

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

10 First Day of Trial

## 12 APPEARANCES:

13 For the Government:14 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
15 Assistant United States Attorneys, Federal Courthouse,  
16 Boston MA 02109.17 For the Defendant:18 Terry R. Segal, Esq., Scott P. Lopez, Esq., and  
19 Brenda Ruel Sharton, Esq., SEGAL & FEINBERG,  
20 210 Commercial Street, Boston, MA. 02109.21  
22 Courtroom 3  
23 Federal Courthouse  
24 Boston, Massachusetts

25 October 25, 1993

Computer-Aided Transcription

P R O C E E D I N G S

THE COURT: Good morning, please be seated.

There are a couple of things left over. Mr. Trenkler is on route. Can I give you rulings while he's coming or do you need him here?

MR. SEGAL: Oh, I think -- well, how long will it be, your Honor?

THE COURT: We just called the Marshal's office and told them to bring him down.

MR. SEGAL: I wonder if we can wait a minute or two, if he's not here, then we can go forward.

(Pause.)

(Defendant present.)

THE COURT: All right. As I recall, there were two motions, well, three, really, left from last week. One of them was the motion to quash the subpoena to Mr. Shay; another, the motion to quash the subpoena to Mr. O'Rourke, and there was the government's motion in limine concerning the 1986 bomb.

In addition to that, there was the motion concerning other 404(b) evidence as to which I'm not prepared to rule. I just received the government's response to that and I wish to review it before ruling on it.

I assume that the government will not make any reference to any of these matters in its opening statement

1 until I can rule on the admissibility of these matters.

2 With respect to the 1986 bomb, as I understand it, it  
3 is offered to show the defendant's, not only skill and  
4 knowledge, but identity and his intent.

5 Under Rule 404(b), evidence is admissible if it has  
6 some special relevance; that is, whether -- if it is offered  
7 to establish some material issue, such as knowledge or intent,  
8 and not merely to show propensity to crime. I have to decide,  
9 also, whether -- if relevant to a material issue, whether it  
10 nevertheless should be ruled out under <sup>403</sup>404(β) as being more  
11 prejudicial than probative. So it's a two-step analysis.

12 I find the proffered evidence is relevant to show the  
13 defendant's skill, knowledge, identity and intent.

14 I find that the 1986 and 1991 devices are  
15 unquestionably similar, although not identical. It is clear  
16 that they are not identical.

17 Based on the rather more extensive evidence on the  
18 issue of signature than had been presented during the first  
19 trial, I also find that the similarities are sufficient to  
20 admit the evidence under the rules established in Ingraham and  
21 Williams by the First Circuit.

22 The standard for admissibility is not, as Mr. Kline  
23 suggested, that the evidence must show beyond a reasonable  
24 doubt that the same person made both devices. Rather, the two  
25 must have, quote, similarity sufficient to be probative, or as

1 the Court said in Ingraham, whether they are sufficiently  
2 idiosyncratic to permit an inference of pattern.

3 Both of the experts, Mr. Waskom and Mr. Kline, agreed  
4 that the systems used in the two bombs are similar. Mr. Kline  
5 quarreled with specific components, but I interpret his  
6 evidence, I understood his testimony to be that they are  
7 nevertheless similar.

8 Although Mr. Kline has considerably more experience  
9 in making, quote, signature comparisons, I find Mr. Waskom  
10 more persuasive as he does not insist on a comparison by an  
11 erroneous standard; namely, reasonable doubt.

12 Both bombs used similar, although as I noted, not  
13 identical components. Both were made in a similar manner. In  
14 both, connectors were soldered. In both, components were  
15 wrapped in duct tape. Both used remote control, although the  
16 remote control systems were not identical. They were, in  
17 their essentials, very much alike. Both had power sources,  
18 slide switches, receivers, antenna and motor that responded  
19 with a moving switch. Both were similarly placed; namely,  
20 under a vehicle. Both were affixed with similar magnets.

21 Adding to this evidence, the statistical evidence  
22 from the EXIS system, I am persuaded that the two devices are  
23 sufficiently similar to prove that the same person built them,  
24 and thus relevant to the issues in the case.

25 The evidence of the 1986 bomb is without question

1 prejudicial in the sense that it will likely harm the  
2 defendant. That is not the test, however. The question is  
3 whether it is unfairly prejudicial. It is not. It is  
4 evidence directly relevant to the central issue in the case,  
5 and it does not, in this trial, present the particular  
6 evidentiary and fairness issues that were present in the trial  
7 of the codefendant.

8           Accordingly, I will admit the proffered evidence and  
9 allow the government's motion in limine, and the defendant's  
10 objections to this ruling are noted.

11           With respect to the motion to quash Mr. Shay, that is  
12 allowed. I do not believe that he can be forced to testify,  
13 even with a grant of immunity, in light of his Fifth Amendment  
14 rights.

15           With respect to Mr. O'Rourke, I haven't decided  
16 that. I'm deeply troubled by calling Mr. O'Rourke. I've  
17 asked the government not to make reference to it in its  
18 opening statement. I wish to think about it some more.

19           And the other motion in limine, also, I ask you not  
20 to reference in your opening, so I can at least read your  
21 brief and make an informed decision on it.

22           That, I think, takes care of all the motions.

23           MR. KELLY: If I may be heard just a moment, your  
24 Honor? I appreciate the Court's instructions here on not  
25 making reference to matters involving Mr. O'Rourke or the

1 other 404(b) matters.

2 With respect specifically and only to the matter  
3 involving Thomas Shay, Jr., the United States has filed with  
4 the Court, and I believe is pending, we had filed it some time  
5 ago, an application to immunize Mr. Shay.

6 THE COURT: That's true.

7 MR. KELLY: Following the Court's statements the  
8 other day, I took a further look at the law on the question of  
9 whether or not an immunity order granted by this Court, thus  
10 immunizing a witness here in the Federal Court, may  
11 nonetheless subject a person to a prosecution by a state  
12 authority.

13 The law is very clear that for supremacy clause  
14 reasons once this Court issues an immunity order to a witness,  
15 nothing that that witness says can be used against that  
16 witness in any state proceeding.

17 THE COURT: I would like to see the law on that  
18 because it is totally contrary to my understanding of the  
19 law. That is, a federal immunity order, as I understand it,  
20 protects a witness in the federal system but not in the state  
21 system.

22 MR. KELLY: I respectfully would like the  
23 opportunity, if I could, your Honor, to present you with some  
24 of those case authorities, and ask the Court at that time  
25 whether it will consider acting on our application for the

1 immunity order.

2 The reason for this, it is really central --

3 THE COURT: At the moment I don't need to act on it,  
4 because at the moment, my view is that he can't testify, under  
5 any circumstances. So if you can persuade me that an immunity  
6 order here does indeed protect him, having in mind the  
7 problems that he has a case on appeal that may come back, and  
8 having in mind that there is at least a reasonable belief on  
9 his part that he may be prosecuted by the state, then I will  
10 reconsider, but at the moment, I won't. So we will just leave  
11 it at that.

12 MR. KELLY: I understand.

13 THE COURT: And of course, whoever, Ms. Gertner or  
14 the defendant in this case will have an opportunity to respond  
15 to your law.

16 MR. KELLY: I understand, your Honor.

17 THE COURT: Now, with respect to the jury questions,  
18 we discussed that on Friday in the absence of the reporter.  
19 So let me just review that on the record.

20 The defendant had requested a questionnaire, and I  
21 think I ruled on that on the record, denying the use of a  
22 questionnaire with the jury. However, I told you that I would  
23 ask the jury essentially the questions that you had asked me  
24 to ask.

25 And this is how I propose to proceed: I will address

1 the entire venire, asking them whether they know any of the  
2 participants in the case, including counsel and the  
3 defendant. I will outline to the entire group the indictment  
4 in the case and then ask them whether they have any knowledge  
5 of the events underlying the charge, at which I anticipate  
6 getting lots of hands, and we will need to review that again  
7 in individual voir dire; whether they know Mr. Thomas Shay,  
8 Jr., Mr. Thomas Shay, Sr., Officer Hurley, Officer Foley;  
9 whether they know any of the witnesses, and you were all going  
10 to give me lists of them. Maybe the government already has.

11 I have the government's list.

12 MR. SEGAL: Mrs. Dello Russo has my list.

13 THE COURT: That's your list with the red?

14 MR. SEGAL: The red is simply to indicate names not  
15 on the government's witness list because we have a lot of  
16 similar witnesses. Those are additional people that will not  
17 be --

18 THE COURT: I need to read all the government's, plus  
19 the red ones?

20 MR. SEGAL: Yes.

21 THE COURT: I will ask them whether any of them have  
22 been employed by any law enforcement agency or any members of  
23 their immediate families have been so employed. And I will  
24 outline to them the schedule which I understand will hopefully  
25 result in the case going to the jury before Thanksgiving, but

1 I will tell them there's no guarantee.

2 Then we will seat 12 jurors and then proceed to  
3 interrogate them individually. And at that point I will  
4 probably need to ask them each, again, whether they know  
5 anything about the case. I will ask them the questions as  
6 follows, and these come, in essence, from the defendant's  
7 proposed questions:

8 If a defendant in a criminal case is accused of  
9 unlawful conduct that resulted in the death of a police  
10 officer, would your views of the evidence be significantly  
11 influenced by that fact?

12 Third question: If a person is arrested, indicted  
13 and brought to trial, would that cause you to believe the  
14 person is probably guilty?

15 Four: If a defendant in a criminal trial does not  
16 testify, would that cause you to believe that this is some  
17 evidence of his guilt?

18 Five: If there is a conflict between the testimony  
19 of a law enforcement officer and a witness not in law  
20 enforcement, would you be inclined to give either more or less  
21 weight to the testimony of the law enforcement officer?

22 Six: Do you believe that homosexual relations  
23 between consenting adults is morally wrong?

24 Seven: Would your views of a witness's credibility  
25 or a defendant's guilt be influenced in any way by that

1 person's sexual orientation?

2 And eight: Is there any other reason that I may not  
3 have specifically articulated why you feel you cannot be a  
4 fair and impartial juror?

5 That's, in essence, what I propose to ask the jurors.

6 And I anticipate we will have jurors within the next  
7 five minutes or so.

8 We will conduct the individual voir dire in the  
9 lobby; however, it will be open court because we'll keep the  
10 door open but a member of the press is invited to sit in, and  
11 that's how we'll go.

12 Mr. Segal.

13 MR. SEGAL: On the last question, your Honor, I  
14 missed it, was it -- is there any other reason you cannot be  
15 fair and impartial, I wonder if you'd also consider adding to  
16 that, or you do not wish to sit on this case?

17 THE COURT: No, jurors don't have a right just not to  
18 want to be on a case.

19 MR. SEGAL: Well, they may have some personal reason  
20 that, you know, they have some leanings and all, and I'm not  
21 sure we could come on a fair and impartial, but, you know,  
22 they might say my second cousin is involved in law  
23 enforcement, I understand we've got that. But I can conceive  
24 of situations that somebody could be fair and impartial but  
25 for some reason that makes good logical sense doesn't want to

1 sit, and I'd just like them to have that opportunity to say  
2 that to you in the chambers.

3 THE COURT: I think not.

4 MR. LIBBY: If the Court please, it's our  
5 understanding that Mr. Segal's intention is to have with him  
6 in chambers during individual voir dire, a jury selection  
7 specialist. I would like to go on the record now to indicate  
8 we would object to having that individual present in chambers  
9 during the selection process.

10 THE COURT: Well, if we were doing this in open  
11 court, certainly the person would have a right to be in open  
12 court.

13 MR. LIBBY: Your Honor, --

14 THE COURT: I mean, the alternative is to do it in  
15 court.

16 MR. LIBBY: Your Honor, that individual would have no  
17 right to be seated at counsel table and confer with  
18 Mr. Segal as to each question.

19 THE COURT: No, but he could certainly hear the  
20 questioning.

21 MR. LIBBY: We believe it's going to effectively  
22 prolong the voir dire process, and any matters that Mr. Segal  
23 can have learned from a specialist over the past few months,  
24 clearly he's learned by now.

25 THE COURT: The alternative to doing what I propose

1 to do is to seat the prospective juror in the witness box and  
2 question that person in open court on the record, which we can  
3 certainly do, and at that point, his jury specialist has the  
4 right to hear it.

5 MR. LIBBY: Note our objection.

6 THE COURT: I do not want you to have lengthy  
7 conferences with your person. I mean, once we're finished  
8 questioning the 12 jurors, I want to proceed to challenges  
9 quickly.

10 MR. SEGAL: I understand and we will. This man has  
11 been in this court on two prior cases and been in 50 federal  
12 courts, so there is nothing unusual.

13 THE COURT: He will not sit at counsel table. We  
14 will sit him in the chair off by himself.

15 MR. KELLY: I want to --

16 MR. SEGAL: One other point on that last question,  
17 your Honor, the words fair and impartial, I wonder if you  
18 would consider is there anything else that would adversely  
19 affect you in this case, versus fair and impartial?

20 THE COURT: Adversely affect them?

21 MR. SEGAL: Fair and impartial is sort of a term that  
22 everybody, you know, likes to think they are going to be fair  
23 and impartial, so if you say that to them, of course, they  
24 will say they will be fair and impartial.

25 THE COURT: That's not in fact true.

1 MR. SEGAL: But adversely affect you, it's more of a  
2 future.

3 THE COURT: It's not in fact true that everybody says  
4 they are fair and impartial. We have frequently had jurors  
5 who asked to be excused on the basis of that all inclusive  
6 question. I'll ask it in some way.

7 Yes, Mr. Kelly.

8 MR. KELLY: Your Honor, I just looking for a  
9 clarification on the exercise of the preemptories As I  
10 recall from the last trial, where we had an equal number.

11 THE COURT: Yes, I think what we will do this time is  
12 that the government exercises one challenge, the defendant  
13 two, government one, defendant two, until you're even, at  
14 which point we go back and forth one and one.

15 MR. KELLY: Thank you, your Honor.

16 MR. SEGAL: Total is 10, 6 when exercised in that  
17 fashion.

18 MR. KELLY: Two challenges for the four alternates?

19 THE COURT: Two each?

20 MR. KELLY: I think that's the standard under the  
21 federal rule of court proceeding.

22 THE COURT: Correct. At that point, it is one and  
23 one.

24 MR. SEGAL: But the 10 and 6 also figure into the  
25 alternates, or am I --

1 THE COURT: No. 10 and 6 is for twelve, and then you  
2 get two additional ones for the alternates. And we will  
3 impanel them separately after we have 12.

4 MR. SEGAL: The alternates are two and two; am I  
5 right?

6 THE COURT: Yes.

7 We have 80 jurors and I would ask that the spectators  
8 be somehow consolidated.

9 THE MARSHAL: If it is okay, can we put them in the  
10 back row until we find out how many seats we have?

11 THE COURT: However you want to arrange it, but I  
12 think we need to -- --

13 The government has filed a motion for sequestration,  
14 which I will allow, and I ask counsel, please, to monitor it.

15 MR. SEGAL: Mr. Bergund, is he allowed to sit behind  
16 me rather than in the first row? May he sit right behind us?

17 THE COURT: Yes.

18 (Pause.).

19 THE COURT: Good morning, members of the jury, I'm  
20 Judge Zobel. And we are about to impanel a jury in a criminal  
21 case which Mrs. Dello Russo is about to call.

22 THE CLERK: United States versus Alfred Trenkler, CR  
23 92-10369.

24 Would the defendant please stand?

25 Mr. Trenkler, you are now set to the bar to be tried,

1 and these good jurors whom I shall call are to pass between  
2 the United States and upon your trial. If you would to object  
3 to any of them, you must do so before they are sworn.

4 THE COURT: Please be seated.

5 We will proceed in the following way. I will need to  
6 ask you a series of questions to ensure that none of you know  
7 anything about the case, that would interfere with your  
8 judgment about the evidence; that none of you know any of the  
9 participants in the trial, and that you can, in the end, be  
10 fair jurors in this case.

11 If the answer to any of the questions is, yes, if you  
12 would kindly just let me have your name at the moment, and  
13 then if you are chosen, I will speak with you further about  
14 what you may or may not know.

15 So let me first introduce to you the lawyers in the  
16 case.

17 This is a criminal case, and the prosecutors are  
18 Mr. Paul V. Kelly and Frank A. Libby, both of them Assistant  
19 United States Attorneys.

20 Do any of you know either of the prosecutors in this  
21 case?

22 The defendant is Mr. Alfred A. Trenkler of Quincy, is  
23 it or Milton?

24 MR. SEGAL: Milton.

25 THE COURT: Do any of you know Mr. Trenkler, the

1 defendant in this case?

2 He is represented -- thank you, please be seated.

3 He is represented by Mr. Terry Phillip Segal  
4 Mr. Scott P. Lopez and Ms. Brenda Sharton of the law firm of  
5 FEINBERG & SEGAL in Boston.

6 Do any of you know defense counsel or have any of you  
7 had anything to do with their law firm?

8 Thank you.

9 A criminal case is always begun, almost always begun  
10 by an indictment. The indictment is the piece of paper that  
11 contains the accusation. And let me tell you what the  
12 accusation in this case says.

13 It is in three counts, so there are three separate  
14 charges in this case. Count 1 says that the defendant was a  
15 member of a conspiracy in September, October of 1991, a  
16 conspiracy to, one, receive explosives in interstate commerce  
17 with a knowledge and intent that they would be used to kill,  
18 injure or intimidate another person, and destroy property,  
19 and, second, a conspiracy to destroy an automobile by means of  
20 an explosive.

21 The second count is what we call the substantive  
22 count that goes back to the first part of the conspiracy, and  
23 it says that the defendant participated in receiving in  
24 October of 1991 an explosive with the intent and knowledge  
25 that it would be used to kill or injure one Thomas Shay, but

1 which did cause the death of one police officer and serious  
2 injuries to another.

3 And the third count says that the defendant  
4 participated in an attempt to maliciously destroy an  
5 automobile belonging to one Thomas Shay, which had been used  
6 in interstate commerce.

7 And all of the counts also say that the conduct of  
8 the defendant resulted in the death of one police officer and  
9 serious injuries to another police officer.

10 The events allegedly took place in Roslindale,  
11 Massachusetts.

12 Do any of you know anything at all about this case?

13 All right.

14 Do any of you know Mr. Thomas Shay, Jr., of Quincy, I  
15 guess?

16 Do any of you --

17 MR. KELLY: One hand, your Honor.

18 THE COURT: Oh, I'm sorry.

19 What is your name, please?

20 A JUROR: Ramona Walsh.

21 MR. KELLY: No. 78, your Honor.

22 THE COURT: One of these days our computer will be  
23 able to give this in alphabetical order. So far, it hasn't  
24 managed it.

25 Anybody else know Mr. Shay, Jr.?

1 Do any of you know Mr. Shay, Sr., of Roslindale?

2 Do any of you know Officer Jeremiah Hurley?

3 Do any of you know Officer Frank Foley? These are  
4 both officers of the Boston Police Department. Officer  
5 Jeremiah Hurley is the person who was allegedly killed as a  
6 result -- who was killed, allegedly as a result of the bomb,  
7 and Mr. Foley was the officer who was injured.

8 Do any of you know either of the officers?

9 I need to read to you a number of names of witnesses  
10 and, again, I will ask you whether any of you know any know  
11 any of the witnesses:

12 Steven Adams of Cleveland, Ohio; Dwayne Armbrister of  
13 Boston; Frank Armstrong of the Boston Police Department;  
14 Richard Bender of Hull, Massachusetts; Jeffrey Berry of  
15 Stoughton.

16 Do any of you know any of these people?

17 Dan Boeh, B O E H -- of Washington?

18 MR. LIBBY: I think that's Boeh, your Honor,  
19 Baltimore.

20 THE COURT: William Bridgeforth, who is with the  
21 Boston Police Department; Richard Brown of Quincy; Phillip  
22 Caldwell of Roslindale; Nurdan Cagdis of Quincy.

23 Do any of you know any of these people?

24 The list goes on, so bear with me.

25 Edward Carrion of Boston; John Cates of Franklin;

1 Michael Coady of Quincy; Jack Coyle of Weymouth; Robert Craig  
2 of Boynton Beach, Florida.

3 Thomas Creavin, C R E A V I N, of Boston; Thomas  
4 D'Ambrosio of the Bureau of Alcohol, Tobacco & Firearms in  
5 Boston; Robyn DePalma of Quincy; John Doering,  
6 D O E R I N G, of Brockton; Robert Evans of Randolph,  
7 Massachusetts.

8 Do any of those names ring a bell?

9 Brent Donaghue of Hull; Mary Flanagan of Roslindale;;  
10 Robert Flavell of Duxbury; William Fogerty of the Boston  
11 Police Department; Francis Foley of the Boston Police  
12 Department.

13 Do any of you know any of these people?

14 Judy Fredette of Quincy; Al Gleason of Jacksonville,  
15 Florida; Michael Greene of Quincy; Frank Hankard of the  
16 Massachusetts State Crime Laboratory; James Harding of  
17 Weymouth.

18 Lawrence Herb, who is a document examiner with the  
19 Bureau of Alcohol, Tobacco & Firearms; James Karolides of  
20 Peabody; James Keough of Boston; Jeffrey, Kerr who is also  
21 with the Bureau of Alcohol, Tobacco & Firearms in Boston;  
22 Denise Kraft was her maiden name, she's now Denise Corbett, of  
23 the Boston Police Department.

24 Do any of you know any of the people whose names I  
25 have just called?

1 William Lanergan of the Quincy Police Department;  
2 Sandra LaCourse of the Bureau of Alcohol, Tobacco & Firearms  
3 in Boston; Todd Leach of Quincy; Dennis Leahy also of ATF; Bob  
4 Lee of Cambridge; David Lindholm of Quincy; Wajahat Malick of  
5 Bridgewater.

6 Did you raise your hand?

7 Robert Maloney, Boston Police Department; John  
8 McCarthy, Boston Police Department; James McKernon,  
9 Roslindale, Massachusetts; Eleanor McKernon, Roslindale,  
10 Massachusetts; Charles Metcalf, Bureau of Alcohol, Tobacco &  
11 Firearms.

12 Left me assure that not everybody on this list will  
13 testify, but it's an all-inclusive list just to make sure that  
14 we cover all bases.

15 Do any of you know any of the people whose names I've  
16 just mentioned?

17 A JUROR: Frank Armstrong you first mentioned, he's a  
18 Boston Police Officer?

19 THE COURT: What is your name, please?

20 A JUROR: Joseph MacDonald, No. 33.

21 THE COURT: Anybody else?

22 Did I say David Millette?

23 MR. KELLY: 48, your Honor.

24 THE COURT: Timothy Murray, Boston Police,, Paul  
25 Nutting, Boston; Patricia O'Donoghue, Quincy; Peter O'Malley,

1 Boston Police Department; Francis O'Rourke, Boston.

2 Do you know any of them?

3 Victor Palaza, Bureau of Alcohol, Tobacco & Firearms;  
4 Evelyn Pirello, Roslindale; Lawrence Plant, Quincy; Chris  
5 Porreca, Bureau of Alcohol, Tobacco & Firearms; Alan Pransky,  
6 Dedham; James Quinlan, Quincy.

7 Yes, what is your name, please?

8 A JUROR: Janet Talbot.

9 THE COURT: Thank you.

10 THE CLERK: No. 19.

11 THE COURT: Ms. Walsh.

12 A JUROR: I may know Lawrence Plant.

13 THE COURT: James Quinlan, Quincy; Andy Robinson of  
14 Springhill, Florida; Louis Rotman, Randolph; Steve Scheid,  
15 Bureau of Alcohol, Tobacco & Firearms; Dr. Christopher  
16 Shapley, Bedford, New Hampshire; Paul Shaw of Weymouth,  
17 Massachusetts; Thomas A. Shay, Quincy, Massachusetts.

18 Do any of you know any of these people?

19 Thomas L. Shay, Roslindale; Nancy Shay, Quincy; Paula  
20 Shay, Quincy; Donna Shea, spelled S H E A, contrasted with S H  
21 A Y as the previous bunch was, of Weymouth; David Shilallis,  
22 Quincy; Randy Stoeller, Attelboro.

23 A JUROR: S H A Y again?

24 THE COURT: When I asked you earlier whether you know  
25 any Thomas Shay, that is spelled S H A Y, and Donna Shea is

1 spelled S H E A.

2 A JUROR: Does she have a sister?

3 THE COURT: Thomas Shay?

4 No, but Paula Shay, maybe.

5 A JUROR: Paula, I believe.

6 THE COURT: What is your name?

7 A JUROR: Marcia Lapson.

8 THE COURT: Anybody else?

9 MR. KELLY: There's one other.

10 THE COURT: Ms. Walsh? You know everybody.

11 Thomas Tierney, Quincy Police Department; Miller  
12 Thomas, Boston Police Department; Anastasiose Vasiliadas of  
13 Hull; Cynthia Wallace, Bureau of Alcohol, Tobacco & Firearms  
14 of Washington or Baltimore; David Wallace of Randolph.

15 A JUROR: Thomas Tierney.

16 THE COURT: Okay, I've got your name.

17 Thomas Waskom of Bureau of Alcohol, Tobacco &  
18 Firearms in Baltimore or Washington; Dr. James Weiner, Medical  
19 Examiner, Suffolk County, Massachusetts; Kip White, Wellesley;  
20 Eric Wilkie, Boston; Dr. Peter DeForest. I don't know of  
21 where for the rest of these. David Gaines; Rod Kennedy.

22 Do those names ring a bell?

23 Brian O'Leary; Mark Rambolli; Arthur Shay, spelled S  
24 H A Y; Jack Wallace; Jo Wallace; Bill McNamara; Denny Kline;  
25 David Flaherty.

1 I don't where any of these people are from,  
2 Mr. Segal.

3 MR. SEGAL: I'll be happy to supply them.

4 THE COURT: Do the names sound familiar to any of  
5 you?

6 William Baione; Sharpless Jones; Louie Giamarco;  
7 David Louis; Frank Cavallo et Alvaro.

8 A JUROR: Marcia Lapson.

9 THE CLERK: No. 2.

10 Martin Alexander; Phil Caldwell; Rod Davidson; Robert  
11 Pirello; Scott Davis; Joseph Pelphrey,  
12 P E L P H R E Y; Chris Punis, P U N I S; David McGary; Bill  
13 Miller; Dr. Robert Philips; Eric Wilkie; Bruce Marcus; Randy  
14 Winchester; David Farde; Peter Cataldo.

15 All right.

16 Now, are any of you or have any of you been employed  
17 by any law enforcement agency, either local, state or  
18 federal? And, also, I want to include if any members of your  
19 immediate families have been employed by any law enforcement  
20 agency?

21 So we'll do this by row.

22 Ms. Walsh, I've already got.

23 What is your name, please?

24 A JUROR: Melissa Mazzarella, No. 77.

25 THE COURT: And you, also, sir?

1 A JUROR: Peter Confalone.  
2 MR. KELLY: No. 50.  
3 THE COURT: Anybody else second row on my left side?  
4 Yes, sir, what is your name, please??  
5 A JUROR: Robert Thomas.  
6 THE COURT: Anybody else second row?  
7 Third row.  
8 Yes.  
9 A JUROR: Joanne Ruggiero.  
10 THE CLERK: No. 17.  
11 THE COURT: Anybody else in the third row?  
12 Yes, sir.  
13 A JUROR: Woo, W O O, Raymond.  
14 THE COURT: Anybody else?  
15 Next row, fourth row. Nobody?  
16 Fifth row?  
17 A JUROR: Dawn Salvail.  
18 THE CLERK: 62.  
19 THE COURT: Anybody else in that row?  
20 Next row, fourth row. Nobody?  
21 Fifth row?  
22 A JUROR: Janet Talbot.  
23 THE COURT: Anybody else on this side?  
24 Yes.  
25 A JUROR: Does that include my brother-in-law, who is

1 a police officer?

2 THE COURT: Let's count him. What is your name,  
3 please?

4 A JUROR: Amanda Mitchell.

5 THE COURT: And there was somebody in the back.  
6 Yes.

7 A JUROR: What do you mean by law enforcement?

8 THE COURT: Local police or something like Bureau of  
9 Alcohol, Tobacco & Firearms, or State Police or FBI or  
10 anything like that, Customs Police.

11 A JUROR: U.S. Attorney's Office?

12 THE COURT: Yes.

13 So what is your name, please?

14 A JUROR: Stephanie Paradis.

15 THE COURT: Anybody else on this side of the  
16 courtroom?

17 All right, now let me to go this side. First row.  
18 Yes.

19 A JUROR: David Welch.

20 MR. KELLY: 80.

21 THE COURT: Anybody else in the first row?

22 Yes.

23 A JUROR: Marcia Fries.

24 MR. KELLY: 36.

25 THE COURT: And you, sir?

1 A JUROR: Facey, F A C E Y, David.

2 MR. KELLY: 43.

3 THE COURT: Anybody in the second row? Third row?  
4 Fourth?

5 Anybody on this side?

6 Okay.

7 A JUROR: Margaret Shea, spelled S H E A.

8 THE CLERK: 13.

9 THE COURT: And there was somebody else.  
10 Yes.

11 A JUROR: Rosemarie Vecchio.

12 THE CLERK: 73.

13 THE COURT: And who else?

14 Yes.

15 A JUROR: Judge, are you making a distinction between  
16 currently employed or previously employed?

17 THE COURT: Everything.

18 A JUROR: The whole world.

19 A JUROR: Dalia Zikas.

20 THE CLERK: 35.

21 THE COURT: Was there anybody else?

22 A JUROR: Anne Lawrence.

23 THE COURT: Anybody else? Is that it?

24 Finally, the trial will take two to three weeks to  
25 complete. We will sit every day from 9 until 1, until the

1 evidence is completed.

2 When the jury deliberates on its verdict, it will be  
3 here into the afternoon until it finds it's too tired to go  
4 on, and then we'll probably go home and probably come back the  
5 next day to continue.

6 On November 17, 18 19, we will not sit. But then we  
7 start again -- that is, Wednesday, Thursday, Friday of that  
8 week, and then we start again the next week if we haven't  
9 finished.

10 I hope that we will be done before Thanksgiving. I  
11 do not guarantee it, however.

12 Does that cause anyone serious inconvenience, the  
13 schedule?

14 [Laughter.]

15 THE COURT: All right. We'll deal with that later.

16 Let us seat 12.

17 THE CLERK: Seat No. 1 in the first row being closest  
18 to me, Sheridan Kassirer, No. 48 on the list; Seat No. 2,  
19 Marcia Lapson, No. 2 on the list;; Seat No. 3, Ralph Winslow,  
20 No. 16; Seat No. 4, Marie O'Hare, No. 4; Seat  
21 No. 5, Theresa Spinelli, No. 27; Seat No. 6, James Bowers, No.  
22 15; Seat No. 7, first one in the second row, Donald Wright,  
23 No. 24; Seat No. 8, Rosamond Hanlon, No. 25; Seat No. 9,  
24 Robert Belton, No. 28.

25 THE COURT: Mr. Belton, if you go in that way, you

1 won't have to climb over anybody. Second row, please.

2 Thanks.

3 THE CLERK: Seat No. 10, Amanda Mitchell, No. 32;  
4 Seat 11, Joseph MacDonald, No. 33; Seat No. 12, Chrissa  
5 Pissios, No. 72.

6 THE COURT: Members of the jury, I will need to talk  
7 individually to each of the jurors who are now in the jury  
8 box. Because it's difficult to do that when we are sort of  
9 hunched over at the edge of the bench here, we will do it in  
10 the lobby. We'll keep the door open. And I hope that you  
11 will be patient with us as we go through this. It's  
12 unfortunately necessary to do it because so many of you know  
13 something about the case.

14 So we will proceed as expeditiously as possible.  
15 We'll get to the rest of you as quickly as we can. Make  
16 yourselves comfortable in the meantime to the extent you can,  
17 but please don't go away.

18 You want to put something on the record?

19 MR. SEGAL: I believe Juror No. 1 in the box, your  
20 Honor, Sheridan Kassirer, I have met her eight or ten times.

21 THE COURT: In what connection?

22 MR. SEGAL: I believe she's a member of the Temple  
23 that I attend in Wellesley. I didn't have my glasses on.

24 THE COURT: Let's bring her in and we'll find out.

25 MR. SEGAL: It is a limited contact, but I believe

1 that's the same woman that I've seen over at the different  
2 religious functions at the Temple and just spoken to her in a  
3 very casual way. Unless my vision is really gone, I believe  
4 I'm right.

5 THE COURT: Good morning.

6 How do you pronounce your name?

7 A JUROR: Kassirir.

8 THE COURT: Mr. Segal thinks he knows you. Do you  
9 know him?

10 THE WITNESS: He's a member of our Temple.

11 THE COURT: Do you know him in such a way that you  
12 think that you can't be a fair juror in a case in which he's  
13 counsel.

14 A JUROR: No.

15 THE COURT: Did you raise your hand when I asked  
16 whether you know anything about the case?

17 THE WITNESS: No, I didn't, but I believe I do  
18 remember the case in the papers.

19 THE COURT: What do you remember about it?

20 THE WITNESS: This may be a case that dealt with a  
21 bomb going off and killing a police officer.

22 THE COURT: Is what you know about it likely to be in  
23 any way -- is it likely in any way to interfere with your  
24 ability to try the case only on the basis of what you hear in  
25 the courtroom?

1           A JUROR: No, I don't believe so.

2           THE COURT: If a defendant in a criminal case is  
3 accused of unlawful conduct that resulted in the death of a  
4 police officer, would your views of the evidence be  
5 significantly influenced by that fact; namely, the death of a  
6 police officer?

7           A JUROR: Yes.

8           THE COURT: So you don't think that you could be --  
9 what does that mean?

10          THE WITNESS: It means that I would be influenced by  
11 the fact that a police officer died.

12          THE COURT: Would it change your view of the  
13 evidence?

14          THE WITNESS: No, not change my view of the  
15 evidence.

16          THE COURT: But how would it affect your view of the  
17 evidence?

18          THE WITNESS: I guess many of us would feel more  
19 passionately about a police officer being killed.

20          THE COURT: Would you be able to try this case  
21 fairly?

22          A JUROR: I think so.

23          THE COURT: Do you have doubts?

24          A JUROR: No.

25          THE COURT: If a person is arrested, indicted and

1 brought to trial, would that cause you to believe that the  
2 person is probably guilty?

3 A JUROR: Would you repeat the question?

4 THE COURT: Would the fact that a person has been  
5 indicted, arrested and brought to trial, lead you to believe  
6 that the person is likely guilty?

7 A JUROR: No.

8 THE COURT: If a defendant in a criminal case doesn't  
9 testify, would that cause you to believe that this is some  
10 evidence of his guilt?

11 A JUROR: No.

12 THE COURT: If there is a conflict in the testimony  
13 of a law enforcement officer and the testimony of some other  
14 person, would you be more inclined or less inclined to give  
15 weight to the testimony of the law enforcement officer?

16 A JUROR: I'd have to evaluate the testimony.

17 THE COURT: Do you believe that homosexual relations  
18 between consenting adults is morally wrong?

19 A JUROR: No.

20 THE COURT: Would your views of a witness's  
21 credibility or a defendant's guilt be influenced in any way by  
22 that person's sexual orientation?

23 A JUROR: No.

24 THE COURT: Did you have a problem with our  
25 schedule?

1           A JUROR: Yes. I have -- I was called to serve  
2           October 12th through November 5th. I have a business trip  
3           beginning November 6th for a week.

4           THE COURT: Which can't be changed?

5           A JUROR: It would be difficult to change it.

6           THE COURT: What would happen to you if you were not  
7           able to go on this trip?

8           A JUROR: Nothing dire, I hope. I put considerable  
9           deposits, and I was taking my mother who was looking forward  
10          to it, who has just came out of the hospital after six weeks.

11          THE COURT: Is there any reason other than what we  
12          have specifically talked about why you feel you cannot serve  
13          on this case?

14          A JUROR: No.

15          THE COURT: Mr. Segal, any questions?

16          MR. SEGAL: No, your Honor.

17          THE COURT: Mr. Kelly or Mr. Libby, who is going to  
18          do this?

19          MR. KELLY: I will, your Honor.

20          I just want to clarify. The spouse's occupation with  
21          the New England Journal of Medicine, if I may ask whether or  
22          not her husband is a journalist or is in some field of the  
23          medical profession?

24          A JUROR: He's a physician.

25          MR. KELLY: He's also a doctor?

1           A JUROR:   Yes.

2           THE COURT:  Thank you.  Would you please return to  
3 the jury box?

4           And let us talk to Ms. Lapson.

5           Good morning, you how are you?

6           A JUROR:  Good morning.  Fine, thank you.

7           THE COURT:  Ms. Lapson, did you raise your hand when  
8 I asked whether you knew anything about the case?

9           A JUROR:  Yes, I did.

10          THE COURT:  What do you know about it?

11          A JUROR:  I read Globe articles on days that I read  
12 the Globe, and I probably saw some television reporting about  
13 it that I don't remember.

14          THE COURT:  At what time, when?

15          A JUROR:  Oh, prior investigation, arrest of Thomas  
16 Shay and the outcome of the trial.

17          THE COURT:  Would what you do know about the case  
18 make it in any way difficult for you to try this case fairly,  
19 based only on what will be presented in the courtroom?

20          A JUROR:  That's very difficult for me to answer.

21          I believe I'm capable to looking at evidence, but I  
22 also believe that the newspapers certainly led me to think in  
23 a particular direction.

24          THE COURT:  If a defendant in a criminal case is  
25 accused of unlawful conduct that resulted in the death of a

1 police officer, would your views of the evidence be  
2 significantly influenced by that fact, the death of the police  
3 officer?

4 A JUROR: No.

5 THE COURT: If a person is arrested, indicted and  
6 brought to trial, would that cause you to believe that the  
7 person is probably guilty?

8 A JUROR: Just knowing those facts?

9 THE COURT: Just knowing that.

10 A JUROR: No.

11 THE COURT: If a defendant in a criminal case does  
12 not testify, would that cause you to believe that that is some  
13 evidence of guilt, his failure to testify?

14 A JUROR: I think it would depend on the situation.

15 THE COURT: If there is a conflict between the  
16 testimony of a law enforcement officer and a witness who is  
17 not in law enforcement, would you be inclined to give either  
18 more or less credence to the testimony of the law enforcement  
19 officer?

20 A JUROR: That would also depend upon what else I  
21 have heard.

22 THE COURT: The question is: Would you be in any way  
23 influenced by the fact that one is a law enforcement officer  
24 and the other is not? Simply that fact.

25 A JUROR: I don't know.

1           THE COURT: Do you believe that homosexual relations  
2 between consenting adults is morally wrong?

3           A JUROR: No.

4           THE COURT: Would your view of a witness's  
5 credibility or a defendant's guilt be influenced in any way by  
6 that person's sexual orientation?

7           A JUROR: A defendant's what?

8           THE COURT: Guilt.

9           A JUROR: No.

10          THE COURT: Do you have a problem with the schedule?

11          A JUROR: No.

12          THE COURT: Is there any reason that I may not have  
13 specifically asked you about, why you feel you cannot serve on  
14 this jury?

15          A JUROR: I don't know if this is a reason, but when  
16 you went through the list of witnesses, I believe you named a  
17 Nancy Shay, was that one of the names?

18          THE COURT: Yes, S H A Y.

19          A JUROR: Yes. I'm a former school teacher, and  
20 Nancy Shay was a student of mine for a period of time,  
21 approximately 12 years ago.

22          THE COURT: Is that possible?

23          A JUROR: I was doing a little computation, I would  
24 guess she was a freshman at the time I recall.

25          MR. KELLY: Your Honor, the mother's name is Nancy

1 Shay and there's also a daughter by the name of Nancy Shay.  
2 That would be approximately--

3 A JUROR: Twenty-sevenish.

4 MR. KELLY: I would say that's about the right age  
5 frame.

6 THE COURT: She was a student of yours in a home room  
7 situation or in a particular class?

8 A JUROR: As a student in an English class.

9 THE COURT: Would that make it difficult for you to  
10 judge her believability if she were to be a witness in this  
11 case?

12 A JUROR: No, because besides the name, I don't  
13 remember a great deal about her. She might look familiar to  
14 me, she might not.

15 THE COURT: Mr. Segal, any questions?

16 MR. SEGAL: No, thank you.

17 A JUROR: There was one other name, you named a Louie  
18 Giamarco.

19 THE COURT: Yes.

20 A JUROR: I don't know if that is the same person who  
21 may have -- if it is, there was a student at a school earlier,  
22 approximately 1969, 1970, named Louie Giamarco, and this was  
23 the Milton public school system.

24 THE COURT: Is he of Milton?

25 MR. KELLY: I don't believe he's of Milton, your

1 Honor, but I'm not clear on where --

2 A JUROR: He, I would guess, '69, he might have been  
3 14. He was not my student, that I recall. He was a student  
4 in the school.

5 THE COURT: Again, would you be able to judge his  
6 believability, independent of any knowledge that you may  
7 have?

8 A JUROR: I might question the credibility on that  
9 person, if it is the same person.

10 THE COURT: I can't find him on my list here, so I  
11 can't tell you where he's from now.

12 A JUROR: You named him toward the end.

13 MR. KELLY: He is on the defendant's list.

14 THE COURT: Ah, which doesn't tell me where he's  
15 from.

16 MR. KELLY: I'm told that he in fact was originally  
17 from Milton and now has a place of employment in Dedham.

18 THE COURT: All right.

19 Mr. Kelly, did you have any questions?

20 MR. KELLY: No, your Honor, I do not.

21 THE COURT: Thank you, Ms. Lapson, would you please  
22 return to the jury box.

23 What is your view as to -- is either counsel seeking  
24 to have either of these jurors excused for cause?

25 MR. SEGAL: We are not, your Honor.

1 MR. KELLY: No, your Honor, not for cause.

2 THE COURT: Okay.

3 MR. KELLY: I would like to ask a question if I  
4 could. As I recall the last time we engaged in this process,  
5 we asked the jurors if they could just tell us if they were  
6 married and if they had children, given the fact that we have  
7 some testimony about a son and a father. And, for example, we  
8 don't know with respect to Ms. Lapson whether or not she has  
9 children or how many. So I would ask in the questioning of  
10 future jurors if we can get a sense of --

11 THE COURT: It wasn't one of the questions you asked  
12 me to ask.

13 MR. LIBBY: Your Honor, on the juror sheets some of  
14 the information is blank. We don't know what their prior  
15 occupation may be or their marital status, that kind of thing,  
16 to the extent that it is --

17 MR. SEGAL: If we go into that, I have no objection.  
18 I just ask that you ask what their children do outside the  
19 house.

20 THE COURT: Good morning, Mr. Winslow.

21 THE WITNESS: Good morning.

22 THE COURT: This is Mr. Winslow, 16 on the list, Seat  
23 3.

24 Do you know anything about this case?

25 A JUROR: Only what I read in the newspaper.

1 THE COURT: What did that tell you?

2 A JUROR: Not much. Just read about it as a  
3 happening, you might say.

4 THE COURT: When did you read about it?

5 A JUROR: Quite a while ago. I can't remember.

6 THE COURT: Do you remember anything at all about  
7 what you read?

8 A JUROR: Just that a policeman was killed, and I  
9 think he was a policeman that went to investigate a  
10 complaint. That's about all I remember. I think there was a  
11 bomb somewhere or other.

12 THE COURT: Do you feel you can decide the case based  
13 only on what you will hear in the courtroom and not on  
14 what you may have read about earlier?

15 A JUROR: I think I can, because I don't remember  
16 much about what I read.

17 THE COURT: If a defendant in a criminal case is  
18 accused of unlawful conduct that resulted in the death of a  
19 police officer, would your views of the evidence be  
20 significantly influenced by the fact of the death of a police  
21 officer? That is, would the fact that a police officer died  
22 in any way influence your views of the evidence?

23 A JUROR: I don't think so, no. No more than if  
24 anybody else died.

25 THE COURT: If a person is arrested, indicted and

1 brought to trial, would that cause you to believe that the  
2 person is probably guilty?

3 A JUROR: No.

4 THE COURT: If a defendant in a criminal case does  
5 not testify, would that cause you to believe that a failure to  
6 testify is some evidence of guilt?

7 A JUROR: I'd wonder about it probably.

8 THE COURT: If you understand, of course, that the  
9 law says you may not take that into account?

10 A JUROR: I didn't understand that.

11 THE COURT: The idea is in a criminal case, when the  
12 government accuses somebody, then it's up the government to  
13 prove him guilty, and the defendant has no burden whatsoever  
14 to prove his innocence, doesn't have to offer any evidence,  
15 doesn't have to testify. He can just say to the government,  
16 you have accused me, now you prove it.

17 A JUROR: Yes.

18 THE COURT: Do you have any problem with that?

19 A JUROR: No.

20 THE COURT: If there is a conflict between the  
21 testimony of a law enforcement officer and a witness who is  
22 not in law enforcement, would you be inclined to give either  
23 more or less credence to the witness who is a law enforcement  
24 officer?

25 A JUROR: No.

1 THE COURT: Do you believe that homosexual relations  
2 between consenting adults is morally wrong?

3 A JUROR: Yes.

4 THE COURT: Would your views of a witness's  
5 credibility or a defendant's guilt be influenced in any way  
6 that person's sexual orientation?

7 A JUROR: I would -- I would like to think it  
8 wouldn't be, but, you know, we all have prejudice, and I just  
9 stated what mine was in the previous question, so.

10 THE COURT: But this is a different question.

11 A JUROR: I know. I would say no. I would try to be  
12 fair.

13 THE COURT: Did you have a problem with the schedule  
14 that I had outlined in court?

15 A JUROR: No.

16 THE COURT: Is there any reason other than what I  
17 have specifically asked you about that you know would make it  
18 difficult for you to sit as a fair juror in this case?

19 A JUROR: Not that I'm aware of.

20 THE COURT: Mr. Segal, any questions?

21 MR. SEGAL: May I ask one, Mr. Winslow --

22 THE COURT: You may ask me and I'll decide whether  
23 you can have the question.

24 MR. SEGAL: You might have covered it in the question  
25 about the law enforcement, whether Mr. Winslow would give more

1 weight to the officers.

2 THE COURT: I did cover that and he said he thought  
3 not.

4 MR. SEGAL: I guess my question was on Mr. Winslow on  
5 the issue of the defendant doesn't testify, said he'd wonder  
6 about that. I guess my question is what would he wonder  
7 about? I think you asked him a question about.

8 THE COURT: Yes. I think you indicated that you  
9 would hope that you would not, I think you said. Well, tell  
10 us, what you did say in response to the question about the  
11 effect of a defendant not testifying, effect on your feeling  
12 about his guilt?

13 A JUROR: Well, I think I answered your question by  
14 saying I would wonder about it. And then you explained to me  
15 that he doesn't have to testify, which I was unaware of.

16 THE COURT: Does it change your view in any way,  
17 would you I'd be wondering?

18 A JUROR: No, I said I would think I would like to  
19 make a fair decision, now that I understand he doesn't have  
20 to.

21 THE COURT: Anything else?

22 MR. SEGAL: I guess, would you I'd wonder about it  
23 even though you understand it?

24 THE COURT: He said he would make a fair decision.

25 MR. SEGAL: I think Mr. Winslow responded about

1       that.

2               THE COURT:   What's the question you want to ask?

3               MR. SEGAL:   About his view of sexual consenting --  
4       sexual relations by consenting adults.  I think he said he  
5       felt he had an opinion on that.  The question is, could he be  
6       fair, given that if there's testimony that some of the people  
7       in this case are in fact gay and there are those  
8       relationships, would that in any way influence his view of the  
9       case?

10              THE COURT:   I assume you understood that there would  
11       be testimony by homosexuals in this case.  Would you be  
12       influenced in judging their believability by the fact that  
13       they are homosexuals?

14              A JUROR:    I would like to think I would not be.  I  
15       assumed there would be when you asked me that other question.

16              THE COURT:   Of course.

17              A JUROR:    Which I responded.  I'm trying to be honest  
18       with you.

19              MR. SEGAL:   My question is a little more direct.  It  
20       is likely there will be some testimony from gay people on  
21       behalf of the defendant in this case.  The question is:  Is  
22       that something -- I'd like to know --

23              THE COURT:   It is the same question.

24              MR. SEGAL:   Well, testifying generally it could be  
25       both sides.  We have some people that are gay, who would be

1 key witnesses for us.

2 THE COURT: What specifically do you want to ask  
3 him? I don't understand your --

4 MR. SEGAL: Would his view of the evidence that the  
5 defense puts in be in any way influenced if two or three key  
6 defense witnesses are gays, given his feelings about gay  
7 people?

8 THE COURT: Well, as I understand Mr. Winslow, he  
9 told us that he would hope it would not influence him, if a  
10 person who was a homosexual is a witness. There will be  
11 homosexuals who are witnesses on behalf of the government and  
12 there will be homosexuals who are witnesses on behalf of the  
13 defense.

14 MR. SEGAL: My question is: Would he likely give  
15 less weight to the testimony --

16 THE COURT: To the homosexual defense witness than to  
17 the homosexual government witness?

18 MR. SEGAL: No, no. To the homosexual witness versus  
19 any other witness in the case because the person is gay?

20 THE COURT: Well, I don't know. Do you understand  
21 the question?

22 A JUROR: I do. No.

23 MR. KELLY: Your Honor, may we inquire about any  
24 military service?

25 THE COURT: Why?

1 MR. KELLY: I'd be curious, if there was military  
2 service, whether any of it involved the field of explosives?

3 THE COURT: Have you ever played with explosives in  
4 the military or otherwise?

5 A JUROR: No.

6 MR. KELLY: Thank you, your Honor.

7 THE COURT: Thank you, Mr. Winslow, would you please  
8 return to your seat in the jury box?

9 Let's talk to Ms. O'Hare, No. 4 on the list in Seat  
10 No. 4.

11 Good morning.

12 A JUROR: Good morning.

13 THE COURT: How are you?

14 A JUROR: Good, how are you?

15 THE COURT: Ms. O'Hare, our sheet doesn't tell us  
16 what your occupation is.

17 A JUROR: Secretary.

18 THE COURT: For whom do you work?

19 A JUROR: EG&G in Salem.

20 THE COURT: Are you married?

21 A JUROR: Separated.

22 THE COURT: Do you have children?

23 A JUROR: Yes, I have two.

24 THE COURT: How old are they?

25 A JUROR: A son, 21, and a daughter, 12.

1           THE COURT: Do you know anything about this case?  
2 Have you read anything?

3           A JUROR: Vaguely, just pick up the paper and read it  
4 and that was it. Vaguely. I don't recall too much about it.

5           THE COURT: Do you recall when you read about it?

6           A JUROR: It was a while ago.

7           THE COURT: Do you remember anything about what you  
8 read?

9           A JUROR: Just about explosives. That's about it. I  
10 remember car explosives, but I don't remember too much more.

11          THE COURT: Will you be able to decide the case based  
12 entirely on what you will hear in the courtroom from the  
13 witnesses and not in any way from what you may have read in  
14 the paper some time ago?

15          A JUROR: Yes.

16          THE COURT: If a defendant in a criminal case is  
17 accused of unlawful conduct that results in the death of a  
18 police officer, would the fact that a police officer was  
19 killed in any way influence your views of the evidence?

20          A JUROR: No.

21          THE COURT: If a person is arrested, indicted and  
22 brought to trial, would that cause you to believe that the  
23 person is probably guilty?

24          A JUROR: No.

25          THE COURT: If a defendant in a criminal case does

1 not testify, would that cause you to believe that his failure  
2 to testify is some evidence of his guilt?

3 A JUROR: No.

4 THE COURT: If there is a conflict between the  
5 testimony of a law enforcement officer and a person who is not  
6 in law enforcement, would you be inclined to give either more  
7 or less credibility to the law enforcement witness?

8 A JUROR: No.

9 THE COURT: Do you believe that homosexual relations  
10 between consenting adults is morally wrong?

11 A JUROR: No.

12 THE COURT: Would your views of a witness's  
13 credibility or a defendant's guilt be influenced in any way by  
14 that person's sexual orientation?

15 A JUROR: No.

16 THE COURT: Did you have a problem with our  
17 schedule?

18 A JUROR: No.

19 THE COURT: Is there any reason that I may not have  
20 specifically asked you about but that you know about why you  
21 feel you cannot serve as jurors in this case?

22 A JUROR: No, I don't think, no. I understand  
23 everything you've said.

24 THE COURT: Mr. Segal, any questions?

25 MR. SEGAL: No, thank you.

1 THE COURT: Mr. Kelly?

2 MR. KELLY: No, your Honor.

3 THE COURT: Thank you very much, Ms. O'Hare, if you  
4 would kindly return to the jury box for the moment.

5 With respect to the last two, any challenges for  
6 cause?

7 MR. SEGAL: Yes, your Honor. I would like to  
8 challenge Mr. Winslow. He said homosexuality is morally  
9 wrong, and he would only try to put that aside.

10 THE COURT: What's your view, Mr. Kelly?

11 MR. KELLY: He did appear to express some  
12 reluctance. He did say, however, he would try to be fair,  
13 although he did tell you that everybody has prejudices and his  
14 was outlined by his response to your previous question, so he  
15 wasn't --

16 THE COURT: I'm inclined to excuse him for cause.  
17 That's Juror No. 16 in Seat 3, but we'll pass it for the  
18 moment and then fill that seat then we finish all of the  
19 examination.

20 Let us now talk to Ms. Spinelli.

21 THE COURT: Good morning, how are you?

22 A JUROR: Good.

23 THE COURT: Ms. Spinelli, you work with the Chelsea  
24 Soldiers Home?

25 A JUROR: Yes.

1 THE COURT: Your husband is what kind of a musician?

2 A JUROR: Professional musician.

3 THE COURT: What does he play?

4 A JUROR: Keyboard.

5 MR. SEGAL: I'm sorry, your Honor, I have trouble  
6 hearing.

7 THE COURT: Plays keyboard.

8 Do you have children?

9 A JUROR: Yes.

10 THE COURT: How old are they?

11 A JUROR: 30 to 36.

12 THE COURT: Well, flown, flown the coop, right?

13 A JUROR: Yes.

14 THE COURT: Lucky you.

15 Do you know anything about this case?

16 A JUROR: I did see it on the news.

17 THE COURT: When?

18 A JUROR: I don't know. Whenever it happened, I  
19 guess.

20 THE COURT: Have you seen anything recently about  
21 it?

22 A JUROR: No.

23 THE COURT: Will you be able to decide the case based  
24 entirely on what you will hear in the courtroom and not in any  
25 way on anything that you may have read about or seen on the

1 news?

2 A JUROR: I believe so.

3 THE COURT: Did you have a problem with our  
4 schedule?

5 A JUROR: Well, yes. I have a lot of appointments  
6 and things to cancel, appointments and such I'd have to  
7 cancel.

8 THE COURT: But you can do it?

9 A JUROR: If absolutely necessary, I suppose I would  
10 have to if I have to.

11 THE COURT: I mean, it's not as though you have a  
12 vacation which you've plunked down large amounts of money?

13 A JUROR: Right. The only other thing I wanted to  
14 mention was that I didn't mention at the time because it  
15 happened so long ago, my first husband was a police officer.

16 THE COURT: Where did he work?

17 A JUROR: Everett.

18 THE COURT: Would that make it in any way difficult  
19 for you?

20 A JUROR: No, it was 28 years ago, so.

21 THE COURT: If a defendant in a criminal case is  
22 accused of unlawful conduct that results in the death of a  
23 police officer, having in mind what you have just told me,  
24 would that fact make it -- would that in any way influence  
25 your view of the case, the fact that a police officer was

1 killed?

2 A JUROR: No.

3 THE COURT: If a person is arrested, indicted and  
4 brought to trial, would that cause you to believe that he is  
5 probably guilty?

6 A JUROR: No.

7 THE COURT: If a defendant in a criminal case does  
8 not testify, would that fact cause you to believe that this is  
9 some evidence of his guilt?

10 A JUROR: No.

11 THE COURT: If there's a conflict in the testimony  
12 between a witness who works for law enforcement and a witness  
13 who does not, would you be inclined to give more credence or  
14 less credence to the testimony of the person who was in law  
15 enforcement?

16 A JUROR: It would depend upon what the other person  
17 was there, if the other person was a professional in their  
18 line of work, then I would have to go with them over the  
19 police officer.

20 THE COURT: Do you believe that homosexual relations  
21 between consenting adults is morally wrong?

22 A JUROR: No.

23 THE COURT: Would your views of a witness's  
24 credibility or a defendant's guilt be influenced in any way by  
25 that person's sexual orientation?

1 A JUROR: No.

2 THE COURT: Is there any reason, separate and apart  
3 from what we've talked about, that you know about, that would  
4 make it difficult for you to sit as a juror in this case?

5 A JUROR: Except for my own personal schedule, no.

6 THE COURT: Mr. Segal any questions?

7 MR. SEGAL: No questions.

8 THE COURT: Mr. Kelly?

9 MR. KELLY: No, your Honor.

10 THE COURT: Thank you very much. Would you mind  
11 returning to the jury box for the moment, please?

12 Mr. Bowers. Juror No. 15, James Bowers.

13 THE COURT: Good morning.

14 A JUROR: Good morning.

15 THE COURT: How are you?

16 A JUROR: Fine, and you?

17 THE COURT: Mr. Bowers, you told us that you work in  
18 maintenance at Itek, Littleton, right?

19 A JUROR: Maintenance.

20 THE COURT: That your wife is inside sales. What's  
21 inside sales?

22 A JUROR: She sells, she works for a retail  
23 lumberyard, she sells to contractors and stuff.

24 THE COURT: What's outside sales?

25 A JUROR: That would be, I think would be somebody on

1 the road.

2 THE COURT: Oh, get it. I get it.

3 Do you know anything about this case?

4 A JUROR: The only thing I can say there is the  
5 little bit that I read in the paper. And I can remember  
6 because I don't really -- I'm not from here, I've been up here  
7 32 years, but I'm originally from Pennsylvania, so I don't  
8 really get into things like that.

9 THE COURT: Will you be able to decide the case based  
10 entirely on what you hear in the courtroom and in no way based  
11 on anything you may have read?

12 A JUROR: Oh, yes. Anything I've read I've already,  
13 you know, forgotten it or, like I said, I just scanned over  
14 it.

15 THE COURT: Did you have a problem with our  
16 schedule?

17 A JUROR: The only thing there is, you said that we'd  
18 get out of here by 1 o'clock in the afternoon?

19 THE COURT: Every day.

20 A JUROR: I don't think so. I'm on call 24 hours a  
21 day, I have 15 machines that I take care of, and some of them  
22 work 24 hours around the clock. And if they break down, then  
23 I have to go in. I don't really foresee any problems.

24 THE COURT: Okay.

25 If a defendant in a criminal case is accused of

1 unlawful conduct that resulted in the death of a police  
2 officer, would that fact, the death of a police officer,  
3 significantly influence your view of the evidence?

4 A JUROR: No, ma'am.

5 THE COURT: If a person is arrested, indicted and  
6 brought to trial, would that cause you to believe that he's  
7 probably guilty?

8 A JUROR: Under our system, never.

9 THE COURT: If a defendant in criminal case does not  
10 testify at this trial, would that cause you to believe that  
11 this is some evidence of guilt?

12 A JUROR: No.

13 THE COURT: If there's a conflict in the testimony  
14 between the testimony of a law enforcement officer and  
15 somebody who is not in law enforcement, would you be inclined  
16 to give either more or less credence to the police officer?

17 A JUROR: No, ma'am.

18 THE COURT: Do you believe that homosexual relations  
19 among consenting adults is morally wrong?

20 A JUROR: What people do on their own is their own.

21 THE COURT: Would your views of a witness's  
22 credibility or a defendant's guilt be in any way influenced by  
23 that person's sexual orientation?

24 A JUROR: No, ma'am.

25 THE COURT: Is there any reason that we haven't

1 explicitly talked about why you feel you cannot sit as a juror  
2 in this case?

3 A JUROR: Nope.

4 THE COURT: Mr. Segal, any questions?

5 MR. SEGAL: No, your Honor.

6 THE COURT: Mr. Kelly, any questions?

7 MR. KELLY: No, your Honor.

8 THE COURT: Thank you very much. If you would kindly  
9 return to the jury box for the moment, I would appreciate it.  
10 Mr. Wright.

11 MR. SEGAL: Your Honor, I wonder on the questions in  
12 the next series if you can go to Mr. Kelly first.

13 THE COURT: Sorry?

14 MR. SEGAL: At the end you say, any questions, I  
15 wonder if you could start with Mr. Kelly first in that series,  
16 my mind is a little slow.

17 THE COURT: How are you, Mr. Wright?

18 A JUROR: As well as can be expected.

19 THE COURT: What did you say?

20 A JUROR: As well as to be expected.

21 THE COURT: You don't like being here?

22 A JUROR: Oh, yes. Do you like being here?

23 THE COURT: I do. I do. Most of the time.

24 A JUROR: Okay.

25 THE COURT: Our poop sheet tells you that you work as

1       custodian for the City of Revere.

2               A JUROR:   Yes.

3               THE COURT:  Are you married?

4               A JUROR:   Yes.

5               THE COURT:  It doesn't tell what your wife does?

6               A JUROR:   She works for the City of Revere, also.

7               THE COURT:  What does she do?

8               A JUROR:   She's a secretary.

9               THE COURT:  Do you know anything about this case?

10              A JUROR:   I think I recollect it being extensively  
11 covered in TV, in the media newspapers, that type of stuff.

12              THE COURT:  Do you remember what you learned from the  
13 TV and the press?

14              A JUROR:   Basically, yes.

15              THE COURT:  What did you learn?

16              A JUROR:   I believe the son was arrested or something  
17 for trying to collect on an insurance or something, destroying  
18 a vehicle.

19              THE COURT:  What else?

20              A JUROR:   That's about it.

21              THE COURT:  Will you be able to decide whether the  
22 government has proven this defendant guilty beyond a  
23 reasonable doubt based entirely on the evidence that will be  
24 presented in court and not in any way based on what you may  
25 have heard earlier in the press?

1           A JUROR: I believe so.

2           THE COURT: If a defendant in a criminal case is  
3 accused of unlawful conduct that resulted in the death a  
4 police officer, would that fact, namely, the death of a police  
5 officer, significantly influence your view of the evidence?

6           A JUROR: I don't think so.

7           THE COURT: If a person is arrested, indicted and  
8 brought to trial, would that cause you to believe that the  
9 person is probably guilty?

10          A JUROR: Not necessarily.

11          THE COURT: What do you mean?

12          A JUROR: No.

13          THE COURT: If a defendant in a criminal case does  
14 not testify in a course of his trial, would you regard that as  
15 some evidence of his guilt?

16          A JUROR: No.

17          THE COURT: If there is a conflict between the  
18 testimony of a law enforcement officer and a witness who is  
19 not in law enforcement, would you be inclined to give either  
20 more or less credit to the testimony of a police officer?

21          A JUROR: No.

22          THE COURT: Do you believe that homosexual relations  
23 between consenting adults is morally wrong?

24          A JUROR: I have no idea.

25          THE COURT: Would your views of a witness's

1 credibility or a defendant's guilt be influenced in any way by  
2 that person's sexual orientation?

3 A JUROR: No.

4 THE COURT: Did you have a problem with our  
5 schedule?

6 A JUROR: I have a doctor's appointment on Wednesday,  
7 and I have a hunting appointment in Maine for a week, starting  
8 on Monday, which I've kept for last 30 years and arrangements  
9 were made every year.

10 THE COURT: I should have asked you this question  
11 first.

12 A JUROR: This is something I've been doing for the  
13 last 30 years, I'm a Maine guide.

14 THE COURT: You're never missed it?

15 A JUROR: I'm a Maine hunting guide.

16 THE COURT: You can't miss it?

17 A JUROR: I would rather not.

18 THE COURT: I guess we have to excuse.

19 A JUROR: The doctor's appointment, I can  
20 reschedule.

21 THE COURT: But the hunting season, you can't.

22 A JUROR: I'm afraid not.

23 THE COURT: Any objection to excusing Mr. Wright?

24 MR. SEGAL: No, your Honor.

25 MR. KELLY: No, your Honor.

1 be presented in court and no way based on what you have read a  
2 couple of years ago or since?

3 A JUROR: I think so.

4 THE COURT: Did you have a problem with our  
5 schedule?

6 A JUROR: I think you said that they would not be in  
7 session on the 19th of November.

8 THE COURT: Correct.

9 A JUROR: I don't have a problem.

10 THE COURT: Let me ask you, if a defendant in a  
11 criminal case is accused of unlawful conduct that results in  
12 the death a police officer, would that fact, the death a  
13 police officer, significantly affect your views of the  
14 evidence?

15 A JUROR: I don't think so.

16 THE COURT: If a person is arrested, indicted and  
17 brought to trial, would that cause you to believe that the  
18 person is probably guilty?

19 A JUROR: I don't think so. I don't think so.

20 THE COURT: If a defendant in a criminal case chooses  
21 not to testify, would that cause you to believe that his  
22 failure to testify is some evidence of guilt?

23 A JUROR: I don't think so.

24 THE COURT: If there is a conflict between the  
25 testimony of a person in law enforcement and a witness who is

1 not in law enforcement, would you be inclined to give either  
2 more or less credit to the testimony of the law enforcement  
3 officer?

4 A JUROR: I guess I'm not sure.

5 THE COURT: You don't understand the question?

6 A JUROR: No, I understand the question. I'd try to  
7 be impartial.

8 THE COURT: Do you believe that homosexual relations  
9 between the consenting adults is morally wrong?

10 A JUROR: I think it is morally wrong, but that's  
11 their own, that's their own private lives.

12 THE COURT: Would your views of a witness's  
13 credibility or a defendant's guilt be in any way influenced by  
14 that person's sexual orientation?

15 A JUROR: No.

16 THE COURT: Is there any reason that I may not have  
17 specifically asked you about, why you feel you cannot sit as a  
18 juror in this case?

19 A JUROR: Not that I know of.

20 THE COURT: Mr. Kelly, any questions?

21 MR. KELLY: No, your Honor.

22 THE COURT: Mr. Segal, any questions?

23 MR. SEGAL: I have one, request to ask, your Honor, I  
24 think --

25 THE COURT: Can we just have a question?

1           MR. SEGAL: I think on a couple of questions,  
2           Ms. Hanlon said, I don't think so. In other words, giving  
3           greater weight to the weight of a police officer. I just ask  
4           you to ask her what her reservations are.

5           THE COURT: Well, let me ask you: Do you in fact  
6           have any reservations when you said, I don't think so? Do you  
7           have any doubts about your ability to --

8           A JUROR: No, I think I could be impartial.

9           MR. SEGAL: I request to your Honor ask Ms. Hanlon  
10          whether, on the issue of giving greater weight to the  
11          testimony of law enforcement officer, I think the response, if  
12          I recall, was I don't think I'd give any greater weight, but  
13          my question was simply to ask, what if any reservation was  
14          there? I don't think I would give any greater weight, maybe  
15          she can help us on this.

16          THE COURT: Do you understand what he --

17          A JUROR: I understand what you're saying. I think I  
18          could be impartial.

19          MR. SEGAL: Do you think you would give more weight  
20          to something from a law enforcement officer?

21          THE COURT: The question is: Do you have any  
22          reservations as to whether -- do you in fact have reservations  
23          about your ability to give -- not to give more or less credit  
24          to a police officer?

25          A JUROR: I believe I would be impartial.

1 MR. SEGAL: Thank you.

2 THE COURT: Thank you very much. Would you mind  
3 returning to your seat in the jury box, please?

4 Kathy, I think we might as well send Mr. Winslow back  
5 to the jury room, as well.

6 THE CLERK: Okay.

7 THE COURT: Go next to No. 28, Mr. Belton.

8 MR. SEGAL: I guess I would move on Ms. Hanlon, as I  
9 recall she said in view of homosexual --

10 THE COURT: I will not view Ms. Hanlon for cause.

11 MR. SEGAL: Just make the record of her view of  
12 consenting --

13 THE COURT: Good morning.

14 A JUROR: Good morning.

15 THE COURT: Mr. Belton, right?

16 A JUROR: Yes, ma'am.

17 THE COURT: You were one who was clever enough to  
18 come in the right way into the jury box.

19 Mr. Belton, our poop sheet doesn't tell us what you  
20 do for a living.

21 A JUROR: I work two jobs. I've got my own, and I  
22 work for the MSPCA. I own my own private investigator and  
23 security business.

24 MR. SEGAL: I couldn't hear your Honor.

25 THE COURT: Mr. Belton has his own investigation,

1 private investigator and security business and he works for  
2 the MSPCA.

3 A JUROR: MSPCA up in Boston here.

4 THE COURT: With animals?

5 A JUROR: Yes, ma'am.

6 THE COURT: Are you married?

7 A JUROR: Yes, ma'am.

8 THE COURT: Is your wife working outside the home?

9 A JUROR: Yes, ma'am.

10 THE COURT: What does she do?

11 A JUROR: She works for Ratheon Corporation in West  
12 Andover.

13 THE COURT: What does she do there?

14 A JUROR: I couldn't tell you. That, I couldn't tell  
15 you.

16 THE COURT: Do you have children?

17 A JUROR: Yes, ma'am. I have one daughter and one  
18 boy, and one boy deceased.

19 THE COURT: And the children you have are grown or  
20 still living at home?

21 A JUROR: My daughter is 13, my youngest boy is 21,  
22 he's incarcerated right now. He's incarcerated.

23 THE COURT: Where is he?

24 A JUROR: Concord. He's in Concord.

25 THE COURT: Would the fact that you have a child who

1 is -- has apparently been convicted of a crime, would that  
2 make it in any way difficult for you to be a juror in a  
3 criminal case?

4 A JUROR: Yes, it would.

5 THE COURT: It would?

6 A JUROR: Yes, ma'am. I would be --

7 THE COURT: Well, I guess we'll have to excuse  
8 Mr. Belton.

9 If you would please return to the jury room we'll try  
10 and find a civil case for you.

11 THE COURT: Thank you.

12 Go to Ms. Mitchell, No. 32.

13 THE COURT: Good morning.

14 A JUROR: Good morning.

15 THE COURT: How are you?

16 A JUROR: Good.

17 THE COURT: Ms. Mitchell, you had told us earlier you  
18 know somebody or have some relationship with law enforcement.

19 A JUROR: My husband's brother is a police officer.

20 THE COURT: Where?

21 A JUROR: In Fall River.

22 THE COURT: Would that fact make it difficult for you  
23 to be a juror in a case which involves the death of a police  
24 officer?

25 A JUROR: I don't believe so, but I can't tell you

1 unequivocally that it will not.

2 MR. SEGAL: I can't hear you. I apologize.

3 THE COURT: Ms. Mitchell says that she doesn't think  
4 so, but she cannot tell us unequivocally that it would not.

5 Do you know anything about this case?

6 A JUROR: Only what was in the newspapers two years  
7 ago when it happen.

8 THE COURT: What do you recall?

9 A JUROR: The pictures of a man under a car. I  
10 recall that it had something to do with -- I thought somebody  
11 trying to get a son and got the father or vice versa, but I  
12 don't recall the details.

13 THE COURT: Will you be able to decide the case based  
14 entirely on what you will hear in the courtroom and in no way  
15 based on what you have read earlier or seen on TV earlier?

16 A JUROR: I believe I could.

17 THE COURT: Let me ask the question I asked earlier  
18 in the slightly different way. Would your view of the  
19 evidence in the case be significantly influenced by the fact  
20 that a police officer was killed?

21 A JUROR: He was a person, that to me, yes, police  
22 officers are very, very important, but he's just -- he is a  
23 person, you know.

24 THE COURT: If a person is arrested, indicted and  
25 brought to trial, would that cause you to believe that the

1 person is probably guilty?

2 A JUROR: Not necessarily.

3 THE COURT: If a defendant in a criminal case chooses  
4 not to testify, would that cause you to believe that the  
5 failure to testify is some evidence of guilt?

6 A JUROR: I don't think so.

7 THE COURT: If there is a conflict between the  
8 testimony of a witness who is in law enforcement and a witness  
9 who is not in law enforcement, would you be inclined to give  
10 more or less credence to the witness who is in law  
11 enforcement?

12 A JUROR: I really don't know.

13 THE COURT: You don't know?

14 A JUROR: I don't know.

15 THE COURT: What would it depend on?

16 A JUROR: Well, my view is that a police officer --  
17 I've known lots of police officers in my life, and I know that  
18 they are not all the most honest people, but then you've got  
19 the other people who are not the most honest people in the  
20 world, both sides to both stories. You know, I just I don't  
21 know if it would make a difference to me.

22 THE COURT: Do you believe that homosexual relations  
23 between the consenting adults is morally wrong?

24 A JUROR: No.

25 THE COURT: Would your views of a witness's

1 credibility or a defendant's guilt be in any way influenced by  
2 that person's sexual orientation?

3 A JUROR: No.

4 THE COURT: Did you have a problem with our  
5 schedule?

6 A JUROR: No.

7 THE COURT: Is there any reason why you feel you  
8 cannot sit as a juror in this case, any reason that I may not  
9 have specifically asked you about?

10 A JUROR: No.

11 THE COURT: Mr. Segal, any questions?

12 MR. SEGAL: No, thank you.

13 THE COURT: Mr. Kelly, any questions?

14 MR. KELLY: I'm just curious where or not  
15 Ms. Mitchell has children.

16 A JUROR: I have a daughter at BU.

17 MR. KELLY: Thank you.

18 A JUROR: I do have a son, but he's gone.

19 MR. SEGAL: Your Honor, maybe one question. I wonder  
20 if you could ask what Ms. Mitchell teaches at school, what  
21 subject?

22 A JUROR: First grade.

23 MR. SEGAL: That's it, all of the subjects.

24 THE COURT: Thank you.

25 A JUROR: Thank you.

1 briefly, as you may recall, in the first.

2 THE COURT: I don't.

3 Did you know any of the other witnesses, or was this  
4 the only one?

5 A JUROR: That was him.

6 MR. LIBBY: I would say his appearance on the witness  
7 stand is unlikely.

8 THE COURT: Do you know anything about this case?

9 A JUROR: Just what I read in the paper.

10 THE COURT: When did you read about it?

11 A JUROR: When it came out. It was -- I don't  
12 actually recall when, about a year and a half, three years  
13 ago.

14 THE COURT: What do you remember about what you  
15 read?

16 A JUROR: That there was a bomb, two police officers,  
17 one was killed and one was hurt. They went to a house, there  
18 was a car, there was an explosion. Just -- then eventually  
19 they caught what they assume -- they caught the person.  
20 That's pretty much it.

21 THE COURT: Will you be able to decide the case based  
22 entirely on the evidence that will be presented in the  
23 courtroom and not in any way based on what you read about it  
24 before or about the events?

25 A JUROR: Most likely, yes.

1 THE COURT: What does that mean?

2 A JUROR: Yes.

3 THE COURT: If a defendant in a criminal case is  
4 accused of unlawful conduct that was resulted in the death of  
5 a police officer, would that fact, the death of a police  
6 officer, significantly influence your views of the evidence?

7 A JUROR: I'd have to say yes.

8 THE COURT: What does that mean?

9 A JUROR: I think -- basically, I have a lot of  
10 friends that are in the police department. And I tend to --  
11 well, I have good relationships with them, so I don't know  
12 what -- if that would affect my decision.

13 THE COURT: You think it would?

14 A JUROR: I think it would, yes.

15 THE COURT: I guess I will have to excuse you from  
16 service on this jury and ask that you kindly go back to the  
17 third floor where we will try to find a case with people you  
18 don't know.

19 A JUROR: Thank you, very much.

20 THE COURT: Thank you.

21 72 is next, Chrissa Pissios.

22 Good morning.

23 A JUROR: Good morning.

24 THE COURT: How do you pronounce your name, please?

25 A JUROR: Christa Pissios.

1 THE COURT: Our sheet tells us that you are  
2 accounting supervisor at Cognos Corporation; is that correct.

3 A JUROR: Yes.

4 THE COURT: And your husband does what?

5 A JUROR: He's a painter, he's self-employed,  
6 contracting.

7 THE COURT: Have you any knowledge of this case, do  
8 you know anything about the underlying events?

9 A JUROR: No.

10 THE COURT: Never read about it?

11 A JUROR: I read -- I vaguely remember, but I don't  
12 remember a lot about the case.

13 THE COURT: What do you remember?

14 A JUROR: Just that a policeman was killed, and I  
15 believe I just remember vaguely, that's all, just vaguely.

16 THE COURT: Did you have a problem with our  
17 schedule?

18 A JUROR: Three weeks. You mean the length of the  
19 case?

20 THE COURT: Well, the fact that we will be here from  
21 9 to 1 until it is finished, but I think we be finished before  
22 Thanksgiving, but I don't know how much before Thanksgiving.

23 A JUROR: I sometimes -- well, at least one day a  
24 week, I have to leave work to go pick up my son from preschool  
25 because my husband can't get there. I don't have anybody else

1 to pick him up.

2 THE COURT: When does he finish?

3 A JUROR: They get out at 11:15. He's at preschool  
4 and it's only a couple of hours a day.

5 The other thing is, just because I am accounting  
6 supervisor during the end the month, beginning of the  
7 following month, I have certain responsibilities that I have  
8 to do.

9 THE COURT: But would it be possible for two or three  
10 weeks to find somebody to take care of your child? ?

11 A JUROR: I don't know. I don't know. I don't have  
12 anyone else.

13 THE COURT: One of the neighbors, or one of the other  
14 mothers?

15 A JUROR: I can't tell you right now because I don't  
16 know.

17 THE COURT: You certainly could make an effort if you  
18 were here?

19 A JUROR: If I was here. Either not send them to  
20 school, and I'd have to pay for him to go to school.

21 THE COURT: If a defendant in a criminal case is  
22 accused of unlawful conduct that results in the death a police  
23 officer, would that fact, the death the police officer,  
24 significantly influence your views of the evidence?

25 A JUROR: Well, I feel the police officers are there

1 to protect us and, you know, but I don't know, I don't know  
2 exactly what you mean would it influence me.

3 THE COURT: Would the fact that a police officer was  
4 killed in any way influence your view about how you would  
5 treat the evidence?

6 A JUROR: I was trying to protect the public,  
7 probably, yes.

8 THE COURT: If a person is arrested, indicted and  
9 brought to trial, would that cause you to believe that the  
10 person is probably guilty?

11 A JUROR: No.

12 THE COURT: If a defendant in a criminal case chooses  
13 not to testify at his trial, would you believe that that is  
14 some evidence of his guilt?

15 A JUROR: Yes.

16 THE COURT: Do you understand that the law is  
17 otherwise?

18 A JUROR: Yes.

19 THE COURT: The defendant doesn't have to?

20 A JUROR: Yes.

21 THE COURT: But you still think that there is some  
22 evidence of guilt?

23 A JUROR: Yes.

24 THE COURT: I guess we agree that we will excuse  
25 Ms. Pissios from further participation in this trial.

1           Would you please return to the third floor and we'll  
2 find a shorter case for you?

3           A JUROR: Sure.

4           THE COURT: According to my list we have excused  
5 jurors in Seats 3, 7, 9, 11 and 12 for cause. So let us fill  
6 those seats. If you would kindly help and direct people to  
7 their seats and then Kathy will let us know who they are as  
8 she calls them.

9           (Pause.)

10          MR. SEGAL: Does your Honor plan to go right through  
11 or take a recess before we finish?

12          THE COURT: No, I plan on keep going.

13          THE CLERK: Seat 3, No. 52; Seat 7, 65; 9 is 35; 11  
14 is 71, 12 is 69.

15          THE COURT: Let us start with Ms. Michienzi.

16          Good morning, how are you?

17          A JUROR: Fine thank you.

18          THE COURT: How do you pronounce your name?

19          A JUROR: Michienzi.

20          THE COURT: Oh. The I means nothing?

21          A JUROR: No. It's just the H is pronounced K.

22          THE COURT: You are a billing coordinator at Damon  
23 Clinical?

24          A JUROR: Yes.

25          THE COURT: And what does your husband?

1           A JUROR: Master machinist laborer.

2           THE COURT: Where does he work?

3           A JUROR: He works for Birds Roofing Company.

4           THE COURT: Like flying birds, right?

5           A JUROR: Yes.

6           THE COURT: Do you have any children?

7           A JUROR: Yes, I've got three, six and a half,  
8 four-year old and a two-year old.

9           THE COURT: How do you manage?

10          A JUROR: Try my best. Because he works the night  
11 shift and I work the day shift. So we're both at home to take  
12 care of the kids.

13          THE COURT: Not easy.

14          Do you know anything about this case?

15          A JUROR: I heard on the news when it happened, and  
16 during the week, last week, when they said they are going to  
17 pick on the jury, it was on the news again. That's all.  
18 That's all I know about it.

19          THE COURT: What do you remember about the case  
20 itself from the earlier reports?

21          A JUROR: That they suspected the son, he set up the  
22 bomb in the mailbox, and the policeman was killed, and it's  
23 all. Just on the news.

24          THE COURT: Will you be able to decide the case based  
25 entirely on the evidence that will be presented or would you

1 think you would be in any way influenced by what you have  
2 already learned?

3 A JUROR: I've been influenced by what I saw on TV.

4 THE COURT: Even though it's wrong?

5 A JUROR: Only depends, I don't know. I've got to be  
6 honest, you know.

7 THE COURT: You think you will be influenced?

8 A JUROR: I might. Yes.

9 THE COURT: Even if you find out it's not the way it  
10 was?

11 A JUROR: I don't know. I can't. Maybe.

12 THE COURT: Did you have a problem with our  
13 schedule?

14 A JUROR: As I said, only the time, this case, I  
15 might have problem with children being taken care of, yes, but  
16 working, no.

17 THE COURT: Is there any question in your mind but  
18 that you can be a fair juror in this case? Do you doubt your  
19 ability to be a fair juror in any way?

20 A JUROR: I don't know, to be honest.

21 THE COURT: Counsel agree that we should excuse  
22 Ms. Michienzi?

23 MR. SEGAL: Yes.

24 THE COURT: All right. Would you please return to  
25 the third floor, and we'll find another case for you that you

1 may not have read about?

2 Thank you.

3 William Meade.

4 Good morning.

5 A JUROR: Good morning.

6 THE COURT: How are you?

7 Our poop sheet tells us that you're a teacher in the  
8 Lexington schools?

9 A JUROR: Yes, ma'am.

10 THE COURT: How long have you been teaching there?

11 A JUROR: 29 years.

12 THE COURT: Did you by any chance at any time teach  
13 any Zobel children?

14 A JUROR: No.

15 THE COURT: That's good. What do you teach?

16 A JUROR: Special needs.

17 THE COURT: And your wife is not able to work, I  
18 gather?

19 A JUROR: Correct.

20 THE COURT: Do you have children?

21 A JUROR: They are all married -- all away from home,  
22 one is married.

23 THE COURT: Do you know anything about this case?

24 A JUROR: Only what I've read in the paper.

25 THE COURT: What do you recall about that?

1           A JUROR: Very little, actually. There had been a  
2 bombing, the bomb has been located, police went to retrieve  
3 it, as I recall, and one was killed and one was injured in the  
4 process of the bomb blew up.

5           THE COURT: Would you be able to decide the case  
6 based entirely on what will be presented in the courtroom and  
7 in no way on what you may have heard outside?

8           A JUROR: I believe so.

9           THE COURT: Did our schedule present you with any  
10 problems?

11          A JUROR: Yes. Right after Thanksgiving, I'm  
12 supposed to be on Vineyard for a wedding. That's the only  
13 conflict I have outside of my teaching job.

14          THE COURT: You mean the weekend after Thanksgiving?

15          A JUROR: Yes.

16          THE COURT: No, we won't sit that weekend, anyway, so  
17 that would be the only problem.

18          If a defendant in a criminal case is accused of  
19 unlawful conduct that resulted in the death of a police  
20 officer, would that fact significantly influence your view of  
21 the evidence, the fact of the death?

22          A JUROR: I'm not sure I understand. I don't think  
23 so.

24          THE COURT: Would you be influenced in the way you  
25 view the evidence by the fact that a police officer was

1 killed?

2 A JUROR: I don't think so.

3 THE COURT: Do you have any reservations?

4 A JUROR: No. Only I'm trying to be as honest as I  
5 can. I don't want to leap out and say something that isn't  
6 thought out, that's all.

7 THE COURT: If a person is arrested, indicted and  
8 brought to trial, would that cause you to believe that the  
9 person is probably guilty?

10 A JUROR: No.

11 THE COURT: If a defendant in a criminal case decides  
12 not to testify, would you regard that as some evidence of his  
13 guilt?

14 A JUROR: No.

15 THE COURT: If there is a conflict between the  
16 testimony of witness who is a law enforcement officer and the  
17 witness who is not a law enforcement officer, would you be  
18 either more or less inclined to believe the witness who is the  
19 law enforcement officer?

20 A JUROR: I don't believe so.

21 THE COURT: Do you believe that homosexual relations  
22 between consenting adults is morally wrong?

23 A JUROR: I don't have a judgment on that.

24 THE COURT: Would your views of a witness's  
25 credibility or a defendant's guilt be in any way influenced by

1     that person's sexual orientation?

2             A JUROR:   No.

3             THE COURT:  Is there any reason other than what we  
4     have specifically talked about why you feel you cannot sit as  
5     a juror in this case?

6             A JUROR:   No.

7             THE COURT:  I think it's Mr. Kelly's turn to go  
8     first.

9             MR. KELLY:  I have no questions, your Honor.

10            THE COURT:  Mr. Segal?

11            MR. SEGAL:  No questions, your Honor.

12            THE COURT:  Thank you, Mr. Meade, if you would kindly  
13    return to your seat in the jury box, I would appreciate it.

14            35, Dalia Zikas.

15            Good morning.

16            A JUROR:   Good morning.

17            THE COURT:  Have a seat.  It is not the hot seat.

18            Mrs. Zikas, you told us that you are engaged in some  
19    way or know somebody who is engaged in law enforcement.

20            A JUROR:   Yes.  My sister was a police officer  
21    outside of Chicago area called Tri-City area, Batavia, Geneva  
22    and St. Charles.  She was an officer for two years.

23            THE COURT:  How long ago?

24            A JUROR:   It was in the late Seventies.  She resigned  
25    her duties because she could not handle the stress and strain

1 of the job.

2 THE COURT: Would that fact make it in any way  
3 difficult for you to be a juror in this case which involves  
4 the death a police officer?

5 A JUROR: Before she quit her job, she went through a  
6 very hard time because she prepared for six years in college  
7 to criminal justice courses. Was very idealistic, it was a  
8 very painful process for her to make that decision to withdraw  
9 from service.

10 The memories of her initial loss of idealism and the  
11 pain and the preparation that she felt was futile, perhaps in  
12 way would upset me, because I saw what the process does to an  
13 individual.

14 I really couldn't say 100 percent.

15 THE COURT: Well, the question really is whether your  
16 view of the evidence would be in any way influenced by the  
17 fact that a police officer was killed?

18 A JUROR: I don't think so.

19 THE COURT: And another one injured?

20 A JUROR: I don't think so.

21 THE COURT: Do you know anything about this case?

22 A JUROR: Very little. I don't read the Boston  
23 Globe, I read the New York Times. What I know about the case,  
24 I saw -- I heard a summary on the evening news, and I believe  
25 I saw the funeral of the police officer on television.

1           THE COURT: Will you be able to decide the case based  
2 only on what you hear in the courtroom and in no way on what  
3 you may have heard outside?

4           A JUROR: Yes.

5           THE COURT: Seen outside?

6           A JUROR: Yes.

7           THE COURT: If a person is arrested, indicted and  
8 brought to trial, would that cause you to believe at that time  
9 person is probably guilty?

10          A JUROR: No.

11          THE COURT: If a defendant in a criminal case chooses  
12 not to testify, would that cause you to believe that that is  
13 some evidence of his guilt?

14          A JUROR: I'm not sure. It's hard, stated that way,  
15 to say yes or no. Perhaps in the process of facts being  
16 revealed, that may have a different consideration in terms of  
17 how it would impact on my judgment.

18          THE COURT: If you are instructed by the Court that  
19 you may not consider in reaching your verdict the fact that a  
20 defendant did not take the stand, would you be able to follow  
21 that instruction?

22          A JUROR: I would have great difficulty to be told  
23 how to think when I would perhaps have certain other  
24 opinions.

25          THE COURT: Do counsel wish me to excuse

1 criminal case is accused of unlawful conduct that results in  
2 the death or did result in the death of a police officer,  
3 would your view of the evidence be significantly influenced by  
4 the fact that a police officer died?

5 A JUROR: No, I wouldn't be influenced at all.

6 THE COURT: If a person is arrested, indicted and  
7 brought to trial, would that cause you to believe that the  
8 person is probably guilty?

9 A JUROR: No.

10 THE COURT: If a defendant in a criminal case decides  
11 not to testify, would you regard that as some evidence of his  
12 guilt?

13 A JUROR: No, I wouldn't.

14 THE COURT: If there is a conflict between the  
15 testimony of a witness who is a police officer or law  
16 enforcement officer and the witness who is not in law  
17 enforcement, would you be inclined to give greater credence or  
18 less credence to the law enforcement officer than the other  
19 one?

20 A JUROR: No.

21 THE COURT: Do you believe that homosexual relations  
22 between consenting adults is morally wrong?

23 A JUROR: No, I don't. I think that's their  
24 province.

25 THE COURT: Would your views of a witness's

1 credibility or a defendant's guilt be in any way influenced by  
2 that person's sexual orientation?

3 A JUROR: No.

4 THE COURT: Do you have a problem with our schedule?

5 A JUROR: No, I don't.

6 THE COURT: Is there any reason that I, that we  
7 haven't specifically talked about why you feel you cannot sit  
8 as a juror?

9 A JUROR: No, there's no reason at all that I  
10 couldn't.

11 THE COURT: I've forgotten who goes first, I think  
12 you do.

13 MR. SEGAL: No questions.

14 THE COURT: Mr. Kelly?

15 MR. KELLY: No, I have no questions, your Honor,  
16 thank you.

17 THE COURT: Thank you. Would kindly return to the  
18 jury box for the moment?

19 69 is next Mr. O'Meara.

20 THE COURT: Hi, Mr. O'Meara, how are you?

21 A JUROR: Good.

22 THE COURT: I can't decipher exactly what our sheet  
23 tells us about you. It says Eng/Dynamics Research Corp. I  
24 suppose that means engineer?

25 A JUROR: Engineer, computer scientist, software.

1 THE COURT: Your wife is also an engineer?

2 A JUROR: Yes.

3 THE COURT: Also in computers?

4 A JUROR: Yes.

5 THE COURT: Do you have any children?

6 A JUROR: No.

7 THE COURT: Do you know anything about this case?

8 A JUROR: Just it sounded familiar the last few  
9 minutes you mentioned it. Maybe last year I read something on  
10 it, I'm not sure.

11 THE COURT: Do you remember what you read?

12 A JUROR: Just an officer who had died and an officer  
13 got hurt, but I'm not sure. It could have been any case. I'm  
14 sure it happens.

15 THE COURT: Well, to the extent that it's possible  
16 that as the evidence proceeds you will recall more of what you  
17 may have heard earlier, will you be able to decide the case  
18 entirely on what you hear in court and in no way on what you  
19 have heard before?

20 A JUROR: Sure.

21 THE COURT: If a defendant in a criminal case is  
22 accused of unlawful conduct that results in the death of a  
23 police officer, would your view of the evidence be  
24 significantly influenced by that fact that the police officer  
25 was killed?

1           A JUROR: Repeat that again?

2           THE COURT: Would you view the evidence in a case in  
3 any way differently because a police officer was killed than  
4 if there had been nothing like that?

5           A JUROR: Hard to say. Possibly not.

6           THE COURT: Is it the death of a person or the death  
7 of a police officer that causes you to have the question?

8           A JUROR: Death of a person.

9           THE COURT: If a person is arrested, indicted and the  
10 brought to trial, would that cause you to believe that the  
11 person is probably guilty?

12          A JUROR: Yes, I do believe that.

13          THE COURT: If a defendant in a criminal case decides  
14 not to testify, would that cause to you believe that that is  
15 some evidence of his guilt?

16          A JUROR: No.

17          MR. SEGAL: Sorry, I didn't hear the last one.

18          A JUROR: No.

19          MR. SEGAL: Thank you.

20          THE COURT: If there is a conflict between the  
21 testimony of a witness who is in law enforcement and a witness  
22 who is not in law enforcement, would you be inclined to  
23 believe the person in law enforcement more than the other or  
24 less than the other witness?

25          A JUROR: No.

1 THE COURT: Do you believe that homosexual relations  
2 between consenting adults is morally wrong?

3 A JUROR: Yes.

4 THE COURT: Would your views of a witness's  
5 credibility or a defendant's guilt be in any way influenced by  
6 that person's sexual orientation?

7 A JUROR: No. I don't think so.

8 THE COURT: Did you have a problem with our  
9 schedule?

10 A JUROR: Three weeks could be a problem for work.  
11 We're behind schedule, but if you ask the people I work with,  
12 they will say yes for sure, but it will be tough. I might be  
13 able to cover up the time after that.

14 THE COURT: Is there any reason that we haven't  
15 specifically talked about why you feel you can't be a fair  
16 juror in this case?

17 A JUROR: No.

18 THE COURT: Mr. Kelly?

19 MR. KELLY: I have no questions, your Honor.

20 MR. SEGAL: No questions.

21 THE COURT: Thank you, Mr. O'Meara, would you kindly  
22 return to the jury box?

23 MR. SEGAL: I move for cause in light of that answer.

24 THE COURT: Yes, I think that's right.

25 You don't really object, do you?

1 MR. KELLY: No, I don't, your Honor.

2 THE COURT: We have excused for cause Juror No. 52 in  
3 Seat 3, No. 35 in Seat 9, No. 69 in Seat 12. That's it. So  
4 let's fill those three seats. Let's excuse Mr. O'Meara and  
5 fill those three seats.

6 MR. SEGAL: Give me the seats again, 3, 9 and 12.

7 (Pause.)

8 THE CLERK: Seat No. 3 is No. 49; Seat No. 9 is Juror  
9 38; Seat No. 12 is Juror 31.

10 THE COURT: Mark Vinocoor, No. 49.

11 One of the jurors wanted to know if they were being  
12 excused by the lawyer or me, and I told the Clerk to tell her  
13 it's a joint effort.

14 MR. SEGAL: Can we ask which juror asked that  
15 question, your Honor?

16 THE COURT: I don't know.

17 Hi, Mr. Vinocoor?

18 A JUROR: Yes.

19 THE COURT: How are you?

20 A JUROR: Fine, and you.

21 THE COURT: You are a social worker?

22 A JUROR: Yes. I work with the mentally ill.

23 THE COURT: Is that what Atkets does?

24 A JUROR: Yes.

25 THE COURT: Have you heard anything about this case?

1           A JUROR: I heard just a little on the news, but  
2 probably not enough to make a conviction either way.

3           THE COURT: Do you remember what you heard?

4           A JUROR: Remember hearing, you know, about the bomb  
5 in the driveway, and that was about it.

6           THE COURT: Will you be able to decide the case based  
7 entirely on what you hear in the courtroom and in no way based  
8 on what you read before?

9           A JUROR: Yes.

10          THE COURT: Did you have a problem with our  
11 schedule?

12          A JUROR: No.

13          THE COURT: If a defendant in a criminal case is  
14 accused of unlawful conduct that resulted in the death of a  
15 police officer, would your views of the evidence be  
16 significantly influenced by that fact, the death of a police  
17 officer?

18          A JUROR: No.

19          THE COURT: If a person is arrested, indicted and  
20 brought to trial, would that cause you to believe that the  
21 person is probably guilty?

22          A JUROR: No.

23          THE COURT: If a defendant in a criminal case chooses  
24 not to testify, would that cause you to believe that his  
25 failure to testify is some evidence of guilt?

1           A JUROR: No.

2           THE COURT: If there is conflicting testimony between  
3 a witness who is a law enforcement official and a witness who  
4 is not in law enforcement, would you be inclined to believe  
5 the law enforcement person more or less than the other person,  
6 would you differentiate, based on their status?

7           A JUROR: No.

8           THE COURT: Do you believe that homosexual relations  
9 between consenting adults is morally wrong?

10          A JUROR: No.

11          THE COURT: Would your views of a witness's  
12 credibility or a defendant's guilt be in any way influenced by  
13 that person's sexual orientation?

14          A JUROR: No.

15          THE COURT: Is there any reason that we haven't  
16 specifically talked about why you feel you cannot sit as a  
17 juror in this case?

18          A JUROR: No.

19          THE COURT: Mr. Kelly?

20          MR. KELLY: Did you ask about scheduling?

21          THE COURT: I thought I did.

22          You have no with our schedule, right?

23          A JUROR: No.

24          THE COURT: Other the usual inconvenience?

25          A JUROR: No.

1 MR. KELLY: No questions.

2 MR. SEGAL: No questions, your Honor.

3 THE COURT: Thank you Mr. Vinocoor, would you kindly  
4 return to the jury box for a moment?

5 38 is next, Ms. Richards.

6 Good morning.

7 A JUROR: Good morning.

8 THE COURT: How are you?

9 A JUROR: Fine, thank you.

10 THE COURT: You work as a data entry person?

11 A JUROR: Yes.

12 THE COURT: What's the nature of the data that you  
13 enter?

14 A JUROR: Students, discharges, home address,  
15 research, a lot of research.

16 THE COURT: Do you have children?

17 A JUROR: Yes.

18 THE COURT: All grown?

19 A JUROR: Yes.

20 MR. SEGAL: I'm having a little trouble hearing.

21 THE COURT: Maybe you should trade places.

22 Do you know anything about this case?

23 A JUROR: Whatever is in the papers, but it was a  
24 while ago.

25 THE COURT: What do you recall of what you read?

1           A JUROR: I don't think so.

2           THE COURT: If there is a conflict in the testimony  
3 between a witness who is employed by law enforcement and a  
4 witness who is not in law enforcement, would you be inclined  
5 to give either more or less credence to the witness who is in  
6 law enforcement?

7           A JUROR: I don't think any more credence to his or  
8 hers.

9           THE COURT: Do you believe that homosexual relations  
10 between consenting adults is morally wrong?

11          A JUROR: I think that's their business, not mine.

12          THE COURT: Would your views of a witness's  
13 credibility or a defendant's guilt be in any way affected by  
14 that person's sexual orientation?

15          A JUROR: No.

16          THE COURT: Is there any reason that we haven't  
17 specifically talked about why you feel you cannot sit as a  
18 juror in this case?

19          A JUROR: No, because I don't really remember  
20 anything about this gentleman's involvement in it.

21          THE COURT: Mr. Kelly, any questions?

22          MR. KELLY: No, your Honor.

23          THE COURT: Mr. Segal, any questions?

24          MR. SEGAL: No, your Honor.

25          THE COURT: Thank you, Ms. Richard. Would you kindly

1 return to the jury box for a moment?

2 No. 31 on the list, Mr. Woods.

3 Good morning. How are you?

4 A JUROR: I'm fine.

5 THE COURT: We have some peculiar notations about  
6 what you do. It says HVAC Machine/Coolidge Coolant. Does  
7 that mean you are involved in air-conditioning?

8 A JUROR: Yes. Well, not just air-conditioning,  
9 heating, too.

10 THE COURT: Heating, too. Well, I think they sort of  
11 go hand-and-glove don't they?

12 A JUROR: Some people don't associate the two.

13 THE COURT: And your wife works as a secretary?

14 A JUROR: Yes.

15 THE COURT: Do you have any children?

16 A JUROR: Yes.

17 THE COURT: Are they are all grown?

18 A JUROR: They are not living at home.

19 THE COURT: Do you know anything about this case?

20 A JUROR: No, I do not.

21 THE COURT: Never heard about it?

22 A JUROR: I think I remember hearing something about  
23 some Boston Police officer being killed. Other than that,  
24 no.

25 THE COURT: Do you remember anything else about it?

1           A JUROR: No.

2           THE COURT: If a defendant in a criminal case is  
3 accused of unlawful conduct that resulted in the death of a  
4 police officer, would that fact, the death of the police  
5 officer, significantly influence your view of the evidence?

6           A JUROR: You mean death of a police officer versus  
7 the death of an another individual?

8           THE COURT: Yes.

9           A JUROR: Whether it is a police officer -- if  
10 someone is killed is the important thing, whether it was a  
11 police officer. Someone being killed is someone being  
12 killed.

13          THE COURT: If a person is arrested, indicted and  
14 brought to trial, would that cause you to believe that the  
15 person was probably guilty?

16          A JUROR: No.

17          THE COURT: If a defendant in a criminal case chooses  
18 not to testify, would you regard that failure as some evidence  
19 of guilt?

20          A JUROR: No.

21          THE COURT: If there is conflicting testimony between  
22 a witness who is employed by a law enforcement agency and a  
23 witness who is not in the law enforcement, would you be  
24 inclined to give more credence to the person in the law  
25 enforcement?

1           A JUROR: Not necessarily.

2           THE COURT: What do you mean?

3           A JUROR: I think I would try to make assessment of  
4 the person's credibility based on their statements and  
5 demeanor as compared to whether they are law enforcement  
6 personnel or not. Because law enforcement doesn't necessarily  
7 make them a truthfully or a reliable witness, versus someone  
8 else.

9           THE COURT: Do you believe that homosexual relations  
10 between consenting adults is morally wrong?

11          A JUROR: No.

12          THE COURT: Would your views of a witness's  
13 credibility or a defendant's guilt be in any way influenced by  
14 that person's sexual orientation?

15          A JUROR: No.

16          THE COURT: Did I ask you whether our schedule caused  
17 you any difficulty?

18          A JUROR: No, you didn't, but it does.

19          THE COURT: I know I should have asked that first.

20          A JUROR: The company that I work for is a relatively  
21 small company. Taking 25 percent of their crew away for a  
22 three-week period would be a hardship on them.

23          THE COURT: It's not for the whole, it is in the  
24 mornings only.

25          A JUROR: I understand that.

1 work is scheduled from 8 to 4:30. There are occasions where  
2 there is late work, but most the time it is 8 to 4:30.

3 THE COURT: Mr. Kelly, any questions?

4 MR. KELLY: No questions, your Honor.

5 THE COURT: Thank you, Mr. Woods. Would you kindly  
6 return to the jury box for a moment?

7 MR. SEGAL: One other suggestion along those lines.  
8 Is it possible that some of the work could be done on weekends  
9 or even before he went to court?

10 THE COURT: How can it be done before coming to  
11 court? We start at 9.

12 MR. SEGAL: Some people go in early, put in a couple  
13 of hours. And then I'm not familiar with it entirely, with  
14 the actual nature of that HVAC work. Sometimes it is a  
15 maintenance function to check it.

16 A JUROR: Some of it I can, but I wouldn't say that  
17 there is consistency of expectation you can do it. Might be  
18 able to make up a third to a half.

19 MR. SEGAL: One other suggested follow-up. Is it  
20 certain that the employer wouldn't pay for the downtime in the  
21 mornings if you worked in the afternoon shift or sometimes  
22 early in the morning?

23 A JUROR: Yes, it is reasonably certain that he would  
24 not pay.

25 THE COURT: Thank you.

1 (Recess.)

2 THE COURT: Government one, defendant two.

3 MR. KELLY: Your Honor, the United States challenges  
4 Juror No. 49, Mark Vinocoor, in Seat No. 3.

5 THE COURT: Mr. Segal?

6 MR. SEGAL: Jurors in Seats No. 6 and 9.

7 THE COURT: Juror No. 15 on the list?

8 MR. SEGAL: James Bowers and Anne Richard. Bowers in  
9 Seat No. 6 and Richards in Seat No. 9.

10 THE COURT: Anybody else, Mr. Kelly?

11 MR. KELLY: Are we going to keep doing it, or are we  
12 going to fill seats?

13 THE COURT: We'll keep doing it until we are done  
14 with this group in the box.

15 MR. KELLY: Okay. The government would excuse Juror  
16 No. 64 in Seat 7, William Meade.

17 THE COURT: Anybody else, Mr. Segal?

18 MR. SEGAL: No.

19 THE COURT: Anybody else, Mr. Kelly?

20 MR. KELLY: Nothing, your Honor.

21 THE COURT: All right. Then the jurors in Seats 3,  
22 6, 7, 9 have been excused.

23 MR. KELLY: Your Honor, am I correct that this means  
24 that the remaining six in the box are immune from preemptory  
25 challenges since we've passed them?

1 THE COURT: That's correct.

2 MR. SEGAL: I think there's eight, am I right?

3 MR. KELLY: I'm sorry, eight, I meant eight.

4 (Pause.)

5 THE COURT: Is there any objection to letting those  
6 who are now immune from challenge to go to the jury room so  
7 they can have some coffee?

8 MR. KELLY: No, your Honor.

9 MR. SEGAL: No, your Honor.

10 (Pause.)

11 THE CLERK: Seat 3, Juror No. 10; Seat 6, Juror  
12 No. 53; Seat 7, Juror No. 73; Seat 9, Juror No. 6.

13 THE COURT: Cathy, can you tell those jurors who --  
14 not the four we have just seated, but the rest of them, that  
15 they can go up to the jury room and have coffee if they wish,  
16 and relax.

17 And the four we'll talk to, starting with  
18 Mr. Thomas.

19 THE CLERK: Okay.

20 Mr. Thomas, please.

21 THE COURT: Good morning. Have a seat. In fact, if  
22 you want, you can pull it up some.

23 Mr. Thomas, you told us earlier that you knew  
24 somebody in law enforcement or had some relationship with law  
25 enforcement.

1           A JUROR: Yes. My sister worked for the Dade County  
2 Police Department for a while, and then she worked for the  
3 State of Utah.

4           THE COURT: Also in law enforcement?

5           A JUROR: She was in the crime lab.

6           THE COURT: Would that fact make it in any way  
7 difficult for you to sit, first, on a criminal case; and,  
8 second, on a case that involves the death of and injuries to  
9 another police officer?

10          A JUROR: I don't think so.

11          THE COURT: Do you know anything about this case?

12          A JUROR: No.

13          THE COURT: Never heard anything or read anything?

14          A JUROR: I may have, but it was long enough ago.

15          THE COURT: Do you have any recollection of what you  
16 may have heard?

17          A JUROR: I recall one case where someone was killed  
18 and the kid was believed to be the bomber, but I don't know  
19 even know if this is the case.

20          THE COURT: Does our schedule present any serious  
21 difficulties for you?

22          A JUROR: It would be a bit of a problem.

23          THE COURT: But one that can be overcome?

24          A JUROR: Yes. I believe so.

25          THE COURT: If a defendant in a criminal case is

1 accused of unlawful conduct that resulted in a death of a  
2 police officer, would that fact in any way influence your  
3 views of the evidence?

4 A JUROR: I don't think so.

5 THE COURT: If a person is arrested, indicted and  
6 brought to trial, would that cause you to believe that the  
7 person is probably guilty?

8 A JUROR: No.

9 THE COURT: If a defendant in a criminal case decides  
10 not to testify, would that fact cause you to believe it is  
11 some evidence of guilt, that failure?

12 A JUROR: No.

13 THE COURT: If there is a conflict between the  
14 testimony of someone who works for law enforcement and a  
15 witness who does not work for law enforcement, would you be  
16 more inclined to believe or less inclined to believe the  
17 person who is in law enforcement?

18 A JUROR: I think it would depend on situation.

19 MR. SEGAL: I'm sorry I couldn't you hear.

20 THE COURT: It would depend on the situation.

21 Do you believe that homosexual relations between  
22 consenting adults is morally wrong?

23 A JUROR: No.

24 THE COURT: Would your views of a witness's  
25 credibility or a defendant's guilt be in any way influenced by

1       that person's sexual orientation?

2               A JUROR: I don't think so.

3               THE COURT: Any doubts?

4               A JUROR: None.

5               THE COURT: Is there any reason that we haven't  
6 specifically talked about why you feel you cannot sit as a  
7 juror in this case?

8               A JUROR: No.

9               THE COURT: Mr. Kelly?

10              MR. KELLY: I was just wondering if Mr. Thomas had  
11 children.

12              A JUROR: No, I don't.

13              MR. KELLY: Thank you, sir.

14              THE COURT: Mr. Segal, any questions?

15              MR. SEGAL: I wonder if your Honor would ask what  
16 type of an engineer Mr. Kelly is, mechanical or electrical?

17              A JUROR: It's computer software.

18              MR. SEGAL: Would you ask what subjects his wife  
19 teaches?

20              A JUROR: She's a second-grade teacher.

21              MR. SEGAL: I have nothing further.

22              THE COURT: Thank you, Mr. Thomas. Would you mind  
23 taking any seat, please?

24              Thank you.

25              THE COURT: Good morning.

1 A JUROR: Good morning.

2 THE COURT: How are you?

3 A JUROR: Fine, thank you, and you?

4 THE COURT: You pronounce your name Winnett?

5 A JUROR: Winnett.

6 THE COURT: Ms. Winnett is No. 53 on the list,  
7 seating in Seat No. 6.

8 You are a training associate?

9 A JUROR: Yes.

10 THE COURT: What do you train?

11 A JUROR: We train new employees in regards to the  
12 securities division where I work at Bank of Boston.

13 THE COURT: And your husband is an inventory  
14 specialist?

15 A JUROR: Yes.

16 THE COURT: For whom does he work?

17 A JUROR: The National Fire Protection Association.

18 THE COURT: Do you know anything about this case?

19 A JUROR: Not really.

20 THE COURT: What do you remember?

21 A JUROR: I remember hearing a little bit about it on  
22 the news, but I don't know any of the details.

23 THE COURT: Do you remember any of the grand  
24 picture?

25 A JUROR: No.

1 THE COURT: Nothing?

2 A JUROR: No.

3 THE COURT: Does our schedule present you with any  
4 serious problems?

5 A JUROR: No.

6 THE COURT: Let me ask you if a defendant in a  
7 criminal case is accused of unlawful conduct that resulted in  
8 death of a police officer, would your views of the evidence be  
9 significantly influenced by that fact; namely, the death of  
10 the police officer?

11 A JUROR: Can you repeat the question again?

12 THE COURT: If a person is accused of unlawful  
13 conduct that resulted in the death of a police officer, would  
14 the fact that police officer was killed significantly  
15 influence your views of the evidence?

16 A JUROR: No.

17 THE COURT: If a person is arrested, indicted and  
18 brought to trial, would you believe that the person is  
19 probably guilty?

20 A JUROR: No.

21 THE COURT: If a defendant in a criminal case decides  
22 not to testify, would his failure to testify, in your mind, be  
23 some evidence of his guilt?

24 A JUROR: No.

25 THE COURT: Do you believe that homosexual relations

1 between consenting adults is morally wrong?

2 A JUROR: No.

3 THE COURT: Would your views of a witness's  
4 credibility or a defendant's guilt be influenced in any way by  
5 that person's sexual orientation?

6 A JUROR: No.

7 THE COURT: If there's conflicting testimony between  
8 a witness who is in law enforcement and one who is not working  
9 for a law enforcement agency, would you be inclined to give  
10 more credence or less credence to the law enforcement  
11 witness?

12 A JUROR: No, it wouldn't matter.

13 THE COURT: Is there any reason that we haven't  
14 specifically talked about why you feel you cannot sit as a  
15 juror in this case?

16 A JUROR: No.

17 THE COURT: Mr. Segal, any questions?

18 MR. SEGAL: No, your Honor.

19 THE COURT: Mr. Kelly, any questions?

20 MR. KELLY: No, your Honor.

21 THE COURT: Thank you, Ms. Winnett. If you would  
22 just kindly take any seat in the jury box, I would appreciate  
23 it.

24 Ms. Vecchio, No. 73 on the list is next.

25 Good morning.

1 A JUROR: Good morning.

2 THE COURT: How are you?

3 A JUROR: Fine, thank you.

4 THE COURT: You told us that you have some  
5 relationship with law enforcement.

6 A JUROR: My brother-in-law, when that other woman  
7 asked about a brother-in-law, my brother-in-law is with the  
8 FBI.

9 THE COURT: Is this your sister's husband or your --

10 A JUROR: My husband's.

11 THE COURT: Where does he work, in what city?

12 A JUROR: He's in -- they're in New Jersey.

13 THE COURT: Do you talk to him about his work?

14 A JUROR: Whenever we speak with him, we usually do.  
15 That's not very often.

16 THE COURT: Would the fact that you have a  
17 brother-in-law who is with the FBI, would that in any way  
18 influence your ability to be a juror in a criminal case?

19 Do we have any FBI witness in this case?

20 MR. KELLY: Possibly one former FBI official.

21 A JUROR: I would say, no, I don't think it would.

22 THE COURT: Do you know anything about this case?

23 A JUROR: Very superficially. I read about it in the  
24 newspaper, but I can't recall a lot of detail about it.

25 THE COURT: Can you remember any of what you read?

1           A JUROR: I don't know how accurate this is, but I  
2 recall a son and father relationship being involved, the son  
3 possibly having arranged for the bombing of the vehicle, and  
4 that's about it.

5           THE COURT: Would you be able to decide the case  
6 entirely on the basis of what you hear in the courtroom and  
7 not in any way based on what you have read outside?

8           A JUROR: I think I would be able to try to do that.

9           THE COURT: Did our scheduled present you with any  
10 serious problems?

11          A JUROR: That's what I'm most concerned about just  
12 in terms of being a teacher, it's the end of the quarter, I  
13 can't find a substitute in my discipline.

14          THE COURT: What do you teach?

15          A JUROR: English to middle school students. It was  
16 hard for me to find one for today, so the thoughts of three  
17 weeks is certainly an anxious one for me.

18          THE COURT: Do you personally have to find a  
19 substitute?

20          A JUROR: If I want one to be in my discipline, I  
21 do.

22          THE COURT: But this is something that you're  
23 responsible for or that the school is responsible for?

24          A JUROR: They will ultimately put a substitute in,  
25 but it might not be someone who can teach the subject I'm

1 teaching. And where grades are closing next week, I'm just  
2 very concerned about that.

3 THE COURT: And your classes are in the morning?

4 A JUROR: All day. From 8 to 3.

5 THE COURT: Would your being here be of such a  
6 hardship to you that you feel that it would interfere with  
7 your?

8 A JUROR: I am concerned about that. I did serve on  
9 a trial last year, and it was -- I deferred it to my February  
10 vacation to alleviate that problem. And I have two young  
11 daughters at home and a father who is just recuperating from a  
12 heart attack, so I am kind of concerned about the  
13 complications that would arise, honestly.

14 THE COURT: Shall we excuse?

15 MR. SEGAL: Yes.

16 THE COURT: Let's see if we can find a shorter case  
17 for you. If you would kindly return to the jury lounge?

18 A JUROR: The jury lounge.

19 THE COURT: Good morning.

20 A JUROR: Good morning.

21 THE COURT: Almost afternoon. How are you?

22 A JUROR: Fine.

23 THE COURT: Mr. Ruhmann, is that how you pronounce  
24 your name?

25 A JUROR: Yes, it is.

1 THE COURT: Our sheets tells us that you are  
2 unemployed. What were you doing when you were working?

3 A JUROR: I was a manager in a computer company for  
4 30 years.

5 THE COURT: And your wife coordinates what?

6 A JUROR: Nurses.

7 THE COURT: Have you heard about this case?

8 A JUROR: No.

9 THE COURT: Know nothing about it?

10 A JUROR: Nothing.

11 THE COURT: Would our schedule create serious  
12 inconvenience for you?

13 A JUROR: I don't believe so.

14 THE COURT: If a defendant in a criminal case is  
15 accused of unlawful conduct that resulted in the death of a  
16 police officer, would your views of the evidence be  
17 significantly influenced by that fact, the death of the police  
18 officer.

19 A JUROR: No.

20 THE COURT: If a person is arrested, indicted and  
21 brought to trial, would that cause you to believe that he's  
22 probably guilty?

23 A JUROR: No.

24 THE COURT: If a defendant in a criminal case decides  
25 not to testify, would that failure to testify be regarded by

1 you or cause you to believe that that is some evidence of  
2 guilt?

3 A JUROR: No.

4 THE COURT: If there is a conflict between the  
5 testimony of a person who works in a law enforcement agency  
6 and a person who is not so employed, would you be more or less  
7 inclined to believe the person in law enforcement, simply  
8 because he is in law enforcement or she is?

9 A JUROR: It's a hard question to answer. More or  
10 less inclined?

11 THE COURT: Would the status of the witness as a  
12 person in law enforcement influence your decision on the  
13 credibility of that person at all?

14 A JUROR: No.

15 THE COURT: Do you believe that homosexual relations  
16 between consenting adults is morally wrong?

17 A JUROR: Yes.

18 THE COURT: Would your views of a witness's  
19 credibility or a defendant's guilt be in any way influenced by  
20 that person's sexual orientation?

21 A JUROR: Could you run that by me one more time?

22 THE COURT: Would your view of whether a witness is  
23 believable or whether a defendant is guilty or not guilty be  
24 in any anyway influenced by that person's sexual orientation?

25 A JUROR: No.

1           THE COURT: Is there any reason other than what we've  
2 specifically talked about why you feel you cannot sit as a  
3 juror in this case?

4           A JUROR: No.

5           THE COURT: Mr. Segal?

6           MR. SEGAL: No, your Honor.

7           THE COURT: Mr. Kelly?

8           MR. KELLY: No, your Honor.

9           THE COURT: Thank you very much. If you wouldn't  
10 mind just waiting for a moment, we need to replace one juror  
11 and talk to that person.

12           (Pause.)

13           MR. SEGAL: Can I ask he be excused on morality?

14           THE COURT: I will not excuse him because he has told  
15 us it will not influence his decision, and your objection to  
16 that ruling is noted.

17           THE COURT: We are filling Seat 7, now having excused  
18 Ms. Vecchio.

19           THE CLERK: No. 64, Mr. Raymond.

20           THE COURT: Good morning. How are you?

21           A JUROR: Fine.

22           THE COURT: Raymond, is that how you pronounce your  
23 name?

24           A JUROR: Raymond.

25           THE COURT: Mr. Raymond.

1           Our sheet doesn't tell us anything about you, so can  
2           you please tell us what the nature of your work is and who  
3           your employer is?

4           A JUROR: Well, I'm an iron worker by trade. I work  
5           through Local 7.

6           THE COURT: I see, so the union, you get hired from  
7           the union hall?

8           A JUROR: I'm presently employed over at  
9           International Place by American Architecture.

10          THE COURT: Are you married?

11          A JUROR: Yes.

12          THE COURT: And is your wife working outside the  
13          home?

14          A JUROR: Right.

15          THE COURT: What does she do?

16          A JUROR: She's MBTA operator.

17          THE COURT: Do you have any children?

18          A JUROR: Three. They're all grown.

19          THE COURT: All grown?

20          A JUROR: Right.

21          THE COURT: Had you heard anything about this case?

22          A JUROR: I read a little about it in the papers when  
23          it first happened.

24          THE COURT: What do you remember about it?

25          A JUROR: I don't know, it was a police officer got

1 hurt and a bomb.

2 THE COURT: Anything else?

3 A JUROR: I remember hearing the guy Shay's name. I  
4 didn't follow it too much after that.

5 THE COURT: Will you be able to decide the case  
6 entirely on the basis of what you will hear in the courtroom  
7 and not based on anything you may have read earlier?

8 A JUROR: Oh, yes.

9 THE COURT: Does our schedule cause you any serious  
10 grief?

11 A JUROR: No.

12 THE COURT: If a defendant in a criminal case is  
13 accused of unlawful conduct that resulted in the death of a  
14 police officer, would your views of the evidence be  
15 significantly influenced by the fact that a police officer was  
16 killed?

17 A JUROR: No.

18 THE COURT: If a person is arrested, indicted and  
19 brought to trial, would that cause you to believe that he is  
20 probably guilty?

21 A JUROR: What now?

22 THE COURT: The fact that a person has been arrested,  
23 indicted, and is now being brought to trial, would that cause  
24 you to believe that he is probably guilty?

25 A JUROR: Not necessarily.

1           THE COURT: If a defendant in a criminal case decides  
2 not to testify at his trial, would you, would you believe that  
3 his failure to testify is some evidence of guilt?

4           A JUROR: Yes.

5           THE COURT: If I were to tell you that, that under  
6 the Constitution, a person doesn't have to testify --

7           A JUROR: Okay.

8           THE COURT: -- would that change your view in any  
9 way? Would you be able to adhere to an instruction that says,  
10 you may not take it into account in any way if the defendant  
11 decides not to testify?

12          A JUROR: Would I change my view?

13          THE COURT: Would you be able to listen, to live up  
14 to that instruction, and not say he must be guilty because he  
15 didn't testify?

16          A JUROR: Sure.

17          THE COURT: No problem about that?

18          A JUROR: I'm honest.

19          THE COURT: If there is a conflict between the  
20 testimony of a witness who works in a law enforcement agency  
21 and somebody who doesn't work in law enforcement, would you be  
22 more inclined to believe the law enforcement person?

23          A JUROR: Not necessarily.

24          THE COURT: Do you believe that homosexual relations  
25 between consenting adults is morally wrong?

1 A JUROR: No.

2 THE COURT: Would your views of the believability of  
3 a witness or the guilt of the defendant be in any way  
4 influenced by that person's sexual orientation?

5 A JUROR: I don't think so.

6 THE COURT: Is there any reason that we haven't  
7 specifically talked about why you feel you cannot sit as a  
8 juror in this case?

9 A JUROR: That I cannot sit?

10 THE COURT: Yes.

11 A JUROR: No.

12 THE COURT: Mr. Segal, any questions?

13 MR. SEGAL: No questions.

14 THE COURT: Mr. Kelly, any questions?

15 MR. KELLY: No, your Honor.

16 THE COURT: Thank you, Mr. Raymond. Would you mind  
17 just taking any of the seats in the jury box for the moment?

18 Thank you.

19 (Pause.)

20 THE COURT: You have five minutes.

21 (Pause.)

22 THE COURT: Jurors No. 53 and 64 in Seat 6 -- sorry,  
23 and 6.

24 MR. SEGAL: Ms. Winnett and Mr. Ruhmann.

25 THE COURT: Jurors in Seat 6, No. 53, and 9, No. 6 on

1 the list.

2 Mr. Kelly, any challenges?

3 MR. KELLY: No, your Honor.

4 THE COURT: All right. Let us replace No. 53 and No.  
5 6, and the other two can go up to the jury room.

6 THE CLERK: Okay.

7 (Pause.)

8 MR. SEGAL: The score is four by the defendant and  
9 two by the prosecution.

10 THE COURT: I think that's correct. I had a mistake  
11 here.

12 THE CLERK: No. 41.

13 THE COURT: Yes, I can't find you on my list.

14 Mr. Furtado, right?

15 A JUROR: Yes.

16 THE CLERK: The other one is 44.

17 THE COURT: Mr. Furtado, you work as an electrician  
18 at Polaroid?

19 A JUROR: Yes, ma'am.

20 THE COURT: And it tells us your wife is a teacher's  
21 aide?

22 A JUROR: Yes.

23 THE COURT: Do you have any children?

24 A JUROR: Yes.

25 THE COURT: Are they grown or still at home?

1 A JUROR: Both married.

2 THE COURT: Do you know anything about this case?

3 A JUROR: No, not really.

4 THE COURT: Have you had read anything about it?

5 A JUROR: The only thing I can remember reading that  
6 a man was killed and one was injured trying to disarm a bomb,  
7 I think it was. That's about all I know actually.

8 THE COURT: Will you be able to decide the case based  
9 entirely on what you will hear in the courtroom and in no way  
10 on what you may have read earlier?

11 A JUROR: I think so, yes.

12 THE COURT: Did our schedule present you with any  
13 serious difficulties?

14 A JUROR: No, not really.

15 THE COURT: If a defendant in a criminal case is  
16 accused of unlawful conduct that resulted in the death a  
17 police officer, would your views of the evidence be  
18 significantly affected by the fact that a police officer was  
19 killed?

20 A JUROR: No, I don't think so.

21 THE COURT: If a person is arrested and indicted and  
22 then brought to trial, would you believe that that is evidence  
23 of guilt, that he must be guilty, or that he's probably  
24 guilty?

25 A JUROR: Say that over again, please.

1           THE COURT: If a person is an arrested, indicted and  
2 brought to trial, would you think that the person is probably  
3 guilty?

4           A JUROR: Yes.

5           THE COURT: The fact that he's arrested and indicted  
6 means that he's guilty?

7           A JUROR: No, indicted means going to trial?

8           THE COURT: Indicted means being accused.

9           A JUROR: Oh, no.

10          THE COURT: You know, it's like, remember I told you  
11 an indictment is a piece of paper that contains the  
12 accusation?

13          A JUROR: Okay, yes.

14          THE COURT: Indicted means being accused.

15          A JUROR: Okay, right.

16          THE COURT: We tend to use our own language and not  
17 realize that not everybody speaks the same language that we  
18 do.

19                If a defendant in a criminal trial does not testify,  
20 would that cause you to believe that his failure to testify is  
21 some evidence of guilt?

22          A JUROR: No, I don't think so.

23          THE COURT: If there is a conflict between the  
24 testimony of a witness who works for a law enforcement agency  
25 and a witness who does not work for a law enforcement agency,

1 would you be inclined to give more weight or less weight to  
2 the testimony of the person who works for the law  
3 enforcement?

4 A JUROR: I think I would have to hear it to be able  
5 to make my decision.

6 THE COURT: Do you believe that homosexual relations  
7 between consenting adults is morally wrong?

8 A JUROR: No.

9 THE COURT: Would your views of a witness's  
10 credibility or a defendant's guilt be in any way affected by  
11 that person's sexual orientation?

12 A JUROR: No.

13 THE COURT: Is there any reason why you feel you  
14 cannot be a fair juror in this case or why you can't sit on  
15 this case?

16 A JUROR: No, I don't think so.

17 THE COURT: Mr. Kelly?

18 MR. KELLY: No question.

19 THE COURT: Mr. Segal, any questions?

20 MR. SEGAL: In light of the response on arrest and  
21 indictment.

22 THE COURT: What's the question?

23 MR. SEGAL: Could you consider asking, do you have a  
24 feeling that the defendant wouldn't be here if he hadn't done  
25 something wrong?

1 THE COURT: Do you understand the question?

2 A JUROR: Oh, I didn't understand --

3 THE COURT: Do you have the feeling that the  
4 defendant wouldn't be here if he hadn't done something wrong?

5 A JUROR: No.

6 THE COURT: Anything else?

7 MR. SEGAL: No, your Honor.

8 THE COURT: Thank you, Mr. Furtado, would you mind  
9 just taking any seat in the jury box, please?

10 MR. SEGAL: I move for cause on that, your Honor, in  
11 light of his first answer.

12 THE COURT: Yes, no.

13 Hi, how are you?

14 A JUROR: Fine thank you.

15 THE COURT: This is Ms. Lawrence, who is No. 44 on  
16 the list and in Seat No. 9.

17 You work as a secretary?

18 A JUROR: Yes.

19 THE COURT: At Tagrin or Tagrin?

20 A JUROR: Tagrin.

21 THE COURT: What do they do?

22 A JUROR: Primarily civil litigation and domestic  
23 relations, but I'm also in a firm with Attorney Robert Murray.

24 They're sole practitioners but sometimes we share  
25 practition cases with Robert Murray. He does a little bit or

1 civil litigation, criminal, estate planning.

2 THE COURT: Have you been involved in any criminal  
3 litigation; that is, have you worked on any criminal cases?

4 A JUROR: Not of this nature.

5 OUI cases, actually.

6 THE COURT: And your husband is a teacher?

7 A JUROR: Yes, he is.

8 THE COURT: What does he teach?

9 A JUROR: Physical education at high school.

10 THE COURT: Do you have any children?

11 A JUROR: Yes, I do.

12 THE COURT: How old are they?

13 A JUROR: Eleven and six.

14 THE COURT: Do you know anything about this case? ?

15 A JUROR: A little bit from what I've read in the  
16 paper.

17 THE COURT: What do you remember about that?

18 A JUROR: That there was a bomb involved and a car  
19 that exploded and killed an officer. The exact details of the  
20 case, no, I don't remember.

21 THE COURT: Will you be able, if you are a juror, to  
22 decide it based on the evidence in court and in no way on what  
23 you read before?

24 A JUROR: Oh, I think I could, yes.

25 THE COURT: Does our schedule cause you serious

1 concern?

2 A JUROR: Yes. I hate to say this to you because you  
3 have a lovely process here this morning, but it would be a  
4 hardship for me with my two children. I'd have to make  
5 arrangements.

6 THE COURT: You don't work in the mornings now?

7 A JUROR: I only work two days a week.

8 THE COURT: Oh, I see.

9 A JUROR: I only work part-time, so that I can  
10 accommodate my children and their schedule. Three weeks or  
11 more would present a problem.

12 THE COURT: Aren't they in school in the morning?

13 A JUROR: Yes. But I also drive them to school, and  
14 then I pick them up one of my children. One takes a bus and  
15 one I drive, you know, it's like 2:30.

16 THE COURT: You would only be here until 1. You  
17 would be here from 9 until 1. Can you manage that, or does  
18 that interfere with the children?

19 A JUROR: I certainly would like to try to help you,  
20 but I am going to be very honest with you and tell you that it  
21 would present a hardship for me.

22 THE COURT: Well, when are the children in school,  
23 when is the driving?

24 A JUROR: 8:40, I have to drop one off at 8:40 in the  
25 morning, and other one -- and I have to pick him up at 2:30.

1 My other daughter gets out at 2:10.

2 THE COURT: Well, you'd be home by then, wouldn't  
3 you?

4 Where do you live?

5 A JUROR: Saugus.

6 THE COURT: It's only about half an hour away, isn't  
7 it?

8 A JUROR: Yes.

9 THE COURT: So it could be done?

10 A JUROR: It could be done.

11 THE COURT: Would it be possible for your husband to  
12 drive your daughter to school in the morning?

13 A JUROR: My husband is gone at 7:15.

14 THE COURT: Can arrangements be made to take her?

15 A JUROR: Yes, they could be made, but you're talking  
16 about a three weeks schedule or more, are you not? Yes?

17 THE COURT: I think in fairness, we will be done,  
18 mostly like, before Thanksgiving.

19 A JUROR: Because I do have Thanksgiving plans and  
20 I'm going to New York.

21 THE COURT: We will not be here on Thanksgiving Day  
22 nor the Friday after Thanksgiving.

23 A JUROR: Okay.

24 THE COURT: So it's possible.

25 A JUROR: It's possible. It's not my preference. It

1 is possible.

2 THE COURT: I understand that.

3 A JUROR: It is not my preference.

4 THE COURT: Let me ask you: If the defendant in a  
5 criminal case is accused of unlawful conduct that involves the  
6 death of a police officer, would your views of the evidence be  
7 significantly influenced by that fact, the death of a police  
8 officer?

9 A JUROR: Just that he was a police officer, no, no  
10 more than if he was any other person.

11 THE COURT: If a person is arrested, indicted and  
12 brought to trial, would that cause you to believe that the  
13 person is probably guilty?

14 A JUROR: No, not until the trial is finished.

15 THE COURT: If a defendant in criminal case decides  
16 not to testify, would that cause you to believe that it is  
17 some evidence of guilt, failure to testify, some evidence of  
18 guilt?

19 A JUROR: No, that's just a procedure, that's the  
20 attorney's decision.

21 THE COURT: If there is a conflict between the  
22 testimony of a witness who works for a law enforcement agency  
23 and a witness who is not so employed, would you tend to give  
24 more or less credence to the person who is in law  
25 enforcement? That is, would the status the witness influence

1 your decision about his or her credibility.

2 A JUROR: It might.

3 THE COURT: Which way?

4 A JUROR: Who worked for the law enforcement agency.

5 THE COURT: Do you believe that homosexual relations  
6 between consenting adults is morally wrong?

7 A JUROR: No.

8 THE COURT: Would your views of a witness's  
9 credibility or a defendant's guilt be influenced in any way by  
10 that person's sexual orientation?

11 A JUROR: No.

12 THE COURT: Is any reason that we haven't  
13 specifically talked about why you feel you cannot sit on this  
14 case?

15 A JUROR: Other than what we've discussed? No.

16 THE COURT: To go back to the law enforcement, is it  
17 your view that a person's status determines in any way whether  
18 the person is telling the truth or not? That is, a person's  
19 status as --

20 A JUROR: You mean status within the law enforcement  
21 agency?

22 THE COURT: As a law enforcement person?

23 A JUROR: No.

24 THE COURT: I'm trying to understand your earlier  
25 answer.

1           A JUROR: I might give it more credence because he  
2 was a member of the law enforcement agency, yes, because I  
3 felt that that's his position, upholding the law.

4           THE COURT: All right. Would you mind taking a seat  
5 out in the jury box?

6           I assume you are going to ask me no excuse her?

7           MR. SEGAL: I didn't, but I had a couple of  
8 questions.

9           THE COURT: Are you going to ask me to excuse her?

10          MR. SEGAL: Well, I was going you to ask her two or  
11 three questions. I think she raised her hand in response to  
12 the general inquiry about law enforcement relatives in the law  
13 enforcement office.

14          THE COURT: That's true, she did, I'm sorry, I  
15 neglected to ask her.

16          Ms. Lawrence, I'm sorry. I neglected to note when  
17 you were here before that you had indicated you have some  
18 relationship with law enforcement.

19          A JUROR: No. I misunderstood that. I thought you  
20 just meant -- I didn't know if I had to bring it to your  
21 attention that I worked with a law firm.

22          THE COURT: I see.

23          Did you have any questions, Mr. Segal?

24          MR. SEGAL: I missed the first question. Could we  
25 have the name of the attorney that you work with and type of

1 practice.

2 A JUROR: Marnold, M A R O L D, Tagrin.

3 T A G R I N. He's a gentlemen practitioner,  
4 primarily in litigation, plaintiff. He does a lot of domestic  
5 relations, very little criminal, Workmen's Compensation, real  
6 estate, estate planning.

7 MR. SEGAL: Can we just get what city he's located  
8 in?

9 A JUROR: Boston, One Union Street.

10 THE COURT: Anything else?

11 MR. SEGAL: No.

12 THE COURT: Mr. Kelly, any questions?

13 MR. KELLY: No, your Honor.

14 THE COURT: Thank Ms. Lawrence.

15 MR. SEGAL: Based on the law enforcement question  
16 response, I would move for cause.

17 THE COURT: You could have told me that before we  
18 called her back. I invited you to do that.

19 MR. SEGAL: I wanted to think about it. It was  
20 really a very picky issue.

21 THE COURT: Let's excuse her and bring in somebody  
22 else.

23 I'm trying to get this done by 1 clock.

24 (Pause.)

25 THE CLERK: Juror No. 11, Seat No. 9.

1 THE COURT: Hi, how are you?

2 A JUROR: Good, thanks.

3 THE COURT: Ms. Vallario, is it?

4 A JUROR: Yes.

5 THE COURT: You work as a nurse?

6 A JUROR: Yes, I do. I'm supposed to start  
7 orientation on a new job today.

8 THE COURT: Does that mean our schedule will cause  
9 you serious grief?

10 A JUROR: Yes, because I'm single parent.

11 THE COURT: We'll excuse Ms. Vallario, right?

12 MR. SEGAL: Yes, your Honor.

13 MR. KELLY: Yes, your Honor.

14 THE COURT: If you would go to the third floor and  
15 see if we can get another or shorter assignment for you.  
16 Maybe you can even talk to Ms. Cook and see if you can be  
17 excused for a month or so until you can get established in  
18 your job.

19 Tell her I said to ask that.

20 A JUROR: Okay. Thank you.

21 (Pause.)

22 THE CLERK: No. 40.

23 THE COURT: Hi, how are you?

24 A JUROR: Fine, thank you.

25 THE COURT: Is your name Baker-Marcellino?

1 A JUROR: Marcellino.

2 THE COURT: I guess they must have run out of space.

3 A JUROR: That happens.

4 THE COURT: And you are involved in commercial  
5 management? That is real estate management?

6 A JUROR: Yes.

7 THE COURT: And your husband is a lawyer?

8 A JUROR: Yes.

9 THE COURT: What is the nature of his practice?

10 A JUROR: He's a trial lawyer.

11 THE COURT: With what firm?

12 A JUROR: He's with the Boston Office of McDermott  
13 Will & Emery.

14 THE COURT: Does he do criminal work?

15 A JUROR: No, civil.

16 THE COURT: Do you have any problems about serving as  
17 juror in a criminal case?

18 A JUROR: I know of you, Judge. I know your name.

19 THE COURT: Well, that doesn't make any difference.

20 A JUROR: Okay. I thought it was fair to disclose  
21 that.

22 THE COURT: I won't even ask you what you know.

23 (Laughter.)

24 THE COURT: Unless you feel what you know would in  
25 any way prejudice you in this case.

1           A JUROR: No, just that I know of you.

2           THE COURT: Do you know anything about this case?

3           A JUROR: I certainly am aware of the original trial,  
4 if I made appropriate judgment from the brief list of  
5 indictment.

6           THE COURT: What do you mean by the original trial?

7           A JUROR: If I'm remembering correctly, there was a  
8 case of the father and son, were tried, and I believe that  
9 that was in fact tried and completed, and the son was found  
10 guilty.

11          THE COURT: Well, it is the same case, but there are  
12 two separate trials for two different defendants.

13          A JUROR: This aspect of it, I don't know that I'm  
14 familiar with.

15          THE COURT: Will you be able to decide this case  
16 based entirely on the evidence that will be presented in the  
17 courtroom and in no way in what you read before?

18          A JUROR: I would think so.

19          THE COURT: Does our schedule cause you any serious  
20 grief?

21          A JUROR: It would be a significant burden for me, I  
22 have two small children.

23          THE COURT: How small?

24          A JUROR: Four and five.

25          THE COURT: You don't work full-time?

1           A JUROR: I work not a full day, necessarily, no, but  
2 I am a full-time employee.

3           THE COURT: But you don't normally work from 9 on?

4           A JUROR: Not necessarily.

5           THE COURT: You could manage it, though?

6           A JUROR: Yes.

7           THE COURT: If a defendant is accused of unlawful  
8 conduct that resulted in the death of a police officer, would  
9 your views of the evidence be significantly influenced by the  
10 fact that a police officer was killed?

11          A JUROR: I don't think so.

12          THE COURT: If a person is arrested, indicted and  
13 brought to trial, would that cause you to believe that the  
14 person is probably guilty?

15          A JUROR: No.

16          THE COURT: If a defendant in a criminal case decides  
17 not to testify, would that failure cause you to think that  
18 this is some evidence of his guilt?

19          A JUROR: No.

20          THE COURT: If there is conflicting testimony between  
21 a witness who works for law enforcement and the witness who  
22 does not work for law enforcement, would you be inclined to  
23 give more weight or less weight to the testimony of the police  
24 officer?

25          A JUROR: No. No, I would not.

1 THE COURT: Do you believe that homosexual relations  
2 between consenting adults is morally wrong?

3 A JUROR: No.

4 THE COURT: In your view, would a witness's  
5 credibility or a defendant's guilt be in anyway influenced by  
6 that person's sexual orientation?

7 A JUROR: No.

8 THE COURT: Is there any reason, other than what  
9 we've already talked about, why you feel you cannot sit as a  
10 juror in this case?

11 A JUROR: No.

12 THE COURT: Mr. Kelly, any questions?

13 MR. KELLY: No, your Honor.

14 THE COURT: Mr. Segal, any questions?

15 MR. SEGAL: No, your Honor.

16 THE COURT: Thank you, Ms. Baker-Marcellino. If you  
17 would just kindly have a seat in the jury box, I would  
18 appreciate it.

19 MR. KELLY: I do not know Mrs. Baker-Marcellino, but  
20 I do know her husband.

21 THE COURT: Is her husband Jim Marcellino?

22 MR. KELLY: Yes.

23 I know her husband, and I have had fairly recent  
24 conversations with that law firm.

25 THE COURT: With him?

1 MR. KELLY: With Mr. Marcellino and others.

2 MR. SEGAL: I know Mr. Marcellino, also.

3 THE COURT: Well, is it cause to excuse her --

4 MR. SEGAL: I don't believe so.

5 THE COURT: -- that counsel know Mr. Marcellino, the  
6 husband of a juror?

7 MR. SEGAL: I don't believe it is, your Honor. I've  
8 never met Mrs. Marcellino and never even discussed her with  
9 her husband. Knowing the husband, she's going to sit here and  
10 listen to the evidence and presumably not discuss it with  
11 anybody, which I'm sure she can follow the Court's  
12 instructions. I think she can be fair and impartial.

13 MR. KELLY: I just wanted to bring it to the Court's  
14 attention that I do know her husband.

15 THE COURT: Well, since we only have to talk about  
16 two jurors, two minutes should be enough.

17 (Pause.)

18 MR. KELLY: United States would excuse  
19 Ms. Baker-Marcellino, Juror No. 40, in Seat No. 9.

20 THE COURT: Does the defendant have any challenges?

21 MR. SEGAL: Yes, Mr. Furtado, Juror No. 41, in  
22 Seat 6.

23 THE CLERK: No. 60, and Seat No. 9 is 20.

24 No. 16 is present.

25 THE COURT: How are you?

1 A JUROR: Okay.

2 THE COURT: Are you dying of boredom?

3 A JUROR: Yes, when you're not used to sitting down.  
4 That's okay, your job is bad, too.

5 THE COURT: Ms. Vallee, right?

6 A JUROR: Yes.

7 THE COURT: You work as a nurse at Alden Court Health  
8 Center?

9 A JUROR: Yes.

10 THE COURT: Your husband works as a painter?

11 A JUROR: Yes.

12 THE COURT: Do you have any children?

13 A JUROR: They're all married.

14 THE COURT: Do you know anything about this case?

15 A JUROR: No.

16 THE COURT: Never heard about it?

17 A JUROR: Well, you know, not really. No.

18 THE COURT: What do you remember that you did hear?

19 A JUROR: I really didn't hear anything.

20 THE COURT: Did our schedule cause you any grief?

21 A JUROR: Well, it does, because of my position as a  
22 nurse Alden Court. It will cause -- if I have to be here for  
23 three weeks.

24 THE COURT: They can't get somebody to --

25 A JUROR: Well, I guess they can, but I don't know

1 what will happen to my job. We're very shorthanded.

2 THE COURT: You think you would lose your job if you  
3 stayed here?

4 A JUROR: Maybe.

5 THE COURT: Well, that we wouldn't want to have  
6 happen.

7 Any reason not to excuse Ms. Vallee?

8 Why don't you go back to the third floor and see if  
9 you can find a shorter case for you?

10 A JUROR: Thank you.

11 THE COURT: We certainly don't want you to lose your  
12 job.

13 A JUROR: Thank you.

14 (Pause.)

15 THE COURT: How do you do? Mr. Candelino?

16 A JUROR: Yes.

17 THE COURT: You're No. 20 on the list. Mr. Candelino  
18 works as a postal clerk, right?

19 A JUROR: Yes.

20 THE COURT: Do you know anything about this case?

21 A JUROR: Not really.

22 THE COURT: I mean, you've read something about it, I  
23 gather?

24 A JUROR: But I didn't go to my memory until today.

25 THE COURT: What do you remember now that you've

1 heard about it again?

2 A JUROR: Just what was said this morning about  
3 explosives and the officers. That's all.

4 THE COURT: Will you be able to decide the case based  
5 entirely on what you hear in the courtroom and not on anything  
6 you may have read elsewhere?

7 A JUROR: I don't see why not.

8 THE COURT: Does our schedule cause you any serious  
9 grief?

10 A JUROR: I'll be glad to serve.

11 THE COURT: If a defendant in a criminal case is  
12 accused of unlawful conduct that resulted in the death of a  
13 police officer, would your views of the evidence be  
14 significantly influenced by the fact that a police officer was  
15 killed?

16 A JUROR: Well, I just wish I had the wisdom of  
17 Solomon to make a decision. I'll do the best I can.

18 THE COURT: But would you be influenced by the fact  
19 that it was a police officer who was killed?

20 A JUROR: Not really.

21 THE COURT: If a person is arrested, indicted and  
22 brought to trial, would that cause you to believe that the  
23 person is probably guilty?

24 A JUROR: Say that again, please?

25 THE COURT: If a person arrested and then accused and

1 is then brought to trial, would you think that that  
2 combination of facts, would that cause you to believe that  
3 he's probably guilty?

4 A JUROR: No, I would have to hear all the evidence.

5 THE COURT: If a defendant in a criminal case decides  
6 not to testify, would that cause you to believe, that is, that  
7 failure cause you to believe that it is some evidence of  
8 guilt?

9 A JUROR: I can't give an answer. I'll have to think  
10 about that. And I never thought of something like that. I  
11 would have to think about it. I just can't give you an answer  
12 to right now.

13 THE COURT: Can you think about it?

14 A JUROR: The defendant refuses to?

15 THE COURT: If he just doesn't testify, would that  
16 failure cause you to think that it is some evidence of guilt?

17 A JUROR: Some evidence of guilt?

18 THE COURT: Would his failure to testify be some  
19 evidence of guilt?

20 A JUROR: 99 percent, yes. Could be extenuating  
21 circumstances why he doesn't want to testify, maybe try to  
22 protect somebody. You know?

23 THE COURT: If you're instructed by the Court that,  
24 under the Constitution, a defendant has an absolute right not  
25 to testify and that the jury may not take that into account in

1 deciding whether he's guilty or not, will you be able to  
2 follow that instruction?

3 A JUROR: Does that have something to do the with the  
4 Fifth Amendment?

5 THE COURT: Indeed.

6 A JUROR: Well, then I would say that he has a right  
7 not to, you know, testify against himself.

8 THE COURT: Or even for himself?

9 A JUROR: For himself, yes.

10 THE COURT: But will you be able to disregard, that  
11 is, not to take into account in deciding whether he's guilty  
12 or not, simply the fact that he did not testify? Will you be  
13 able to do that?

14 A JUROR: I'm lost. To be honest with you, Judge.  
15 Can you but it another way?

16 THE COURT: Yes.

17 Suppose you're in the jury room deciding this case.

18 A JUROR: Right.

19 THE COURT: And you and the another jurors hash over  
20 all the evidence, if somebody else says, well, this guy didn't  
21 testify, you know, he must be guilty, would you be able to say  
22 to that juror, you can't take that into account because he has  
23 a right not to testify and we can't base a verdict on the fact  
24 that he didn't?

25 Do you understand?

1           A JUROR: I must be dumb because I still don't get  
2 the point.

3           THE COURT: The point is that when you decide whether  
4 somebody is guilty or not.

5           THE WITNESS: I have to hear all the evidence first.

6           THE COURT: Right, you hear all the evidence.

7           A JUROR: Right.

8           THE COURT: Now you're in the jury room deciding  
9 whether the person is guilty or not based on all the  
10 evidence. The thing that you may not take into account in  
11 deciding whether he's guilty or not is the fact that he didn't  
12 testify. It cannot play any role in the decision.

13           Do you understand?

14           A JUROR: I can make a decision then. I'll have to  
15 make had a decision if he doesn't testify?

16           THE COURT: Right.

17           A JUROR: Okay.

18           THE COURT: But can you in -- I'm sorry, I'm not  
19 explaining this very well, I think.

20           Can you make the decision without taking into account  
21 that he didn't testify?

22           A JUROR: Well, I was never in that situation, I  
23 don't know if I can do that. I would have to be in the  
24 situation, to be honest with you. It would have to be  
25 something that I would have to go through, because I have

1 don't know what I would do in that situation, to be honest  
2 with you.

3 THE COURT: That's fair enough.

4 If there is a conflict between the testimony of a  
5 witness who works for law enforcement and a witness who  
6 doesn't work for law enforcement, would you be inclined to  
7 give greater weight to the person who worked for law  
8 enforcement?

9 A JUROR: No.

10 THE COURT: Do you believe that homosexual  
11 relationships between consenting adults is morally wrong?

12 A JUROR: I do.

13 THE COURT: Would your views of a witness's  
14 believability or a defendant's guilt be in any way influenced  
15 by that person's sexual orientation?

16 A JUROR: Say that again?

17 THE COURT: Would you believe that a witness who is a  
18 homosexual or a defendant who is a homosexual is either -- if  
19 that the witness is less credible or the defendant is more  
20 likely to be guilty?

21 A JUROR: No, that's okay. I take that as, you know,  
22 that has nothing to do with it.

23 THE COURT: Is there any reason that we haven't  
24 specifically talked about why you feel you cannot be a juror  
25 in this case?

1           A JUROR: Physically and mentally, I would like to be  
2 a juror, if it's all right with everybody else.

3           THE COURT: Mr. Kelly, any questions?

4           MR. KELLY: No, your Honor.

5           THE COURT: Mr. Segal, any questions?

6           MR. SEGAL: No.

7           THE COURT: Thank you, Mr. Candelino. Would you mind  
8 taking a seat in the jury box?

9           MR. SEGAL: I move for cause, your Honor.  
10 99 percent, after all those questions, I don't think it really  
11 went down much.

12          THE COURT: I'm afraid I tend to agree.

13          (Pause.)

14          THE COURT: Have a seat.

15          What numbers are we at?

16          THE CLERK: 7 and 13.

17          THE COURT: No. 7, that means that you are  
18 Ms. Powers, right?

19          A JUROR: Yes.

20          THE COURT: And you are exhausted from waiting?

21          A JUROR: I am.

22          THE COURT: Sorry about that.

23          Do you know anything about this case?

24          A JUROR: Yes, it was -- I read it in the news and I  
25 saw it on television.

1 THE COURT: What do you remember seeing about it?

2 A JUROR: That the bomb squad went down to  
3 Roslindale, in the center. And I guess it was one of the men  
4 tried to defuse the bomb and it went off, and he was  
5 automatically killed, and another man escaped. There was only  
6 one other person around, and that was his son. And his son, I  
7 guess, he was the first witness or the first person to go  
8 after.

9 And I guess the next day they had him. I guess the  
10 next day that they arrested him, I believe. I guess he was --  
11 that was -- then eventually came out that he was intentionally  
12 going to kill his father, that he wanted to kill his father.

13 That was in Roslindale. And that's it.

14 THE COURT: Would you be able to decide the case  
15 based on what you hear in the courtroom and not influenced by  
16 what you already know?

17 A JUROR: That would be hard. That would be real  
18 hard. Real hard, from what I already know.

19 THE COURT: Do you know anything at all about this  
20 defendant from what you've read and seen?

21 A JUROR: That he was found to be the person that  
22 planted the bomb.

23 THE COURT: This defendant?

24 A JUROR: Yes.

25 THE COURT: I guess we'll have to excuse Ms. Powers.

1 All right. You are free to exercise going down to  
2 the third floor. I didn't mean to deprive the people of the  
3 ladies room.

4 (Pause.)

5 THE CLERK: Mrs. Shea, No. 13.

6 THE COURT: You're Ms. Shea?

7 A JUROR: Yes.

8 THE COURT: No relation?

9 A JUROR: No relation, no. It seems to be the name  
10 of the day.

11 THE COURT: And you work as a book editor, as I  
12 understand it?

13 A JUROR: Yes, that's right.

14 THE COURT: Where is your husband a professor?

15 A JUROR: At Worcester State College.

16 THE COURT: Do you know anything about this case?

17 A JUROR: I've read about it ongoing in the  
18 newspaper.

19 THE COURT: What do you mean?

20 A JUROR: Of the charge against the young man and the  
21 death of the policeman.

22 THE COURT: What else?

23 A JUROR: That's about it.

24 THE COURT: Will you be able to decide the case based  
25 only on what is presented in the courtroom and not on the

1 basis of what you already know?

2 A JUROR: I don't know whether you would consider  
3 this significant, but do I have a brother-in-law who was  
4 killed in the line of duty as a Cambridge policeman. That  
5 could affect it.

6 THE COURT: It's significant if you think it's  
7 significant.

8 A JUROR: Yes.

9 THE COURT: Would it affect your judgment about this  
10 case?

11 A JUROR: It might.

12 THE COURT: All right.

13 A JUROR: Speaking honestly, it might.

14 THE COURT: Then I think we will have to excuse you,  
15 as well. If you would kindly return to the third floor, I  
16 would appreciate it.

17 A JUROR: Thank you.

18 THE COURT: Thank you.

19 Cathy, before you go, can you find out from Judy what  
20 we do now? We won't finish.

21 THE CLERK: She's here.

22 THE COURT: Ask her to come in, please.

23 (Off the record discussion with the Jury Clerk  
24 present.)

25 (Pause.)

1           THE COURT: I apologize I didn't make it clear that  
2 you didn't have to sit glued to your seats and can't even go  
3 to the bathroom. If any of you are in desperate straits, by  
4 all means, go.

5           I regret that I am unable to finish this process  
6 today. I unfortunately have a full afternoon of a bunch of  
7 other matters, and I would therefore need to ask you to come  
8 back tomorrow morning.

9           If you could kindly be back here at 9 o'clock  
10 tomorrow morning, in -- well, 9 o'clock promptly in the third  
11 floor jury lounge, then we will try to get through it as  
12 quickly as we can.

13           I very much apologize not being able to finish today,  
14 and appreciate your coming back at 9 tomorrow morning.

15           So you are now excused until then. Thank you very  
16 much.

17           (Pause.)

18           [Whereupon, the jury entered the courtroom.]

19           THE COURT: Please be seated in any seat.

20           Those of you who are in the jury box will be jurors  
21 in this case. As you can see, we were unable to finish the  
22 selection of the jury today, and we will continue at  
23 9 o'clock tomorrow morning.

24           I reasonably anticipate that we will not finish  
25 before 10:30, so there is no point in your coming here at 9,

1 but I would ask that you come in at 10:30 tomorrow and go  
2 directly to the jury room that you now know is your jury room  
3 for the duration of the trial. You're on your own in making  
4 coffee.

5 I ask you, please, in the interim not to talk about  
6 the case, whatever you have learned about it today, the  
7 process of selection of the jury, any of this, do not talk  
8 about it with anyone. And I will ask you to continue to  
9 adhere to that stricture during the trial.

10 It is very important that when you are deliberating  
11 on your verdict, you do it on the basis of just what you have  
12 learned in the course of the trial, without that being in any  
13 way reinforced by having talked about it. And I ask you,  
14 also, please not to read anything about the case in any of the  
15 newspapers, not to watch any television about it, not to  
16 listen to any radio reports about it. There likely will be  
17 some. So if you see it, skip over it. Go away from the TV  
18 for 30 seconds because that's likely all that there will be.

19 In the meantime, just take it easy, and come back at  
20 10:30 tomorrow. I can't promise that I'll be done exactly by  
21 10:30, but we will certainly try to get going with the trial  
22 itself tomorrow morning.

23 And I thank you very much for your attendance today.

24 You are now excused.

25 Court is in recess until 2, this case until

1 9 tomorrow morning.

2 MR. KELLY: Thank you, your Honor.

3 MR. SEGAL: As soon as we pick the panel, we will  
4 start with openings right thereafter, your Honor?

5 THE COURT: Well, we will take a two-minute recess.

6 [Whereupon, the jury trial adjourned at 1:12 p.m., to  
7 be resumed on Tuesday, commencing at 9 o'clock a.m.]

8  
9 **CERTIFICATE**

10 I certify that the foregoing is a correct  
11 transcription of my computer-aided stenographic notes of the  
12 proceedings in the above-entitled matter.

13 \_\_\_\_\_  
14 James E. McLaughlin  
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1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Second Day of Trial

11  
12  
13 APPEARANCES:

14 For the Government:

15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

17  
18 For the Defendant:

19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda Sharton, Esq., SEGAL & FEINBERG,  
21 210 Commercial Street, Boston, MA. 02109.

22  
23 Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

24 ~~October~~  
November 26, 1993

25 **Computer-Aided Transcription**

1 [Whereupon, the jury entered the courtroom.]

2 [Whereupon, the jury was duly sworn.]

3 THE COURT: Please be seated.

4 Members of the jury, you have been chosen to try this  
5 case. I congratulate you both on being chosen and on your  
6 patience, and I regret that it took so long but it's important  
7 that we have a jury that will be impartial in this case and  
8 will try the evidence fairly.

9 We will start the trial now with the opening  
10 statement by counsel. First, Mr. Kelly, on behalf of the  
11 Government, will address you and outline to you the evidence  
12 that he expects to present on behalf of the Government. After  
13 that, Mr. Segal will address you and tell you about the  
14 defendant's evidence.

15 The purpose of the opening statement is to put in  
16 context even the testimony of the first witness. It's very  
17 hard to understand what the first witness is talking about if  
18 you did not have some notion of what the case in general was  
19 all about. So that is the purpose of the opening statement,  
20 is to give you the context for even the first witness and to  
21 have you understand what the entire picture is all about.

22 Understand, however, that when you're in the jury  
23 room at the end of the trial, deciding the case, you must  
24 decide it based, not on what the lawyers told you the evidence  
25 would be, but on what the evidence in fact is, namely, what

1 the witnesses tell you and what the exhibits tell you in the  
2 case. The lawyers will have another opportunity to address  
3 you after all the evidence is closed, and I will give you the  
4 same caution at that time.

5 So the way the trial will progress is that we will  
6 now hear the opening statements. We will probably have time  
7 even to hear the beginning of the first witness's testimony.  
8 We will then hear the rest of the witnesses. And at the end  
9 of the trial, counsel will again address you, and I will  
10 instruct you on the legal principles that will -- in  
11 accordance with which you have to find the facts and reach  
12 your verdict.

13 Now, I told you yesterday that Mr. Trenkler, the  
14 defendant, has been charged in this indictment in the three  
15 counts that I outlined to you. This indictment charged two  
16 defendants. It charged not only Mr. Trenkler, but also a  
17 person named Thomas Shay, Jr. For a number of complicated  
18 technical reasons, they were not tried together. Mr. Thomas  
19 Shay, Jr. has already been tried and he was convicted on some  
20 but not all of the counts in the indictment.

21 I simply tell you this because I want you to be very  
22 clear that the fact that Mr. Shay was convicted on some counts  
23 has absolutely nothing to say about whether Mr. Trenkler is  
24 guilty of the charges that have been brought against him. You  
25 will need to decide whether he is guilty or not based entirely

1 on the basis of the evidence you will hear and in no way based  
2 on the fact that Mr. Shay was convicted on evidence that, I  
3 can guarantee you, is in some respects quite different from  
4 that which you will hear.

5 So we will now hear from Mr. Kelly as to the evidence  
6 that the Government will introduce and present to you.

7 MR. KELLY: Thank you, your Honor.

8 Opening Statement by Mr. Kelly

9 May it please the Court, counsel, ladies and  
10 gentlemen of the jury, October 28th, 1991, almost two years  
11 ago to the day, it was a day very much like today, a clear,  
12 crisp, fall day. It was a Monday, I recall. It was about 12  
13 o'clock noon. We were in a quiet residential Roslindale  
14 neighborhood. There was an elementary school down the street  
15 on the corner, there was some children playing in the  
16 elementary school yard at the time, when suddenly the peace  
17 and tranquility of that Roslindale neighborhood was ripped  
18 apart by the sound of a powerful explosion, a bomb. And for a  
19 split second everything stopped. And when the shock of the  
20 moment passed, along with a billowing cloud of smoke from the  
21 driveway of 39 Eastbourne Street in Roslindale, only then were  
22 the tragic consequences of that blast revealed: two veteran  
23 Boston police officers, Officer Jeremiah Hurley and Officer  
24 Francis Foley, had been caught in the path of this destructive  
25 force and were grasping for their very survival.

1 Ladies and gentlemen, during the course of this  
2 trial, you will likely ask yourselves, several times I  
3 suspect, what kind of a person builds a deadly bomb. Because,  
4 as you will learn during the course of this trial, a bomb is  
5 the ultimate weapon of terror. The evidence will be that a  
6 bomb is indiscriminate; unlike with other weapons, with a bomb  
7 the perpetrator is usually unable to precisely focus on his or  
8 her target. Sometimes a bomb will find its intended target.  
9 Oftentimes, however, a bomb will function other than it was  
10 intended, and it will explode without warning, leaving behind  
11 a path of death, of destruction and of innocent victims.

12 Ladies and gentlemen, that is this case.

13 Again, my name is Paul Kelly, I'm an Assistant United  
14 States Attorney. And along with my colleague, Mr. Frank  
15 Libby, it is my job to present evidence to you on behalf of  
16 the United States of America during the course of this trial.

17 As you've heard the judge just outline, two  
18 individuals have been charged with crimes in this case: Thomas  
19 Shay of Quincy, Massachusetts, who I will refer to as Shay,  
20 Jr., and Mr. Alfred Trenkler of Milton, Massachusetts, who is  
21 seated here at counsel table.

22 Both Mr. Trenkler and Mr. Shay have been charged with  
23 three crimes, or, four crimes, actually. They've been charged  
24 with conspiracy; they have been charged with the receipt of  
25 explosives; they have been charged with attempted malicious

1 destruction of property by means of explosives; and as to  
2 those two substantive charges, they have both also been  
3 charged with the crime of aiding and abetting one another.

4 As the judge has just described, only Mr. Trenkler is  
5 on trial at this time. I refer to Mr. Shay as Shay, Jr.  
6 because you will hear testimony and evidence about Mr. Shay's  
7 father, Thomas L Shay, who actually resides in that home, in  
8 that peaceful neighborhood, at 39 Eastbourne Street. And I  
9 will refer to him during my remarks as Shay, Sr.

10 Ladies and gentlemen, I believe the evidence will be  
11 that on Sunday afternoon, October 27th, 1991, Thomas Shay, Sr.  
12 returned home after running some errands. And as he drove up  
13 to his house on this Roslindale street, he noticed that his  
14 usual parking place, which is in front of his home, was taken  
15 by his fiancée. This photograph that I'm holding depicts  
16 Mr. Shay's house from somewhat of an aerial view, and  
17 typically he will park in front of a house.

18 On this Sunday afternoon, he drove up, and his  
19 fiancée's car was parked in his space, so he pulled his car  
20 across the front, and then he backed his car up into the  
21 driveway of his home. And as Mr. Shay backed the car up into  
22 that driveway -- another picture of it here -- as he reached  
23 the crest of that driveway, suddenly he heard an unfamiliar  
24 thump or scraping sound. He continued to back the car up a  
25 little bit into the driveway. He stopped. He got out of his

1 1986 Buick. He took a quick look, he saw nothing, so he went  
2 into the house to watch a football game.

3 A short while later, his fiancée, Ms. Mary Flanagan,  
4 left the home with her daughter, thus opening up the parking  
5 space in the driveway of his house. The evidence will be that  
6 Mr. Shay went outside, got back in his car, drove it back down  
7 the driveway to park it in front of the house where he  
8 typically parks.

9 Again, as he drove this 1986 Buick, which is depicted  
10 here in this photograph, and again, as he reached the crest of  
11 that driveway, this way on the way down, he heard that same  
12 familiar sound, that thump or that scraping from the  
13 undercarriage directly beneath the driver's seat. He pulled  
14 the car down the driveway, he turned to his left, and then he  
15 backed the car up into the front of the house. And as he  
16 exited the vehicle, he looked back, and there, sitting in the  
17 middle of the driveway, was an object. He walked over to the  
18 object, he looked down at it, he picked it up to kind of give  
19 it a closer examination -- he later described it, and I'll  
20 explain what he says he saw -- he wasn't sure what it was. So  
21 he walked over next to his house, and he placed the object  
22 next to a trash barrel, which you can just barely see, right  
23 here along the side of the house. He went inside, Sunday  
24 afternoon, to watch a football game. After.

25 Watching the football game, you will hear for a few

1 minutes, Mr. Shay started thinking to himself, I really don't  
2 know what that thing is, I probably shouldn't leave it next to  
3 the trash barrel. So he walks back outside, and he picks the  
4 object up again, and he walks down his driveway, and this time  
5 he places the object in between two vehicles that he has  
6 parked in the driveway in the rear of the driveway. He's got  
7 a white panel truck, and parked behind it is kind of a  
8 disabled GTO, I believe. He takes the device that he finds,  
9 and he drops it in between the two vehicles, and, again, he  
10 goes back into the house. Nothing else happens the rest of  
11 that Sunday or Sunday evening.

12 And the next morning, October 28th, 1991, Mr. Shay,  
13 who was in the automotive repair business, is scheduled to do  
14 some work on a neighbor's car. So that morning he picks up  
15 the woman's car, some kind of a small foreign model, and he  
16 drives to his brother's garage. His brother is also in the  
17 same business. While he's in the garage, he describes to his  
18 brother and to another mechanic, what he has discovered in the  
19 driveway of his home. He describes it as a wooden box; it's  
20 about 10 inches long and it's about 6 or 8 inches wide; it's  
21 got a couple of circular things on the top.

22 Subsequently, as you will learn, Mr. Shay draws a  
23 diagram, a crude sketch, of what he sees in the driveway that  
24 day. This is an enlargement of the sketch that he drew. But  
25 he described it to these two fellows of the garage -- again,

1 this is, again, enlarged -- about 10 inches long, 6 or 8  
2 inches wide, having two large circular things on the face of  
3 it, and then some smaller round things attached to it.

4 Now, upon hearing it, the two individuals at the  
5 garage say: Gee, that sounds awfully suspicious, Tom. You  
6 know, you ought to do something about that. In fact, it even  
7 sounds like you might have a bomb in that driveway. You ought  
8 to contact the police.

9 So later that morning, October 28th, Thomas Shay, Sr.  
10 drives from this garage, and he stops at the West Roxbury  
11 police station, also known as area E-5, and he goes in and  
12 speaks to a Detective Robert Maloney, and he tells Mr. Maloney  
13 what he has discovered in his driveway the previous afternoon,  
14 and he tells him it's still there.

15 Mr. Maloney tells Mr. Shay that he's going to alert  
16 the Boston Bomb Squad unit, and that he's going to send two  
17 patrol cars out to the house there until they get there, and  
18 he wants Mr. Shay to return to the home and wait for the  
19 police to arrive. You'll learn from the evidence that that's  
20 what happens. Mr. Shay goes back to the house, two patrol  
21 officers, a Denise Kraft and Thomas Creavin, arrive moments  
22 later at this house on 39 Eastbourne Street.

23 While the two police officers are there, Mr. Shay  
24 escorts them back between the two vehicles, he shows them the  
25 device on the ground. They don't know what it is, they're not

1 bomb technicians or experts. They kind of stay back and they  
2 take a look at it for a few minutes, when suddenly the bomb  
3 squad officers drive up to the house, Officers Jerry Hurley  
4 and Officer Frank Foley. At that point Officer Hurley and  
5 Officer Foley basically take over; it's now their  
6 responsibility.

7           They come over to Mr. Shay, they get some basic  
8 information from him and from the two patrol officers, and  
9 then they have Mr. Shay escort them back to where this device  
10 is situated. They take a look at the device. They don't know  
11 what it is, so they move Mr. Shay and the two patrol officers  
12 back from the front of the -- back from the rear of the  
13 driveway away from where this device is located, or back out  
14 here in front of where the truck is. And then the two bomb  
15 squad officers decide that they want to do a preliminary exam  
16 to determine what type of equipment they need.

17           So while the two bomb squad officers go back to  
18 attend the device and Mr. Shay is out front with the two  
19 patrol officers, suddenly, at that time, ladies and gentlemen,  
20 there is this tremendous explosion. Debris comes flying over  
21 the top of the panel truck in the vicinity of where the two  
22 patrol officers and Mr. Shay are situated. And as you will  
23 hear from the testimony, in the moments that followed, the  
24 scene there in the driveway was one of panic, devastation, and  
25 agony. The bomb had exploded with tremendous force.

1           The two patrol officers, ladies and gentlemen, will  
2 describe to you how they rushed from the driveway back behind  
3 the panel truck and, they will describe what they did, what  
4 they saw, and what they heard.

5           Officer Hurley, you will learn, would die several  
6 hours later from massive trauma. Officer Francis Foley would  
7 survive, although barely, losing an eye and suffering severe  
8 injuries to his head, to his face, and to his upper torso.

9           Immediately thereafter, the Boston police with  
10 assistance from the Bureau of Alcohol Tobacco and Firearms  
11 blocked off the 39 Eastbourne Street and began the  
12 investigation.

13           The evidence will be, ladies and gentlemen, that  
14 while detectives and federal agents were out following leads  
15 to try to determine who put this very deadly device in that  
16 driveway, a team of highly qualified experts immediately began  
17 their work at the crime scene, painstakingly gathering  
18 together all of the piece of the debris that they could find,  
19 in an effort to determine just what was that thing that had  
20 killed Officer Hurley and mamed Officer Foley.

21           During the course of this trial, ladies and  
22 gentlemen, you will hear from a series of expert witnesses,  
23 including a forensic chemist, an explosives expert, and an  
24 engineer, who will describe to you their findings and opinions  
25 after this careful reconstructive process.

1           Ladies and gentlemen, the evidence you will hear will  
2   be that the device which detonated in the driveway there on  
3   October 28th, 1991, was a high powered explosive device which  
4   was designed and constructed to be detonated by remote  
5   control. You will learn that this device contained the  
6   equivalent of two or three sticks of repackaged dynamite, two  
7   blasting caps, a remote control receiver, a toggle switch  
8   assembly, batteries, wire, tape, and other internal  
9   components. Those components and the explosive materials were  
10  all contained within a carefully constructed wooden box. The  
11  components had been glued down to the base of the box. The  
12  box had been closed. It had been glued and it had also been  
13  nailed. It was a very professional job of construction, as  
14  well as in terms of the internal componentry.

15           You'll hear the experts describe how there were two  
16  magnets that were glued to the top of this box, two kind of or  
17  circular or doughnut magnets and a series of button magnets,  
18  and then how the entire device had been spray-painted black so  
19  that it was not easily detected. So when this thing was stuck  
20  up under the vehicle, someone taking a glance under the car  
21  would not have seen it.

22           You will hear, ladies and gentlemen, the experts  
23  describe how in fact that device was affixed to the  
24  undercarriage of Mr. Thomas Shay, Sr.'s 1986 Buick in the  
25  vicinity of the driver's seat, up underneath, and that the

1 intended purpose of that device was to kill.

2           You will learn that that device was intended to be  
3 detonated from up to a half a mile away; although under  
4 optimum conditions, it will be approximately line of sight of  
5 a couple hundred years, would be the ideal circumstance if  
6 someone was in the vicinity. Fortunately, for Thomas Shay,  
7 Sr., and tragically for Officers Hurly and Foley, the device  
8 became dislodged in the driveway, the previous day, October  
9 27th, 1991.

10           Now, ladies and gentlemen, you will also hear that  
11 while these experts were out doing their reconstructive work,  
12 that various federal and state investigators were working  
13 almost around the clock to piece the facts and evidence  
14 together that would lead them, hopefully, to the killers of  
15 Officer Hurley.

16           This case is also about how that effort started with  
17 multiple suspects but led unmistakably to Thomas Shay, Jr.  
18 and to this defendant, Alfred Trenkler.

19           Ladies and gentlemen, during the course of this  
20 trial, the Government will present various pieces of evidence  
21 which in isolation may not tell you very much. Taken  
22 together, this collage of evidence which the Government  
23 intends to present will demonstrate to you without a doubt  
24 that this defendant, Alfred Trenkler, was part of a two-person  
25 conspiracy whose aim it was to kill Shay, Jr.'s father, Thomas

1 Shay, Sr. by means of this sophisticated bomb.

2           There will not be a single eyewitness. There will  
3 not be any snapshot from a hidden camera or some insider who  
4 is going to lay out the whole scheme for you. Rather, ladies  
5 and gentlemen, this is a case built primarily on  
6 circumstantial evidence. This is largely because of the  
7 secretive nature of the crime of conspiracy. But from the  
8 statements, from the actions, from the motives, of two  
9 participants, you will be asked to draw certain inferences  
10 concerning the nature and scope of their unlawful agreement.

11           Among the pieces of evidence that the United States  
12 intends to offer is evidence demonstrating the clear  
13 involvement of Thomas Shay, Jr. in these crimes and his  
14 motives for doing so.

15           What were the motives of this young kid for wanting  
16 to kill his father? Ladies and gentlemen, the evidence will  
17 be that Thomas Shay, Jr. had both a personal motive and  
18 financial motive. You will learn, in the course of this  
19 trial, Thomas Shay had experienced years of neglect, of  
20 rejection and abandonment by members of his family, including  
21 his father. You will learn that Thomas Shay, Jr. witnessed  
22 physical abuse by his father against his mother, against other  
23 siblings.

24           You will learn after being reunited by his father,  
25 after years of physical separation, how there was an incident

1 that occurred which led to Mr. Thomas Shay, Jr. being expelled  
2 from the family home. And you will learn how in the weeks  
3 prior to this explosion, in the fall of 1991, there were  
4 instances where the father and the son had a falling out, had  
5 exchanged words and anger and frustration.

6 We will show you that there's also a financial motive  
7 which the United States will try to demonstrate through the  
8 evidence acted as almost a triggering mechanism when coupled  
9 with these feelings of anger and frustration which the son had  
10 against the father.

11 You will learn from the evidence that  
12 Mr. Shay, Jr. became aware, in or about September of 1991,  
13 that his father had a lawsuit pending in which there was  
14 \$400,000 worth of insurance coverage available. The evidence  
15 will be that Mr. Shay, Jr. was told by one of his father's  
16 attorneys, an Alan Pransky, that if the father died, that the  
17 lawsuit would survive and that some portion of the money would  
18 actually go to Mr. Shay, Jr. through the estate, perhaps as  
19 much as a quarter of the amount, or \$100,000, in the event  
20 that the lawsuit prevailed.

21 Beyond the evidence of Shay, Jr.'s motive, however,  
22 ladies and gentlemen, there will be evidence that following  
23 this bombing on October 28th, Shay, Jr. admitted his  
24 involvement in the crime to others, that he made light of the  
25 fact that a police officer had been killed, and even laughed

1 about it.

2           However, even in Mr. Shay, Jr.'s incriminating  
3 admissions, ladies and gentlemen, you will hear that Shay, Jr.  
4 told investigators that he wasn't the one who built it, that  
5 he wasn't one who got the dynamite, that he wasn't the violent  
6 one.

7           You will learn that Mr. Shay, Jr. gave a video-taped  
8 interview, during which he proclaimed on the tape that he  
9 purchased a toggle switch at a Radio Shack store in Boston and  
10 that that precise toggle switch was inside the explosive  
11 device that killed Officer Hurley.

12           You will hear further evidence of this transaction at  
13 the Radio Shack, ladies and gentlemen. You will hear from the  
14 clerk, and you will see the actual receipt of this transaction  
15 in question.

16           What you will see, ladies and gentlemen, from this  
17 receipt, is that on October 18th of 1991, as is indicated  
18 here, at a Radio Shack store at 197 Mass. Ave. in Boston,  
19 there was a purchase of a certain model toggle switch, along  
20 with other items. The other items that you will hear are  
21 consistent with the purchase of bulbs and batteries and  
22 battery holders and project boxes that one might use to check  
23 the circuitry work of an electrical device, such as a bomb.

24           You will learn that this precise model toggle switch  
25 was identified by expert and forensic chemists as being

1 contained within the bomb that killed Mr. Hurley.

2           You will see on the receipt that the customer  
3 involved here gave the name S A H Y, with the first initial  
4 J Y T, where the first initials are, which could be the name  
5 Shay with two initials inverted, T for Thomas, and the  
6 J Y could be for junior for, the Y being next to the R on a  
7 typewriter.

8           You will learn that this identification number on the  
9 corner, the Radio Shack people will tell you, that's the last  
10 four digits of the customer's phone number. The number here  
11 on the receipt is 3780. You will learn that Thomas Shay,  
12 Sr.'s telephone number is 7380, the last four digits of his  
13 number.

14           So you will see, ladies and gentlemen, that there is  
15 an independent corroboration for the admissions and  
16 statements of Mr. Thomas Shay, Jr. concerning his purchase of  
17 this toggle switch which was found within this bomb.

18           There will be other evidence presented to you, ladies  
19 and gentlemen, concerning Thomas Shay, Jr.'s actions, his  
20 statements, his motives, including the fact that Thomas Shay,  
21 Jr. is a homosexual. In fact, I believe the evidence will be  
22 that Thomas Shay, Jr. would prostitute himself to older gay  
23 males for shelter, for support, and for companionship.

24           But the evidence will be that Thomas Shay, Jr. was  
25 not capable of building a sophisticated bomb by himself. He

1 needed someone to do it for him. He needed someone with a  
2 knowledge in explosives, someone with a background in  
3 electronics, someone with the ability to work with wood. The  
4 evidence will be that that someone was Alfred Trenkler.

5 You will hear that a few days after this bombing took  
6 place, ATF, the Bureau of Alcohol, Tobacco and Firearms, was  
7 informed by the Quincy Police Department of a detonation of a  
8 similar remote control device in Quincy in September of 1986.

9 The circumstances of that incident, on which you will  
10 hear evidence, are that in the early morning hours of  
11 September 1st, 1986, the Quincy police will call to the site  
12 of an explosion, a truck belonging to a fish company had  
13 sustained damage from some type of an explosion from  
14 underneath it. When they examined the remnants and debris  
15 from that explosion, it indicated that there was a remote  
16 control explosive device, containing a receiver, a toggle  
17 switch assembly, batteries, tape, and other electrical  
18 components, along with something called an M 21 Hoffman device  
19 which is some kind of a military flash simulator used by the  
20 military or the Army to simulate the explosion of shells and  
21 tanks and things like that.

22 You will learn from that examination of the earlier  
23 device that the device had been wrapped in duct tape and had  
24 been affixed to the undercarriage of that fish truck by means  
25 of a speaker magnet. The investigation of that incident led

1 to Quincy Police Department for this defendant, Alfred  
2 Trenkler who when initially confronted denied his involvement  
3 with that device. However, you will learn that a day or two  
4 later when it was clear that the police had the goods on him,  
5 Mr. Trenkler, the defendant, admitted that he was the builder  
6 of that device in September of 1986. He further admitted that  
7 he built that device for another person as a favor.

8 Now, the investigators in this Roslindale bombing  
9 case were intrigued by that, but literally saw no connection  
10 between it and the tragic events which occurred in Roslindale  
11 on October 28th. That is until they came into possession of  
12 Thomas Shay, Jr.'s address book and there on the address book,  
13 this is an enlargement of the first page of the address book  
14 is the entry, Al Trenkler with a beeper number, 617-553-0778.  
15 You will see Mr. Shay alphabetized by first initial, first  
16 name, thus Al, Alan, and the book continues.

17 This investigative connection occurred on or about  
18 November 5th of 1991 or about a week after the explosion. The  
19 evidence will be that the investigators in this case then went  
20 out and located and paid a visit to this Mr. Trenkler. He  
21 went to his residence a tiny basement apartment in North  
22 Quincy that following evening, November 6th of 1991. You will  
23 learn that during that evening, Mr. Trenkler admitted that he  
24 knew Mr. Thomas Shay, Jr. but stated that he had only known  
25 him for a short period of time. I believe that the testimony

1 will be that he had only known him for six months or in or  
2 about June of 1991 and he denied to police that this Thomas  
3 Shay, Jr. had ever been to his apartment there in Quincy.

4 He admitted, Mr. Trenkler did that night, that he was  
5 gay, and that he had met Mr. Thomas Shay, Jr. in a gay  
6 cruising area in the Fenway section in Boston, and when the  
7 subject of this 1986 bomb was raised that night in the  
8 questioning, Mr. Trenkler's demeanor changed entirely. You  
9 will learn that he grew nervous and became upset. He admitted  
10 to the investigators that in fact he had built that earlier  
11 remote control bomb.

12 Later that evening he was asked by one of the  
13 investigators to draw a crude wiring diagram of this device  
14 that he had built back in 1986 which he did. He was then  
15 asked hypothetically if you were going to construct a device  
16 that involved dynamite and remote control, what would you do?  
17 Mr. Trenkler then proceeded to draw a wiring diagram. And  
18 what you will hear is that the diagram he drew contained  
19 double or two blasting caps, or something called dual priming  
20 which the testimony will be is a distinctive touch in the  
21 construction of an explosive device containing dynamite.

22 During this trial the Government will present further  
23 evidence to show that Mr. Trenkler was not entirely truthful  
24 in his initial statements that evening to the police  
25 concerning his association with Thomas Shay, Jr. and other

1 matters. The evidence will be that in fact Mr. Trenkler's  
2 association with Mr. Thomas Shay, Jr. dated back some three  
3 years to the spring of 1989 and not June of 1991 as he had  
4 claimed; that Thomas Shay, Jr. in fact had been to  
5 Mr. Trenkler's apartment in Quincy, contrary to his earlier  
6 denial, as well as the fact that Thomas Shay, Jr. had visited  
7 or stayed with Mr. Trenkler at a previous residence.

8           The evidence will be that Thomas Shay, Jr. and  
9 Mr. Trenkler were friends who shared a common sexual  
10 orientation and likely an intimate relationship. The evidence  
11 will be that Thomas Shay, Jr. and Mr. Trenkler were observed  
12 in each other's company on more than one occasion during the  
13 30 days prior to October 28th, 1991 and Thomas Shay, Jr. was  
14 in fact paging Mr. Trenkler on this paging device only days  
15 before the explosion.

16           You will also hear evidence about Mr. Trenkler's  
17 background, his training, and his interests. You will hear  
18 that he has extensive training and experience in electronics,  
19 including satellite and microwave communications. You will  
20 hear that he has a long-term interest in remote control  
21 vehicles and toys. You will hear that he has experience in  
22 woodworking and that in the line of his work he commonly  
23 builds boxes and things like that. You will learn that he has  
24 a background in circuitry work and soldering, not unlike the  
25 type of soldering and circuitry work found inside the device.

1 You will learn that he had a fairly detailed knowledge of  
2 explosives including dynamite and blasting caps.

3 The evidence will be that Mr. Trenkler, along with a  
4 business partner, ran an electronics firm known as ARCOM and  
5 you will hear that on October 18th, of 1991, the date of this  
6 Radio Shack purchase at the 197 Mass. Avenue Store, that  
7 Mr. Trenkler's business, ARCOM was performing a job for the  
8 Christian Science Mother Church. And you will learn, ladies  
9 and gentlemen, that the Christian Science Mother Church is  
10 directly across the street from this Radio Shack at 197  
11 Massachusetts Avenue. You will also learn that regard that  
12 Mr. Trenkler was observed on multiple occasions inside that  
13 store in the same time frame.

14 Ladies and gentlemen, there will be evidence of other  
15 statements by Mr. Trenkler to law enforcement officials as  
16 this investigation proceeded or unfolded. You will hear  
17 testimony in February of 1992, or a few months after the  
18 bombing, when Mr. Trenkler went to the offices of ATF to pick  
19 up some materials that had been seized from him in connection  
20 with a search. During the course of a lengthy discussion,  
21 Mr. Trenkler said to the agent that he had confessed to the  
22 1986 bombing and then to use his words said, I'm not going to  
23 make that -- and then he stopped in mid sentence. And you  
24 will learn just as he was leaving that day, Mr. Trenkler  
25 turned to that agent in a harsh, almost arrogant tone, and he

1 asked the agent that if he and Shay, Jr. had built the bomb  
2 and neither of them talked, how would they ever find out?  
3 Ladies and gentlemen, as you can see, the evidence will be  
4 that in his dealings with law enforcement, this defendant  
5 Mr. Trenkler tried to be cool, calm, collected, almost  
6 displaying a sense of bravado, and he remained fairly guarded  
7 and allusive in his comments to law enforcement.

8           You will learn at least on one occasion that  
9 Mr. Trenkler let his guard down when during a running  
10 three-day conversation that he had with a cell mate,  
11 Mr. Trenkler admitted that he in fact made the bomb that  
12 detonated Roslindale and killed Officer Hurley.

13           Finally, ladies and gentlemen, the United States  
14 expects to present evidence that the same person who  
15 constructed the explosive device in Quincy in 1986 namely this  
16 defendant Alfred Trenkler made the deadly device in 1991.  
17 This evidence will not only consist of the similar surrounding  
18 factual circumstances namely that he did it for a friend as a  
19 result of a conspiracy using parts purchased from a Radio  
20 Shack, but the evidence will be, first, in the form of a  
21 comprehensive statistical survey.

22           You will learn that the Government analyzed over  
23 14,000 bombings that have taken place in the United States for  
24 the 12-year period from 1979 to 1991, and when those thousands  
25 and thousands of bombing incidents are analyzed from all over

1 the country from Guam to the Virgin Islands, and when you  
2 query and analyze those various incidents for common features,  
3 that only two devices shake out of those 14,000. When you  
4 take into account remote control cars and trucks as the  
5 targets, the affixing of the device to the undercarriage of  
6 the cars and trucks, using a round magnet, the presence of a  
7 toggle switch, the presence of duct tape, the use of AA  
8 batteries and soldering, only two bombs shake out of 14,000,  
9 and those bombs happen to be just a couple of miles apart.  
10 One in Quincy in 1986 and one in Roslindale in October of  
11 1991.

12 And further, you will hear evidence from a bomb  
13 expert who will tell you that it's his opinion that both of  
14 these devices when you look at the internal componentry, when  
15 you look at the assembly reflect certain distinctive touches  
16 or remarkably similar handiwork, and when you couple how they  
17 connect certain things together and what components they  
18 employ, when you combine that with the similar surrounding  
19 factual circumstances and the statistical result, it is the  
20 opinion of this expert that the same person built both bombs.  
21 As you can probably tell, ladies and gentlemen, this is a  
22 relatively complex case with evidence coming in on a number of  
23 different issues and matters.

24 And one last area that you'll be hearing evidence  
25 about is what was Mr. Trenkler's motive for involving himself

1 in this conspiracy with Shay, Jr. and his involvement in the  
2 commission of these offenses. Just as Mr. Shay had a dual  
3 motive for being involved and wanting to kill his father, the  
4 Government expects the evidence to be that Mr. Trenkler also  
5 had a dual motive for his involvement as well. First, he had  
6 a personal motive. A willingness to perform this sinister act  
7 to induce and cultivate companionship and sexual relations  
8 from Thomas Shay, Jr., a younger, openly gay male; and  
9 secondarily, a financial motive, the prospect of receiving  
10 perhaps some portion of a sizeable amount of money from this  
11 insurance coverage from the lawsuit that was pending against  
12 Thomas Shay, Jr.'s father.

13 In this regard, I believe you will also hear some  
14 evidence concerning the defendant's string of failed  
15 businesses and his financial condition generally in the fall  
16 of 1991. Ladies and gentlemen, that is a summary of the  
17 evidence that the United States expects to present during the  
18 course of this trial. In all, the United States expects to  
19 present the testimony of perhaps 30 to 35 witnesses, and  
20 introduce into this trial over 50 physical exhibits.

21 On the basis of all the evidence, at the conclusion  
22 of this case, one of us, either Mr. Libby or myself will  
23 appear again before you, and ask you to find the defendant,  
24 Alfred Trenkler, guilty of conspiracy, guilty of receiving  
25 explosives, and guilty of attempted malicious destruction of

1 property by means of explosives resulting in the death of  
2 Officer Jeremiah Hurley and the maiming of Officer Francis  
3 Foley. On behalf of my colleague, Mr. Libby and the United  
4 States of America, I thank you for your patience and  
5 attention.

6 THE COURT: Members of the jury, why don't we stand  
7 for a moment and stretch.

8 (Pause. )

9 MR. SEGAL: May we approach the bench about one  
10 comment in Mr. Kelly's opening?

11 THE COURT: Can you make it after the opening?

12 MR. SEGAL: Yes, sure.

13 THE COURT: You may proceed.

14 MR. SEGAL: Thank you.

15 Opening Statement by Mr. Segal

16 May it please the Court, ladies and gentlemen of the  
17 jury, you've just met two highly experienced, highly competent  
18 prosecutors representing the Government in this case. My name  
19 is Terry Segal. I represent Al Trenkler in this case. I'm  
20 fortunate to have with me the assistance of Scott Lopez and  
21 Brenda Sharton, two very competent lawyers who will be  
22 assisting me in this matter.

23 Ladies and gentlemen of the jury, we represent Alfred  
24 Trenkler who is seated right here next to Brenda Sharton.  
25 This man is innocent, ladies and gentlemen. There will be no

1 evidence that will connect him in any way with that horrible  
2 crime on October 28th, 1991 in Roslindale.

3 Ladies and gentlemen, as the evidence comes in,  
4 however, it will show why Alfred Trenkler is here in this  
5 courtroom. That evidence will show it's about guilt by  
6 association. It will show Alfred Trenkler knew Thomas Shay,  
7 Jr., a bizarre, gay, male, who had a love-hate relationship  
8 with his father, Thomas Shay, Sr. That evidence will show  
9 that Alfred Trenkler is gay, and that his name was in Thomas  
10 Shay, Jr.'s telephone book, that Mr. Kelly held up to you.  
11 And that when the police searched that phone book right after,  
12 shortly after this terrible tragedy, they found his name and  
13 they knew he knew Thomas Shay, Jr. The evidence will also  
14 show he was associated with electronics, and electronics  
15 ability as an engineer. And the evidence will show, he was  
16 associated with that Quincy incident in 1986 where with a  
17 stupid prank he lit off a large firecracker. Something you  
18 call special fireworks, or as Mr. Kelly calls it an artillery  
19 simulator which creates or simulates the noise or smoke of a  
20 real tank gun, that he placed it under a truck to scare  
21 somebody. It didn't injure anybody, but it worked the way it  
22 was supposed to. The evidence will be that he was associated  
23 with that. So that's why I say this evidence comes in. This  
24 is about guilt by association.

25 Ladies and gentlemen, as you listen to this evidence,

1 keep firmly in mind the burden of proof, the Government must  
2 convince you beyond a reasonable doubt Alfred Trenkler is  
3 guilty. That's not beyond a reasonable suspicion. That's not  
4 beyond a reasonable speculation. That's not even beyond a  
5 reasonable association. It's beyond a reasonable doubt that  
6 they have to prove this case. We have no burden at all. We  
7 don't have to put on any evidence here.

8           However, ladies and gentlemen, we'll put on evidence  
9 to show who Al Trenkler really is. That he's a microwave and  
10 two-way radio consultant. That he was born in Boston in  
11 1956. That his parents divorced about three or four years  
12 later, and that shortly thereafter Al's mother Josephine  
13 married Jack Wallace who became the New England Regional  
14 Manager of RCA, and has been a supportive father to Al for the  
15 last 33 years. They had one child, Al's brother David  
16 Wallace. Mrs. Wallace, Josephine, is in the second row, the  
17 third woman. Next to her is her husband Jack Wallace and on  
18 the left is David Wallace. Jack and Josephine Wallace have  
19 always supported Al Trenkler, and they will be with him every  
20 day in this trial.

21           Al grew up in a supportive, stable, comfortable  
22 suburban home in Milton, 7 White Lawn Avenue, and you'll hear  
23 a lot of testimony about 7 White Lawn Avenue in this case. He  
24 attended Milton Academy, Park School in Brookline, Thayer  
25 Academy, and then he went to Wentworth where he learned about

1       electrical engineering.

2               Mr. Kelly's correct. There will be evidence that my  
3       client was not a great financial success. But there'll also  
4       be substantial evidence that that was not because of lack of  
5       hard work. In 1999, 1991 when Mr. Kelly hasn't allegedly  
6       building bombs for Mr. Shay, Jr. he's a hard working microwave  
7       engineer, attempting to start a company, ARCOM that designed  
8       and installed microwave systems. These systems link TV  
9       stations with transmitters. The indictment alleges that  
10      Mr. Trenkler conspired with Mr. Shay to build a bomb, to  
11      receive dynamite, to blowup Shay, Sr.'s car. In September and  
12      October 1991, the evidence will show those same months when  
13      the Government says my client is running around building bombs  
14      for this character, Al Trenkler was working at the Christian  
15      Science Monitor building up on a roof at a \$38,000 contract  
16      connecting their mike -- their broadcast center using those  
17      microwave dishes you see on roofs to channel 68 so that the  
18      Christian Science Monitor -- in those days they had a TV  
19      station could broadcast over channel 68 which was in  
20      Brighton. And he was also connecting a satellite link up so  
21      that the microwave dishes would carry the signal from the roof  
22      of the Christian Science Monitor up there on Massachusetts  
23      Avenue over to a videocom in Dedham up to a satellite, show  
24      that they broadcast from the Christian Science Monitor could  
25      broadcast the cable all over the world. It was an extensive

1 project. He was working hard and you'll hear testimony about  
2 what he was doing there. There'll also be evidence of other  
3 projects he was working on, lawful, proper microwave  
4 communication projects, and other prospects he had and was  
5 developing and working hard for this startup company.

6 The indictment charges that Mr. Trenkler conspired  
7 with Mr. Shay, September, October. There'll also be  
8 substantial evidence that during that period, Mr. Trenkler had  
9 a stable relationship with John Cates with whom he had been  
10 living for one year as of October 1991. I submit to you,  
11 ladies and gentlemen, there will be no, and I repeat the word,  
12 no evidence of any motive that Mr. Trenkler had to help  
13 Mr. Shay, Jr. do anything let alone make a bomb.

14 Let's talk about what the physical evidence will be  
15 in this case and what the evidence is.

16 Physical evidence, ladies and gentlemen, doesn't  
17 lie. Remember that as this case goes along. Because there  
18 were seven searches of Mr. Trenkler's apartment in Quincy, the  
19 one-room basement apartment he lived in with Mr. Cates, his  
20 office, ARCOM in Weymouth. His parents' garage on White Lawn  
21 Avenue, where he had some supplies, his automobile, the ATF  
22 very thoroughly recovered over 100 items from those four  
23 locations. And I submit to you, ladies and gentlemen, there  
24 won't be one bit of physical evidence from any of those  
25 searches of those 100 items that connects Alfred Trenkler in

1 any way to the bomb debris that was very carefully recovered  
2 by ATF on October 28th and 29th of 1991.

3 Now, contrast that hundred items that we'll hear  
4 about with that one bit of evidence that Mr. Kelly talks  
5 about, one bit of evidence that the Government never took, and  
6 that's the alleged diagram. You heard opening statement. He  
7 says my client drew a diagram of two blasting caps, with very  
8 distinctive signature.

9 Ladies and gentlemen, this is the exhibit Mr. Kelly  
10 was referring to. This is a diagram, ladies and gentlemen,  
11 and keep it firmly in mind as this testimony comes in about  
12 this Government exhibit. This is a diagram that you see here  
13 that was drawn by an ATF agent in May of 1993, 18 months after  
14 my client allegedly drew the famous diagram with the two  
15 blasting caps. The distinctive feature. The Government  
16 claims my client drew that diagram. They don't have any  
17 diagram. They took a hundred pieces of evidence, but they  
18 cannot produce and didn't take that diagram he allegedly drew  
19 on November 6th, 1992, '91.

20 Let me talk a little about the evidence relating to  
21 this diagram because it gets back again to why Al's here,  
22 guilt by association, go back once again to October 29th,  
23 1991. Two brave police officers were felled in the line of  
24 duty. There was a tremendous pressure and intensity to solve  
25 this case and move quickly on it. The police very quickly

1 learned about those things, guilt by association, that Thomas  
2 Shay, Jr. was a prime subject. He was gay, Al Trenkler was  
3 gay. He knew Tom Shay, Al Trenkler had a background in  
4 electronics. His name was in Shay's notebook. Al Trenkler  
5 had built a device, this flash simulator in Quincy in 1986.  
6 They had their man as of November 5th?

7           What did they do? It was about 11:30 at night, just  
8 about seven or eight days after this terrible tragedy. A  
9 swarm of agents arrived at their apartment in Quincy. They  
10 search that apartment. They don't find anything. It's after  
11 midnight. They say to Al Trenkler, would you take us down to  
12 your office, the ARCOM office, we'd like to look at that  
13 office. Sure, I've got nothing to hide. Let's go to ARCOM,  
14 even though it's 12:30 in the morning. They drive down to  
15 ARCOM. The ATF searches ARCOM, in the PD, they seize the  
16 number of items, they take them, tools and all sorts of  
17 things. You will hear testimony from two experienced ATF  
18 agents who will claim that Al Trenkler drew a diagram at about  
19 1 a.m. in the morning at his ARCOM office that had those  
20 distinctive features, two blasting caps, and keep in mind that  
21 two blasting caps, ladies and gentlemen, because as of  
22 November 5th, as a result of the ATF investigation, they knew,  
23 the investigators knew that this bomb that went off on October  
24 28th, 1991 had a very distinctive feature. Two blasting  
25 caps.

1           According to these agents, my client drew the diagram  
2     that had the two blasting caps. These are very experienced  
3     agents. They've searched and taken a lot of items. What do  
4     they do with the diagram? Did they arrest them on the spot?  
5     There won't be any testimony that they arrested them, when  
6     they drew what was basically a confession. Did they take the  
7     diagram? There'll be no testimony that they even took the  
8     diagram, ladies and gentlemen.

9           They'll ask you to believe that he drew something so  
10    distinctive, and yet they'll ask you to believe, if he did it,  
11    they didn't arrest them, they didn't even seize the diagram.  
12    Ask yourselves, if this evidence comes in, if my client made  
13    that bomb, would he confess by making such a diagram that is  
14    so distinctive. If he had done it, if they had drawn that  
15    diagram, would they have arrested him right on the spot at  
16    least taken this diagram. Ask yourself this as the evidence  
17    comes in. This isn't the only gap in the Government's case,  
18    ladies and gentlemen, how does the Government fill in those  
19    gaps.

20           Well, first, let's take it from November 6 to today.  
21    November 6th, 1991 right through today. They have a number of  
22    more searches. Besides the searches on the 5th and the 6th,  
23    they once again go back and search his apartment. His  
24    business, his parents' garage where he had a work shop, and  
25    storage, his automobile he gave him consent to search his car,

1     come on, no problem, they even bring up a very sophisticated  
2     device, a sniffer -- that's probably a much more scientific  
3     name, that's the way I'm going to describe it.

4             They bring a fellow over from MIT. He takes air  
5     samples of the garage with all the tools and paraphernalia  
6     because you'll hear testimony, dynamite lasts, the residue  
7     lasts five or six months. They bring up an expert. They find  
8     no evidence of dynamite. You'll hear evidence of ATF  
9     interviews with my client. He was trying to be cooperative.  
10    He didn't run; he didn't hide; he talked to people. That  
11    evidence, I submit to you, ladies and gentlemen, would simply  
12    show a man who has got a knowledge of electronics and was  
13    innocent.

14            Mr. Kelly told you, you'll hear from evidence from an  
15    inmate. Let's put this in context. December 16, 1992, my  
16    client is working in his business: Satellite communications  
17    installing microwave dishes. Where is he working? MIT. He's  
18    installing a satellite, downlink project. A microwave dish on  
19    the roof so MIT can receive signals for video conferencing.  
20    He's arrested that day, taken from the work at MIT, and he's  
21    jailed for eight months before he was released in August.

22            You'll hear testimony from one inmate who is serving  
23    a long sentence who is going to testify that in a three-day  
24    weekend having never met Mr. Trenkler before, Mr. Trenkler  
25    confessed I built the bomb. Ask yourselves, ladies and

1 gentlemen, how credible is that testimony as it comes in? Is  
2 that testimony from such an inmate serving a long sentence for  
3 a substantial crime? Is that any substitute for real evidence  
4 in this case for physical evidence, for a diagram that if he  
5 had drawn, they should have had or for credible evidence in  
6 this case, ask yourself that, ladies and gentlemen, as this  
7 evidence comes in.

8           There'll be evidence about Thomas Shay, Jr.,  
9 Mr. Kelly referred to him often in this opening. It's clear  
10 that he wanted to kill his father. He was convicted of doing  
11 that. An it's also clear that he knew Alfred Trenkler.  
12 That's not in dispute in this case, ladies and gentlemen, but  
13 I submit to you, there will be no, and I repeat the word, no  
14 evidence that Alfred Trenkler was involved in any way, shape  
15 or manner with any scheme of Thomas Shay to get rid of his  
16 father. Mr. Kelly has talked about a toggle switch, and he  
17 showed you this exhibit. This is the purchase of the toggle  
18 switch on October 18th, 1991 from the Radio Shack on  
19 Massachusetts Avenue right opposite the Christian Science  
20 Monitor Church, and the evidence will be that the toggle  
21 switch was purchased, brand No. 275-602 matched the toggle  
22 switch that ATF meticulously recovered from the bomb debris.  
23 That's not in dispute that that toggle switch was purchased  
24 and the same number matched the bomb debris.

25           It's also not in dispute that Alfred Trenkler during

1 September and October was working on a major microwave  
2 communications project at the church installing those big  
3 dishes so they could feed their signal to channel 68 and also  
4 to satellites. That's not in dispute and it's not in dispute  
5 that he went into Radio Shack on numerous occasions in  
6 connection with his business across the street.

7           There'll be no evidence and this is the key, ladies  
8 and gentlemen, that he had anything to do with the purchase of  
9 this toggle switch on October 18th. There will be no evidence  
10 that he was even working at the church that day. Once again,  
11 guilt by association. He's nearby so he must have gone in or  
12 sent Shay into purchase the toggle switch. Ask yourselves,  
13 ladies and gentlemen, as this evidence comes in, what evidence  
14 is there, not guilt by association, what real evidence is  
15 there my client had anything to do with either purchasing or  
16 sending Shay into purchase that toggle switch. There'll be  
17 evidence about the 1986 March firecracker or special fireworks  
18 or simulator whatever you call it to make a big bang or smoke,  
19 it wasn't designed to kill anybody, it was a stupid prank, it  
20 didn't hurt anybody. The Government expert will say it was  
21 built by the same person who built the 1991 bomb.

22           We will put on the stand Denny Klein, a former FBI  
23 explosive expert for 20 years, a vast experience comparing  
24 devices to try to match up signatures to identities, did the  
25 same person build two bombs? He did make a comparison, he

1 will be able to say, based upon his vast experience in this  
2 field, testifying on comparisons and signatures in  
3 investigative work for the Federal Bureau of Investigation,  
4 investigating some of the major bombings in this country, in  
5 this world for the last 20 years. He'll be able to say that  
6 you can't say it was the same person. Don't be fooled in this  
7 case as the evidence comes in by guilt by association.  
8 Association with my client in Shay in '86. I'm sorry,  
9 association of Al Trenkler and Shay. Association with the  
10 1986 Quincy incident. Association with electronics knowledge,  
11 working across the street during the same months as the  
12 purchase of that Radio Shack toggle switch. Don't be confused  
13 by that.

14 Make the Government prove this case by real evidence,  
15 by physical evidence, by credible evidence. Listen to all the  
16 evidence, please, ladies and gentlemen. Keep an open mind.  
17 We're going to put on a number of witnesses. We don't have  
18 any burden as I said. Mr. Kelly is going to put on a number  
19 of witnesses. Give all the witnesses the same attention.  
20 Focus on the physical evidence. The indictment charges  
21 conspiracy. Receipt of dynamite and making the device to blow  
22 up Shay, Sr.'s car. That's only an allegation. That's a way  
23 to bring my client to court.

24 As this evidence comes in, let me just reemphasize,  
25 please hold the Government to the burden of proof. They have

1 to convince you, ladies and gentlemen, beyond a reasonable  
2 doubt; not beyond a reasonable suspicion, speculation or  
3 association. I will return at the conclusion of all the  
4 evidence in this case, after Mr. Kelly, Mr. Libby put on their  
5 witnesses, after we put on our witnesses and I'm going to ask  
6 you for a verdict of not guilty because I expect the evidence  
7 will show that my client didn't do anything wrong, never  
8 conspired with Thomas Shay, is an innocent man, and that the  
9 Government has not proven, will not prove beyond a reasonable  
10 doubt the charges in this case.

11 Thank you.

12 THE COURT: Let us stretch again. Mr. Kelly call  
13 your first witness, please.

14 MR. LIBBY: Your Honor, the United States calls Mr.  
15 Robert Maloney to the stand.

16 THE COURT: Mr. Segal, did you wish to...

17 [conference at the bench, as follows:

18 MR. SEGAL: I move for a mistrial because of  
19 Mr. Kelly's statement in his opening, he says quoting, Shay,  
20 he wasn't the one who built it. I suggest that's a violation  
21 of the Bruton document because in a two-person conspiracy is  
22 the inference from that statement is my client had to be the  
23 only one who built it. That statement could not be admitted  
24 because it's in open court.

25 THE COURT: Motion denied.

1 MR. KELLY: Your Honor, a scheduling issue, Mr.  
2 Maloney is about a ten-minute witness and we have Ms. Kraft,  
3 Corbett is her name, her direct is probably 20 to 30 minutes.  
4 I just want to alert the Court.

5 THE COURT: She will probably benefit from having a  
6 recess in the middle of it anyhow, don't you think?

7 MR. KELLY: Probably.

8 **ROBERT P. MALONEY, Sworn**

9 **Direct Examination by Mr. Libby**

10 THE CLERK: Please state your full name for the  
11 record.

12 THE WITNESS: Robert P. Maloney.

13 THE COURT: Do any of the jurors wish to take notes?  
14 We will give you notebooks and pens and I will ask you,  
15 please, to put on the outside of your notebook your name and  
16 your seat number.

17 Let me give you two cautions about the notebooks:  
18 One is you will not allowed to take them out of the courtroom  
19 until you retire to deliberate on your verdict. So during  
20 every recess and at the end of each day fold them up, please  
21 and leave them on your chairs, and that's why you put your  
22 name on them so we can collect them and return them to their  
23 rightful owner. We promise not to read them. We will hold  
24 them for you, but we will not view them. Second, one of the  
25 things, one of the matters you will have to decide is whether

1 you believe what each and every one of the witnesses tells  
2 you. One of the ways in which we make the judgment about the  
3 believability of the person who talks to us is by observing  
4 the person who talks to us so please do not get so involved in  
5 taking notes that you fail to observe the witnesses.

6           Everybody all set. All right. Mr. Libby, you may  
7 proceed.

8 Q     Would you state your name again, please.

9 A     Robert P. Maloney, M A L O N E Y.

10 Q    Where do you reside?

11 A    Roslindale, Massachusetts.

12 Q    Are you still active in the work force, sir?

13 A    I'm retired.

14 Q    From what, sir?

15 A    Boston Police Department.

16 Q    And when did you retire?

17 A    July 1st, '91-- '92, excuse me.

18 Q    How long were you with the Boston Police Department?

19 A    Forty-one years.

20 Q    Would you describe the various locations and capacities  
21 you served?

22 A    I was appointed in the Boston Police Department November  
23 14th, 1951. I was assigned to approximately the 30 years, at  
24 the North End I was assigned to the robbery squad, and  
25 assigned Area E in West Roxbury as a detective.

1 Q Is it fair to say that you served in various capacities  
2 throughout the city?

3 A Yes, sir.

4 Q Directing your attention to the fall of 1991, sir?

5 A I was assigned to Area E in West Roxbury.

6 Q In what capacity there?

7 A Detective.

8 Q And directing your attention specifically, sir, to  
9 October 28th of that year, 1991, do you recall that day?

10 A Very well.

11 Q What were your hours that day, sir?

12 A 7:30 a.m. to 4 p.m.

13 Q Did you receive a visit that day, sir, that was  
14 unexpected?

15 A Yes, I did.

16 Q Would you tell the court and jury, please, the  
17 circumstances surrounding that visit, how did you have that  
18 visit?

19 A I was in the office, speaking to some victims of the  
20 crime and showing them mug shots which I received a call from  
21 the front desk from a young lady who worked there stating that  
22 there was a man wanting to speak to a detective.

23 Q Do you recall what time of day that was?

24 A It was 11:45 a.m.

25 Q Just so everyone has an understanding of the layout there

1 where were you in the station house at the time?

2 A Second floor, front level.

3 Q Who generally is found there?

4 A That's the detective's office.

5 Q How many desks?

6 A There's about 16 desks.

7 Q Open spaces or cubicles?

8 A No, open space.

9 Q And you received this call from the front desk?

10 A That's correct.

11 Q And someone came up the stairs to meet with you?

12 A That's correct.

13 Q Do you recall this individual's name?

14 A Thomas Shay.

15 Q Would you give us a description of this gentleman,  
16 please?

17 A He's about 45 to 50. He's 5'9, 185, 195 pounds.

18 Q Did you introduce yourself to Mr. Shay?

19 A Yes, I did.

20 Q Did he introduce himself to you?

21 A Yes, he did.

22 Q Did you have a conversation?

23 A We did.

24 Q Would you describe the substance of that conversation for  
25 us?

1 Q As Frank Foley?

2 A That's correct.

3 Q Just briefly what did you convey to Officer Foley?

4 A I told the situation as it was told to me by Mr. Shay.

5 Q What message did you get in return?

6 A He said he would come up to investigate, and he also  
7 asked me if I would also contact the turret which is  
8 headquarters which is the dispatch office, and asked if they  
9 would send a service car to stand by the area until they got  
10 there, which I did.

11 Q How long, all told, did you talk with Mr. Foley?

12 A A minute.

13 Q Following that you called the turret?

14 A I spoke to Officer Johnson and asked if he would send up  
15 a service car to that address, to stand by and wait for the  
16 bomb squad.

17 Q Do you know if Officer Johnson did that?

18 A Yes, I did.

19 Q How do you know that?

20 A I had my walkie-talkie -- heard them dispatch.

21 Q Now, while this is ongoing, where is, has Mr. Shay left?

22 A No.

23 Q What happened then between you and Mr. Shay?

24 A I asked him if we could go back to the area of his house  
25 and wait for the arrival of the service car of the bomb squad

1 and keep a safe distance.

2 Q And you saw him leave?

3 A At that time he left.

4 MR. LIBBY: I have nothing further.

5 Cross-examination by Ms. Sharton

6 Q Good morning, Mr. Maloney.

7 A Good morning.

8 Q I am here with Mr. Segal and Mr. Lopez representing  
9 Mr. Alfred Trenkler.

10 Now, Mr. Shay, Sr. came into the West Roxbury Police  
11 Station about 11:45 a.m.?

12 A As I recall, yes.

13 Q He told you that there was a suspicious object in his  
14 driveway?

15 A Yes, he did.

16 Q And he told you that he thought it might be a bomb,  
17 correct?

18 A He said it could possibly be, yes.

19 Q And Mr. Shay described this object before you, didn't he?

20 A Yes, he said it was a metal, I believe it was an oblong  
21 thing, but I do remember he said magnets.

22 Q He said it was a metal box?

23 A Something like that.

24 Q And he told you that there were round magnets or magnets  
25 on top of it?

1 A Yes.

2 Q And Mr. Shay also told you that there were some wires  
3 sticking on it, is that right?

4 A He said something about wires, yes.

5 Q And in fact after he described the object to you, you  
6 asked him, do you know anyone that you feel threatened by, is  
7 that right?

8 A That's correct.

9 Q If he was having trouble with anybody?

10 A That's right.

11 Q This was about 11:45, Mr. Shay said, no, I'm not having  
12 trouble with anyone; is that right?

13 A That's basically what he said, yes. At some time he  
14 mentioned he was in a civil lawsuit, yes.

15 Q He didn't go into the details of that lawsuit?

16 A Something about an automobile or an automobile shop.

17 Q And as a result of your conversation with Mr. Shay, Sr.,  
18 you dispatched the bomb squad and the control car?

19 A That's correct.

20 THE COURT: Who will cross-examine the witness?

21 MR. SEGAL: Miss Sharton will.

22 THE CLERK: Please be seated and state your name.

23 THE WITNESS: Denise Corbett.

24 THE COURT: Miss Corbett, you need to speak up some  
25 try it again.

1 THE WITNESS: Denise Corbett.

2 DENISE CORBETT, Sworn

3 Direct Examination by Mr. Kelly

4 Q How are you employed, Miss Corbett?

5 A I'm a Boston Police Officer.

6 Q And would you tell us what your rank or position is?

7 A Patrolman.

8 Q What station are you assigned to?

9 A Area E in West Roxbury.

10 Q What sections of the City of Boston does area E-5 try to  
11 cover?

12 A West Roxbury, Roslindale and Jamaica Plain.

13 Q How long have you been a police officer?

14 A About four, four and a half years.

15 Q Are you currently working?

16 A Yes, I am.

17 Q I want to direct your attention to the date of October  
18 28th, 1991, and ask you whether you were working on that date?

19 A Yes, I was.

20 Q What shift were you working that day?

21 A The day shift.

22 Q And what hours did that, does that typically entail?

23 A 7:30 a.m. to 4 p.m.

24 Q And were you assigned to a patrol car?

25 A Yes, I was.

1 Q Would this have been with in another officer or by  
2 yourself?

3 A I was by myself.

4 Q What if anything happened that day October 28th, at or  
5 around 11:45 a.m.?

6 A I received a radio call to respond to 39 Eastbourne  
7 Street for a bomb.

8 Q And how long after receiving the call did you respond to  
9 that location on Eastbourne Street?

10 A Approximately six minutes.

11 Q Now, while you were on route to the location, what if any  
12 other dispatchers did you hear over the radio?

13 A I heard the dispatcher notify the bomb squad there was a  
14 bomb in the driveway at that address.

15 Q Officer Corbett were you the first officer to arrive at  
16 the scene?

17 A Yes, I was.

18 Q Upon your arrival, tell us what happened in sequence if  
19 you can?

20 A I was met by the caller, Mr. Shay, who stated that he had  
21 a bomb in his driveway.

22 Q What happened next?

23 A I asked him where it was and he told me that it was in  
24 the driveway, and we proceeded to walk to where the bomb was.

25 Q And did you look at the item?

1 A Yes, I did.

2 Q Tell us how close you got to them?

3 A About five or six feet.

4 Q Describe what you saw?

5 A It was a black box laying there in the driveway,  
6 approximately 12 inches by 5, three inches thick, it had two  
7 large round magnets on the top, and surrounded by a bunch of  
8 small magnets.

9 Q And what color was the item?

10 A Black.

11 Q And whereabouts in the driveway was the item located  
12 where you looked at?

13 A It was between a car and a panel truck on the ground.

14 Q And how long a period of time did you have to observe the  
15 site?

16 A Pardon me?

17 Q How long did you look at it, a minute, seconds?

18 A Just a minute while he explained to me this was the item  
19 right there.

20 Q And after you made these observations, Officer Corbett,  
21 what did you do next?

22 A I asked him to follow me back to the car and wait for the  
23 bomb squad.

24 Q Can you tell us what went on?

25 A As we walked back up he explained to me how he thought it

1 had fallen off from the bottom of his car, and I told him to  
2 wait for a minute while I got my notebook out of the car.

3 Q And where was your car parked, by the way?

4 A Right past 39 Eastbourne Street on the right-hand side of  
5 the street.

6 Q You walked back to retrieve a notebook?

7 A Right.

8 Q What happened next?

9 A I looked up and Mr. Shay, I couldn't find him. He said  
10 I'm right here. I was standing on the front part of the house  
11 E said come in. So I followed him into the house. Then I  
12 sat down and he asked me if I remembered who he was, and I  
13 didn't recall right away. And then he explained to me that he  
14 had come into the station earlier, when I was on the desk one  
15 day to record someone who had been following him and then I  
16 remembered who he was.

17 Q You said earlier, can you tell us who you mean by that?

18 A In May.

19 Q So not earlier that day?

20 A No.

21 Q Some months earlier?

22 A Right.

23 Q After he made that statement to you, did you remember  
24 him?

25 A Yes, I did.

1 Q Did you, in fact, fill out a report that he had come into  
2 the station?

3 A Yes, I did.

4 Q Tell us what happened next?

5 A We were still discussing it and we heard Sergeant Creavin  
6 outside. He came to the house and he was yelling for me and  
7 we walked outside beneath the side door.

8 Q And when you went outside, did Sergeant Creavin take an  
9 opportunity to make observations of the state in the driveway?

10 A Then the bomb squad came and they had, yes, they both  
11 were directed by Mr. Shay back to where the bomb was.

12 Q Can you tell us the names of the two bomb squad officers  
13 that arrived on the scene?

14 A Officer Frank Foley and Officer Jeremiah Hurley.

15 Q And upon their arrival what happened?

16 A Mr. Shay proceeded to tell them the story about how he  
17 thought the bomb had fallen off the bottom of his car, and he  
18 picked it up and through it against the house. And then later  
19 on he thought it was the bomb. He picked it up again and  
20 moved it to the back of the driveway because he thought some  
21 children would play with it. And we all walked back to the  
22 panel truck again where the bomb was, so that officers could  
23 look at it.

24 Q And did the two bomb squad officers make observations in  
25 your presence?

1 A Yes, they did. They were back there. I couldn't see what  
2 they were doing, but I was standing at the side of the truck.

3 Q How long did you stay in that vicinity of the driveway  
4 while they were making observations?

5 A Just a couple of minutes.

6 Q What happened next, Officer?

7 A We all walked back up to the front of the panel truck and  
8 Sergeant Creavin and Frank Foley were asking Mr. Shay some  
9 more questions, and he was telling him a story about a  
10 lawsuit. He had an incident with dynamite from earlier and  
11 Officer Hurley went to the bomb cruiser and got some things  
12 out of the cruiser, and both the bomb officers proceeded to  
13 walk back to the bomb.

14 Q And did you follow the bomb squad officers back to where  
15 it was located?

16 A No.

17 Q Where did you remain with Officer Creavin and Mr. Shay?

18 A We stayed right in front of the paneled truck and  
19 continued to ask him questions.

20 Q Tell us what happened next?

21 A We heard an explosion.

22 Q And when you heard the explosion, could you describe to  
23 us what you heard and what occurred?

24 A There was a big explosion and a lot of smoke and debris  
25 flying everywhere and we -- I looked at Sergeant Creavin and

1 we looked back at the bomb officers and I could see Frank  
2 Foley, he was saying get back, get back, and then we ran back  
3 there.

4 Q And what did Officer Creavin do immediately after the  
5 explosion?

6 A He called for help on the radio and told me he had  
7 officers and would try to send ambulances.

8 Q Did you and Officer Creavin go back behind the panel  
9 truck to where the explosion had taken place?

10 A Yes, we did.

11 Q And describe what you saw when you went back there?

12 A Frank was lying against the fence and Gerry was  
13 underneath the truck and his leg was gone and his hand was  
14 gone and Frank's face had come apart, and his eye was gone.

15 Q Were Officers Hurley and Officers Foley conscious at the  
16 time you went back there?

17 A Yes, they were.

18 Q What did you do?

19 A We continued calling on the radio for more help and send  
20 somebody, and I looked around for people, for somebody to do  
21 something. I told some people from the street to get some  
22 towels, and we tried to administer some help to them and  
23 Sergeant Creavin held his hand to try to stop the bleeding and  
24 we put towels over his legs and help to Frank's eyes.

25 Q Did you attend Officer Foley?

1 A Yes, I did.

2 Q Did patrolman Freeman attend to Officer Hurley?

3 A Yes, they did.

4 Q And did either Officer Foley or Officer Hurley say  
5 anything while you were back there attending to it?

6 A Yes. They told us to tell their families, their wives,  
7 they loved them and their children, that they loved him, and  
8 they asked how each other were doing, and they told us they  
9 would get away from them because Gerry, the bomb was still  
10 underneath them.

11 Q Now, did any neighbors or other persons arrive on the  
12 scene to help you and Officer Creavin?

13 A Yes, they did.

14 Q And what type of aid or assistance did they provide to  
15 you, the neighbors?

16 A Someone handed them in towels.

17 Q And how long were you there on the scene with the two  
18 bomb squad officers before the ambulances arrived?

19 A I don't recall.

20 Q Did both officers remain conscious the entire time prior  
21 to the arrival of the ambulances?

22 A Yes.

23 Q At any time after the bomb exploded Officer Corbett and  
24 before the ambulance arrived, did you see Thomas Shay, Sr.  
25 come back and offer assistance or aid?

1 A No, I didn't.

2 Q At any time that day, do you recall Mr. Thomas Shay, Sr.  
3 rendering any type of help or assistance?

4 A No, I didn't.

5 MR. KELLY: Your Honor, if I may approach the  
6 witness, for the benefit of the Court, Mr. Segal and I have  
7 agreed to the admissibility of certain diagrams and  
8 photographs.

9 With the Court's permission, I would like to ask  
10 Officer Corbett if she could come down momentarily.

11 THE COURT: Can all of you see that?

12 MR. KELLY: I'm going to use an enlarged one. I just  
13 need this momentarily.

14 Q Officer Corbett, I've placed on the easel here what has  
15 been marked as Government's Exhibit 1 and this time I would  
16 for the record offer Government's Exhibits 1, 2, and 3, 3  
17 consisting of four photographs A, B, C, and D, I believe  
18 without objection.

19 MR. SEGAL: No objection. Just identify them for the  
20 record.

21 THE COURT: 1, 2, 3, A, B, C, and D.

22 MR. KELLY: 3 A, B, C, D, and E.

23 THE COURT: Are in evidence.

24 [Government's Exhibits 1, 2, 3A, B, C, D, E entered  
25 into evidence.]

1 Q Officer Corbett, is this a diagram of the vicinity of  
2 Eastbourne Street in Roslindale?

3 A Yes, I am.

4 THE COURT: Excuse me, Miss Corbett, could you try to  
5 shout, please.

6 THE WITNESS: Yes.

7 Q If you could point out for us, please, where 39  
8 Eastbourne Street is on this diagram. This is Eastbourne  
9 Street which is a line running across the center of this and  
10 you're pointing to 39 which is in about the center of the  
11 diagram; is that correct for the record?

12 A Yes.

13 Q I want to place on the easel, Exhibit No. 2, which is an  
14 enlargement of that area of the other diagram, and for your  
15 benefit, Officer Corbett, this is the street here, Eastbourne  
16 Street. This is the front walk area, the porch, the house,  
17 the driveway, the vehicles in the driveway, would you show us,  
18 first of all, on this diagram, where you park your cruiser  
19 when you first arrived, Officer Corbett? You're pointing down  
20 in the corner just past the house?

21 A Yes.

22 Q Now, would you show us, please, where the device was in  
23 the driveway when you made these observations that you earlier  
24 described in your testimony. Your pointing on the diagram,  
25 there's actually a red dot on the diagram; is that correct?

1 A Yes.

2 Q Finally, Officer, if you could show us where you and  
3 Officer Creavin and Mr. Thomas Shay, Sr. were stand standing  
4 at the moment that this explosion occurred. You're pointing  
5 just in front of this vehicle, am I correct that it was just  
6 like a paneled truck of some kind?

7 A Yes.

8 Q If you could resume your place on the stand, I would  
9 appreciate it.

10 A (Witness complies.)

11 Q Miss Corbett, I'm placing before you what I have marked  
12 for identification as Government's Exhibit 4. Have you seen  
13 that item before?

14 A Yes.

15 Q Officer Corbett that is what's known as a mockup or a  
16 recreation. My question to you, Officer, does that mockup,  
17 Exhibit No. 4, fairly and accurately depict the object you  
18 observed in the driveway of 39 Eastbourne Street on October  
19 28th, 1991?

20 A Yes.

21 Q It is approximately the same size, is it not?

22 A Yes.

23 Q Color?

24 A Yes.

25 Q Shape?

1 A Yes.

2 Q And contains what appear to be magnets or circular  
3 objects on the top?

4 A Yes.

5 Q Officer Corbett, after bomb squad Officers Hurley and  
6 Foley were removed from the scene in the ambulance, what if  
7 anything did you do next?

8 A I took their gun belts and walked up to my cruiser.

9 Q And did you then enter your cruiser?

10 A I sat there until they found me.

11 Q Do you recall who was it that found you?

12 A No.

13 Q Do you know how long you were sitting there before you  
14 were discovered?

15 A No, I don't.

16 Q Is it fair to say that you were upset?

17 A Yes.

18 Q Did you have any other contact that day with Mr. Shay,  
19 Sr.?

20 A No.

21 Q Have you had any contact with Mr. Shay, Sr. since the  
22 date of this explosion?

23 A No.

24 MR. KELLY: Your Honor, I have nothing further.

25 THE COURT: You may cross-examine.

Cross-examination by Ms. Sharton

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Q Good afternoon, Officer Corbett.

Now, you mentioned that on October 28th, 1991, that wasn't the first time that you met Mr. Shay; is that right?

A Yes.

Q In fact, when you -- I want to ask you just a few questions about him remembering you, when you saw him that day. Okay.

Now, in fact he had been into the police station in May of 1991 and made some kind of a report about --

THE COURT: Could you keep your voice up please.

MS. SHARTON: Sorry, your Honor.

Q He had come into the police station in May of 1991 and made a report about somebody following him?

A Yes.

Q You were the officer to whom he made the report?

A Yes.

Q And in May of '91 when he came in, he told you, someone was following him and then he feared for his safety or his daughter's safety; is that right?

A Yes.

Q And in fact, when he came in and made the report, Mr. Shay gave him the make and the model number of the car that had been following him?

A Yes.

1 Q And he also gave you the license plate number of the car?

2 A Yes.

3 Q Now, Officer Corbett you then ran a trace on that license  
4 plate number; is that right?

5 A Yes.

6 Q And you ultimately found out that the car belonged to a  
7 Mr. Mark Griffin in Brookline, right?

8 A Yes.

9 Q Now, in fact, Officer Corbett, Mr. Shay never followed up  
10 with you to find out, back in May to find out who the car  
11 belonged to; isn't that right?

12 A Yes.

13 Q And he came in and made the report about fearing for his  
14 safety and his daughter's safety, and then he never heard from  
15 him again; is that right?

16 A Yes.

17 Q And when you saw him on October 28th and he recognized  
18 you, he said to you, Oh, I just figured that it was an  
19 insurance man following me or something and I never heard  
20 anything.

21 A Yes.

22 Q Now, I'd like to take you to October 28th, 1991, and just  
23 ask you a few questions about that day, I understand it's --

24 THE COURT: What's the question?

25 Q When you responded, you were the first officer on this

1 team; is that right?

2 A Yes.

3 Q When you arrived at 39 Eastbourne Street you didn't see  
4 anybody around or, aside from Mr. Shay, you were standing up  
5 front; is that right?

6 A Somebody waved at me from across the street.

7 Q A neighbor was across the street and waved to you?

8 A Yes.

9 Q And you didn't notice anybody else in the vicinity?

10 A No.

11 Q And you met Mr. Shay and he told you that he thought that  
12 there was a bomb in his driveway?

13 A Yes.

14 Q And he took you back to show you the item?

15 A Yes.

16 Q And I think you testified that you looked at the item,  
17 and were about five or six feet away from it?

18 A Yes.

19 Q Now, Mr. Shay told you, he actually told you on that day,  
20 how he came to find it in his driveway; is that right?

21 A Yes.

22 Q He told you also that he had picked it up and thrown it  
23 against his house, didn't he?

24 A Yes.

25 Q And when you looked at the item, Mr. Corbett, you noticed

1 it was obviously made of wood?

2 A Yes.

3 Q And at some point during your conversation with Mr. Shay,  
4 he told you that he had thought it was part of a Chapman lock?

5 A Yes.

6 Q Now, Mr. Shay, you then said, Mr. Shay, let's go back out  
7 front and wait to the bomb squad to arrive?

8 A Yes.

9 Q Then you said to Mr. Shay let me just get my notebook out  
10 and take some notes --

11 A Yes.

12 Q You went in your cruiser to get your note pad. When you  
13 came out your cruiser, you couldn't find it, right?

14 A Yes.

15 Q He had disappeared?

16 A Yes.

17 Q And you looked around for him, and then eventually he  
18 yelled out from beside the house?

19 A Yes.

20 Q He had gone out in back of the house, right?

21 A Yes.

22 Q And when you went inside the house, Officer Corbett,  
23 that's where you said, you remember me from this prior  
24 incident?

25 A Yes.

1 Q Now, you also asked him when you were in the house, are  
2 you having trouble with anyone, do you have any enemies,  
3 something to that effect?

4 A Yes.

5 Q In fact, Officer Corbett, Mr. Shay told you at that time  
6 that he was involved with a lawsuit against somebody?

7 A I don't recall at that time your telling me. I remember  
8 him telling the story, Sergeant Creavin, the bomb officer.

9 Q And what he told you was that he had a lawsuit against  
10 his former employer, right?

11 A Yes.

12 Q He told you that someone that he used to work for had put  
13 a stick of dynamite in a barrell and blew it up nearer; is  
14 that right?

15 A Yes.

16 Q That is what the lawsuit was about?

17 A Yes, as best as I can recall.

18 Q I think you testified that he repeat the story about the  
19 dynamite and the lawsuit in front of Officer Creavin?

20 A Yes.

21 Q Now, at one point, at the point just before the bomb went  
22 off you were standing with Officer Creavin and Mr. Shay in  
23 front of the truck?

24 A Yes.

25 Q And you testified that when, after the bomb went off, you

1 had people standing around, people came out from the houses to  
2 get the --

3 A Yes.

4 Q I think you stated some people offered towels, asked --

5 THE COURT: Can we have some cross-examination that  
6 doesn't repeat the direct, please.

7 Q At no time did Mr. Shay offer any assistance whatsoever,  
8 did he?

9 A No.

10 Q In fact, after the bombing squad, you never saw him again  
11 that day?

12 A Yes.

13 Q He disappeared again?

14 A Yes.

15 I have nothing further, your Honor.

16 THE COURT: No redirect?

17 MR. KELLY: Just two quick questions.

18 Redirect Examination by Mr. Kelly

19 Q Officer Corbett, did you learn that this car was marked  
20 to Mark Griffin back in May of 1991, Mr. Griffin was some kind  
21 of an insurance investigator or something like that?

22 A Yes.

23 Q And you commented about this dynamite in this lawsuit.

24 Do you recall that Mr. Shay told you that it was  
25 something like a quarter stick of dynamite; do you remember

1       that phrase?

2       A       Yes.

3               MR. KELLY:  Nothing further.

4               THE COURT:  Anything else, Ms. Sharton?

5                       Recross Examination by Ms. Sharton

6       Q       Officer Corbett, in fact when Mr. Shay told you about the  
7       lawsuit that he was involved in, said it was the landlord of  
8       his that he was suing, do you recall?

9       A       I don't recall.

10              MS. SHARTON:  All right.  Nothing further.

11              THE COURT:  Thank you, Miss Corbett.  You're excused.  
12       Members of the jury, so are you until 9 o'clock tomorrow  
13       morning.  Please report directly.  Those of you who went  
14       through this drill yesterday know the new jurors on the panel.  
15       Please report directly to this jury room on the 12th floor;  
16       that is don't go down to the third floor, but come directly to  
17       the 12th floor and to your jury room.

18              The coffee will be there.  We will start promptly at  
19       9 tomorrow morning.  And in the normal course of events just  
20       for your benefit we will take a recess at about 11 o'clock,  
21       and I will see what I can do about arranging to have coffee  
22       for you so you don't have to be making it for as many of you,  
23       because we wouldn't be able to have short recesses which is  
24       what we like.

25              In the meantime, I caution all of you again, please,

1 not to talk about the case with anyone even amongst  
2 yourselves. We know that when you talk about something it  
3 tends to become more fixed in our minds than the thing we did  
4 not talk about. And you should all come to the deliberations  
5 when all of the evidence has been completed and you've been  
6 instructed on the law with as open a mind as possible, not  
7 fixed on any particular piece of evidence. You need to  
8 discuss the case among yourselves when you deliberate, not  
9 before. So please do not talk about the case with anyone. Do  
10 not read about anything or watch anything about the case. I  
11 do believe that it is likely to be some media interest in this  
12 case so please if you see anything in the paper, pass over  
13 it. If you hear anything on the radio just turn it down for  
14 the moment, and the same thing with television. If anyone  
15 should talk to you about it or you should hear anything about  
16 it from some other source, I wish to know about that; and  
17 otherwise, I wish you a good afternoon, and we will start  
18 again at 9 o'clock tomorrow morning. Kindly leave your  
19 notebooks and your pens please.

20 [Whereupon, the jury left the courtroom.]

21 THE CLERK: Court is in recess until 2 and this case  
22 until 9 tomorrow morning.

23 [Whereupon, the jury trial was adjourned, to be  
24 reconvened on Wednesday, November 27, 1993, commencing at  
25 9 a.m.]

CERTIFICATE

We certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

\_\_\_\_\_  
James E. McLaughlin

\_\_\_\_\_  
Laura K. S. Walker

I N D E X

Opening statement by Mr. Kelly, Page 4

Opening statement by Mr. Segal, Page 26

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Robert P. Maloney, sworn (by Mr. Libby)	39			
(by Ms. Sharton)		45		
Denise Corbett, sworn (by Mr. Kelly)	47		64	
(by Ms. Sharton)		59		65

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
1,2, 3A-E	(See Clerk's Notes.)		55

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Third Day of Trial

11  
12  
13 APPEARANCES:

14 For the Government:

15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

17  
18 For the Defendant:

19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
21 210 Commercial Street, Boston, MA. 02109.

22  
23 Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

24 October 27, 1993

25 Computer-Aided Transcription

P R O C E E D I N G S

[Whereupon, the jury entered the courtroom.]

THOMAS CREAVIN, Sworn

Direct Examination by Mr. Libby

THE CLERK: Please be seated and state your name.

A My name is Thomas Creavin, C R E A V I N.

MR. LIBBY: Before we get underway, your Honor, counsel have agreed that the enlarged photographs, Exhibits 9 A through F and 10 A through D are admitted in evidence.

THE COURT: All right.

Q What do you do for work?

[Government's Exhibits 9A - F, and 10A - D entered into evidence.]

A I'm a Boston Police Officer, sir.

Q Where are you assigned?

A Presently I'm assigned to district 14 in Brighton.

THE COURT: What was your first name?

THE WITNESS: Thomas.

Q What's your duty assignment there, sir?

A I'm the detective sergeant.

Q When did you join the force, sir?

A 1966.

Q And just very briefly for the court and jury how have you been assigned since then?

A I've been assigned as a patrol officer throughout the

1 city, and about five years ago I was promoted to sergeant and  
2 two years ago I was promoted to detective sergeant.

3 Q Now, where were you assigned, sir, directing your  
4 attention back to the fall of 1991, specifically, October,  
5 where were you assigned?

6 A I was assigned to Area E, that's in the West Roxbury  
7 area.

8 Q What was your job there?

9 A I was the patrol supervisor.

10 Q How many police officers did you supervise, sir?

11 A About 10 to 12 on the shift.

12 Q What was your shift hours?

13 A From 7:30 a.m. to 4 p.m.

14 Q Now, specifically directing your attention, sir, to --

15 THE COURT: Is that called a morning shift?

16 THE WITNESS: No, that's the day shift, your Honor.

17 Q Specifically directing your attention to the 28th of  
18 October 1991, sir, Mr. Creavin, do you recall what day of the  
19 week that was?

20 A That was on a Monday.

21 Q And do you recall, sir, hearing a report or coming to  
22 learn of a report at any time with respect to a suspicious  
23 device in the driveway?

24 A Yes, I did, sir.

25 Q How did you hear about that?

1 A It came over the police radio.

2 Q Where were you when you received that report?

3 A I was on Center Street in Jamaica Plain.

4 Q In your unit?

5 A Yes, a marked police cruiser on patrol.

6 Q Any one with you?

7 A No, I was alone in the car.

8 Q When you heard that report, sir, what did you do?

9 A I started to proceed to that area.

10 Q Did you get on to the radio and respond to that report?

11 A Yes, after I had been called and had been assigned to the  
12 unit, I also responded.

13 Q What did you hear in terms of who else was responding?

14 A The call was assigned to the 433 car which was officers  
15 Denise Kraft which was assigned to that car. She's in that  
16 area, the call was assigned to her.

17 Q She's known as now Denise Corbett?

18 A Denise Corbett, yes.

19 Q Did you hear any other radio telephone traffic?

20 A Yes. After that, the dispatcher also contacted the bomb  
21 squad and asked them to respond to that location. And they  
22 said in the affirmative they would respond.

23 Q You heard that on your radio?

24 A Yes, it came over the radio.

25 Q And following that, sir, what did you do?

1 A I proceeded to 39 Eastbourne Street.

2 Q And when you arrived, sir, what did you see?

3 A Denise Kraft's cruiser was there. I pulled up right  
4 behind her and parked my cruiser.

5 MR. LIBBY: If I may, your Honor.

6 THE COURT: Why you do that? May I see you,  
7 Mr. Marshal, please.

8 (Pause.)

9 Q Now, Sergeant Creavin, let me hold up for you, blocking  
10 the Court officer, I apologize. Directing your attention to  
11 Government's Exhibit No. 1, do you recognize that, sir?

12 A Yes, sir, I do.

13 Q What does it depict?

14 A That's the street where he got the call.

15 Q As you arrived could you point out, do you recognize 39  
16 Eastbourne Street.

17 A 39 Eastbourne Street, right here.

18 Q Thank you.

19 You saw Officer Kraft's unit?

20 A Yes. It was parked approximately in front of -- some  
21 place along right here.

22 Q All right.

23 And you.

24 THE COURT: Mr. Creavin, you have a pointer there,  
25 which may help.

1 THE WITNESS: Okay.

2 A She parks in approximately this area, and I pulled up to,  
3 I think, maybe faced in right behind her someplace up here.

4 Q What is "up here"?

5 A It is a dead Street, two more houses on that dead end  
6 street.

7 Q What's further on beyond 39?

8 A A school right here at the corner of Eastbourne and Beach  
9 Streets, there's a school right there.

10 Q Now, as you got out of your vehicle, sir, did you see  
11 anybody on the premises?

12 A No, sir, I did not see anybody.

13 Q What did you do then?

14 A I proceeded to walk down the driveway of the house,  
15 adjacent to the house.

16 Q Why did you do that?

17 A Because the information I had received over the radio  
18 that there was an object, suspicious object, in the driveway.

19 Q All right. Now directing your attention to Exhibit 2,  
20 which is an enlargement, if I may move this, an enlargement of  
21 the driveway area 39 Eastbourne Street, can you tell the Court  
22 and jury what you did after you got out of your unit?

23 A Yes, this is the driveway right here. There's two cement  
24 paths and there's grass in the middle. And this is a truck;  
25 it's a large truck that was parked right here. And there was

1 a car right in the rear. I walked down alongside the truck,  
2 and I saw nothing until I arrived at the end the truck.

3 Q What did you see then?

4 A I saw a small black box in between the truck and the car,  
5 laying on the ground.

6 Q Was it flat on the ground, sir?

7 A Yes, it was flat. One end was tilted up a little bit.

8 Q And do you recall the color?

9 A The color was completing black. There was shiny objects  
10 on the top. It looked like quarters all left over the top.  
11 And there was two larger round circles in the middle.

12 Q How long did you stay there looking at that object, sir?

13 A Just about a minute. I just stayed at the corner of the  
14 truck and I stayed about a minute, and then I walked back out  
15 to the front of the driveway.

16 Q You understood that was the purpose of the call?

17 A Yes, that's what the information I had received over the  
18 radio that there was an object, and that's the only object I  
19 saw in the driveway.

20 Q Now, again, the object that you saw was somewhat tipped;  
21 is that right?

22 A That's right, sir.

23 Q What was on the surface that was facing you, if you  
24 recall?

25 A On the top, it was round objects, and silver in color on

1 the top.

2 Q How many round objects? Were they the same size objects?

3 A All the same. It looked like a lot of quarters on the  
4 top.

5 Q Now, directing your attention, recalling back to the  
6 middle of the top circle?

7 A Yes, there was two larger objects, circular objects in  
8 the center.

9 Q Let me show you, sir, what's been marked Government's  
10 Exhibit 4 for identification, I believe, at this point, and  
11 ask you if you recognize this, sir?

12 A Yes, sir.

13 Q Does this fairly and accurately depict, Government 4,  
14 fairly and accurately, first, the size of the object that you  
15 saw in the driveway on the 28th of October?

16 A Yes, it does, sir.

17 Q Does it fairly and accurately depict the dimensions,  
18 rough dimensions of that object, sir?

19 A Yes, it does.

20 Q Does it fairly and accurately depict the objects on the  
21 top, except for the fact that here we have black, and I  
22 believe your testimony was that these objects were shiny?

23 A Yes. The top, just the tops were shiny the. Rest was  
24 completely black.

25 Q And that is both with respect to the smaller so-called

1 button magnets, as well as large circular objects in the  
2 middle?

3 A That's correct, sir, yes.

4 Q And directing your attention to the bottom there,  
5 Sergeant Creavin, does that fairly and accurately depict the  
6 smaller box which you saw on that morning?

7 A Yes, sir, that's exactly how it looked.

8 Q And you did not touch it?

9 A No, I did not touch it.

10 MR. LIBBY: Your Honor, at this time the Government  
11 would mover Exhibit 4.

12 MR. LOPEZ: Objection, your Honor.

13 THE COURT: It may be marked for identification as a  
14 chalk. That's really all it is.

15 **[Government's Exhibit 4 marked for identification.]**

16 THE COURT: If I may publish it?

17 THE COURT: Yes.

18 MR. LIBBY: Thank you.

19 Q Now, after you spent a minute or so looking at this  
20 object Sergeant Creavin, what did you do?

21 A I returned to the front the driveway.

22 Q And then what took place?

23 A As I had just returned, the bomb squad, Officers Foley  
24 and Hurley just pulled up.

25 Q And what did they arrive in, please?

1 A They arrived in kind of a -- it's a marked police  
2 vehicle, kind of a Wagoneer.

3 Q Did you recognize Officers Foley and Hurley when you saw  
4 them?

5 A Yes, I did, I worked with both officers, and I knew the  
6 officers.

7 Q How were they addressed?

8 A They were dressed in their blue jump suits with police  
9 baseball caps with their and emblem on their shoulder.

10 Q Where did they park the Wagoneer?

11 A Directly in front of the driveway, right here.

12 Q Okay. And then what did the three of you do?

13 A They asked me, I told them the only thing I saw was a  
14 small object down the middle of the driveway. And they asked  
15 me to show it to them. I took them back down to where I seen  
16 the object in the driveway.

17 Q And where did you position yourself?

18 A Where I did before, right alongside the truck.

19 Q What did you see the officers do?

20 A They observed it for a few seconds, and then they got  
21 down on their knees and they looked very closely at the  
22 object.

23 Q And from where you were standing, could you tell us where  
24 Officer Foley was and Officer Hurley was?

25 A Officer Foley was with his back towards the fence.

1 Q Let me show you, with reference to Exhibit 2, and  
2 pointing out just where the object was?

3 A The object was right here where the red dot. Officer  
4 Foley was with his back towards this fence, and Officer Hurley  
5 right about here.

6 Q How long did the officers stay with the object at that  
7 time?

8 A A minute, I'd say .

9 Q And did you see either officer do anything?

10 A Yes, Officer Hurley had a knife, and he just gently  
11 scratched the side of the box.

12 Q Do you recall either officer making any comment?

13 A Yes, that Officer Hurley says: This looks like a piece  
14 machinery. There's no seems. It looks like it was made in a  
15 factory.

16 Q And how long, all told, did both officers stay by the  
17 object?

18 A Oh, I'd say a minute, between a minute and two minutes, a  
19 couple minutes, maybe two or three minutes.

20 Q Then what happened?

21 A Then they got up, and we all returned to the front of the  
22 driveway. And they asked me where the owner was.

23 Q Let me stop you there.

24 Before you left the scene, the three of you back  
25 there, did you see Officer Hurley do anything else?

1 A Yes, he removed two of the smaller -- he picked up two of  
2 the smaller objects that was on top of the, of the box, and  
3 placed them right on the truck, on the bumper of the truck.

4 Q Let me show you what's been marked as Government's  
5 Exhibit 13 A, Sergeant Creavin, and ask you if you can  
6 identify that object?

7 A Yes, that looks exactly like one of the objects that he  
8 removed from the top of the box.

9 Q The same with respect to the colors, sir?

10 A No, it was completely black. The top was silver like  
11 this, but the rest of it was completely black.

12 Q So, we're clear on this, Officer Hurley removed how many  
13 of these, sir?

14 A Two.

15 Q He put them where?

16 A Right on the bumper of the truck, right behind it.

17 Q How many of these smaller objects did you see on the face  
18 of that device?

19 A I'd say approximately 10 to 12 around the whole top.

20 MR. LIBBY: If I may, your Honor, 13 A for I.D., and  
21 publish it to the jury.

22 THE COURT: Well, if it's not in evidence, it  
23 shouldn't be published. I assume you want this in evidence.

24 MR. LIBBY: I would like to mark and it offer it in  
25 evidence.

1 THE COURT: Why is it not admissible?

2 MR. LOPEZ: It is a chalk.

3 THE COURT: It is something the witness says came off  
4 the device.

5 MR. LIBBY: Actually, your Honor, he said it looks  
6 like.

7 MR. LOPEZ: It is an exemplar.

8 THE COURT: I guess the jury can see it as an  
9 exemplar, since they saw the other one, as an exemplar.

10 [Government's Exhibit 13 A marked for  
11 identification.]

12 Q You and Officers Foley and Hurley leave this area between  
13 the two vehicles?

14 A Yes.

15 Q Officer Hurley has placed two of these objects on the  
16 rear bumper of this --

17 THE COURT: Can we have a question without repeating  
18 what the witness has already told us, please.

19 MR. LIBBY: I will.

20 Q Where do you now go?

21 A We return to the front of the driveway right here.

22 Q And what do you then do?

23 A I go to the front of the house and go up about two steps,  
24 and I saw Officer Kraft talking to the owner of the house  
25 inside the door.

1 Q And --

2 A I called to her to bring the owner out, and she came  
3 out. And the bomb squad wanted to talk to the owner of the  
4 house.

5 Q Were introduced to the owner at that time?

6 A No, I was not.

7 Q Did you know his name at that time?

8 A No, I did not.

9 Q Would you recount for us, please, what conversation took  
10 place then?

11 A Yes. The owner and Denise Kraft came out and came to the  
12 front of the driveway. At this time Officers Foley and Hurley  
13 started to question the owner of the house.

14 Q And what did that gentleman say?

15 A They asked him how this object got in his driveway. And  
16 he stated that on Sunday morning when he was backing his car  
17 out of the driveway, he observed this box as he backed his car  
18 out. He got out and picked up the box up and threw it over to  
19 the side of the driveway near the house. And that afternoon  
20 he was talking to some friends, and he told them about the  
21 object. And then one of the friends said it may be a Lo-Jack  
22 that fell off your car. Another friend said it may be  
23 machinery. And still another friend said it may be a bomb.

24 Q Did Officer Hurley inquire of the owner as to why  
25 believed it might be a bomb?

1 A He said: Why would you think it was bomb?

2 Well, he said, I have a lawsuit pending for a body  
3 shop I had in Dedham, and there was an explosion.

4 Q Did the owner indicate what the source of that explosion  
5 was?

6 A Yes, he said it was lawsuit pending over that explosion.

7 Q What actually exploded?

8 A He said a half stick of dynamite. Somebody had put a  
9 half stick of dynamite in the barrel adjacent to the shop, and  
10 it exploded, causing a lot of damage.

11 Q Did Officers Hurley and Foley say anything in response?

12 A They said: How do you know it was dynamite or a half  
13 stick?

14 He said: I know it was a half stick of dynamite  
15 because the lawsuit was pending over that.

16 Q Was there any further conversation about the driveway  
17 there at that time?

18 A Yes, he also stated that about a month prior to this he  
19 had made a report to the police that somebody had dumped a lot  
20 of machine parts in the driveway and they came from his body  
21 shop in Dedham. Somebody had taken them and dump them in the  
22 driveway and there was a police report on that.

23 Q Was the owner concerned about anything else involving as  
24 to himself or his family he?

25 A He said about a week prior to this, some car followed his

1 wife, or, his girlfriend, rather, and followed her home one  
2 night. And that just happened once, he said.

3 Q Now, did either officer leave that conversation among the  
4 five of you?

5 A Yes, Officer Hurley left the conversation and went to his  
6 truck.

7 Q And where was Officer Foley?

8 A He stayed with us at the time.

9 Q What did you see Officer Hurley do, if anything?

10 A He returned from his truck and passed by us, back to  
11 where the object was. And at this time Officer Foley left us,  
12 and he accompanied Officer Hurley back to where the object  
13 was.

14 Q And where were you at this point, sir?

15 A I was standing in front of Mr. Shay.

16 Q Directing your attention to Government's Exhibit 10 B, if  
17 you would, please, this enlarged photograph, do you recognize  
18 that scene?

19 A Yes, I do, sir.

20 Q What is that?

21 A That's the driveway of the house right along here. This  
22 is where we were standing, right around here.

23 Q All of you were standing right around there initially?

24 A Initially.

25 Q After Officer Foley followed Officer Hurley, you stayed

1 with whom, sir?

2 A The owner and Denise stayed there.

3 MR. LIBBY: If I may publish this to the jury?

4 THE COURT: Yes.

5 MR. LOPEZ: No objection.

6 Q Now,, you remain in conversation with Officer Corbett and  
7 the owner, sir, would you describe to the jury what happened  
8 thereafter?

9 A I started to talk to the owner, to see if I could find  
10 any more information from him.

11 Q How long were you speaking with the owner?

12 A I was only speaking to him, like, a couple of questions.  
13 Then suddenly, we a heard a loud, very loud explosion.

14 Q What did you see?

15 A I looked back, and coming over the truck was a large  
16 cloud of smoke, gray-white smoke.

17 Q What did you then?

18 A I immediately run towards that area because I heard the  
19 officers screaming for help.

20 Q Did you run back alone?

21 A No, Denise run after me.

22 Q What did you do?

23 A I observed the two officers which were in very bad  
24 shape. I went and put my arm around Officer Hurley and tried  
25 to console him.

1 Q What did Officer Kraft do?

2 A She went to Officer and did the same thing.

3 Q Did you take any action in response to that, sir?

4 A I got on my radio and I started screaming in the radio  
5 for ambulances and medical personnel to respond to the scene.

6 Q And did ambulances arrive?

7 A Yes, about three to five minutes later. Several  
8 ambulances responded.

9 Q Did anyone else come on scene while you were there?

10 A Yes, some neighbors from the across the street had heard  
11 the explosion and, they came running over, and they brought  
12 some towels which were use to mop up the blood from the  
13 officers' face and body.

14 Q How long with you tending to Officer Hurley, sir?

15 A I would say until the ambulance arrived, three minutes,  
16 three to five minutes.

17 Q Did you stay on the scene that afternoon after the  
18 officers --

19 A Yes, I stayed there until about 4 clock that day.

20 Q Do you recall generally what took place that afternoon?

21 A Yes, the area was cordoned off, and the rest the bomb  
22 squad responded, plus the ATF responded to the scene and took  
23 up the investigation.

24 MR. LIBBY: May I approach, your Honor?

25 THE COURT: Yes.

1 Q Let me show you what's been marked as Exhibit 9 C,  
2 Sergeant Creavin, and ask if you recognize this photograph?

3 A Yes, that is rear bumper of the truck where the magnets  
4 were placed.

5 Q Directing your attention to the center of the photograph,  
6 are those the magnets that you earlier described?

7 A Yes, sir, they are.

8 Q Does this picture depict those magnets as Officer Hurley  
9 had placed them on the rear bumper?

10 A No, maybe not the same spot.

11 Q Would you explain that to the Court and jury, please.

12 A During the commotion, I saw them there, and I took them  
13 for safe keeping and I put them in my pocket. And later on,  
14 after the ambulance had left, the pictures were going to be  
15 taken of the scene, and one of the homicide officers, I  
16 explained to him how I had magnets, and he told me to put them  
17 back as close as I could as to where I had taken them from.

18 Q So you had taken these two magnets from the rear bumper?

19 A That's right.

20 Q Where you did you put them, sir?

21 A In my coat pocket.

22 Q Does this photograph indicate where you placed those  
23 magnets?

24 A That's correct.

25 Q Did they at any time come out of your pocket, except for

1 purpose of going on the bumper?

2 A No, sir. They were with me all the time.

3 MR. LIBBY: If I may publish 9 C.

4 I have nothing further.

5 Thank you, sir.

6 THE COURT: Mr. Lopez, you may cross-examine.

7 MR. LOPEZ: Thank you, your Honor.

8 Cross-examination by Mr. Lopez

9 Q You had been an officer for 25 years at the time of this  
10 incident?

11 A Yes, sir.

12 Q And you were familiar with the neighborhood that you came  
13 upon?

14 A Yes, sir, I was.

15 Q As a matter of fact, you live in that neighbor?

16 A Correct, sir.

17 Q When you arrived, you were coming to the scene, you knew  
18 that there was an allegation of a bomb located there; is that  
19 correct?

20 A That's correct, sir.

21 Q And as you drove to that location, I assume you looked  
22 around the location as you were driving there?

23 A Yes, as usual.

24 Q You didn't see anyone as you were driving to  
25 39 Eastbourne Street; is that correct?

1 A I wasn't particularly looking for anybody.

2 Q And you didn't see anybody?

3 A I didn't see anybody, no.

4 Q When you arrived, you didn't see Officer Corbett?

5 A No.

6 Q And you didn't see Shay, Sr.

7 A No, sir.

8 Q Now, Mr. Creavin, being an officer for 25 years, I assume  
9 you are familiar with writing reports?

10 A Yes, sir.

11 Q And when you're writing reports, you describe everything  
12 that you believe is important at that particular point in  
13 time; isn't that correct?

14 A Yes, sir.

15 Q And if someone tells you something, you make a report and  
16 you make a note of that; isn't that correct?

17 A Yes, sir.

18 Q And you make a note of that when it is fresh in your  
19 mind, so you won't forget it later on; isn't that correct?

20 A That's correct.

21 Q And you try to be as accurate as you can?

22 A Correct, sir.

23 Q You try to be complete; isn't that correct?

24 A Right, sir.

25 Q Now, officer, you submitted a written report to Gerald

1 McKale; isn't that correct?

2 A Yes, sir.

3 Q And Gerald McKale is a deputy superintendent for the  
4 Boston Police Department?

5 A That's correct, sir.

6 Q So, he's your supervisor?

7 A That's correct, sir.

8 Q Now, you submitted a report to him on or about October  
9 the 28th; isn't that correct?

10 A Correct, sir.

11 Q And on that particular day, you indicated that, or, you  
12 indicated in that report, that Mr. Shay told you, Shay, Sr.,  
13 that he observed that black box, which has been marked as  
14 Exhibit 4 for identification purposes, on Sunday morning;  
15 isn't that correct?

16 A That's correct, sir.

17 Q When you arrived at 39 Eastbourne, we're talking about  
18 Monday afternoon; isn't that correct?

19 A Correct, sir.

20 Q It was about 12:15 in the afternoon?

21 A No, 12 noon, yes.

22 Q Now, he also told you, Mr. Shay, that he observed that  
23 item when he was backing his Buick out of the driveway; isn't  
24 that correct?

25 A Yes, after he had backed it out he saw the object.

1 Q He told you he was backing his car out of the driveway?

2 A As he -- after backing his car out, then he observed the  
3 box.

4 Q Okay. And then he observed the box in his driveway?

5 A That's correct, sir.

6 Q Now, he didn't tell you he was backing his Buick into the  
7 driveway when he saw that object; isn't that correct?

8 He didn't say he was backing in?

9 A No, he didn't.

10 Q He didn't say he was pulling out?

11 A As far as I can recall, I think he said he was backing  
12 out.

13 Q He was backing out of his driveway. And this took place  
14 on Sunday morning?

15 A Sunday morning, yes.

16 Q Now, after seeing this object in the middle of the  
17 driveway, he said he picked it up and he threw it to the side  
18 of his house; isn't that correct?

19 A Correct, sir.

20 MR. LIBBY: Objection, your Honor.

21 THE COURT: What's the objection?

22 MR. LIBBY: I believe, with respect to the officer's  
23 report, he's still making reference to the report.

24 MR. LOPEZ: I made no reference to the report, your  
25 Honor.

1 Q Now, later on that Sunday, he also told you that he  
2 talked to someone who said it was a bomb; isn't that correct?

3 A Yes.

4 Q Now, so, he knew sometime Sunday that it was a bomb?

5 MR. LIBBY: Objection, your Honor.

6 THE COURT: The objection to that is sustained. This  
7 witness cannot tell us what he knew, what Mr. Shay knew or  
8 didn't know.

9 Q Did he, to your knowledge, call the police when he found  
10 out it might be a bomb?

11 A No, sir.

12 Q Did he tell you what time on Sunday he found out it might  
13 be a bomb?

14 MR. LIBBY: Objection, your Honor. Form of the  
15 question.

16 THE COURT: Well, what time he found out, what time  
17 somebody told him is the same thing.

18 Q Did he tell you what time someone told him it might be a  
19 bomb, on Sunday?

20 A He said on Sunday afternoon he was talking with some  
21 friends.

22 Q On Sunday afternoon?

23 A Yes.

24 Q Did he tell you who told him it might be a bomb?

25 A No, sir, he didn't.

1 Q Did he do anything, to your knowledge, with this bomb on  
2 Sunday?

3 MR. LIBBY: Objection, your Honor.

4 THE COURT: What is the objection?

5 MR. LIBBY: The form of the question, "with this  
6 bomb." He's characterizing it as a bomb, known to this man as  
7 a bomb.

8 THE COURT: I'll allow it.

9 MR. LOPEZ: Your Honor, I believe, the government's  
10 case --

11 THE COURT: You may have the question.

12 MR. LOPEZ: Thank you.

13 Q Now --

14 THE COURT: We haven't had an answer, though.

15 Q Did he do anything else with this bomb on Sunday?

16 A I do not know, sir.

17 Q Now, he also told you that on Monday he picked this bomb  
18 up again and he threw it between the car and the van; isn't  
19 that correct?

20 A Yes, sir.

21 Q So, he picked it up, not once, but twice by this time  
22 when he threw it in between the car and the van; isn't that  
23 correct?

24 THE COURT: All the witness can tell us is what  
25 Mr. Shay told him, not what Mr. Shay in fact did.

1 MR. LOPEZ: All right.

2 Q Now, Mr. Shay also told you that someone else told him  
3 that the black box might be part of the Lo-Jack system?

4 A Yes, one of his friends made that statement.

5 Q He also said someone else told him it might be a Chapman  
6 system?

7 A Yes.

8 Q Now, when asked by the officers why anyone would want to  
9 leave a bomb in his driveway, he told you that two men had set  
10 off an explosion next to his business about two years ago;  
11 isn't that correct?

12 A That's correct, sir.

13 Q And he told you he had a lawsuit against these two  
14 individuals?

15 A Correct, sir.

16 Q And he told you that these two individuals put a half a  
17 stick of dynamite into a drum and it blew up; isn't that  
18 correct?

19 A Yes, some individuals. I don't think he knew who did  
20 it.

21 Q And he was sure it was a half a stick of dynamite, didn't  
22 he?

23 A Yes.

24 Q When questioned about it, he said: I'm sure it was a  
25 half a stick of dynamite?

1 A Yes, sir.

2 Q He didn't say a quarter of a stick of dynamite, he said a  
3 half a stick of dynamite; isn't that correct?

4 A Best I recall, yes, it was.

5 Q And he further told the officers, and you were present,  
6 that he knew something about dynamite, didn't he?

7 A No, he never said that.

8 Q He never said that?

9 Sir, do you remember testifying before in this case?

10 Do you remember?

11 A Yes.

12 MR. LOPEZ: Your Honor, may I approach the witness?

13 THE COURT: Yes, you may tell counsel the page.

14 MR. LOPEZ: Page 4-111, line 9.

15 Q Sir, I show you a page of your prior testimony, and I ask  
16 you to look at it, line 7, and tell me if I read this  
17 correctly:

18 "Did he tell you that he knew something about  
19 dynamite, that he could identify what dynamite was?"

20 Did I read that correctly?

21 MR. LIBBY: Actually no, your Honor.

22 Q "That he could identify what dynamite was," isn't that  
23 correct?

24 A Something to that effect. I don't know his exact words.

25 Q Your answer was: "He said I know something about

1 dynamite," didn't he say that?

2 Didn't you say he said that?

3 MR. LIBBY: Your Honor, please, if we can have the  
4 entire response read.

5 THE COURT: Yes.

6 MR. LIBBY: Perhaps that would be helpful.

7 A He said I know something about dynamite, something to  
8 that effect. I knew it was a half a stick.

9 Q He knew it was a half a stick?

10 A Yes.

11 MR. LIBBY: Can we have the entire response at one  
12 time read, please?

13 THE COURT: Yes.

14 Q Let me read it:

15 "He said, I knew it was a half a stick. He seemed  
16 to give answers that he knew it was a half a stick of  
17 dynamite."

18 Isn't that correct?

19 Didn't I read that correct?

20 A He said I know something about dynamite, something to  
21 that effect. I know it is a half a stick. He seemed to give  
22 answers that he knew something about dynamite, about a half a  
23 stick of dynamite.

24 MR. LIBBY: Your Honor, your Honor for the record if  
25 I may, this answer has not been read correctly once in the

1 last four efforts, may have I for record please?

2 MR. LOPEZ: Your Honor, if I may, this answer has not  
3 been read correctly in the last four attempts. May I for the  
4 record, please?

5 MR. LOPEZ: Your Honor, I believe he can  
6 cross-examine on that.

7 THE COURT: What he's objecting to is an incorrect  
8 reading of the transcript, and he may have the jury have a  
9 correct reading of the transcript.

10 MR. LIBBY: "He said, I know something about  
11 dynamite, something to that effect. I knew it was a half  
12 stick. He seemed to give answers that he knew it was a half  
13 stick of dynamite."

14 THE COURT: Let me explain to the jury, as I told you  
15 yesterday, one of the jobs that you will have to do is to  
16 determine the credibility of each and every witness. And you  
17 will need to decide what you accept what a witness tells you.  
18 I explained to you yesterday that one of the ways in which you  
19 do that is to observe the witness. There is another way,  
20 another mechanism available to you, and counsel will, no  
21 doubt, with other witnesses point out to you that what they  
22 perceive to be answers that the witness gave on an earlier  
23 occasion that they think are inconsistent with the answer that  
24 the witness is giving now to you.

25 You will have two jobs with respect to any such

1 proffer of an earlier inconsistent statement. One is to  
2 decide whether, in fact, it is inconsistent. If you determine  
3 that it is inconsistent, then you may -- then you need to  
4 decide whether the fact that the witness did give inconsistent  
5 answers affects your judgment of the believability of this  
6 witness.

7 Do you understand?

8 You may proceed.

9 Q Now, he also told you about an incident that happened  
10 about a week prior to this?

11 A Yes, sir.

12 Q With his girlfriend?

13 A Yes, sir.

14 Q Isn't that correct?

15 And someone was following her, that's what he told  
16 you?

17 A Yes somebody had once followed.

18 Q He didn't tell you that someone was following him, did  
19 he?

20 A No, sir.

21 Q And he also told you about an incident where someone  
22 dumped parts on his driveway?

23 A Yes, sir.

24 Q Now, at some point, you specifically observed Officer  
25 Hurley pick up the two magnets that are depicted in not 9 C.

1 A Yes, sir.

2 THE COURT: They are on the table.

3 The picture is in the jury box.

4 Q Those are these magnets right here?

5 A Correct, sir.

6 Q You saw Officer Hurley pick these off of the device; is  
7 that correct?

8 A Yes, he was examining them, yes.

9 Q He picked them up and he looked at them?

10 A Yes.

11 Q And then, Officer Hurley placed them on the truck?

12 A Correct.

13 Q And then, later on you picked them up with your hands?

14 A Yes, sir.

15 Q And you put them into your pocket?

16 A Yes, sir.

17 Q And then, sometime later you put them back?

18 A Yes, sir.

19 Q Okay. Did you notice where Mr. Shay was facing or  
20 standing at the time explosion occurred?

21 A He was in the front of the driveway.

22 Q With you?

23 A Yes, sir.

24 Q Was that all the way in front of the driveway?

25 A We were a couple of feet in from the sidewalk. Three to

1 four feet, maybe.

2 Q Let me show you Government's Exhibit No. 2, and I ask you  
3 to point on this chart --

4 A Approximately right around this area here.

5 Q You were standing right around here?

6 A Yes.

7 Q Okay. You weren't standing back here by the van?

8 A No, sir.

9 Q You were standing all the way up in the front?

10 A About maybe three to four feet in from the front, in this  
11 area.

12 Q Okay. Thank you.

13 Now,, sir, I asked you this before.

14 THE COURT: Then don't ask it again.

15 Q You must have interviewed a number of people. Do you  
16 have any idea how many people you interviewed over those 25  
17 years?

18 A Hundreds, thousands.

19 Q You were the second officer on the this scene, weren't  
20 you?

21 A Correct, sir.

22 Q You had more years on the job than any other officer  
23 there; isn't that correct?

24 A Yes, sir.

25 Q More than Officer Corbett?

1 A Yes, sir.

2 Q More than Officer Foley?

3 A Yes, sir.

4 Q More than Officer Hurley?

5 A I'm not sure about Officer Hurley, sir.

6 Q Sir, you weren't satisfied with Shay's, Sr. answer when  
7 he was asked questioned questions by Officer Foley; isn't that  
8 correct?

9 A I wanted to find out all I could about the incident.

10 Q You wanted to question him further, didn't you?

11 A Yes, I wanted to ask him another couple of questions.

12 Q You didn't a chance to question him further?

13 A No, sir.

14 Q Even after the explosion; isn't that correct?

15 A Well, no, I didn't.

16 Q Now, sir --

17 MR. LOPEZ: If I may approach the witness, your  
18 Honor.

19 Q I'll ask you to look at what's been marked as  
20 Government's Exhibit 4 for identification. I want you to look  
21 at it very carefully. Pick it up, look at it completely.

22 THE COURT: What is the question?

23 MR. LOPEZ: I just asked the witness to look at it,  
24 first.

25 THE COURT: I'm asking you: What the's the

1 question?

2 Q Do you see any wires sticking out of that device, sir?

3 A No, sir.

4 MR. LOPEZ: No further questions.

5 THE COURT: Any redirect?

6 MR. LIBBY: Not a thing.

7 Thank you, Sergeant Creavin.

8 THE COURT: Thank you, Sergeant Creavin, you are  
9 excused.

10 Who is next?

11 MR. LIBBY: United States calls Special Agent Daniel  
12 Boeh.

13 MR. KELLY: Strike that.

14 We'll take another witness out of order who is here  
15 and not feeling well who will testify, so he can get on his  
16 way.

17 We call James McKernan.

18 THE CLERK: Please be seated, and state your name.

19 THE COURT: Do we need the box on the witness box?

20 MR. LIBBY: I don't think so, your Honor.

21 (Pause.)

22 THE COURT: Who will cross-examine?

23 MR. SEGAL: I will, your Honor.

24

25

1                    James McKernan, sworn

2                    Direct Examination by Mr. Kelly

3            Q        Will you state your name and spell your last name for the  
4            reporter, please.

5            A        James McKernan, M C K E R N A N.

6            Q        Good morning, Mr. McKernan.

7                    Where do you reside sir?

8            A        36 Eastbourne Street, Roslindale.

9            Q        How long have you live lived at that address?

10          A        33 years sir.

11          Q        Are you employed at the present time, Mr. McKernan?

12          A        No, I'm retired.

13          Q        Prior to your retirement, how were you are employed?

14          A        I worked for the City of Boston, Fire Department.

15          Q        For how long?

16          A        44 years.

17          Q        Do you know a Thomas Shay, Sr.?

18          A        Yes.

19          Q        And where does Mr. Shay, Sr. live in relation to you,  
20          Mr. McKernan?

21          A        He lives diagonally across the Street.

22          Q        Approximately how long has he lived there?

23          A        I would say about two years or so.

24          Q        And who, if anyone, resides with him at that location?

25          A        His girlfriend.

1 Q What's her name?

2 A Mary Flanagan.

3 Q And do they have any children?

4 A Yes, they have a daughter, one daughter.

5 Q And what is her name?

6 A Crysten.

7 Q Can you tell us her approximate age, please?

8 A Probably about nine or ten, I guess, now.

9 Q And does Mr. Shay and Ms. Flanagan live at 39 Eastbourne?

10 A Yes.

11 Q Now, does Mr. Shay and Ms. Flanagan each drive a car?

12 A Yes.

13 Q And directing your attention back to the fall of 1991,  
14 would you tell me, first, Mr. McKernan, what type of a car did  
15 Mrs. Flanagan drive at that time?

16 A She drove a white Lincoln.

17 Q A kind of a big car?

18 A A big car, yes.

19 Q Does she still have that Lincoln?

20 A Yes.

21 Q And back in the fall of 1991, what kind of a car did  
22 Mr. Shay drive?

23 A I think it was a Buick.

24 Q Was it a darker car or lighter car?

25 A A darker car.

1 Q Now, as of October of the fall of 1991, Mr. McKernan, can  
2 you tell us where Ms. Flanagan typically parked her big white  
3 Lincoln?

4 A She usually parks in the driveway.

5 Q And where does Mr. Shay park his car?

6 A Right outside his -- right outside her house.

7 Q I want to direct your attention specifically, sir, to the  
8 date of October 28 of 1991, and ask you, at or about  
9 11:20 a.m. that morning, what if anything did you do?

10 A I usually go for a walk.

11 Q Did you go for a walk this day?

12 A Yes.

13 Q Do you recall what the weather was outside that day.

14 A It was a beautiful day.

15 Q How often do you go for walks, Mr. McKernan?

16 A Two or three times a week.

17 Q When go on these walks, how far do you walk?

18 A Two miles.

19 Q Do you have a standard route that you follow, sir?

20 A Yes.

21 Q Do you time yourself when you go on these walks?

22 A Yes.

23 Q What time of day did you go for your walk on October 28  
24 of 1991?

25 A Just about 18 or 20 past eleven because I looked at my

1 watch.

2 Q How long does it take you to do the two miles, sir?

3 A About 40 minutes.

4 Q Do you know what time it was when you looked at your  
5 watch when you returned home from the walk that day?

6 A Yes.

7 Q What time was it?

8 A It was 12 clock.

9 Q Okay. And as you walked into the house from that walk at  
10 12 clock, did you see any police cruisers or any other type of  
11 official vehicles parked in the vicinity of your house?

12 A No, there was no police cars there at all.

13 Q Or in the vicinity of the Shay-Flanagan house?

14 A No.

15 Q Mr. McKernan, I want to show you two photographs that  
16 have already been introduced, Exhibits 3 C and 3 D.

17 I'll start with Exhibit 3 D, sir. Can you tell us  
18 what that photograph depicts generally?

19 Have you seen that before?

20 A Yes.

21 Q What does it show in that picture, sir?

22 A The street I live on.

23 Q Okay. Are you able to tell us what this structure is,  
24 this large structure in the kind of foreground of the  
25 picture?

1 A That's the Mozart School.

2 Q And what level school is that, sir?

3 A I think it goes up to the 5th Grade.

4 Q It's an elementary school?

5 A Elementary school, yes.

6 Q Is it open, active today?

7 A Yes.

8 Q Was it open in the fall of '91?

9 A Yes.

10 Q Are you able to see your house in this photograph, sir?

11 A Yes.

12 Q Would you point it out to the jury with the pointer?

13 A Right here.

14 Q It is on the left-hand side of this street right up here

15 that runs --

16 A On the left-hand side of Eastbourne.

17 Q That's Eastbourne Street?

18 A Yes.

19 Q Are you able to point out the Shay house in this

20 photograph?

21 A Yes.

22 Q Could you do you that.

23 A It's right here.

24 Q It's on the right side, kind of diagonally across from

25 your house?

1 A Yes.

2 Q One last question on this photographer, Mr. McKernan,  
3 what's this street that runs diagonally, kind of across,  
4 depicted the long way?

5 A Beach Street.

6 Q Okay.

7 Sir, I want to show you Exhibit 3 B, which is a  
8 little bit closer aerial picture, can you tell me what is  
9 depicted in that photograph, sir?

10 A That's the house across from my house.

11 Q Okay.

12 A These four houses.

13 Q Okay.

14 A Right across the street.

15 Q Whose house is this right here, kind of in the center of  
16 the picture?

17 A Mary Flanagan's house, right there.

18 Q Where Mr. Shay lives as well?

19 A Yes.

20 Q Now, as able to see any portion of the roof of your home  
21 in this picture, sir?

22 A Yes. I see it right here.

23 Q Right in the bottom right-hand corner underneath that  
24 kind of tree?

25 A Yes.

1 Q So you are diagonally across?

2 A Yes.

3 Q Now, as you went on your walk that morning, Mr. McKernan,  
4 did you observe anything that you determined to be out of the  
5 ordinary?

6 A Yes.

7 Q Tell us what you saw.

8 A I seen a car parked on the corner of Beach and Eastbourne  
9 Street.

10 Q And why did you consider this to be unusual?

11 A Well, I was walking straight ahead, and he was on the --  
12 this guy was in the car. He was parked right on the  
13 crosswalk. And I was wondering why he was parked on the  
14 crosswalk all by himself.

15 Q Now, had you ever seen this car before?

16 A No.

17 Q This would have been roughly 1:20 in the morning?

18 A Yes.

19 Q Was school getting out about that time?

20 A No.

21 Q And could this have been a parent waiting to pick up a  
22 child or anything like?

23 A No, there was nobody else around. Very quiet.

24 Q Would I be correct, Mr. McKernan, that the crosswalk that  
25 you're referring to, sir, is down at this intersection of

1 Beach and Eastbourne?

2 A Yes.

3 Q Can you tell us specifically on the picture?

4 A Right here.

5 Q You are pointing to the kind of southerly side or the  
6 lower side of this crosswalk which is at the intersection of  
7 Eastbourne and Beach?

8 A Yes.

9 Q So that the car was literally on top of the two big white  
10 lines?

11 A The crosswalk, yes.

12 Q Was there anyone in the car?

13 A There was one man in the car.

14 Q And can you describe the man? What features do you  
15 recall, if any?

16 Do you recall, for example, whether he was white or  
17 black?

18 A He was a white male.

19 Q Do you remember anything else about that man in the car?

20 A No.

21 Q Can you describe what type of car it was, sir?

22 A It was a small compact car.

23 Q Do you recall the color of that car?

24 A Kind of bluish gray or grayish blue.

25 Q Was it a lighter shade or darker shade?

1 A Kind of a lighter shade.

2 Q Was there anybody else in the car besides this man?

3 A No, he was all by himself.

4 Q Did you make eye contact with the man?

5 A Yes, I looked at him and he looked at me, and he took  
6 off.

7 Q When you say, "he took off," what does that mean, sir?

8 A He drove the car around the corner, from Beach to  
9 Eastbourne Street, and he drove away.

10 Q How close did you get to the car along your walk before  
11 the car turned around the corner and drove away?

12 A Probably about 30 feet.

13 Q And after you made eye contact with the man, did he drive  
14 away, sir?

15 A Yes.

16 Q And after car the car drove away, what if anything did  
17 you do?

18 A I looked at the number plate number, and I took down in  
19 my mind the number plate number.

20 Q Why did you do that, Mr. McKernan?

21 A I don't know. I looked at it automatically, seemed,  
22 like, you know, what was he doing parked there.

23 Q Now, do you recall the license plate of that car, as you  
24 sit here today?

25 A I remember it was three letters and three numbers.

1 Q Okay. And have you tried to recall the license plate  
2 number?

3 A Yes, I was hypnotized for trying to remember the number.

4 Q You have gone to great lengths in trying to remember the  
5 number?

6 A Yes.

7 Q And have you been unable to do so?

8 A Yes.

9 Q When you finished your walk that morning, 40 minutes  
10 later, did you remember that number?

11 A No, I didn't even think of it.

12 Q You made a momentary mental note, and then it lapsed?

13 A Yes. After all what happened, my mind just went blank  
14 after that. I didn't think about the car or number plate or  
15 anything.

16 Q Now, when you arrived home, sir, after your walk, who was  
17 at your residence, if anyone?

18 A My wife, my son, my sister-in-law and her son.

19 Q Okay. And did you go into the house?

20 A I went into the house, yes.

21 Q And tell us what happened next, sir? What did you do  
22 after going into the house?

23 A I talked to my son, you know, and my wife.

24 Q And then what happened?

25 A I was in the house about five minutes when the explosion

1 happened.

2 Q And upon hearing the sound, sir, what did you do?

3 A My son and myself and -- we all ran outside.

4 Q As you ran outside, tell us the first thing you observed,  
5 Mr. McKernan?

6 A We observed smoke coming out of the driveway across,  
7 diagonally across the street.

8 Q Did you see any people in the driveway area?

9 A A police sergeant was coming out of the driveway with his  
10 walkie-talkie.

11 Q Did you see --

12 A Calling for police and ambulance and all that.

13 Q Did you observe any police vehicles?

14 A Yes, at that time there was two of them there.

15 Q Tell us what happened next, what did you do?

16 A Well, I didn't know, I thought it was somebody shooting  
17 at somebody, you know. I went over there, and there was a  
18 police lady kneeling down beside this gentleman. I didn't  
19 know it was a police officer until I seen the patch on his  
20 arm. His clothes was all tattered. And then I seen the bomb  
21 squad insignia on his arm.

22 Q What did you do next, sir?

23 A The police lady said: Get some towels. So, I yelled  
24 over to my wife, where she was outside, and I told her to get  
25 some towels, and she ran upstairs and she come down with a

1 whole bunch of towels, and we put them on the -- the police  
2 lady put them on the police officer's face.

3 Q And did your son Tom, I think you used the name, did your  
4 son Tom also go back into this driveway area?

5 A Yes, the two of us went over.

6 Q What was your son Tom doing?

7 A He was giving first aid to the police officer underneath  
8 of the car, underneath van.

9 Q You said there were two officers down in the driveway?

10 A There was two officers down, yes.

11 Q And what if anything was your drive doing after she gave  
12 you the towels, that you observed?

13 A I don't know what she was doing.

14 Q Okay. How long were you on the scene offering aid or  
15 assistance that morning before other police apparatus or  
16 personnel arrived?

17 A Probably five minutes or so.

18 Q Now, I want to back up just a minute, Mr. McKernan, and  
19 focus you on the weekend prior to this explosion.

20 The October 28 of 1991 was a Monday, was it not?

21 A Yes.

22 Q I want you to think about the Saturday and Sunday before  
23 the 26th and 27th, and ask you, did you see or hear anything  
24 suspicious at all in the neighborhood prior to this Monday?

25 A No.

1 Q Now, you're retired, so you spend a lot time in and  
2 around your home in the neighborhood, do you not, sir?

3 A Yes.

4 Q Have you ever made any observations of Mr. Shay  
5 performing any activities in and around the driveway of his  
6 home?

7 A Sometimes he works on a car, I guess.

8 Q Do you have an understanding that he's kind of an auto  
9 body business, at least on a part-time basis?

10 A Yes.

11 Q And he actually does some work right there on premises?

12 A Sometimes, yes.

13 Q One final question, Mr. McKernan, from the location that  
14 this car was parked on the corner of Beach Street and  
15 Eastbourne Street, the person sitting in that car, would they  
16 be able to have a view of the Shay residence from that  
17 location?

18 A Yes.

19 MR. KELLY: Your Honor, at this time, without  
20 objection, the government would like to offer Exhibits 54, in  
21 addition to the list, a photograph from the intersection of  
22 Eastbourne and Beach Streets.

23 **[Government's Exhibit 54 entered in evidence.]**

24 THE COURT: This car, Mr. McKernan, was on Eastbourne  
25 Street or on Beach Street?

1 THE WITNESS: It was on Beach Street.

2 Q Mr. McKernan, I will ask you to --

3 THE COURT: Excuse me, Exhibit 54 is in evidence  
4 without objection, right?

5 MR. SEGAL: Correct.

6 Q You can look at the item that's before you, Mr. McKernan,  
7 which we marked as Exhibit 54, do you recognize the scene  
8 depicted in that photograph, sir?

9 A Yes.

10 Q What does it show?

11 A It shows the street I live on.

12 Q Okay. And where is the picture taken from, sir?

13 A Roughly, it looks like where the car was parked.

14 Q It is taken literally above the crosswalk on Beach Street  
15 as you're looking back up Eastbourne in the direction of your  
16 home?

17 A Yes.

18 Q And from that location, sir, are you able to see Thomas  
19 Shay and Mary Flanagan's house?

20 A Yes.

21 Q And whereabouts is it in the photograph?

22 A Right-hand side.

23 Q Kind of in the center?

24 A Right in the center of the street photograph.

25 Q In the center of the photograph?

1 A In the center of the photograph.

2 Q A little to the right.

3 A Yes.

4 Q Describe what you're able to see in that picture, for the  
5 record, what color is the house you are looking at in the  
6 picture?

7 A It is white. I see the porch, front porch.

8 MR. LIBBY: Your Honor, at this time I would request  
9 the Court's permission to publish the three photographs we  
10 used here with Mr. McKernan, and I have nothing further.

11 MR. SEGAL: I have no objection, I would like to use  
12 one of those large photographs to question Mr. McKernan.

13 THE COURT: Why don't you ask some questions without  
14 first. And when the jury finishes looking at them, you can  
15 ask a more informed question, that is more informed to the  
16 jury.

17 Cross-examination by Mr. Segal

18 Q Good morning, Mr. McKernan.

19 My name is Terry Segal. I represent Al Trenkler?

20 A Good morning.

21 Q I think you told us the car you saw on that day was  
22 either grayish blue or bluish gray; isn't that correct?

23 A Correct.

24 Q It definitely wasn't white, sir?

25 A It definitely wasn't white.

1 Q It wasn't very old; isn't that correct, sir?

2 A That's correct.

3 Q It didn't have any rust marks on it, did it, sir?

4 A I didn't notice any.

5 Q You didn't notice any insignias on the car; isn't that  
6 correct?

7 A That's right.

8 Q You didn't notice an antenna on the trunk of the car;  
9 isn't that correct?

10 A That's correct.

11 Q You didn't notice any decal or sticker on the back of the  
12 car?

13 A No.

14 Q Now, you were shown some photographs by the ATF shortly  
15 after the bombing incident; is that correct?

16 A That's correct.

17 Q And you were shown a series of automobiles to see if you  
18 can pick out the car you had seen that day; isn't that  
19 correct?

20 A Yes.

21 Q Okay.

22 And you were unable to pick out that car from those  
23 photographs; isn't that correct?

24 A Yes.

25 Q All right.

1 MR. SEGAL: May I approach the witness, your Honor?

2 THE COURT: Yes.

3 Q Let me show you Government's Exhibits 1 through 3, in  
4 evidence, and I'll represent that these are some of the  
5 photographs that you were shown by the ATF.

6 Do you remember seeing those photographs?

7 THE COURT: Have they been marked into evidence,  
8 yet?

9 MR. SEGAL: Yes, they have been marked.

10 May I stand here?

11 THE COURT: Yes.

12 Q Sir, do you remember seeing those photographs,  
13 Defendant's Exhibits 1 through 3?

14 A Yes.

15 Q And those are the photographs, some of the photographs,  
16 that the ATF showed you, to see if you could identify that car  
17 that you had seen on October 28; isn't that correct?

18 A Yes.

19 Q And you were unable to identify that car; isn't that  
20 correct?

21 A That's correct.

22 Q I'm just going to show you --

23 THE COURT: I'm sorry, what was the answer?

24 MR. SEGAL: Unable to identify the car.

25 Q I have the same photographs, I have just blown it up a

1 little more. Exhibits 4, 5 and 6, in evidence, sir, are the  
2 same as Exhibits 1, 2, and 3, except they are bigger.

3 Now, I wonder, looking at -- maybe, could I hold  
4 these up for the jury? Or maybe, Mr. McKernan and I can come  
5 close to the jury.

6 THE COURT: No, just hold them up. If you come  
7 closer, so will reporter have to come closer.

8 Q Let me show you Exhibit 4, can you see that from here,  
9 where I am?

10 A Yes, I can see it, yes.

11 Q All right. You will noticed this car, which I'll  
12 represent is Mr. Trenkler's car, has an antenna on the back of  
13 it.

14 Do you see that here?

15 A I see it, yes.

16 Q And the car you saw, you didn't see an antenna?

17 A I didn't notice any antenna.

18 Q It has a sticker, WBCN, do you see that on Exhibits 4,  
19 sir?

20 A Yes.

21 Q And the car you saw didn't have sticker?

22 A I didn't notice that either, any sticker.

23 MR. SEGAL: May I publish this one to the jury, your  
24 Honor?

25 THE COURT: Yes.

1 MR. KELLY: Are those in evidence?

2 MR. SEGAL: 4, 5 and 6.

3 THE COURT: Why don't we mark them 4 A, 5 A, they are  
4 the same thing.

5 MR. SEGAL: Yes, I think previously, with Mr. Kelly's  
6 consent, I marked them 4, 5 and 6.

7 THE COURT: Those are 1, 2, and 3?

8 **[Defendants' Exhibit 4, 5 and 6 entered in evidence.]**

9 Q Showing you Defendant's Exhibit, 5 which is a replica of  
10 one of the earlier exhibits, sir, do you see some rust on that  
11 particular car, sir, which is Exhibit 5?

12 A Yes.

13 Q You didn't notice any rust on the car that you saw on  
14 that morning; isn't that correct?

15 A No, I didn't.

16 Q Doesn't this car appear to be white, sir?

17 A It does.

18 MR. SEGAL: I ask that this be published to the  
19 jury.

20 Q Showing you what's been marked Defendant's Exhibit 6, in  
21 evidence, which is just a blowup of one of those earlier  
22 exhibits, Mr. McKernan, and you notice an insignia on the  
23 front of Exhibit 6 here, sir?

24 A Yes.

25 Q You didn't notice that insignia on the car you saw that

1 day, did you, sir?

2 A No.

3 MR. SEGAL: I ask that this be published, also.

4 Q Mr. McKernan, would you take a look at what's been marked  
5 defendant's exhibit for identification, an insignia, which  
6 I'll represent is the same as the insignia on Defendant's  
7 Exhibit 6, which is on the front of that car, you didn't see  
8 this insignia on the automobile on October 28, 1991, that was  
9 in the intersection of Beach and Eastbourne?

10 A No, I didn't.

11 Q All right.

12 You were shown some photographs of people in  
13 connection with trying to identify the person that you saw  
14 that morning; isn't that correct, sir?

15 A Yes.

16 Q All right.

17 And you were unable to identify the person from the  
18 photographs that you were given; isn't that right?

19 A That's right.

20 Q Let me show you Government's Exhibit 34, in evidence, a  
21 series of six photographs?

22 THE COURT: I don't believe it is in evidence.

23 MR. KELLY: If he's offering it, I have no  
24 objection. It is my exhibit, anyway.

25 THE COURT: Government's 34 by agreement.

1                   **[Government's Exhibit 34 entered in evidence.]**

2       Q     Let me show you what we marked as Government's Exhibit  
3     34, in evidence, sir, which is a photo display of six  
4     photographs, which I'll represent were shown to you by the  
5     ATF.

6                   Do you recall seeing those particular pictures, sir,  
7     in connection with the investigation in this case?

8       A     Yes.

9       Q     Keeping your voice up just a little, sir, when do you  
10    recall seeing those pictures? Roughly when did they show them  
11    to you, sir?

12    A     Probably about four days after the explosion, four or  
13    five.

14    Q     And you weren't able to pick out anyone from those  
15    photographs?

16    A     No. No.

17    Q     Is that right?

18                   MR. SEGAL: I ask that this be published to the jury,  
19    also.

20                   THE COURT: Yes.

21                   MR. SEGAL: If I might borrow the large chart.

22    Q     Now, Mr. McKernan, let me show you what's in evidence,  
23    Government's Exhibit 3 D, which represents the Eastbourne and  
24    Beach Streets; am I correct, sir?

25    A     Correct.

1 Q All right. Now, please take the pointer and show us  
2 where that car was when you first saw it on that morning,  
3 looking at not 3 D, just point it out to us.

4 A (Indicating) It was parked right here on the crosswalk.

5 Q All right. Was the front of it facing forward?

6 A The front of it was facing up Beach Street.

7 Q All right.

8 And it was right on the crosswalk?

9 A Right on the crosswalk.

10 Q You thought it was strange that a car would be parked  
11 there at that hour in the crosswalk opposite a school?

12 A Yes.

13 Q All right.

14 You wanted to make a note of it?

15 A Right. I was walking down this way here.

16 Q You were coming down Eastbourne?

17 A On the sidewalk. He was parked right on the crosswalk.  
18 I was wondering why he was parked there.

19 Q I'm sorry?

20 A I was wondering why he was parked there right on the  
21 crosswalk. As I got closer to him --

22 Q And it was a clear day, no problem with line of sight?

23 A No problem.

24 Q You had a clear view of that automobile that was about 30  
25 feet from you as you were going straight ahead toward it?

1 A Yes.

2 Q All right. And you tried to remember the distinctive  
3 features of that car because you felt it was important?

4 A Yes.

5 Q All right.

6 How close -- isn't it true, sir, you got to within  
7 about 30 feet of that car, before it -- did the fellow turn on  
8 his engine and then leave, or was it running?

9 A I don't know if it was running or if he turned it on. I  
10 didn't hear anything --

11 Q All right.

12 A -- a motor.

13 Q But you were -- show me right on this, on this exhibit,  
14 where you were when that car took a right on to Eastbourne  
15 Street?

16 A (Indicating) Approximately right about here.

17 Q All right. You're pointing to where that blue car is on  
18 Exhibit 3 D?

19 A Yes.

20 Q All right. And you were looking directly straight ahead  
21 of the car which was pointing straight across on Eastbourne --  
22 I'm sorry, on Beach?

23 A Beach.

24 Q The car was facing on Beach?

25 A Yes.

1 Q You had a pretty good look at that car?

2 A Yes.

3 Q And how long did you look at before it made the turn  
4 around the corner on to Eastbourne?

5 A A couple of minutes, that's all.

6 Q You didn't see Mr. Trenkler in that car, did you?

7 A No, I didn't.

8 Q When I say "Mr. Trenkler," let me be clear, the  
9 gentleman --

10 MR. SEGAL: Stand up, please.

11 Q -- the gentleman seated right there, you didn't see him  
12 in that car that morning, did you?

13 A I don't know who was in the car.

14 Q Well, my question is: You didn't see my client in the  
15 car, isn't that fair to say, this fellow right here?

16 MR. KELLY: I think he's already got an answer to  
17 that question.

18 THE COURT: I do believe that he's answered.

19 Q You do remember, though, sir, that the automobile had  
20 three -- the license plate had three letters and three  
21 numbers; is that right?

22 A Yes.

23 Q What does your license plate have, sir?

24 A My mine has six numbers.

25 Q Have you seen --

1 A Yes, six numbers.

2 Q Have you seen lot of plates around that have three  
3 letters and three numbers; that's not that uncommon, is it?

4 A No, it isn't.

5 MR. SEGAL: May I have just one minute, your Honor.

6 [Pause.]

7 Q I think you told us, Mr. McKernan, that the car you saw  
8 that day wasn't very old; isn't that right?

9 A Yes.

10 Q Wouldn't you consider a 19 -- strike that.

11 Wouldn't you consider a 1978 Toyota Celica fairly  
12 old?

13 A I would say it was fairly old, '78.

14 MR. SEGAL: Thank you, sir.

15 I have no further questions.

16 THE COURT: Any redirect?

17 MR. KELLY: Yes, your Honor.

18 Redirect Examination by Mr. Kelly

19 Q Mr. McKernan, these photographs, the small ones that you  
20 were shown to you by Mr. Segal, you didn't take those  
21 photographs, did you, sir?

22 Those little photographs of that car that he showed  
23 you, did you take those?

24 A Did I take those?

25 Q Yes.

1 A No.

2 Q Do you know when they were taken?

3 A No.

4 Q This antenna that is depicted in these little  
5 photographs --

6 THE COURT: The little photographs are with the  
7 witness.

8 Q Do you know whether or not that's a removable antenna  
9 that's depicted in these photographs that you didn't take?

10 Isn't that one of C.V. antennas?

11 MR. SEGAL: I'll object. I'm not sure this man is  
12 qualified as an expert.

13 THE COURT: Also, he's your witness.

14 Q Now, you were coming at this car from the side,  
15 Mr. McKernan, were you not?

16 A That's right.

17 Q So, in other words, your the car -- you were walking kind  
18 of like this, like I'm walking, towards you?

19 A Yes.

20 Q Now, this picture here that you were shown, that appears  
21 to faintly show this insignia on the hood, is taken kind of  
22 from a didn't downward-looking perspective, is it not?

23 A Yes.

24 MR. SEGAL: I object to the characterization of the  
25 photograph, "faintly." I think he should let the witness

1 answer it.

2 THE COURT: I think what you are asking him are  
3 somewhat argumentative questions. You can certainly point it  
4 out to the jury at the appropriate time.

5 MR. KELLY: I'll ask a different question, your  
6 Honor.

7 Q Now, this picture, sir, is taken kind of from the side,  
8 is it not?

9 A Yes.

10 Q Although by, it look like, a really tall person. Would  
11 you agree with me?

12 MR. SEGAL: Objection. Unless Mr. Kelly --

13 THE COURT: Objection is sustained.

14 Q Forget the tall person. It is taken from the side,  
15 right?

16 A Yes.

17 Q Can you see that insignia on the hood very clearly?

18 A No.

19 Q And how far would you say the person who took that  
20 picture was standing from the car when he took it?

21 MR. SEGAL: Objection, your Honor.

22 THE COURT: The objection is sustained. I don't know  
23 how he can tell us that.

24 Q Well, is that about how far you were from the car when  
25 you saw it drive away, or was this closer than you were?

1 A I wasn't that close.

2 Q You weren't that close?

3 A No.

4 Q Are you able to see the rust marks on that picture?

5 A I can see the rust marks here.

6 Q Where are they?

7 A Underneath the door and around the fender.

8 Q Right on the bottom there?

9 A Yes.

10 Q Did you see any rust marks on the car you observed?

11 A No.

12 Q Now, you said it was a small kind of compact car. Were  
13 you able to tell if it was a foreign car or an American car?

14 A I think it was an American car.

15 Q Do you know what model?

16 A No.

17 Q When you previously testified, did you testify it might  
18 have been a Honda or a Toyota?

19 MR. SEGAL: Objection.

20 THE COURT: He may, he may do that.

21 Q What was the answer?

22 A It was a small compact car. I think it was American  
23 made, something like a Honda or Accord, Toyota.

24 Q Is it your understanding that some Hondas and Toyotas are  
25 made in the United States?

1 A Yes.

2 Q Okay. I didn't mean to confuse you, sir.

3 You told us that with respect to a person in the car,  
4 you made certain observations.

5 In your mind, when you observed that person behind  
6 the wheel, would you able to tell approximately how old that  
7 person was, approximate age?

8 A I say roughly about in his 30s or so).

9 Q This picture that's in evidence, Defendant's Exhibit  
10 No. 2, are you able to tell from looking at that photograph,  
11 Mr. McKernan, whether or not that car has been repainted?

12 A By looking at this picture?

13 Q Yes.

14 MR. SEGAL: I object.

15 THE COURT: He may tell what he sees in the  
16 photograph, if that's the question. The objection is  
17 overruled.

18 Q Are you able to say whether or not that car has been  
19 repainted?

20 A I would say yes.

21 MR. KELLY: I have nothing further.

22 THE COURT: Do you have anything else?

23 MR. SEGAL: Briefly.

24 THE COURT: It depends on how brief.

25

Recross-examination by Mr. Segal

1 Q Mr. McKernan --

2 THE COURT: The problem, Mr. Segal, when you examine  
3 from there, the witness speaks to you and not to the jury, and  
4 then the jury won't hear it.

5 Q Mr. McKernan, it was important to you on that morning to  
6 remember anything you could that was distinctive about that  
7 car; isn't that fair to say?

8 A Yes.

9 Q Because you felt that that car was at an odd spot, being  
10 right opposite the school house, at a time when kids weren't  
11 getting out?

12 A Yes.

13 Q Isn't that right?

14 A That's right.

15 Q And you were looking at that car to pick up anything you  
16 could that would be distinctive about it; isn't that fair to  
17 say?

18 A That's fair to say.

19 MR. SEGAL: Thank very much, sir.

20 THE COURT: Thank you, Mr. McKernan, you are  
21 excused.

22 And who is your next witness?

23 MR. KELLY: Your Honor, before we call our next  
24 witness, the government would like to offer, by agreement of  
25

1 counsel, two exhibits, that we would ask be published to the  
2 jury. They are Exhibits 6 and 7 on the list that the Court  
3 has. They are the death certificate and autopsy reports on  
4 Jeremiah J. Hurley, Jr.

5 THE COURT: They may be marked.

6 [Government's Exhibit 6 and 7 entered in evidence.]

7 THE COURT: Who is the next witness?

8 MR. KELLY: Your Honor, the United States calls  
9 Special Agent Boeh, B O E H.

10 MR. KELLY: Your Honor, a clarification on  
11 scheduling, was it the Court's attention to take the usual ten  
12 minutes of eleven, ten past eleven.

13 THE COURT: Something like that.

14 How old are you going to be on direct with this  
15 witness?

16 MR. LIBBY: Probably an hour, a little bit more.

17 THE COURT: We'll stop in the middle.

18 Daniel Boeh, sworn

19 Direct Examination by Mr. Libby

20 Q Good morning, sir.

21 A Good morning.

22 Q State your name, spelling your last name, please, for the  
23 reporter?

24 A Daniel Boeh, B O E H.

25 Q What do you do for a living, sir?

1 A I'm a special agent with the Bureau of Alcohol, Tobacco &  
2 Firearms.

3 Q Where are you assigned?

4 A I'm currently assigned in Baltimore, Maryland.

5 Q And in what capacity, sir?

6 A Special agent.

7 Q And do you have any specialties with the Alcohol, Tobacco  
8 & Firearms in Maryland?

9 A Yes, I do the bombing and arson investigations in the  
10 State of Maryland.

11 Q And how long have you been stationed in Maryland?

12 A Approximately 17 years.

13 Q Would you describe to the Court and jury, please, what  
14 type of training and qualifications one has to acquire, in  
15 other words, to become a special agent at ATF?

16 A First of all, you need a bachelor's degree, a bachelor's  
17 of science, bachelor's of art college degree.

18 Q What kind of training do you undergo?

19 A When you come on the agency, you initially go through  
20 several weeks, or, I went to several weeks of Criminal  
21 Investigation School, and that is followed up by seven weeks  
22 of specialized school. And that's training in firearms  
23 investigations, bombing investigations, and arson  
24 investigations.

25 Q Now, in your present capacity, in Maryland, sir, over

1     what types of investigations do you have jurisdiction; does  
2     your office have jurisdiction?

3     A     We have jurisdiction over violations of federal firearms  
4     laws, federal explosives laws and federal arson.

5     Q     And how long have you been an ATF agent, sir?

6     A     Approximately 17 years.

7     Q     Over that course of, time sir, how many bombing  
8     investigations, on-site bomb site investigations have you been  
9     involved in, approximately?

10    A     50,60. Something like that.

11    Q     Would you give the Court and jury just a thumbnail  
12    sketch?

13           THE COURT: Is this witness being called as an  
14    expert?

15           MR. LIBBY: He is, in effect, your Honor, if your  
16    Honor recalls, with respect to both.

17           THE COURT: I don't.

18           Is he being called as an expert?

19           MR. LIBBY: He will, in order to explain the  
20    expertise involved in crime scene investigation as applied to  
21    this investigation. I'll move on to his qualifications.

22           THE COURT: Well, I mean, if he's not an expert, then  
23    we don't need any qualifications, right?

24           MR. LIBBY: Well, he is. He's an expert.

25           THE COURT: Who is going to cross-examine him?

1 MR. LOPEZ: I am, your Honor. He's not an expert.  
2 He's just been trained to do this.

3 MR. LIBBY: I will qualify him, Mr. Lopez may differ.

4 THE COURT: Let us move along. I don't suppose there  
5 is an awful lot of dispute that an agent of 17 years  
6 experience knows how to investigate a crime scene.

7 MR. LOPEZ: I believe I said that your Honor. I said  
8 I believe he's been trained to do just this.

9 Q Would you, I'm sorry, the answer to your question, with  
10 respect to the types of investigation you were involved in?

11 A I have been involved in all types of basic bombing  
12 investigations. In my post of duty, I've investigated bombing  
13 that might involve pipe bombing or something like that. I  
14 have also investigated large bombings, such as the World Trade  
15 Center bombing in New York.

16 Q In addition to your duties as an ATF agent in Maryland,  
17 do you also, sort to speak, wear another hat?

18 A Yes.

19 Q What is that?

20 A I'm a member of the National Response Team. In fact, I'm  
21 the team leader of the National Response Team.

22 Q What National Response Team, sir?

23 A That would be the Northeast National Response Team.

24 Q What is a National Response Team?

25 A The National Response Team is made up of a select group

1 of agents who have specialties in arson and bombing  
2 investigations, who are called from time to time for large  
3 either bombings or fire investigations throughout the United  
4 States, to go in and basically do the crime scene and assist  
5 the state and local police along with our agents in the post  
6 of duty in that investigation until it becomes manageable for  
7 them to take it over.

8 Q Nationwide, sir, how many National Response Teams are  
9 there?

10 A Four.

11 Q You have been with the Northeast Regional Team since  
12 when?

13 A Since 1982.

14 Q And you have been a team leader?

15 A Yes.

16 Q Since when?

17 A Approximately seven years.

18 Q Now, very briefly, sir, your educational background?

19 A I have a bachelor's degree in Administration of Justice.

20 MR. LOPEZ: Objection.

21 THE COURT: Why do we need this?

22 MR. LIBBY: Well, your Honor, he's going to be given  
23 testimony which requires some expertise to put in context for  
24 the jury with respect to crime scene --

25 THE COURT: But a bachelor's of art doesn't have

1 anything to do with that.

2 MR. LIBBY: I'll move on.

3 Q With respect to your -- strike that.

4 Do you have any specialty, sir, in the ATF? Are you  
5 certified any in respect?

6 A Yes.

7 Q What certification do you have?

8 A I'm a certified explosives specialist, and I'm a  
9 certified cause and origin specialist.

10 Q What particular areas are you trained with respect to  
11 explosives?

12 A I have been, as far as handling of explosives, the  
13 construction of explosives, also putting on demonstrations and  
14 training involving explosives and to include crime searches.

15 Q You instruct in that field?

16 A Yes, I do.

17 Q Where do you instruct?

18 A I instruct with our National Academy, that's in Glencoe,  
19 Georgia, where I teach new special agents and state and local  
20 law enforcement. And I also have instructed in Europe,  
21 training Army investigators in Munich, Germany, in reference  
22 to explosives investigations and arson investigations.

23 Q And how long have you been doing that instructing?

24 A Since around 1984.

25 Q Back to your National Response Team activities, sir, can

1     you tell the Court and jury, please, roughly, how many members  
2     compose the National Response Team?

3     A     A National Response Team is made up of ten special  
4     agents, along with the team leader, a team supervisor, a  
5     forensic chemist, and an explosives specialist.

6     Q     Can anyone become a member of the National Response Team?

7     A     No.

8     Q     Describe to us, please, how the that process takes  
9     place.

10    A     When you become a journeyman agent with our agency, you  
11    can apply for the National Response Team. And they select  
12    individuals who have had training in explosives and arson work  
13    and also who are working explosives and arson cases back in  
14    their post of duty on a regular basis.

15    Q     A National Response Team is called to the scene on  
16    explosions as opposed to an arson situation?

17    A     Yes.

18    Q     You have been involved in arson situations before?

19    A     Yes, sir.

20    Q     With respect to a bombing explosion situation, tell us,  
21    please, very briefly, what the primary objectives of that  
22    national response team is when they come on the scene?

23    A     What we want to do is, we're to assist the state and  
24    local in their investigation. These are usually large -- a  
25    large bombing incident, such as, you know, this one or the

1 World Trade Center. And what we do is we do the crime scene  
2 investigation to try to recover, basically, as much of the  
3 componentry of the bombing, of the bomb, or the IED,  
4 improvised explosive device, so that we can --

5 Q Let me stop you right there, sir. Improvised explosives  
6 device?

7 A Yes.

8 Q What is that in English, please?

9 A It is basically a homemade bomb.

10 Q Okay.

11 A Rather than a military type of munition.

12 Q Please continue.

13 A What we try to do is we try to recover the evidence from  
14 the scene, so that we are able to take those items that we  
15 recover and be able to identify them so that we can trace them  
16 back to the individual who either made the bomb or placed the  
17 bomb in the location where it detonated. There are certain  
18 items that have markings on them, and we are able to trace  
19 that through manufacturers, places where they may have  
20 purchased it, and we also take this information and enter it  
21 into our EXIS, our EXIS Bureau down in Washington, D.C.

22 Q Now, let me stop you there, again, and ask you to tell us  
23 what EXIS means?

24 A It's, it's explosives incident systems. And what it is,  
25 it is a computerized network in which all the bombing

1 incidents that are investigated throughout the United States,  
2 the information on the items recovered and the way the bomb  
3 was constructed, and so on, is put into this system, so that  
4 at a later time they can determine whether or not this  
5 particular bombing or these particular devices were used in  
6 another bombing incident, another bombing incident, basically.

7 Q Now, in a case where you get called out, your National  
8 Response Team gets called out, and, typically, how long before  
9 you respond to the scene?

10 A We respond within 24 hours to the scene.

11 Q And do you have any equipment available to you to assist  
12 you in achieving your objectives as you just described them to  
13 the jury, please?

14 A Yes.

15 Q What is that?

16 A We have an explosives investigation truck that has --  
17 basically, it is like a hardware store on wheels. And it has  
18 all the equipment that we need to complete our investigation.  
19 We have it right on the scene. So if we need a certain piece  
20 of equipment, we can go to that truck and obtain that  
21 particular item.

22 We have photography equipment for a photographer  
23 there, anything that he needs, as far as taking different  
24 types of photographs. We have evidence collection equipment  
25 for the evidence technician, as far as items, to recover

1 evidence, containers to store the evidence, and other items to  
2 ship it.

3 Schematic artists, he has all the types of drafting  
4 tables that might be needed to make his sketch so we can  
5 documents the scene. And the rest of the equipment, there's  
6 tools that we might need to take things apart or dig into  
7 areas so that we can recover items. A lot of times we sift  
8 through debris to recover evidence.

9 Q Now, all these materials are prepositioned in this  
10 vehicle for the National Response Team's use?

11 A Yes, sir.

12 Q Now, sir, when you as team leader arrive on the scene of  
13 a bombing, a bomb explosion, is there a certain way or certain  
14 principles that guide you in terms of conducting your  
15 investigation at the scene?

16 A Yes. We have set up a system that we have developed into  
17 what we call a team concept.

18 MR. LIBBY: If I may approach the witness, your  
19 Honor.

20 Q Let me show you what's been marked Government's  
21 Exhibit 8, Agent Boeh, and ask you if you recognize that?

22 A Yes, that's an Explosives Investigation Guide.

23 Q And who puts that out, sir?

24 A Excuse me. It is put out by our headquarters, our  
25 explosives division of our headquarters at Washington, D.C.

1 Q And briefly what does it provide?

2 A It's like a checklist as far as the different assignments  
3 that we have for our investigative team and basically what  
4 needs to be covered in the jobs description of each item.

5 MR. LIBBY: If I may, your Honor, move Government's  
6 Exhibit 8 in evidence, the Explosives Investigation Guide.

7 MR. LOPEZ: No objection.

8 **[Government's Exhibit 8 in entered in evidence.]**

9 MR. LIBBY: If I may pass out copies for the jury.

10 THE COURT: One for everybody?

11 MR. LIBBY: Yes, your Honor.

12 Q Just briefly, Agent Boeh --

13 THE COURT: Maybe you can divide it into two, and  
14 then pass it down both aisles.

15 Q While the jury is passing it down, can you give us an  
16 example of what's covered in here, in the Explosives  
17 Investigative Guide?

18 A It basically has the assignments that we cover when we do  
19 an investigation. It has my assignments, as far as the team  
20 leader. And then it will have the assignments and the things  
21 we want to cover, as far as the evidence technician, the  
22 photographer, the schematic artist. The people that do the  
23 immediate area search, the immediate area interview team, the  
24 general area search and the general area interview team. And  
25 what this basically is, is a systemic process that we've

1 developed, as far as trying to be as far as we can in doing  
2 the bomb scene investigation.

3 Q When you as team leader appear at the scene of a bombing,  
4 sir, do you take copies of this with you?

5 A I usually have one. I have one in my credentials.

6 Q And do you refer to this from time to time in the course  
7 of your investigation?

8 A Yes. I like to look at it to make sure that I've covered  
9 everything.

10 Q Now, sir, you told us that as you appear on the scene of  
11 bombing, there are sort of principles of investigation,  
12 principles of technique, that you apply in virtually every  
13 case?

14 A That's correct.

15 Q Could you explain to the jury, please, in general terms,  
16 how you go about doing that, in terms of laying out your  
17 search plan and how you conduct that? Can you explain that?

18 Would this assist you in explaining that to the  
19 jury?

20 A If I can show draw a little sketch and give you an idea  
21 how we work the scene.

22 MR. LIBBY: If your Honor, please, if we can pull the  
23 chalkboard out.

24 MR. LOPEZ: If we can have him explain what he did in  
25 this case, not in general.

1 THE COURT: Well, can you give what you would  
2 normally do in the context of this case and tell us what you  
3 did do?

4 MR. LIBBY: Your Honor, I think it would make more  
5 sense in context for the jury if Special Agent Boeh could  
6 demonstrate the principles in a brief example here as to how  
7 he sends his team, so that when we actually get into this  
8 man's activities on scene, they will understand how those  
9 principles are employed.

10 THE COURT: Were they employed in a way different  
11 here from other investigations?

12 MR. LIBBY: Your Honor, it is in two parts here. We  
13 can explain, as we have here in Exhibit 8, the principles of  
14 investigation. And he can show, given a little descriptive  
15 picture of a typical bomb site on the ground, and show where  
16 his teams go and why and so forth. So that when we actually  
17 get the information in from the special agent, the jury will  
18 understand why these folks did what they did. We're not  
19 bringing in search members in, other than the team leader and  
20 the evidence technician.

21 THE COURT: I will allow him to tell us the  
22 principles and then apply them in this case.

23 MR. LIBBY: Thank you, your Honor.

24 Q Please step down, Agent Boeh, and give us an example of a  
25 typical bomb scene and how you approach it as a national

1 response team leader.

2 A Okay. What I'll do is, I'll draw a hypothetical type of  
3 situation. We will say that is a building, and this would be,  
4 say, the street out in front of the building. And over here,  
5 maybe we'll have a garage. And over here, we'll have a pond,  
6 and maybe some grassy area that may run in the back of this  
7 pond.

8 When we have a detonation, to give you an idea, or a  
9 bomb goes off, what happens is, when a bomb goes off, it goes  
10 off in a spherical type of explosion. In other words, 360  
11 degrees in all directions, the blast goes down, the blast goes  
12 up, and the blast goes out into different directions. So  
13 basically what we have is, we have componentry of the bomb  
14 basically going in all directions, up, down and out in a  
15 360-degrees type of setup.

16 So, when we arrive on to the scene, we want to, the  
17 first thing we want to do is want to secure the area. As far  
18 as the area that we're going to work, we do that by having  
19 police officers secure it, plus evidence tape that might be  
20 strung around the area. So, once we have our perimeter set up,  
21 then we organize the team and give out different team  
22 assignments, like I went through before, as far as  
23 photographer, evidence technician, sketch person.

24 So when I have these different assignments and they  
25 are set up, I try to have the scene photographed in its

1 original cannot. Because we're going to be taking evidence  
2 out, so we want it photographed in its original. Plus, we  
3 want to make up a rough sketch. A rough sketch may be  
4 something like actually it's here, but maybe a little bit more  
5 detail than this, so that when we do recover evidence we can  
6 document this evidence where it's located, so later on we can  
7 tell where came evidence came from.

8 Q Is that important to know, Agent Boeh, where particular  
9 evidence was found?

10 A Yes.

11 Q Why is that?

12 A Because it gives you an idea of the direction of the  
13 blast and where most of the items will be found in your search  
14 area. In other words, if the blast -- you're if you're  
15 finding different pieces of evidence over in this area, and  
16 none over in this area, you can see that the blast is going in  
17 this direction. So that helps you in determining what areas  
18 you are going to search to more likely find your evidence.

19 Q Is the distance away from -- I'm sorry, the exterior of  
20 the circle is called what?

21 A That would be the crater. That would be the actual place  
22 where the bomb detonated. It would be a crater like you will  
23 see if an artillery shell like you see the bombings in the old  
24 war movies where you had big hole. It's basically a big hole  
25 if it's in a soft material.

1 Q Is that known as the seat of the blast?

2 A Seat of the blast, that's correct.

3 Q Is the distance away from the seat of the blast, any real  
4 evidence, material, debris from the device, is the distance  
5 that this is found away from the scene of the blast  
6 significant for any reason?

7 A Yes, it gives you an idea of the force of the blast.  
8 What happens is the lighter items will usually stay in close  
9 proximity to where the blast occurred, but the heavier items  
10 will, will be projected in a further distance. And what we  
11 try to do, in determining our scene, is that we have what is  
12 known as a 50 percent rule. And if you had, for instance, a  
13 heavy piece of, say, metal or something like this, that was  
14 projected out into this area. And this area here would be,  
15 say, a hundred yards. Then what we would do, if this is the  
16 last piece of evidence that we found during our initial  
17 search, then what we do is we extend that out half the  
18 distance between the last piece of evidence and the bomb  
19 crater, we extend that search area out half that distance.

20 So we would take, in this instance, we would take it  
21 out another 50 yards, so we would be doing a bomb scene search  
22 a 150 yards, and that's to make sure that we recover  
23 everything. A lot of times you won't find very much evidence  
24 out in that 50 percent area, but we want to make sure we try  
25 to get everything.

1 Q Now, you were discussing earlier how you were assigning  
2 your personnel on the scene. You have individuals assigned to  
3 search; is that right?

4 A That's correct.

5 Q Is there anything one else who is on the scene to assist  
6 in the investigation, other than the search teams?

7 A Well, we have our evidence technician who would collect  
8 the evidence and package the evidence. We have a photographer  
9 who would photograph the area, plus photograph significant  
10 pieces of evidence.

11 Q Are there any folks assigned to the investigation to do  
12 other than collect evidence, that is, in the neighboring  
13 area?

14 A There's interview teams that we have that will do  
15 interviews of first arrivals on scene: policemen, fire  
16 department, medical technicians, neighbors that might be in  
17 the immediate area.

18 Q Now, with respect to the searches, are the various  
19 categories of searches that are undertaken?

20 A Yes.

21 Q Will you describe that, please.

22 A What we have is we have, what we call, an immediate area  
23 search, search area, search team. And that would be basically  
24 the areas where, where we would have -- the majority of our  
25 evidence would be located. And that would areas that we would

1 be close to the bomb craters, close to the seat the blast.

2 And the other areas that we would have is we would  
3 have, like, a general area search. And that would be the area  
4 that would be further away from the blast area and also  
5 extending into to that 50 percent area that I talked about  
6 before.

7 Q Now, with respect to these immediate areas, initial  
8 closer-in areas, are all those areas searched at the same  
9 time?

10 A No. What we try to do is, because a lot of times we are  
11 dealing with large areas, we try to break it down into  
12 sections, so that we can work it, get the search areas down  
13 into a manageable, manageable area. So we would take, say,  
14 this particular area here, and we would search this area. And  
15 once we finish that area, we would collect all the evidence,  
16 package it, and then we would move on to another area, which  
17 might be here.

18 Q When you say "search this area," can you give us a  
19 physical description of what is actually happening in that  
20 immediate area being searched?

21 A Okay. In the immediate area, what he we do is we  
22 basically put agents and police officers, who are part of the  
23 team, and they would get down on their hands and knees, crawl  
24 through the area. And any items that they find in that area  
25 they will mark. A lot of times, we use, if it is on a, like,

1 a parking lot, sometimes we'll mark it with chalk and circle  
2 that particular item. If it is in dirt, we use surveyor  
3 flags, such as the ones they use to mark gas and electric  
4 lines in the dirt or cable TV. And once we mark these  
5 particular items, then the evidence technician comes through,  
6 and he will collect it and document where these particular  
7 items were found.

8 Q When you say they are marked, what are they marked with?

9 A Pardon me?

10 Q How are they marked?

11 THE COURT: He just told us, with little flags or  
12 chalk.

13 THE WITNESS: The flags or the chalk.

14 THE COURT: We're going to take the recess as soon as  
15 this general description is finished.

16 MR. LIBBY: Thank you, your Honor, just another  
17 moment.

18 Q You have, as you go through on that first go-through,  
19 does the finder remove the evidence in any respect?

20 A No, it is basically left there to lay, and then the  
21 evidence technician will come through. He is the one that  
22 collects the evidence.

23 Q Is that area searched again at any time?

24 A What we try to do after that is we'll come through with  
25 magnets. And we'll take a magnet and put it, basically, in a

1 plastic bag. And they will go through the grassy area or the  
2 dirt with the magnet in the plastic bag, those items that are  
3 would stick to the magnet, then they would be recovered by the  
4 evidence technician that follows. So that would be the second  
5 wave.

6 Q And then after all the first evidence is marked and  
7 flagged and removed?

8 A They are all collected and moved out. We bring the  
9 second wave in for our collection, as far as metallic items  
10 that might be in the search area.

11 Q What further steps are taken, if any, Agent Boeh?

12 A The last thing we try to do, if we're dealing with an  
13 area of soil or dirt or grass, is we come through with a metal  
14 detector and identify any items that might be actually down  
15 underneath the ground, in the dirt; we dig them up, and they  
16 are collected.

17 Q On a typical day, sir, how long does a search take? How  
18 long do you search?

19 A We basically search until there is no light, and then we  
20 come back the next day.

21 MR. LIBBY: At this point, your Honor, without  
22 getting into particulars of this investigation, it is an  
23 appropriate time.

24 THE COURT: Members of the jury, let us take the  
25 recess now, about 10 no 15 minutes. I have arranged for you

1 to have coffee already there, so you won't be delayed by  
2 having to make it.

3 [Whereupon, the jury was excused.]

4 [Recess.]

5 [Whereupon, the jury entered the courtroom.]

6 THE COURT: Members of the jury, did you have time  
7 enough for your coffee and goodies. One of you had asked  
8 about what aids would be available to you to recall the  
9 evidence while you are deliberating. Nothing, except your  
10 memory and your notes. Although, we will have a transcript of  
11 most of the testimony since the reporters are preparing daily  
12 copy, I am very reluctant to give it to you, because I don't  
13 want to highlight the testimony of any one witness. You  
14 should decide the case based on your recollection of the  
15 entire body of evidence. So, the simple answer is you will  
16 have your memory and you will have any notes you take. That  
17 doesn't mean you have to take notes, but it simply means  
18 that's all you will have.

19 You may proceed.

20 MR. LIBBY: Thank you, your Honor.

21 Q Agent Boeh, directing your attention to November of 1991,  
22 sir, do you recall being notified about an explosion in the  
23 vicinity of Boston, Massachusetts at that time?

24 A Yes.

25 Q How were you notified, very briefly?

1 A I was contacted by our headquarters, our explosives  
2 division at headquarters, the bombing had occurred in Boston,  
3 Massachusetts and they reacted to our response team.

4 Q And what did you do as a result?

5 A Basically, I went home and packed, and then I made phone  
6 calls calling other team members.

7 Q Have you worked with these members before?

8 A Yes, in fact, we had just finished an arson investigation  
9 in Pittsburgh on Friday.

10 Q So you had seen all these folks very recently?

11 A Right.

12 Q All right. You've seen each other again now?

13 A They came in Boston.

14 Q When did you get into Boston?

15 A That evening.

16 Q When did you see your team members?

17 A They were coming in through the night. Basically I saw  
18 most of them coming in through the night and the following  
19 day.

20 Q En route, sir, what did you know about the crime scenes  
21 specifically with respect to the security and integrity of the  
22 crime scene?

23 A I was informed by the Boston police duty that the bomb  
24 scene was secured and awaited our arrival.

25 Q Now, that's a Monday, now Tuesday you had been in Boston,

1 Monday night, right?

2 A That's correct.

3 Q What's the first thing you did Tuesday morning, the 29th?

4 A We went to 5 E, a police station in Roxbury or something  
5 like that.

6 Q Before you went to the West Roxbury Police Station, did  
7 you go to the crime scene?

8 A Yes, I met up with Captain or Lieutenant Malloy of the  
9 bomb squad and he took me out to the scene so I could get  
10 basically, I'd like to get an overview of what type of area  
11 I'm dealing with, whether it's residential or commercial.

12 Q And what was the area that you're dealing with?

13 A It was a residential, residential area. I think the end  
14 of the street, one end was dead end into some wooded area and  
15 then there was a school located on the other side.

16 Q If I may approach, your Honor, I show you what's been  
17 marked as Government Exhibit 3 B and ask if you recognize that  
18 photograph, sir?

19 A Yeah, that's an aerial view of the crime scene, basically  
20 it was in this driveway, and the seat of the blast was behind  
21 this big white van.

22 Q Is this photograph fairly and accurately depicted in  
23 general terms the crime scene in general terms?

24 A Yes, sir.

25 MR. LIBBY: May I publish it as well?

1 THE COURT: The jury have already seen it, I think.

2 MR. SEGAL: Yes.

3 Q Now, Agent Boeh, we're talking about a briefing?

4 A Yes, sir.

5 Q At West Roxbury?

6 A Yes.

7 Q Would you describe, please, what took place there?

8 A What we do at our briefing is we're the local ATF agents  
9 plus the Boston Police Department homicide unit were there,  
10 and they gave us a description of what had occurred prior to  
11 our arrival, what had occurred during the bombing, what  
12 information they had found since the bombing actually occurred  
13 up to that particular morning.

14 Q And how long did that briefing take place?

15 A That was approximately an hour.

16 Q At the conclusion of that briefing, sir, did you assemble  
17 your team?

18 A Yes. Basically, I gave out assignments. I assigned  
19 different agents and different members of the police  
20 department to position, some of the positions I had mentioned  
21 before, search teams, and things like that.

22 Q For example, sir, who was your photographer, if you  
23 recall?

24 A That was Dave Sherman from our Providence, Rhode Island  
25 office.

1 Q Who was your schematic office?

2 A Marty Marsiniak from Albany, New York.

3 Q Marsiniak, I believe?

4 A Right.

5 Q Who was your residence technician?

6 A That's Chris Porreca. He's from Albany New York.

7 Q ATF?

8 A The ATF office in Albany, New York.

9 THE COURT: Would you spell the name, please?

10 THE WITNESS: P O R R E C A, something like that.

11 MR. LIBBY: Everyone has trouble with that.

12 Q Who was your friend and emissary on your team?

13 A That was Cindy Wallace, and she's out of the national  
14 laboratory in Washington.

15 Q Did you have explosives experts assigned to the team?

16 A Yes, they were Tom Waskom and Larry McCune from our  
17 explosive branch in Washington, D.C.

18 Q And would you describe for the Court and jury, please,  
19 how you, when you came on the scene, you came on the scene  
20 with these individuals?

21 A That's correct.

22 Q What did you do generally when you first appeared on the  
23 scene with your team members?

24 A Well, we set up a command post, first of all. We tried  
25 to set that up with our explosive investigation in an area

1 that's outside of the area of the search. And then we wanted  
2 to make sure that all of the boundaries we set up as far as  
3 our search area.

4 Q If I may, your Honor, I'd like to set up the schematics,  
5 I'll be using the schematics in front of the jury, if we can  
6 have the reporter shift over. We're going to make reference  
7 to some of the schematics, and we need to see it. It will be  
8 about five to ten minutes.

9 THE COURT: Is there any serious dispute about any of  
10 this.

11 MR. LIBBY: I don't know if there is, your Honor.  
12 But I would like the jury to see how specific items were found  
13 in immediate search areas as Agent Boeh has described.

14 Q If you take your pointer, Agent Boeh, come out here to  
15 Government Exhibit 1, the large schematic, and would you tell  
16 us in general terms what your search areas consisted of?

17 A Okay. What we did, I talked before about how we tried to  
18 break it down into manageable, manageable sections, and what  
19 we did is, we see this as area 1, area 2, basically area 3,  
20 and this area 3, that's --

21 Q Did everyone see this?

22 A Am I blocking anybody? Area 3 is where the bomb had  
23 detonated, that's where our crater was. So like I said  
24 before, what we do is after we work one area such as area 1,  
25 and secured that, then we take the team and move it into area

1 2, and work that scene and so on and so on, 3 all the way up,  
2 and this would be basically the immediate area search dealing  
3 with this area here.

4 Q Did you make any preliminary observations with respect to  
5 where the majority of the evidence that is the material from  
6 the device was found?

7 A Right. In my initial walk-through in which I try to do  
8 so I can get a feel of what I'm dealing with and how I want to  
9 approach this bomb scene. I notice that in the grassy area  
10 between the two buildings which would be 35 and 39 Eastbourne  
11 Road that there was an awful lot of debris which would appear  
12 to be componentry from the bomb that was in the grassy area  
13 located in between the two buildings and in the bushes located  
14 in this area. Plus there was other debris and componentry  
15 that was back in this grassy area behind 35 Eastbourne  
16 Avenue. So these were the areas that we wanted to do our  
17 immediate area search.

18 Q Directing your attention, Agent Boeh, to Exhibit 2 which  
19 is an enlargement of that portion showing a driveway?

20 A Right.

21 Q Now, show the jury, please, where you made your  
22 preliminary observations in the grassy area?

23 A That would be -- here we have the two, Eastbourne  
24 addresses, and that would be this area in here which we have  
25 as area 1, these bushes, this area around area 3, and also the

1 area 2 which would be behind 35 Eastbourne Road. Basically,  
2 what we had is we had a lot of directional blast forces going  
3 in this direction to the point where it was taking componentry  
4 from the actual bomb, and some of it was sticking into the  
5 siding on 35 Eastbourne Avenue.

6 Q Now, we see references here on Exhibit 2 with respect to  
7 Exhibits No. 2, 3, 4, and so on, and up here on area it 2, we  
8 see exhibits 7, 8, 9 and so forth. Would you explain to the  
9 jury what that represents, please?

10 A When we went into this area, we went through and  
11 collected these items, and these would be the items of  
12 evidence that we collected, different componentry and from the  
13 bomb, and from the container of the bomb that were located in  
14 here. These items were identified and they were packaged and  
15 collected by our evidence technician.

16 Q Now, when you say, we see the reference here on Exhibit 2  
17 to area 1 and then area 2 and then area 3, here. Was area 1  
18 searched in the way which you just described -- you previously  
19 described to the jury, that first wave of people through and  
20 the second wave of the magnet covered by the plastic bag?

21 A That's what we basically did. We had some agents and  
22 some members of the Boston bomb squad on their hands and knees  
23 and we worked here in a wave as far as shoulder to shoulder  
24 down on their hands and knees. Once they found an item of  
25 evidence in this area it was dirt. We were able to put the

1 surveyor flags-- the ones they use for the gas and electric  
2 department-- a little yellow flags with the metal end on it,  
3 and they were stuck on the ground where an item of evidence  
4 was found.

5 Then after we did that and moved through, we had our  
6 evidence technician who would come through there, log it on  
7 his form, collect the evidence and then also those items would  
8 be written in on our schematic sketch which this is basically  
9 the blown up version of the schematic artist's evidence  
10 collection.

11 Q Agent Boeh, did you make any observations as far as  
12 farthest distance from the seat of the blast?

13 A Yes, that would be --

14 Q Directing your attention to Government's Exhibit 1,  
15 please, would you point out to the jury what you're talking  
16 about?

17 A What we -- we talked about this immediate area search  
18 where we had people on their hands and knees. From that we  
19 had the general area search where we went out and basically  
20 what we did on this type of a search, we had the agents going  
21 shoulder to shoulder as you would do when you were in the  
22 Army. They had the police and cigarette butts. They went to  
23 Catholic schools. They had the nuns, the police up in the  
24 parking lot or school yard. So we had them going through this  
25 area over here, all these areas surrounding, outside of the

1 general, immediate area of the search looking for evidence.

2 Q Was that going on at the same time --

3 THE COURT: I believe the question was what was the  
4 furthest distance that you looked or found anything. I think  
5 that was the question.

6 MR. LIBBY: I think that's right, your Honor, but you  
7 if I may before --

8 THE COURT: Perhaps he could ask that question first  
9 since you asked him that first.

10 Q Can you show us the evidence that you found furthest?

11 A The furthest evidence we found is No. 26 which is part of  
12 a doughnut shaped magnet that was actually stuck to a chicken  
13 wire fence that separated this yard with an elementary school  
14 that was on the other side of the fence over there. That's  
15 where I talked about the 50 percent rule, and we had to go  
16 even further on the other side of the fence.

17 Q Did you go beyond that?

18 A We searched the school yard and the top of the roof of  
19 the school plus the windows to see if anything had penetrated  
20 into the school yard or the school.

21 Q Now, you talked about immediate search and general  
22 search. Were they ongoing simultaneously?

23 A Yes.

24 Q Now, staying where you are, I would ask you to direct  
25 your attention to Exhibit 21 A; do you recognize that

1 photograph, sir?

2 A This was a Buick that was parked in front of  
3 39 Eastbourne Road, and that was there when I arrived going to  
4 the scene.

5 Q And what was your understanding as to whose vehicle this  
6 was?

7 A I believe this belonged to the elder Mr. Shay, the  
8 father.

9 Q I show you, marked as 10 C, please, do you recognize that  
10 photograph?

11 A That was the driveway in between 35 -- I'm sorry,  
12 39 Eastbourne and 35 Eastbourne, and right behind this van is  
13 where the actual bomb had detonated.

14 Q Directing your attention to the center photograph here  
15 where we have this red spot here, do you recall seeing this  
16 red spot when you arrived on the scene, sir?

17 A Right.

18 Q What do you recall that scene depicted?

19 A There was an area in the dirt and the grass that had been  
20 disturbed, dug up or something. We wanted to take a further  
21 look at that, have our explosive technology people and have  
22 some other people take a look at that particular area.

23 Q And directing your attention your attention to 10 D is  
24 that an enlargement of that area, sir?

25 A That's a closeup of the area showing you a disturbance

1 bomb and stuck into the woodsiding of 35 Eastbourne. We had  
2 to -- this is an item we had to remove. In fact, the Boston  
3 bomb squad had to render it safe and we had to render it out  
4 because we weren't sure it was still active.

5 Q Could you show the jury, please, how they could tell this  
6 was a detonator cap?

7 A If you look -- it's kind of far away -- but there are,  
8 there are two wires that come out of there. They're called  
9 leg wires.

10 THE COURT: Excuse me, show it to half the jury first  
11 and then the other half.

12 A Yeah. Sure. If you look back in there there's two wires  
13 that come in the detonator. These are leg wires. These are  
14 used to hookup the electrical charge basically which would  
15 detonate the plastic caps which would detonate the explosives.

16 Q Can you show us on that large schematic where that is  
17 depicted, this piece of real evidence was located?

18 A That we have as Exhibit 1 and we showed here, we've also  
19 identified how far it was off the ground. It's 4 foot 6  
20 inches up from the ground, stuck into the side of the  
21 building.

22 Q I show you what's been marked Government Exhibit 9 A,  
23 sir, could you tell us what's taking place in this picture?

24 A This is what I talked about before, and this is how we  
25 went through the scene on the first wave identifying the items

1 of the bomb that we had found in the grassy area in between  
2 the two buildings. And what we did is we would put one of  
3 these flags down and that would be a piece of evidence that  
4 would later be collected by the evidence technician. Our  
5 agents here, basically, we move it into area 2 and are working  
6 area 2.

7 Q Could you correspond this photograph with Government  
8 Exhibit 2, the schematic, please?

9 A What we're doing is we're looking to photograph, it's a  
10 photograph that's taken from here and we're looking down  
11 through area 1 and we can see the agents that are working our  
12 way down to area 2.

13 Q And finally, Agent Boeh, let me show you what's been  
14 marked as Government Exhibit 9 B, can you tell us what this  
15 is?

16 A This basically depicts a photograph of the area, once the  
17 evidence was collected. We collected it and they were put  
18 into bags.

19 Q Who does that, sir?

20 A This is done by the evidence technician. He's in charge  
21 of all the evidence.

22 Q And is there a reason that we have the bags photographed  
23 here at this place at this time?

24 A Basically, to show them the place, that these were the  
25 items collected from all the flags that were there.

1 Q And can you explain the lone soldier here, this one flag,  
2 please?

3 A This was an item that we found, that the initial people  
4 that went through. We're not sure whether it was a part of  
5 the actual componentry of the bomb or not. So what we do in  
6 that instance, we'll have someone from our explosive  
7 technology branch or myself or the chemist come up and look at  
8 it to determine whether it was actually something that was  
9 just laying down there for years or whether it was actually  
10 componentry of the bomb.

11 Q Thank you. You can return to your, resume the stand,  
12 Agent Boeh, thank you.

13 MR. LIBBY: Your Honor, if we could put --

14 Q Agent Boeh, what time of day on Tuesday the 29th, did you  
15 arrive on the scene, please?

16 A We arrived on the scene at 11 a.m. in the morning.

17 Q And how long did the search continue that day?

18 A We searched until it got dark.

19 Q And at the end of the day what did you do?

20 A Then we have what we call a debriefing at the end of the  
21 day in which we give all the members of the team, the  
22 investigative team and the search team, and we go over with  
23 everybody what was found at the scene that we felt was  
24 important, and what was accomplished or the interviews that  
25 were supported. And then we planned our, what we want to do

1 the next day.

2 Q Did you specifically meet with the evidence technician?

3 A Yes.

4 Q For what reason?

5 A Just to go over the evidence to make sure everything's  
6 being collected and anything you might find to be of interest.

7 Q Do you do that at the conclusion of every day's search?

8 A Yes.

9 Q The following day, Wednesday, do you recall being on the  
10 scene?

11 A Yes.

12 Q That being the 30th of October?

13 A Yes.

14 Q And how long was your team on the scene that day?

15 A We arrived around 8 a.m. and we worked until it got dark.

16 Q Doing precisely as outlined here?

17 A Same thing, we continued our search.

18 Q Do you recall Thursday, October 31st, 1991?

19 A Thursday we had finished up our scene on Thursday, and  
20 what we were doing is, they had -- in fact it was a  
21 Northeaster that came in just like the one a day, except it  
22 was a little worse. We went over the evidence to make sure we  
23 had everything, and some of the agents were finishing up on  
24 reports that they had to do.

25 Q Do you recall how your National Response Team did what

1 they did on the following Friday, November 1st, 1991?

2 A Friday we had an outbriefing where we go over everything  
3 we accomplish while we were here.

4 Q Do you recall where that outbriefing took place?

5 A That was at the police station E-5, I believe is the  
6 number for it.

7 Q And who was present for that?

8 A That would be all the members of the team, the Boston  
9 Police Department and homicide unit and ATF, ATF agents from  
10 Boston plus the members of the National Response Team.

11 Q And at that time, sir, where did all the evidence that  
12 was collected from the scene go?

13 A That was, all the evidence was with the evidence  
14 technician Chris Porreca and he, I believe he turned it over  
15 to the chemist, Cindy Wallace. It was shipped to our national  
16 lab in Rockville, Maryland.

17 Q Do you and members of your National Response Team have a  
18 continuing relationship with the Boston ATF field office and  
19 the Boston Police Department with respect to this  
20 investigation?

21 A Basically, our job was done. We tried to bring the case  
22 to some sort of manageable situation as far as the scene  
23 goes. The scene was completed and the local ATF office plus  
24 the Boston Homicide Unit they continue with the investigation  
25 we basically left.

1 MR. LIBBY: If I may, your Honor, publish the  
2 photographs, offer them in evidence and then publish them.

3 THE COURT: Well, the jury has seen them.

4 MR. LIBBY: I'm not sure the jury has seen them.

5 THE COURT: Aren't these the ones that Mr. Major  
6 showed them.

7 MR. LIBBY: That's correct, your Honor.

8 THE COURT: Do you have the smaller version of them?

9 MR. LIBBY: Actually, no. I don't know if we have  
10 them marked.

11 THE COURT: Are you finished examining the witness.

12 MR. LIBBY: I am.

13 THE COURT: At some point, we'll allow the jury to  
14 look at them, but since there are as many of them perhaps not  
15 in the cross-examination but as soon as that's finished and at  
16 an appropriate time we'll circulate them. Remind me.

17 MR. LIBBY: Thank you, your Honor. Thank you  
18 Agent Boeh. I have nothing further.

19 THE COURT: Let us stretch briefly and then we'll  
20 have a cross-examination.

21 [Pause.]  
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Cross-examination by Mr. Lopez

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Q Good morning, Agent Boeh.

A Good morning.

Q Sir, you arrived on the scene of Tuesday, the October 29th, on the national scene at 39 Eastbourne?

A Yes, that morning.

Q Now, the purpose of the procedure that you utilized to search an area is to insure that you get to the area before the area is disturbed; isn't that correct?

A Could you repeat that? I'm not sure I understand.

Q One of the purposes of this detailed procedure identifying every piece of evidence that you find in doing it in such a detailed manner is to insure that you arrived at the scene in an undisturbed state and then proceed from that point; isn't that correct?

A Right. When we arrive on the scene we want to make sure everything is secured, and then we go ahead with our procedures as far as collecting the evidence.

Q And in fact, if the area has been disturbed, then your investigation is hampered some; isn't that correct?

A It depends on what, what occurs as far as the disturbance goes.

Q But if you had your druthers, you would want to arrive at the scene as soon as possible and insure that the area has not been disturbed; isn't that correct?

1 A That's correct.

2 Q And then everything proceeds from that point forward?

3 A Yes.

4 Q Now, you didn't arrive on the scene until the following  
5 day?

6 A That's correct.

7 Q And this explosion occurred about midday of the day  
8 before?

9 A That's also correct.

10 Q And it was your understanding that the Boston Police  
11 Department had arrived at the scene shortly thereafter; isn't  
12 that correct?

13 A That's correct.

14 Q And they told you that they secured the area; isn't that  
15 correct?

16 A That's correct.

17 Q In fact, there were items that were removed from the  
18 scene prior to your arrival; isn't that correct?

19 A I believe there was some evidence that was found in the  
20 street in front of 39 Eastbourne that was collected by the  
21 Boston bomb squad. That was later given to us, I believe that  
22 morning.

23 Q But the point is that your National Response Team didn't  
24 arrive at the scene with the scene being in an undisturbed  
25 state; isn't that correct?

1 A Well, they collected the evidence that was basically in  
2 the street. They did not want that evidence to be a car or  
3 someone to trample on it so they wanted to get that evidence  
4 out of the street certainly.

5 Q Well, you weren't here when Officer Creavin had  
6 testified, were you?

7 A No.

8 Q Were you aware of the fact that Officer Creavin had  
9 removed some magnets on the scene and put them back on the  
10 scene in the same general location. Were you aware of that  
11 when you arrived with your National Response Team on October  
12 29th?

13 A No, when I first arrived no, I did not know that.

14 Q Now, you also testified that we spray painted a  
15 particular area of the driveway and in that particular area  
16 there was some dirt kicked up; is that correct?

17 A We didn't go to spray paint it. That was done by the  
18 Boston Police Department.

19 Q That was done before you arrived on the scene?

20 A That's also correct.

21 Q So that was an area that was also disturbed by the Boston  
22 Police Department; isn't that correct?

23 MR. LIBBY: Objection, your Honor.

24 THE COURT: Before you answer, what's the objection?

25 MR. LIBBY: The connotation of disturbed as opposed

1 to marked.

2 THE COURT: Something happened to it, and the jury  
3 can put its own interpretation on it.

4 MR. LIBBY: Outside of proper protocol, your Honor.

5 THE COURT: No one is suggesting that it was --

6 Q Now, I don't-- your search team first went on the area on  
7 hands and knees?

8 A That's correct.

9 Q They flagged the evidence that they found?

10 A That's correct.

11 Q And then agents came through with magnets and searched  
12 for more evidence?

13 A The ones from the flags were collected and then the  
14 magnets went through afterwards. They were in plastic bags.

15 Q And the evidence was individually tagged; is that  
16 correct?

17 A The evidence that was collected --

18 Q Sir, my question is: Was the evidence individually  
19 tagged?

20 MR. LIBBY: I object to the form of the question,  
21 your Honor.

22 THE COURT: He doesn't understand the question.

23 A I don't understand the question.

24 Q Sir, you were the national team leader?

25 A That's correct.

1 Q You were the supervisor of the evidence collection  
2 officer; isn't that correct?

3 A Yes.

4 Q Do you know whether or not the evidence was individually  
5 tagged by --

6 MR. LIBBY: Same objection.

7 THE COURT: Do you mean whether each shard was put in  
8 a separate envelope, is that what you mean?

9 Q I'm asking -- do you know what evidence is, sir?

10 A Yes.

11 Q Can you tell me whether or not the evidence was  
12 individually tagged?

13 MR. LIBBY: I have the same objection, your Honor.

14 THE COURT: He doesn't understand the question, so  
15 give us a question he understands. I don't understand it  
16 either, frankly. I do not understand it either. Ask a  
17 question that the witness and I can understand.

18 Q Were the particular items of evidence that was recovered  
19 at the scene placed into an individual bag?

20 MR. LIBBY: I'll object to that as well, your Honor.

21 THE COURT: No. That he can answer.

22 A Maybe I can explain --

23 Q Could you please answer the question?

24 MR. LIBBY: If the witness can't answer the question,  
25 he can't say yes or no.

1 THE COURT: He may explain what they did?

2 A What we did is each of the individual items that are  
3 marked by the flag, they were then ground up and put in bags  
4 according to areas and those bags were then tagged, not each  
5 individual item that was located by the flag. There were some  
6 50 or 60 different items that were flagged.

7 Q Was the individual evidence photographed where it was  
8 found?

9 A There was a photograph of all the evidence taken where it  
10 laid. If we found a piece of evidence that we thought was  
11 individually important, then that particular item would be  
12 photographed in place, such as the one photograph in the blast  
13 seat that showed some markers in the componentry.

14 Q So I think your answer to my question is that the  
15 evidence was not photographed where it was found; is that  
16 correct?

17 A I do not understand the witness to have said that.

18 MR. LIBBY: Your Honor, I asked whether or not the  
19 evidence was photographed where it was found?

20 A Yes.

21 Q Every piece of evidence was photographed where it was  
22 found?

23 A There was a photograph that was taken of all of the  
24 evidence where it was found, that was one photograph that I  
25 showed with all the flags, but not each individual item where

1 it laid.

2 Q So, the jury has been shown a view of the flags, but not,  
3 there are no pictures of where the evidence laying next to the  
4 flag; is that correct?

5 A The evidence would be where the flag was located. Some  
6 of the pieces of evidence were the size of a fingernail or  
7 even smaller. We're dealing with very small componentry.

8 MR. LIBBY: Can the witness finish his answer,  
9 please. It's a continuing pattern, your Honor, and I object.

10 Q The evidence wasn't in the --

11 MR. LIBBY: I don't think the witness had finished  
12 his answer.

13 THE COURT: I thought he had.

14 MR. LIBBY: Your Honor, he was in the middle of the  
15 next sentence when the next question came.

16 THE COURT: Had you finished your answer.

17 THE COURT: You may have the question.

18 MR. LOPEZ: Thank you, your Honor.

19 Q Now, sir, was all the evidence that was found noted on  
20 that control sketch?

21 A The items of evidence that were collected in that  
22 particular area as far as evidence bags from certain areas  
23 were noted on that sketch.

24 Q But the evidence, in other words, if a specific item of  
25 evidence was found in that area wasn't noted on the control

1 sketch; isn't that correct?

2 A Not unless we thought it was something of, something that  
3 was truly out of the ordinary that we could specifically  
4 identify.

5 Q So, there were only items that were of particular  
6 significance that were noted.

7 A These were items that we identified immediately as far as  
8 being significant. Some of the items we didn't know the  
9 significance at that time.

10 Q So, for example, the blasting cap that was found, that  
11 item was noted on the schematic; isn't that correct?

12 A That's correct.

13 Q And there were also, there was also noted on that sketch  
14 the height that that item was found; isn't that correct?

15 A That's correct.

16 Q Were there any other items that were determined to be  
17 significant where the height was indicated on that schematic?

18 A I'm not sure the magnet was found on the chicken wire  
19 fence or was noted as far as the height, but most of the other  
20 items were on the ground or under the ground.

21 Q With respect to that particular chicken wire magnet, do  
22 you know what distance from the seat of the blast that  
23 particular chicken wire magnet was found?

24 A I'm not sure if it's marked on there or not, but it went  
25 all the way down. You could see the rows of the houses down

1       there.

2       Q       Isn't that the responsibility of the schematic artist to  
3       show the necessary measurements of heighths, lengths, and  
4       widths?

5       A       Depending on the circumstances, yes.

6       Q       Are there any other items of evidence other than the  
7       blasting cap and that chicken wire were the necessary heighths  
8       lengths and widths of the location of the evidence or noted on  
9       that schematic chart, if you'd like I'll show you that.

10               Are there any other heighths, lengths or widths of  
11       significant evidence located on the schematic chart besides  
12       that one blasting cap?

13       A       We have distances from the seat of the blast. Like I  
14       said before, we have covered a lot of evidence that we felt  
15       was significant.

16               THE COURT: Hold it a second.

17               We've got competition.

18               (Pause.)

19               THE COURT: Okay. Can you start again, please.

20               THE WITNESS: Sure.

21       A       We covered a lot of evidence that we thought was of  
22       significance. But as far as measuring the height of it, we  
23       felt that putting it in a particular area was good enough for  
24       us at that time. So that most the evidence that we found was  
25       basically laying in the grass or some of it was in the dirt we

1 had to sift out.

2 Q So the decision on the scene was not to note the heights  
3 distances and length that these items were found; is that  
4 correct?

5 A We make an individual determination, that was basically  
6 my job.

7 Q And you indicated that, in general, lighter pieces are  
8 usually found near the seat of the blast?

9 A That's usually correct, yes.

10 Q And heavier pieces are usually found away from the seat  
11 of the blast?

12 A Yes.

13 Q Now, there's also a forensic chemist on hand, a Ms.  
14 Cynthia Wallace who assisted in identifying various objects  
15 that were found on location; is that correct?

16 A Yes.

17 Q And there was also an explosive technology officer by the  
18 name of Thomas Waskom. He was also on the scene?

19 A He was from our explosive technology branch, yes.

20 Q Now, as these pieces of evidence are obtained, they are  
21 marked and are they logged by the evidence officer?

22 A They are submitted as evidence log, yes.

23 Q And was there more than one evidence officer that day?

24 A No, there's only one.

25 Q And it's his responsibility to coordinate with the team

1 put it in a container and mark that container, as far as the  
2 evidence goes, as far as where it was found, and then it would  
3 be put on the evidence log. Now, that individual would give  
4 it to, in this particular instance, it would go to our  
5 laboratory.

6 Q Now, when that individual is collecting this evidence,  
7 does he attempt to describe what that evidence is?

8 A Some are described if they are readily identifiable and  
9 other items are put down basically as bomb debris.

10 Q Bomb debris?

11 A Could be, or evidence debris or debris.

12 Q So the evidence technician is making determination about  
13 what the bomb debris is?

14 MR. LIBBY: Your Honor, at this point we've gone far  
15 beyond.

16 THE COURT: Well, we haven't really, Mr. Libby. You  
17 asked the witness to give us a general explanation of what  
18 happens and this is part of the general explanation of what  
19 happens.

20 MR. LIBBY: Actually, what I think, your Honor, is  
21 what I did, I had him identify the members of his team, their  
22 roles, basically what they did. Now, we're talking about  
23 particular points of performance of each of these individuals  
24 which he could not go into detail. We have the evidence  
25 technicians, and it's going to be the next witness.

1           THE COURT: Well, over objection, you elicited a  
2       general way of doing things. As I understand it, this goes to  
3       the general way of doing things. If you are talking about  
4       specifically what happened in this investigation, Mr. Lopez, I  
5       would ask you to hold off until the evidence technician is in  
6       fact on the stand. If you're asking in general what the  
7       technician does and whether in general it's the technician's  
8       job to define whether it's a blasting cap or bomb debris or  
9       evidence debris, then the witness may answer as it is part of  
10      the general business. It does not appear to be clear to me  
11      what it is in this case, even now it was not clear.

12           MR. LOPEZ: Your Honor, I don't think I was asking a  
13      question.

14           THE COURT: That specific person is going to testify,  
15      then that is the best evidence of what she or he did.

16           MR. LIBBY: Your Honor, you just might note that what  
17      I asked was whether or not the evidence officer made a  
18      description of the items thus found. This individual is the  
19      team leader, and he doesn't know what his subordinate was  
20      doing on that particular day, and he can't testify to that,  
21      then he can so state.

22           However, if he does know, then I believe I have an  
23      obligation to ask followup questions to determine exactly what  
24      that officer who was his subordinate was doing on that  
25      particular day.

1           THE COURT: To the extent that you're inquiring about  
2 what some other witness did, you may ask that other witness  
3 what that other witness did.

4           MR. LIBBY: Thank you, your Honor.

5       Q     Now, Agent Boeh, to your knowledge, was Shay, Sr.'s  
6 garage searched by the National Response Team on that  
7 particular day?

8       A     That would be -- no, I don't think we did. We went back  
9 in that area. There was a vehicle back there. We had  
10 searched that vehicle and moved that vehicle, and we were  
11 looking at the garage as far as whether any type of items from  
12 the blasts might have penetrated it, but we didn't actually  
13 search.

14      Q     You didn't search the garage?

15      A     No.

16      Q     Did you search Shay, Sr.'s house that day?

17      A     No.

18      Q     Do you know whether or not anyone else searched Shay,  
19 Sr.'s house and garage that day?

20      A     I'm not sure.

21      Q     Now, you had a briefing on November the 1st, a debriefing  
22 I believe you referred to, was that on November 1st or October  
23 31st, do you recall?

24      A     That would be, which day, we have a debriefing after the  
25 first -- we have one the first day; we have one the second

1 day. We have a debriefing every day after we're working the  
2 scene.

3 Q There would be a final wrapup debriefing?

4 A That was an outbriefing.

5 Q And that outbriefing occurred, did you say on Thursday or  
6 Friday, I've forgotten what your testimony is?

7 A Friday.

8 Q It was on Friday. So that would have been November the  
9 1st.

10 A I thought it was the 30th, but --

11 Q Well, the 29th, you arrived, you were there. The 30th,  
12 31st which is Wednesday and Thursday, and Friday would have  
13 been November 1st?

14 A It was Friday, whatever it was.

15 Q Now, at that time all the officers from the  
16 investigation, from the Boston Police Department, from the  
17 National Response Team from the local Alcohol, Tobacco &  
18 Firearms, they were all present; is that correct?

19 A That's correct.

20 Q And at that time you knew that there were two or three  
21 sticks of dynamite in this device; is that correct?

22 A No, I don't believe we had that information at that time.

23 Q Sir, do you remember writing a report on November the  
24 4th, 1991?

25 A I made a report that would be my after-action report.

1 You may proceed.

2 MR. LIBBY: We're not agreeing to put it into  
3 evidence.

4 MR. LOPEZ: We're not seeking to have it in evidence.

5 THE COURT: Go ahead and answer that question.

6 Q Now, is that your signature. I assume that's your  
7 signature?

8 A Yes, it is.

9 Q I apologize for that copy. I'd ask you to turn, page 4  
10 of that report towards the bottom?

11 A Okay.

12 Q Strike that. Could you move to the last page. It  
13 says -- the second or the beginning of the first paragraph on  
14 that page, Initial findings of the evidence recovered from the  
15 bombing revealed some of the --

16 MR. LIBBY: Your Honor.

17 THE COURT: If you're reading, it's going to have to  
18 go into evidence.

19 MR. LIBBY: I asked it go into evidence.

20 MR. LOPEZ: I'm not going put it into evidence.

21 THE COURT: I don't know for what purpose you're  
22 using it to refresh recollection or impeach?

23 MR. LOPEZ: Yes.

24 THE COURT: Have him read it to himself and ask if it  
25 refreshes his recollection about whatever it is you say his

1 recollection no longer exists.

2 MR. LOPEZ: Thank you.

3 Q Would you read that paragraph to yourself.

4 THE COURT: To yourself.

5 Q The next paragraph?

6 A Which one?

7 Q The next paragraph after --

8 A After initial findings.

9 Q Read it to yourself.

10 A Okay.

11 Q Does that refresh your recollection as to what you knew  
12 at the time of debriefing?

13 MR. LIBBY: I beg your pardon, your Honor. The  
14 report is dated November 4th, the testimony was the  
15 outbrief --

16 THE COURT: He can have the question, whether it was  
17 refreshes his recollection as to what he knew at the  
18 outbriefing. I don't know that what this says. Maybe it  
19 does, maybe it doesn't. The only question is does it refresh  
20 your recollection about the amount of outbriefing, about the  
21 size and the amount of --

22 Q Sir, does it refresh your recollection?

23 A Yes.

24 Q Did you know some of this on November the 1st at that  
25 debriefing?

1 A I knew some of this information, yes.

2 Q And you knew about the dynamite at the debriefing?

3 THE COURT: The question is did you?

4 A No.

5 Q You didn't know about the dynamite?

6 A No.

7 Q Did you know about the electric blasting caps, the fact  
8 that there were two?

9 A Yes.

10 Q You knew about that debriefing; is that correct?

11 A That's correct.

12 Q And you told the officers at that debriefing on November  
13 the 1st; is that correct?

14 A I believe that information would have been put out.

15 Q And you knew about the Futaba radio control system?

16 A Yes.

17 Q And you told the officers that?

18 A That information would also have been put out, correct.

19 Q And you told him about the piece of magnet?

20 A Yes.

21 Q And you told him about the gray duct tape?

22 A That's correct also.

23 Q And you told him about the black electrical tape?

24 A I believe so.

25 Q And you told him that it was a wooden box made of one

1 quarter inch paneling; is that correct?

2 A I'm not sure too if we had sized that.

3 Q You knew about the black paint?

4 A That's correct.

5 Q And you told him that?

6 A That would be given out of the briefing, yes.

7 Q Did you know about the toggle switch at that time, sir?

8 A The toggle switch, you said, I'm not sure. I'm not sure  
9 we had that information or not.

10 Q On that exhibit is there any indication where the toggle  
11 switch contacts were found during this extensive search by the  
12 National Response Team. Could you point that out to the jury  
13 if it's on this?

14 A I'd have to go back over the evidence log to see what was  
15 logged in and the thing is it may have been logged in as  
16 something at the debrief, that it was not identifiable and  
17 what they do is take it down to our lab, take it down to our  
18 microscope, and different people who have examined a lot of  
19 evidence would be able to identify that.

20 Q And that's Officer Porreca, Agent Porreca's evidence log?

21 A That's correct.

22 Q But this doesn't indicate where that debris was located;  
23 is that correct?

24 A It could, you it was Exhibit No. 2 then it would be  
25 located between the area of between the two buildings.

1 Q But sir, as the team leader as the National Response  
2 Team, you don't know where those contacts were found; isn't  
3 that correct?

4 A No, I'm not sure.

5 MR. LOPEZ: Thank you very much.

6 THE COURT: Anything else, Mr. Libby?

7 MR. LIBBY: Your Honor, very briefly.

8 Redirect Examination by Mr. Libby

9 Q What is your understanding, Agent Boeh, with respect to  
10 the forensic integrity before the time you got there Tuesday  
11 morning, was there any steps taken to the lock down scene?

12 MR. LOPEZ: Objection.

13 THE COURT: Sustained.

14 Q Did you see anything on site when you got there as soon  
15 as they indicate high security that had been provided at the  
16 scene --

17 MR. LOPEZ: Objection.

18 THE COURT: He may tell us what he saw, although he  
19 did tell us on direct what he saw.

20 MR. LOPEZ: My objection is to the security, as to  
21 how he can testify as to what security he saw.

22 MR. LIBBY: I'll try and rephrase it.

23 Q Did you see anything that the scene had been secured all  
24 night?

25 A Yes. There was tape that was strung around the area, and

1 in addition to that there were lights that were actually on  
2 poles that were in the area of the crime scene. They were  
3 like that area out there in the evening.

4 Q And how far away from the scene were these light bulbs,  
5 do you recall?

6 A Some of them were up near the driveway towards the  
7 street, shining back into the area of where -- in between the  
8 two buildings where we had our immediate area search.

9 Q Now, do you recall counsel's questioning to you how you  
10 got on the scene there was some evidence that had been removed  
11 from the scene before you got there?

12 A Yes, that's correct.

13 Q Do you recall that? Was there any evidence, first,  
14 strike that.

15 Generally, can you tell the Court and jury, please,  
16 what evidence you know was removed from the scene before you  
17 got there.

18 MR. LOPEZ: Objection.

19 THE COURT: Was there any evidence associated with  
20 either of the officers, sir, that had been removed from the  
21 scene before you got there.

22 MR. LOPEZ: Objection, outside of the cross.

23 MR. LIBBY: Absolutely not, your Honor.

24 THE COURT: No, I will allow it.

25 A Some of the items that the members, Officer Foley and

1 Officer Hurley, their equipment as far as, I believe, a knife,  
2 some of their uniform and other parts of their -- I think more  
3 than one gun was actually removed from the scene.

4 Q Was there any real evidence associated, embedded in the  
5 officers' body, sir?

6 A Yes, there was.

7 Q And that had been removed from the scene as well?

8 A Yes, that went to the coroner's office, some of them went  
9 to the hospital.

10 Q Now, with respect to counsel's questions about  
11 photographs of virtually every piece of real evidence, I  
12 believe you said bits and pieces, wood, wire, can you give the  
13 Court and jury a sense of the number of bits and pieces of  
14 evidence staying away from the scene, every individual piece?

15 A There was probably a hundred. The evidence that was  
16 found. Some of it was so small that we couldn't even  
17 photograph it in the grass with a microtype of lens on our  
18 camera.

19 Q In the course of conducting a National Response Team  
20 investigation, sir, is it necessary to photograph each and  
21 every bit of piece of metal at the crime of the scene?

22 A No.

23 Q Would it assist you to do that?

24 A No, I see no reason.

25 Q With respect to the counsel's question regarding the

1 scope of your search, is it in your search area, sir. In  
2 other words, does your National Response Team commonly go  
3 inside structures like houses and garages?

4 A Yes.

5 Q Do you commonly go in to follow the projectile of debris  
6 into houses which are removed from the bomb scene?

7 A When we examine like houses, we'll go up on the roof,  
8 because of trajectories going up there. We also if we see  
9 there is damage to a window, then we'll go into there. If we  
10 see that in an area, if there is an open area, an open window,  
11 and there may have been some sort of evidence when in there  
12 then we would go in and search.

13 Q Now, you testified that you didn't go into Shay, Sr.'s  
14 house, right?

15 A No.

16 Q And that is this house right here, 39 Eastbourne, the  
17 left part of this schematic, Exhibit 2, correct, right?

18 A Yes.

19 Q And you didn't go into his basement, right?

20 A No, we searched the yard and --

21 Q You didn't go into his closets?

22 A No.

23 Q You didn't go into his attic?

24 A No.

25 Q Any particular reason you didn't go into his basement or

1 his closets or his attic?

2 A No. We found no evidence of any type of bomb componentry  
3 that actually penetrated into the building. In fact most of  
4 the damage of the evidence was projected in the opposite  
5 direction.

6 Q The focus of your search is external as in outside?

7 A That's correct.

8 MR. LIBBY: I have nothing further, your Honor.

9 MR. LOPEZ: I have just a few questions, your Honor.

10 Q Sir, I'm going to show you what's been marked as  
11 Government's Exhibit 8, explosives and investigation guide?

12 A That's correct.

13 Q And that's in evidence. Could you read what No. 5 says?

14 A Photograph evidence is the following.

15 Q And could you also go back to general area search unit,  
16 you'll have to take this document down, and could you list  
17 item, could you just read item No. 9, what does it say there?

18 A Individually record and package the evidence found.

19 Q Individually recorded and package the evidence found?

20 A That's correct.

21 Q And that's to be coordinated with the evidence  
22 technician, the schematic artist and the photographer; isn't  
23 that correct, sir?

24 A That's correct.

25 Q Thank you, sir.

1 THE COURT: Mr. Boeh, as a matter of curiosity, does  
2 a blast like this ruin windows, break windows.

3 THE WITNESS: It depends, your Honor. It's funny I've  
4 seen where we've had blasts real close and the windows have  
5 stayed, and other incidents where we've had blasts and windows  
6 down the street that have been knocked out.

7 THE COURT: And in this case?

8 THE WITNESS: I believe that the windows stayed  
9 intact from what I can remember. Because the blast, we only  
10 had one window on the side, and we were dealing with the sides  
11 that had no windows, we were dealing with one side. We were  
12 dealing with sides that had no windows and it was enclosed  
13 between the area that had two cars which, kind of, take some  
14 of the blast energy into the vehicles rather than letting it  
15 go out.

16 THE COURT: Thank you, you are excused.

17 THE WITNESS: All right. Thank you, your Honor.

18 THE COURT: Who's next?

19 MR. LIBBY: Your Honor, the Government calls Special  
20 Agent Christopher Porreca to the stand.

21 THE CLERK: Please be seated, and state your full  
22 name.

23 THE WITNESS: Christopher Porreca, P O R R E C A.  
24  
25

CHRISOPHER PORRECA, Sworn

Direct Examination by Mr. Libby

Q Would you pull the microphone out so we can hear you.  
What do you do for a living, sir?

A I'm a special agent with the Bureau of Alcohol, Tobacco  
and Firearms.

Q And where are you stationed?

A Albany, New York, the Albany Field Office.

Q Would you tell us, please, what it is you do as a Special  
Agent, ATF?

A Responsible for enforcing federal laws relative to  
firearms violations, explosive violations and arson  
violations.

Q Could you give us, please, a very brief sketch of your  
educational background?

A Bachelor of arts degree from St. Anselm's College in  
Manchester, New Hampshire. I've been trained at the federal  
law enforcement training center in basic criminal  
investigation skills. I've been trained at the ATF National  
Academy in Georgia as an ATF agent, with the laws and  
regulations of the agency.

Q Have you received any specialized training with respect  
to explosions?

A Yes, I have.

Q Would you tell us what they are?

1 A I'm certified by the Bureau of Alcohol, Tobacco and  
2 Firearms as an explosive specialist.

3 Q When you say certified what does that mean?

4 A I've had advanced training in explosives handling,  
5 destruction, and demonstrations, and I've had a schooling in  
6 it, and I've also had practical exercises and hands on  
7 experience with it. In order to maintain certification, we  
8 have to keep up advanced training and hands on experience.

9 Q You have to pass continual examinations with respect to  
10 this, sir?

11 A Yes, you do, every 24 months.

12 Q Now, sir, you've been with the ATF since when?

13 A 1987.

14 Q At any time thereafter have you served any role with the  
15 ATF other than the special agent with the ATF?

16 A In 1990, I've been appointed as a member of the Northeast  
17 National Response Team.

18 Q When you signed up did you become a member of the  
19 National Response Team?

20 A No, sir, there's an application process which you must  
21 list all your experience training and anything else relative  
22 to your duties with the National Response Team.

23 Q And since your experience as a member of the Northeast  
24 National Response Team who has your team leader been?

25 A Daniel Boeh.

1 Q And you've stayed at Albany during this time?

2 A Yes, sir.

3 Q And Agent Boeh is assigned where?

4 A Baltimore, Maryland.

5 Q Have you worked with him before the October 1991 blasting  
6 law was available?

7 A Yes.

8 Q Would you tell us where?

9 A I have received training in the past and mostly several  
10 different occasions.

11 THE COURT: We will finish with this witness today,  
12 right?

13 MR. LIBBY: I'm sorry, your Honor.

14 THE COURT: We will finish with this witness today?

15 MR. LIBBY: Without question.

16 THE COURT: I won't have to worry about the  
17 irrelevant questions, correct?

18 MR. LIBBY: Getting to the relevant questions.

19 THE COURT: Right.

20 Q Going back to 1991, sir, do you recall receiving notice  
21 of an explosion in Boston, Massachusetts?

22 A I was notified by team leader Boeh that our team had been  
23 notified to respond to Boston.

24 Q Had you seen Agent Boeh recently?

25 A Before that, yes, sir, we had a call a week out prior out

1 at Pittsburgh, Pennsylvania.

2 Q And what did you do after you were notified of this  
3 explosion, sir?

4 A I picked up my equipment and drove from Albany to Boston.

5 Q When did you see Agent Boeh?

6 A Late that evening.

7 Q Did you discuss generally what he understood about the  
8 explosion and the crime scene?

9 A What knowledge he had and we were told we had an initial  
10 briefing first thing the next morning.

11 Q Would you tell us about that briefing, sir, when, where?

12 A Yes, sir, it was the next morning at the E-5 barracks of  
13 the Boston Police Department, West Roxbury. It was first  
14 thing in the morning, and we were briefed as far as what  
15 information was available from the scene and we were given our  
16 team assignments.

17 Q What assignment were you given?

18 A The evidence technician from the team.

19 Q Who assigned you from that post?

20 A Daniel Boeh.

21 Q And you were at E-5 with this briefing for approximately  
22 how long, sir?

23 A Approximately an hour.

24 Q What did you do thereafter?

25 A We were taken up to the scene at which time I headed our

1 explosives truck and got our equipment ready for the evidence  
2 technician.

3 Q Would you describe for us briefly the types of equipment  
4 available to you as an evidence technician, please, with the  
5 National Response Team?

6 A It was everything that we would need to perform the  
7 duties. That would be one gallon, and one quart similar to  
8 paint cans to place debris and residue in, zip lock type  
9 baggies. They're heavier than the normal ones we purchase in  
10 the store. We also put evidence in that is being collected  
11 it, the tools and gloves, protective gear, and also the  
12 evidence control logs, and the evidence tags.

13 Q Now, sir, as evidence technician, can you describe for  
14 the Court and jury, please, the bottom line, what's your  
15 responsibility to the team?

16 A My responsibility is to collect all evidence relative to  
17 the scene and to maintain a log of all that evidence, to make  
18 sure the evidence is packaged properly and that all the  
19 evidence labels are correctly filled out relative to the  
20 evidence that is being collected and to maintain the custody  
21 of that evidence throughout the call up.

22 Q Now, in this case, sir, in this investigation, did all  
23 the evidence that you've collected ultimately come to you  
24 directly from the crime scene, that is 39 Eastbourne Street  
25 and that environment?

1 A No, sir.

2 Q Can you tell the Court and jury, please, the other  
3 locales where you recovered this evidence?

4 A Some evidence was turned over to me by the Boston Police  
5 Department from their crime lab.

6 Q Let me stop you there. What kind of evidence was that  
7 basically?

8 A They were the gun belts from the officers, some sheets,  
9 some blankets and towels that were at the scene when the  
10 officers were injured, when they were removed from the scene.

11 Q Please continue.

12 A From Brigham & Women's Hospital where one of the officers  
13 was taken and was treated or both officers were treated, taken  
14 and treated, and also from the Boston morgue.

15 Q Now, you made reference to an evidence log?

16 A Yes, sir.

17 Q Basically, what's an evidence log?

18 A An evidence log is a cumulative list of a preprinted form  
19 of all the evidence that would cover the scene of the act. It  
20 lists our exhibit number as we collect the evidence, and a  
21 basic evidence of what we're collecting who discovered the  
22 evidence, the date it was discovered and the brief description  
23 of the location that it was discovered at.

24 Q Who in the National Response Team is responsible for the  
25 evidence log, sir?

1 A The evidence technician.

2 Q Now, directing your attention to the scene itself, here,  
3 I believe you testified you appeared at the scene on Tuesday  
4 the following Tuesday, the 29th?

5 A Yes, sir.

6 Q You set up shop in the front?

7 A Yes, sir.

8 Q Chairs, tables, and so forth?

9 A Yes, sir.

10 Q Now, with whom do you work, sir, on the scene in the  
11 course of your duties as an evidence technician?

12 A I work with the search team, the schematic artist and  
13 photographer. Also I work with the forensic chemists, the  
14 explosive technology personnel team leader.

15 Q Can you tell us what it is that you do with the  
16 photographer?

17 A As evidence has been discovered by the search team and  
18 left right where they discover it with the flag rest with the  
19 search, I follow-up the search of an area as complete and will  
20 go to the pieces of evidence that they had marked with a  
21 flag. A photographer will photograph that area of evidence as  
22 it has been marked with the flag, and then prior to it being  
23 collected by me.

24 MR. LIBBY: If I may approach, your Honor.

25 Q Let me show you what's been marked as Exhibit 9 A, and

1 ask if you recognize what's depicted in this photograph?

2 A That is area 1, and it has been completely searched, the  
3 first time through by the search team and anything they  
4 believe is evidentiary value they mark with a flag.

5 Q Did you take part personally in this search, sir?

6 A Of this area?

7 Q Yes.

8 A No.

9 Q What was your role with respect to what we see here in  
10 this photograph?

11 A Once the area is searched, I was notified that the search  
12 being completed and I was getting ready to collect evidence  
13 that had been marked.

14 Q Let me show you what has been marked Exhibit 9 B, and ask  
15 you if you recognize what's depicted in that photograph?

16 A This is the area again once all the evidence has been  
17 collected, it's been placed into these bags and it's  
18 photographed in the area.

19 Q Did you participate in this process, sir?

20 A Yes, sir, I've been the individual collected in the  
21 evidence in these bags.

22 THE COURT: Why don't you pass those to the jury now,  
23 if you want them to see them.

24 Q Now, would you describe briefly to the jury briefly to  
25 the Court what the evidence has pointed out precisely how it

1 is you go about bagging it, describing it, securing it?

2 A It once the evidence is marked with the flags, I'll go  
3 through the area, and pick up the evidence and place it in  
4 proper containers, whether it be a bag or a can depending on  
5 what type of evidence it is, and in an area such as that, the  
6 evidence might be separated into bags, some containing just  
7 wood fragments, some containing metal fragments for different  
8 items. All the evidence is picked up, placed into those  
9 bags. Then the bags, after they're photographed, will be  
10 moved back to the books of the investigation at which time  
11 evidence labels will be completed and affixed to those bags.  
12 And if time permits the evidence log will be entered at that  
13 point, and at the end of the day and cumulatively add the  
14 evidence on to that log to the end of that day.

15 Q Who places the evidence labels on these bags, sir?

16 A I do.

17 Q Who makes the notations on the evidence?

18 A I do.

19 Q Did you work also with the forensic chemist and the  
20 explosive tech branch expert on the scene?

21 A Yes, sir. Anything that's been marked by the search team  
22 as possibly being of evidentiary value, would be deemed as  
23 questionable, we would request that the forensic chemist  
24 and/or the explosive technology personnel on the scene do a  
25 preliminary evaluation as to whether it should be collected or

1 not.

2 Q You work with the schematic office in the course of your  
3 performance?

4 A Yes, sir, as we collect evidence in an area the schematic  
5 evidence would be present or be notified that they be  
6 collected, so many exhibits and their numbers that they be  
7 placed on the schematic diagram that they be collected from  
8 the area of these exhibits.

9 Q After you take the evidence, do you place the evidence,  
10 can you tell us whether there's any particular order in which  
11 these bags are labeled and kept?

12 A Yes, they're kept in sequential order in the truck,  
13 usually in some type of a box.

14 Q I believe you mentioned something about the end of the  
15 day, is there something particular you do at the end of the  
16 day, sir?

17 A Yes, sir, the log is completed and it hasn't been done at  
18 the scene. The evidence was collected for that day, and then  
19 the log is compared to the actual physical evidence to make  
20 sure that every piece of evidence that is collected is entered  
21 on the log.

22 Q Did you remain the evidence technician throughout the  
23 course of this investigation at 39 Eastbourne Street, October  
24 1991, Agent Porreca?

25 A Yes, sir, I did.

1 Q If I may approach, your Honor, and I give you  
2 Government's Exhibit 11, and ask if you recognize that, sir?

3 A Yes, sir, I do. This is the evidence log that I  
4 completed.

5 Q Would you take it out, please, and describe generally for  
6 the jury what items of information are posted on that  
7 preprinted form?

8 A On the top is individual by, which is through the  
9 evidence detectives which is my name, the date, the  
10 investigation number, the case agent and on the form itself,  
11 it asks for the item number which would be the exhibit number  
12 as we numbered them, a brief description, the finder, the date  
13 and also the location.

14 MR. LIBBY: Your Honor, at this time the Government  
15 would ask, move Exhibit 11 in evidence.

16 THE COURT: No objection.

17 MR. LOPEZ: No objection, your Honor.

18 MR. LIBBY: Also at this time, your Honor, if Agent  
19 Porreca could come down, we could wheel the real evidence over  
20 and briefly go through what's in each bag of real evidence  
21 where it's labeled, and how it was found, and so forth.

22 THE COURT: Would you --

23 MR. LIBBY: I will try to make this as painless as  
24 possible, your Honor.

25 THE COURT: Can you keep that back a little bit

1 further.

2 Q Is there something that would assist you, Agent Porreca,  
3 in indicating the real evidence here that will be offering in  
4 evidence and indicate where it was found on the schematic?

5 A It's just a list of the area where I can readily point to  
6 the areas where it was collected from.

7 Q Would you pull out the first bag of evidence, please, and  
8 hold it up to the jury and show how generally speaking it's  
9 tagged, would you come forward please and show the labels?

10 A It's placed into this bag, an label containing the same  
11 basic information which is on the evidence log which would be  
12 the date, location, exhibit number, where it was found and  
13 someone other than myself recovered it.

14 THE REPORTER: Could you speak up, please.

15 Q Directing your attention to the flip side of that bag,  
16 could you describe for us generally how those are arranged?

17 A Each individual who, for some reason, comes in contact  
18 with this piece of evidence would also put a label or sign an  
19 existing label on here to show the joint custody of the  
20 evidence that so many people have handled it at different  
21 times for different reasons.

22 Q Now, Agent Porreca, have you examined all of the  
23 evidence, all of the real evidence bag in this fashion that we  
24 see here on the cart?

25 A Yes, I have.

1 Q Including these two cans we have on the second?

2 A Yes, I have.

3 Q You're familiar with them?

4 A Yes, I am.

5 Q Have you affixed these labels yourself, sir?

6 A Yes, sir, I have.

7 Q Did you enter the descriptions on those labels?

8 A Yes, sir, I did.

9 Q Your signature appears on those?

10 A Yes, sir.

11 Q All in connection with your performance as evidence  
12 technician out of this investigation?

13 A Yes, sir.

14 Q Could you give me the evidence log. Coming forward to  
15 the jury, please, directing your attention to the right-hand  
16 side here, would you describe to the jury what they stand for?

17 A The check marks, they use a control by me, that each  
18 time, I would tender a piece of evidence, I would check and  
19 make sure the evidence is listed on the log, and it's a  
20 corresponding bag or can to that, and check. It's a control  
21 to make sure everything is lined up to it. We had everything  
22 and it was on log and what we had in real evidence was in fact  
23 on the log.

24 Q Now, directing your attention to the outbriefing, that  
25 Friday the first of November, did you coordinate the evidence

1 log with Team Leader Boeh?

2 A Yes.

3 Q Would you describe, directing your attention to the  
4 evidence log, please, would you flip to page 2, you see  
5 there's no evidence of item number 17?

6 A Yes, sir.

7 Q What does that indicate, sir?

8 A Those two numbers were inadvertently skipped. There's no  
9 corresponding Exhibit 17 or 18, and those were skipped in  
10 order of the log to show that there is no evidence for those  
11 numbers.

12 Q Did that fact that there was no use of the numbers 17 or  
13 18 of the item number on the evidence log, did that fact in  
14 any way have any adverse impact on your ability to retrieve  
15 those items or identify those, sir?

16 A There is a corresponding piece of evidence,  
17 unfortunately.

18 Q Now, with respect to this asterisk item here, 1A and 1B,  
19 there's no check mark, can you explain that to the jury,  
20 please?

21 A The asterisk just indicates in numerical order, if the  
22 check mark is when this was recovered. This item was entered  
23 on to the log and was had and was turned over to the forensic  
24 chemist at that point and it was out of the box at that time.

25 Q Who was the forensic chemist?

1 A Cindy Wallace.

2 Q Do you have personal --

3 A I had control of the evidence.

4 Q Now, at the time of the outbrief, was all of the evidence  
5 reflected here on the evidence log physically in your  
6 possession at the outbriefing?

7 A No, sir, after the first day on the scene, items of  
8 evidence were carried, being carried down to our lab by an  
9 agent of Boston Field Division and turned over to the lab for  
10 immediate analysis.

11 Q Is that typically done in a bombing investigation?

12 A Yes. We try to get results on certain pieces of evidence  
13 as soon as possible.

14 Q Why is that?

15 A Because it will possibly lead to help the investigation  
16 along if we know certain facts about certain pieces of  
17 evidence.

18 Q Are there -- directing your attention to the evidence  
19 bag, sir, when these evidence bags are turned over or  
20 further -- are there indications here, for example, on this  
21 bag that the evidence has been turned over to others for  
22 investigation?

23 A Yes, sir. On the bottom of an evidence form there's a  
24 block called "chain of custody," it would show the next person  
25 who took custody of it. There's a block and purpose, they

1 would show me as to why they were taking custody of evidence.

2 Q And if I may, directing the jury's attention, for  
3 example, to this white strip here, what does that indicate?

4 A Certain positions within our agency, such as the  
5 explosives technology branch, have their own labels. They  
6 date and show why they do it, as long as it's affixed with the  
7 evidence label to show that there's a chain of custody, and  
8 the date of why they took custody of this piece of evidence.

9 Q Now, if we can, your Honor, I'd like to individually hold  
10 up each of these bags, so we can get this back in order. I'll  
11 ask Agent Porreca, I'll indicate the trial exhibit number,  
12 have him briefly describe it for the record and ask him where  
13 it was found on the crime scene. First, Agent Porreca,  
14 Government Exhibit 12-1 A and B, please?

15 A This is one electric blasting cap with yellow and red  
16 wires, it was found in the wall which is on the east side  
17 house of 35.

18 Q And the other bag what's contained in here?

19 A These are just components of that. They were also found,  
20 they were there on the east side.

21 Q So again as you look in here, what is in here?

22 A A blasting cap with red and yellow wires.

23 MR. LIBBY: I'd like to move this in evidence and  
24 publish it if I may. Trial Exhibit 12-1 and we'll call it A  
25 and B.

1 THE COURT: Is there any objection to be it is 12-1  
2 through what?

3 MR. LIBBY: 12-1 A and B, your Honor.

4 THE COURT: All of 12, 1, A and B through.

5 MR. KELLY: Your Honor, for the record this is  
6 important. As you'll notice 12 has a number of subletters and  
7 numbers.

8 THE COURT: Right.

9 MR. KELLY: They're not in sequence precisely. That  
10 was done intentionally so they would correspond for lab  
11 reports for the ease of the Court counsel and the record. So  
12 it will go 12 A, B, C and then start numbers and there will be  
13 certain numbers missing.

14 THE COURT: 12 in all of the subparts as I understand  
15 it is now in evidence, correct, Mr. Lopez?

16 MR. LOPEZ: Your Honor, if you mean by that 12-1  
17 through 16, yes.

18 MR. LIBBY: If I understand it, that's all that 12  
19 is.

20 MR. KELLY: 12 is A, B, C, and it goes 1 through 16  
21 and then it continues, 19.

22 MR. LOPEZ: Mr. Kelly, I point out 12 A is a  
23 laboratory report.

24 MR. KELLY: For the ease, they don't object to any of  
25 12. If that's the case we can save everybody a lot of time.

1           THE COURT: All of 12 and the subparts of 12 are now  
2 in evidence.

3           THE COURT: While they're conferring, let me explain  
4 something to you about the chain-of-custody issue. If you  
5 were to see on day 1 an autographed copy of a book that was  
6 say by Justice Holmes, and it was dated and it had a  
7 particular signature and it was the only such, then you look  
8 at it again on day 10, then you could probably identify it as  
9 the same book that you saw on day 1.

10           If on the other hand, you take a bag of flour on day  
11 1 and it is simply an ordinary brown paper bag with some flour  
12 in it, when you look at it again on day 10, you would not know  
13 that it is the same bag of flour as that which you saw on day  
14 1. In order for the Government to prove in a case where it is  
15 important to prove that that bag of flour that you see on day  
16 10 is the same bag that was seen on day 1. The only way it  
17 can do that is to show who had handled it, and that in fact  
18 the bag that was seen on day 1 went from person A to person B  
19 to person C and went back so you could see it. That is what  
20 we mean by chain of custody, and that's what is the importance  
21 of chain of custody. And that's why we're talking about it,  
22 because there are bits and pieces here that may not be  
23 identifiable as the same bits and pieces that were seen at the  
24 Roslindale unless it is shown that they went from person A to  
25 B to C and then into the courtroom.

1 MR. LIBBY: Thank you, your Honor. If I may publish  
2 12-1.

3 Q And Agent Porreca, just as an example if we can take a  
4 few of these and link it up with the schematic here. Can I  
5 ask you what 12 C is?

6 A This is one jar with two vials which contained a small  
7 amount of white residue. These were also recovered from the  
8 east wall, approximately 35, in the vicinity here.

9 Q In the vicinity where the detonator cap was found?

10 A Yeah.

11 Q Now, if I could show you the next bag, 12-2, could you  
12 describe that please and indicate to the jury where it was  
13 found?

14 A These were pieces of wood that was found in area 1, it  
15 would be this entire block right here which is marked area 1,  
16 and the exhibits were recovered from here and marked under  
17 this area here.

18 Q To expedite the process here, there's a marking on the  
19 white form here for every one of those bags to indicate the  
20 area of which these bags were found?

21 A Yes.

22 Q So the jury themselves, they could marry it up with the  
23 schematic artist's sketch here?

24 A Yes, they can. And if it's not marked by here, it's  
25 marked by a specific location. It will be marked from the

1 east wall house number 35. It will be marked as a specific  
2 location, and indicated on the schematic or as coming from an  
3 area which is also indicated on the schematic.

4 Q Is there a concept, Agent Porreca, in your field as an  
5 evidence technician with respect to the term pooled  
6 components?

7 A Yes, sir.

8 Q What does that mean, please?

9 A Once all the evidence has been collected from a crime  
10 scene, it's been packaged and it's submitted to our  
11 laboratory, our forensic chemists and our explosive technology  
12 people --

13 MR. LOPEZ: Objection.

14 THE COURT: What's your objection?

15 MR. LOPEZ: With respect to him testifying about what  
16 the forensic testimony -- I believe that's out of his area.

17 THE COURT: I will allow it.

18 Q Thank you. Please continue.

19 A Once submitted to the laboratory and to the explosive  
20 technology people, in order to attempt to reconstruct certain  
21 items that come from the crime scene, you might get one piece  
22 from one evidence bag, one piece from another evidence bag, so  
23 they will remove certain items out of the evidence bag try to  
24 put them together and match them up with items from the other  
25 bag and attempt to build, it's like putting a puzzle together

1 and attempt to build a picture of the puzzle.

2 Q Is that done in this case, Agent Porreca?

3 A Yes, it was.

4 Q Now, when you pool components that is a variety of  
5 different evidence bags, when you pooled them together was  
6 there something done with the original bags when the evidence  
7 was initially secured?

8 A Those bags, some of the bags might become empty, but it's  
9 noted in the bags that I pooled that this evidence was removed  
10 in a different bag.

11 Q Were there components pooled in this case, sir?

12 A Yes, sir.

13 Q Can you put your hands on the bags, the empty bags,  
14 please?

15 A Oh, the empty bags.

16 Q Yes, please.

17 A This is the pooled evidence that comes from other  
18 evidence bags.

19 Q Than that bag number is?

20 A Government's Exhibit 12 B.

21 MR. LIBBY: It's my understanding that all of 12 is  
22 in evidence, your Honor.

23 THE COURT: It is.

24 MR. LIBBY: Thank you, your Honor.

25 THE COURT: What can you do to finish your

1 cross-examination by 1?

2 MR. LOPEZ: I'll do everything in my power, your  
3 Honor, as long as I finish up.

4 Cross-examination by Mr. Lopez

5 Q Good morning, Agent Porreca -- I should say good  
6 afternoon, Agent Porreca, now we heard that your  
7 responsibility on that particular day was to bag and tag the  
8 evidence that is collected in this instance?

9 A I was responsible for collecting the evidence and any  
10 evidence that had been prior collected by another individual  
11 indicating that he also had related to the evidence log.

12 Q And I believe you testified that you were qualified or  
13 certified as explosives technicians?

14 A Explosive specialists.

15 Q Explosive specialists and by explosive specialists, I  
16 assume that you have some knowledge about a different types of  
17 explosives, and what might be involved or used with particular  
18 explosives; is that correct?

19 A Some knowledge.

20 Q And as you have acquired experience over the years,  
21 you're able to identify when particular items of evidence  
22 which are found have some correlation to the device that you  
23 are particularly investigating at that particular time; is  
24 that correct? Do you understand that question?

25 A Can you rephrase that question, please.

1 Q I knew it was a bad question. As you go through and  
2 identify -- as you go through and you collect this evidence,  
3 based on your experience, you have a pretty good idea about  
4 whether or not a particular item probably came from the device  
5 that you're investigating at that point in time; isn't that  
6 correct?

7 A To some degree.

8 Q And if you don't the National Response Team has, in this  
9 case, the forensic chemist was Ms. Cynthia Wallace; isn't that  
10 correct?

11 A Yes, sir.

12 Q And if you have any questions, you can ask Ms. Cynthia  
13 Wallace whether or not this may have come from this device; is  
14 that correct?

15 A You would ask her if this is something we should take and  
16 collect as evidence.

17 Q If you have anything to say about the device, you may be  
18 able to ask in this case Mr. Waskom, from the explosives  
19 technology branch; isn't that correct?

20 A Yes, sir.

21 Q And he is the person that knows an awful lot about  
22 explosives; isn't that correct?

23 A Yes, sir.

24 Q The components?

25 A Yes, sir.

1 Q The makeups of those components. Now, as you're going  
2 through your search, there are supposed to be photographs of  
3 evidence as it is found; isn't that correct?

4 A There is photographs of evidence as it is being marked  
5 and as it is collected, yes, sir.

6 Q Well, sir, are you familiar with the explosives  
7 investigation guide of the Alcohol, Tobacco and Firearms which  
8 has been marked as Government's Exhibit No. 8?

9 A Yes, sir.

10 MR. KELLY: Is it No. 8?

11 MR. LOPEZ: I believe it is 8.

12 THE COURT: It is 8. Where is number 8?

13 THE COURT: Why don't you use your copy?

14 MR. LOPEZ: Well, your Honor, my copy is marked up.  
15 I found it, your Honor.

16 Q I'm going to show you Exhibit No. 8. These are the  
17 regulations. If you will on how to conduct these searches;  
18 isn't that correct?

19 A This is a guide which is utilized by the NRT, depending  
20 on what scene you go to.

21 Q It's a guide?

22 A Yes, sir, it's marked Explosive Investigation Guide.

23 Q So, you don't have to follow these rules if you don't  
24 want to, is that the way --

25 A No, sir, there is depending -- they are utilized -- the

1 scenes that we go to, to conduct the investigation, but it is  
2 scenes, some scenes are smaller than other scenes, so  
3 therefore the guide is used precisely as that, as a guide, but  
4 we do go by what the guide says.

5 Q Well, I ask you to take that out, take that document out,  
6 and it lists on page 2 what the evidence technician's  
7 responsibilities are; isn't that correct?

8 A Yes, sir.

9 Q And it says under No. 5 to categorize collected evidence  
10 on the evidence blanket?

11 A Yes, sir.

12 Q And I assume that there's a blanket that was laid out at  
13 the scene probably near the command post and evidence is  
14 brought there?

15 A That is something that depending on the site of the  
16 scene, the weather conditions and things of that nature,  
17 whether or not you would do that and you would utilize the  
18 evidence as you collect it in an area.

19 Q And that was done in this case. Was an evidence blanket  
20 used in this case?

21 A No, sir, it was not.

22 Q Okay. And then it's your responsibility under item No. 6  
23 to maintain custody and control of collected evidence at the  
24 scene?

25 A Yes, sir.

1 Q And number 8 says verify collected evidence with evidence  
2 control on or before departing any of the scene?

3 A Yes, sir.

4 Q And if you go back to the last page where it talks about  
5 the responsibilities of the general area search unit, it  
6 indicates No. 9 individually record and package the evidence  
7 found. Coordinate this with the evidence technician,  
8 schematic artist, and photographer, isn't that what it says  
9 there?

10 A Yes, sir.

11 Q Now, what you're saying is that, or are you saying that  
12 that wasn't done in this case?

13 A No, sir. In this instance, where we --

14 Q So, it was not done in this case?

15 MR. LIBBY: Your Honor, the question was put to him.

16 THE COURT: The question is, was it done in this  
17 case.

18 MR. LIBBY: He was explaining what was testified.

19 THE COURT: Restate the question.

20 Q Was item No. 9 individually recorded and packaged the  
21 evidence found, was that done in this case?

22 A Are you asking that in reference to the general area  
23 search unit.

24 Q Yes?

25 A No, it was not.

1 Q Now, sir, as you go down this inventory, you notice that  
2 there is a spot there for description; is that correct?

3 A Yes, sir.

4 Q And in that column there's some descriptions about the  
5 items that were found; isn't that correct?

6 A Yes, sir.

7 Q Did you write those descriptions in?

8 A Yes, sir.

9 Q That's your handwriting?

10 A Yes, sir.

11 Q And you wrote that description in at the end of the day;  
12 is that correct?

13 A Yes. It would either be, while we were at the scene or I  
14 was not able to complete the log of the scene at the end of  
15 the day based upon what I filled out on the evidence labels  
16 which was done immediately after the evidence was collected.

17 Q So you write on the evidence labels right away and you  
18 write on this evidence log sometime thereafter?

19 A Yes, immediately after collecting the evidence or no  
20 later than the end of each day.

21 Q Now, sir, I'm going to ask you to look through this and  
22 let me ask you this. Are you familiar with switch contacts.  
23 Have you ever seen those before?

24 A Meaning?

25 Q In any explosive device, have you ever seen switch

1 contacts?

2 A I've seen contacts on the switch before, yes.

3 Q You know what they look like?

4 A When they're attached to a switch, yes.

5 Q They're made of metal, aren't they?

6 A Yes, sir.

7 Q If you saw a switch contact you'd know what it was,  
8 wouldn't you?

9 A It would depend on the context of what I saw.

10 Q Could you look through your evidence log and tell me if  
11 anywhere on the evidence log, is there any indication that  
12 switch contacts were found at that location?

13 MR. LIBBY: Object, your Honor. There's no  
14 impeachment foundation.

15 THE COURT: I'm sorry?

16 MR. LIBBY: There's no impeachment foundation. He  
17 says it's dependent on the context now we're talking about --

18 THE COURT: I assume that we can agree that he does  
19 into describe anything as switch contact, right?

20 MR. LOPEZ: If the Government will so stipulate,  
21 that's fine.

22 Q You didn't describe anything as switch contacts?

23 A That's correct.

24 Q In fact, the most specific you get in your descriptions  
25 on this list with respect to metal is the term "metal"; isn't

1 A No, sir. The evidence is marked in the majority of the  
2 cases.

3 MR. LOPEZ: If I could just have a moment, your  
4 Honor.

5 Q Sir, I'm going to show you what's been marked as  
6 Government's Exhibit No. 12-14; is that correct?

7 A Yes, sir.

8 Q Now, in this, there are individual bags; is that  
9 correct? Do you want to look inside there?

10 A Yes, sir, there are individual bags.

11 Q Now, be careful, because there are some items in there  
12 that might fall out. There are some other items along the  
13 bottom of that bag that don't appear to be in any other bag  
14 other than the large bag; isn't that correct?

15 A Yes, sir.

16 Q Now, --

17 MR. LIBBY: If counsel could allow me just a minute  
18 and a half so I could have a couple of followup questions.

19 MR. LOPEZ: I'll see what I can do, your Honor.

20 Now, I'm going to show you what's been marked inside  
21 this exhibit which is 12-14 which says submission for 14 wire;  
22 isn't that correct, isn't that what it says?

23 A That's what this label says, yes, sir.

24 Q Now, did you fill out that label?

25 A No, sir, I did not.

1 Q Did you fill out this white label?

2 A Yes, sir, I did.

3 Q And the white label indicates wire?

4 A Yes, sir.

5 Q From area 7?

6 A Yes, sir.

7 Q And I'm going to show you this diagram. Could you show  
8 me where area 7 is on this diagram?

9 A Area 7 is marked right alongside the vehicle with the  
10 shrubs.

11 Q Right over here?

12 A Yes, sir.

13 Q So this area is somewhere from this location here down to  
14 this location here?

15 A Yes, sir.

16 Q The full length of this van?

17 A Yes, sir.

18 Q And the seat of the blast was over here?

19 A Yes, sir.

20 Q And there's a van parked right here?

21 A Yes, sir.

22 Q Can you tell me where in area 7 that item of evidence was  
23 located, when it was found, bagged and tagged by you?

24 A It was found on 10-29-91 and came from area 7.

25 Q No, where on area 7?

1 A In area 7.

2 Q No measurements, you have no idea where it came from  
3 within area 7; is that correct?

4 A No, sir, it is within that area.

5 Q Sir, do you notice anything about that item of evidence?

6 MR. LIBBY: I object, your Honor. Does he notice  
7 anything about the evidence?

8 Q Sir, let me ask you, was there any evidence taken from  
9 the other car at the scene on that particular day by the  
10 National Response Team?

11 A Which vehicle are you referring to, sir?

12 Q The small car that Shay, Sr. had driven?

13 MR. LIBBY: I would object, your Honor.

14 THE COURT: Which one? Describe it, the car behind  
15 the van or the cars on the street.

16 Q The GTO that was parked in the back, was there any  
17 evidence taken from that?

18 A I would have to look at the diagram.

19 Q You don't have any independent recollection of any?

20 A No, sir.

21 Q This car here --

22 THE COURT: You mean from inside the car?

23 A No, just anywhere around the car.

24 Q Was there any evidence taken from this car?

25 A There was evidence taken from the front of it to see if

1 the blast was indicated there.

2 Q Was there any evidence taken from the van or inside the  
3 van?

4 A Not to my recollection, no.

5 Q Was there any evidence taken from Shay, Sr. or the owner  
6 or strike that, Shay, Sr. who -- do you know who Shay, Sr. is,  
7 the person who lived at 39 --

8 A The name, I don't know who the individual is.

9 Q All right. The point is did you take any evidence from  
10 this garage here?

11 A Not to my recollection.

12 Q Did you take any evidence from the house?

13 A Not to my recollection, sir, no.

14 THE COURT: We're going to have to suspend here.

15 MR. LIBBY: Your Honor, Agent Porreca could be saved  
16 a trip. I just have two or three questions.

17 Q I have just one more question. As you look, as you look  
18 through this evidence why, is there any indication of what  
19 color wires were found?

20 THE COURT: Well, the document is in evidence.

21 MR. LIBBY: It speaks for itself, your Honor.

22 THE COURT: Hold it for Mr. Libby. It is in  
23 evidence, isn't it?

24 MR. LOPEZ: I'm asking the witness, I can ask him if  
25 it indicates that, your Honor.

1 A I don't see anything that indicates the color of the  
2 wire.

3 Redirect Examination by Mr. Libby

4 Q Agent Porreca, you testified that you said in your  
5 expertise and your experience as a explosives officer you  
6 recognize contact points?

7 A Yes, sir.

8 Q I believe you testified you recognize when you see him in  
9 the context of the toggle switch, correct?

10 A Right.

11 THE COURT: That's two.

12 Q Do you commonly, Agent Porreca, undertake to provide  
13 microscopic analysis of bits and pieces of metal?

14 MR. LOPEZ: Objection.

15 THE COURT: You may answer that.

16 A No, sir.

17 Q Did you ever recover a whole toggle switch from explosion  
18 in it's entirety?

19 A No.

20 THE COURT: You said four questions. It is now 3  
21 questions.

22 MR. LIBBY: I meant two or three areas just very  
23 briefly. I'll be very, very brief.

24 THE COURT: You always say that, and then you go on  
25 with irrelevant things.

1 Q Does that refresh your recollection as to any evidence  
2 found in the grill of that GTO, sir, on that day?

3 A I do not recall evidence being found for that.

4 Q Your understanding was that this picture was taken in the  
5 course of this investigation?

6 A Yes, sir.

7 Q May I publish it to the jury, your Honor.

8 THE COURT: We're not going to publish anything to  
9 the jury, your Honor.

10 THE COURT: Do you have any other questions?

11 MR. LOPEZ: Just one.

12 THE COURT: I'm counting.

13 Recross-examination by Mr. Lopez

14 Q Did you find any pieces of evidence that weren't part of  
15 the bomb?

16 THE COURT: Of what?

17 Q Did you find any items at the scene that weren't part of  
18 the bomb?

19 A That were not?

20 MR. LIBBY: Objection.

21 A I don't know.

22 Q You don't know?

23 A I don't know.

24 THE COURT: Thank you, Mr. Porreca, you are excused.  
25 So are you, members of the jury, please return at 9 o'clock

1 tomorrow, and remember what I told you yesterday about not  
2 talking about the case, not reading about it, et cetera.

3 [Whereupon, the jury left the courtroom.]

4 (Whereupon, the jury trial adjourned at 1:05 p.m. to  
5 be reconvened at 9 o'clock on Thursday, October 28th, 1993.)  
6

7 **CERTIFICATE**

8 We certify that the foregoing is a correct  
9 transcription of our computer-aided stenographic notes of the  
10 proceedings in the above-entitled matter.

11 \_\_\_\_\_  
12 James E. McLaughlin  
13

14 \_\_\_\_\_  
15 Laura K. S. Walker  
16  
17  
18  
19  
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23  
24  
25

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Thomas Creavin, sworn (by Mr. Libby)	2			
(by Mr. Lopez)		20		
James McKernan, sworn (by Mr. Kelly)	35		59	
(by Mr. Segal)		49		64
Daniel Boeh, sworn (by Mr. Libby)	65		123	
(by Mr. Lopez)		103		
Christopher Porecca, sworn (by Mr. Libby)	129		162	
(by Mr. Lopez)		150		164

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
4	(See Clerk's Notes.)		9
13		13	
54			47
34			55
6,7			65
8			75
<u>Defendant's</u>			
4,5,6	(See Clerk's Notes.)		53
8			118

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

5 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9 Fourth Day of Trial

11 APPEARANCES:

12 For the Government:

13 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
14 Assistant United States Attorneys, Federal Courthouse,  
15 Boston MA 02109.

16 For the Defendant:

17 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
18 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
19 210 Commercial Street, Boston, MA. 02109.

20  
21  
22 Courtroom 3  
23 Federal Courthouse  
24 Boston, Massachusetts

25 October 28, 1993

P R O C E E D I N G S

[Whereupon, the jury entered the courtroom.]

THE COURT: Good morning, please be seated.

Who is the next witness, please?

MR. LIBBY: Your Honor, the Government calls  
Mr. Stephen Adams.

STEPHEN ADAMS, Sworn

THE CLERK: Please be seated and state your full  
name.

THE WITNESS: Stephen Adams, S T E P H E N.

THE COURT: You may proceed.

MR. KELLY: Thank you, your Honor.

Direct Examination by Mr. Libby

Q. Good morning, Mr. Adams.

A. Good morning.

Q. Are you employed?

A. Yes.

Q. By whom are you employed?

A. Austin Powder Company.

Q. How do you spell Austin?

A. A U S T I N.

Q. And where do you work?

A. I work out of Kingston, New Hampshire.

Q. And in what capacity are you employed, sir?

A. I'm a New England area regional sales manager.

1 Q. What does Austin Powder do or manufacture, sir?

2 A. We manufacture commercial explosives and detonators.

3 Q. And primarily, sir, who are Austin Powder's customers?

4 A. Drilling and blasting the contractors, sewer contractors,  
5 and rock quarries.

6 Q. How long have you been with Austin?

7 A. Since December of 1986.

8 Q. How long have you been in Kingston as a distributorship  
9 or regional office?

10 A. Yes, it is a storage facility and a regional office.

11 Q. How long have you been there?

12 A. Since January of '92.

13 Q. As a New England regional manager you oversee some  
14 people?

15 A. Yes.

16 Q. Could you briefly describe that to the jury, please.

17 A. We have storage facilities and offices in Vermont, Maine,  
18 Massachusetts and New Hampshire. And I am responsible for the  
19 operations and the people that operate the operations in  
20 there.

21 Q. And due to the nature of its business, sir, Austin is  
22 licensed by the Bureau of Alcohol, Tobacco & Firearms?

23 A. Yes, we are.

24 Q. Licensed in what way, sir?

25 A. As far as storage and inventory control.

1 Q. Are you inspected by the Alcohol, Tobacco & Firearms?

2 A. Yes, we are.

3 Q. Periodic basis?

4 A. Yes.

5 Q. You're appearing here today pursuant to a subpoena issued  
6 by the United States Attorney?

7 A. That's right.

8 Q. Now, where, sir, is Austin Powder's corporate  
9 headquarters?

10 A. Cleveland, Ohio.

11 Q. How long has Austin Powder been in existence?

12 A. Since 1833.

13 Q. So you're one of the larger manufacturing outfits in the  
14 business, sir?

15 A. Yes, we are.

16 Q. As of October 1991, sir, can you tell us, please, where  
17 Austin Powder's detonators caps had been manufactured?

18 A. In Austria.

19 Q. Explain how that process works.

20 THE COURT: What process?

21 Q. The manufacturing, how your relationship rather with the  
22 manufacturer in Austria?

23 A. The detonators are manufactured and assembled in Austria,  
24 and they are shipped, or they were shipped to MacArthur, Ohio;  
25 and then from MacArthur, Ohio they were distributed to

1 Austin's storage facilities to distribute to our customers.

2 Q. Now, was there a time, sir, when Austin's detonators caps  
3 were simply manufactured in Austria and shipped out in  
4 component fashion?

5 A. Yes.

6 Q. Up until what time did that take place?

7 A. October of '91.

8 Q. And at that time, sir, where were Austin's detonator caps  
9 assembled?

10 A. They were assembled in MacArthur, Ohio, and also  
11 Brownsville, Texas.

12 THE COURT: I'm sorry. What is manufactured in  
13 Austria?

14 THE WITNESS: The components of the detonators.

15 THE COURT: And the assembly is done in the United  
16 States and Texas and --

17 THE WITNESS: That's correct.

18 THE COURT: What was the other place?

19 A. In MacArthur, Ohio.

20 Q. So up to October and through October of 1991 all  
21 manufacturing components of the detonator caps took place  
22 overseas in Austria?

23 A. That's correct.

24 Q. And the components were then shipped for assembly to  
25 MacArthur, Ohio?

1 A. That's right.

2 Q. Would you describe to the Court and jury, please, the New  
3 England regional sales, just detonators caps, typical annual  
4 sales?

5 A. Approximately 600,000.

6 Q. Would you describe for us, please, the physical -- give  
7 us a physical description of the detonator cap what it looks  
8 like?

9 A. It is basically an aluminum shell with copper wires  
10 extruding from the end of it which come in different lengths.

11 Q. When you say lengths?

12 A. Lengths of copper wire. The minimum is eight foot length  
13 and the maximum could up to 250 feet.

14 Q. How are you familiar with the physical description of  
15 these detonators?

16 A. Through the use and sale of detonators.

17 Q. What do they sell for retail on the marketplace?

18 A. Average cost is probably around \$3 each.

19 Q. Do they come packaged in any particular form?

20 A. Yes, they do.

21 Q. What form is that?

22 A. They come packaged in a box, depending upon the length of  
23 the leg wires length, like the eight foot detonators they come  
24 in 50 to a box; and the longer they get, the less there is to  
25 a box.

1 Q. When in the hands of a customer, sir, does the customer  
2 typically tailor the length of the leg wires to fit the  
3 customers' needs?

4 A. Yes, they do.

5 Q. Nothing unusual about that?

6 A. It is very common.

7 Q. Cut the ends of the wire and crimp them, and so forth?

8 A. Yes.

9 Q. Now, let me show you, please, if I may, your Honor,  
10 approach the witness, a photograph marked for the record, your  
11 Honor, 17 C, Government's Exhibit 17 C-1 and ask you --

12 MR. KELLY: Offered by agreement of counsel. Part of  
13 17 C, entire 17 C will come in by agreement.

14 THE COURT: Why don't you have him tell us and then  
15 take it jury, because otherwise the reporter moving is always  
16 a problem.

17 Q. First --

18 THE COURT: Is 17 in evidence as of now. Okay. The  
19 record will reflect that 17 and all of the subparts are in  
20 evidence.

21 MR. LIBBY: 17-C.

22 THE COURT: Only 17-C?

23 MR. LIBBY: Which has three subparts.

24 [Government's Exhibit 17-C entered in evidence.]

25 THE CLERK: Mr. Libby, I don't have three subparts

1 marked on the Government's list?

2 MR. LIBBY: That's right. For our purposes here this  
3 is one of those three.

4 Q. Directing your attention to the left side portion of 17 C  
5 here, do you recognize what is depicted there, sir?

6 A. Yes, I do.

7 Q. Could you brief tell the jury what that is?

8 A. That is a Rock Star electric detonator.

9 Q. Would show us, if you can point, and just tell us the  
10 basic function of each of these components or major  
11 components?

12 A. An electrical charge is transmitted down the leg wires.  
13 It goes into the insulating clip, and then the fuse head which  
14 then a fuse head lights, which then lights the delay tube,  
15 which proceeds down the delay and then after the delay the  
16 ignition charge basically explodes, and then the base charge  
17 explodes into the primer or piece of explosives that it is  
18 inserted into.

19 Q. So this ignition charge is the first to go; is that  
20 right?

21 A. Yes.

22 Q. And it explodes the base charge which initiates whatever  
23 main charge this is inserted into?

24 A. That's correct.

25 Q. Okay.

1           THE COURT: Excuse me one second, why don't you show  
2 it to the jury by drawing it in front of them and pass it  
3 along to them so they can study it.

4           MR. LIBBY: I'll use it one more time, your Honor.

5           THE COURT: The witness was referring to the matter  
6 along the left-hand side of the picture.

7           (Whereupon, the exhibit was displayed to the jury.)

8 Q. Mr. Adams, is there anything distinctive about Austin  
9 Rock Star electric detonators?

10 A. Yes, sir, there is.

11 Q. How many competitors do you have on the market?

12 A. In this area, approximately three.

13 Q. What is distinctive about Austin Rock Star detonator  
14 caps, please?

15 A. There are two things, one of them is the color of the leg  
16 wires.

17 Q. And what is that?

18 A. They are red and yellow. And also, the delay timing  
19 sequence is stamped at the base of the aluminum shell of the  
20 detonator.

21 Q. When you say time and device sequence, is that a letter  
22 or number?

23 A. It is a number.

24 Q. What does that number stand for, please?

25 A. The number stands for the actual time in milliseconds

1       that it takes for the delay to activate the detonator.

2       Q.     For example, if there's a number 6 on the base embossed  
3       in the base of the cap itself?

4       A.     Yes.

5       Q.     What does that tell you?

6       A.     The number 6 stands for 150 millisecond delay.

7       Q.     So the standard delay is what?

8       A.     25 milliseconds.

9       Q.     And that is used, if you could briefly for the jury, for  
10      what purpose? Why don't you want to have a delay?

11      A.     To initiate a blast, it's necessary that each hole that  
12      is drilled into the ground or the rock, is initiated  
13      separately so that if you have 20 holes, all 20 holes don't go  
14      at once we can delay it so it can go all separately.

15      Q.     Now, directing your attention again to 17 C-1 Mr. Adams  
16      the right-hand side of the photograph here, sir, directing  
17      your attention specifically to these two items that I'm  
18      pointing to in the middle, can you identify those items for  
19      us, sir?

20      A.     Yes, I can.

21      Q.     What are they?

22      A.     I see red and yellow leg wires extending from the end of  
23      one of the detonators. And also, here I can make out a delay  
24      time stamp at the base of the fragment.

25      Q.     Can you see the actual number?

1 A. Yes.

2 Q. And with that information in mind, sir, do you have a  
3 conclusion as to the manufacturer of those items there, of  
4 those detonator caps?

5 A. In my opinion, based upon the color of the leg wires and  
6 the delay time stamped at the base of the fragment it is a  
7 Rock Star electric detonator.

8 Q. And finally, Mr. Adams, correcting your attention to  
9 Exhibit 12-1, in this -- looking in this can if you would,  
10 please -- can you see what's in there?

11 A. Yes.

12 Q. Can you identify for the jury what's in the can, please?

13 A. It is a Rock Star electric detonator.

14 Q. Manufactured by Austin Powder?

15 A. Yes.

16 MR. LIBBY: Thank you, I have nothing further, if I  
17 may.

18 THE COURT: Yes.

19 Ms. Sharton, any questions?

20 MS. SHARTON: Yes, your Honor.

21 MR. LIBBY: I beg your pardon. If I may have one  
22 final question.

23 Q. At any time, Mr. Adams, has Austin Powder manufacturing  
24 ever had any facilities in the Commonwealth of Massachusetts,  
25 at any time?

1 A. Not the manufacture.

2 THE COURT: You may proceed.

3 Cross-examination by Ms. Sharton

4 Q. Good morning, Mr. Adams.

5 A. Good morning.

6 Q. Keeping Exhibit 12-1 in mind which is being passed along  
7 to the jurors now, can you tell me where someone purchased  
8 that particular detonator?

9 A. No, I can't.

10 Q. And can you tell me when someone might have purchased  
11 this particular detonator?

12 A. No, I can't.

13 Q. Can you tell me what year it was purchased?

14 A. No.

15 Q. And you certainly can't tell me by whom it was purchased,  
16 right?

17 A. I cannot.

18 Q. And in fact, you cannot say whether it was purchased by  
19 anyone; is that right?

20 MR. LIBBY: Objection, your Honor.

21 THE COURT: It is irrelevant. The objection is  
22 sustained.

23 Q. There are no identifying marks or serial numbers or  
24 anything like that on the Austin Rock Star electric detonator;  
25 is that right?

1 MR. LIBBY: Objection, your Honor.

2 THE COURT: I don't know what the relevance of that  
3 is.

4 MS. SHARTON: I'm asking whether he can link up this  
5 particular detonator with anything. Whether he can give us  
6 any information whatsoever about a particular detonator.

7 THE COURT: But what's the relevance of that?

8 MS. SHARTON: Perhaps if we can be heard at the side  
9 bar.

10 THE COURT: Explain to me what the relevance is.

11 MS. SHARTON: Well, your Honor, I'm just trying to  
12 point out that all Mr. Adams can say is this is an Austin Rock  
13 Star detonator, and that's it.

14 THE COURT: Right. And it was manufactured somewhere  
15 other than Massachusetts. That's the sole purpose of his  
16 testimony, as I understand it.

17 MR. LIBBY: That's correct, your Honor.

18 MS. SHARTON: I think I'm entitled to inquire what he  
19 can't tell us as well, your Honor.

20 THE COURT: I don't understand what the relevance of  
21 what he can not tell us. The purpose of his testimony is to  
22 show that, as I understand it, that this detonator was  
23 manufactured outside of Massachusetts and it somehow exploded  
24 within Massachusetts, right?

25 MS. SHARTON: That's right.

1           THE COURT: Well, what's the relevance of showing  
2 that it doesn't have a serial number and he can't tell us that  
3 anybody in particular bought it?

4           MS. SHARTON: I want to make it clear that he has no  
5 knowledge beyond that.

6           THE COURT: I think that's probably agreed, right?

7           MS. SHARTON: Nothing further.

8           MR. LIBBY: I have nothing.

9           THE COURT: Let me explain to the jury, in particular  
10 count 2 of this indictment requires that the Government prove  
11 that the defendant received explosives in interstate  
12 commerce. That's the language of the indictment, and I this  
13 the statute has similar language. What that means is, that  
14 the Government has to prove that some component of the  
15 explosive traveled from one state into Massachusetts from some  
16 state outside Massachusetts, into Massachusetts in order to  
17 show this interstate commerce element. It is a necessary  
18 element the Government has to prove it.

19           The Constitution has allocated certain jurisdiction  
20 over certain things to the states and over certain other  
21 things to the federal Government. One of the powers left to  
22 the federal Government is to regulate interstate commerce.  
23 And it is under that power that Congress has passed this  
24 statute that makes it an offense to use explosives that have  
25 traveled in interstate commerce, and it is for that reason

1     that the interstate commerce is a necessary element to prove,  
2     particularly with respect to count 2; count 3 has another  
3     different interstate element that we will come to in due  
4     course. So it is on that issue that this evidence is being  
5     offered.

6             Thank you, Mr. Adams, you are excused.

7             MR. KELLY: Your Honor, our next witness will be  
8     Ms. Cynthia Wallace. Before we call her, I want to clarify  
9     the record to streamline in terms the counsel's agreement for  
10    the use of exhibits. During the course of this next witness's  
11    testimony, the following exhibits will be used, and most of  
12    them are agreed as being available for admissibility:

13            Exhibit 12, in its entirety, has already been  
14    admitted and will be used by this witness.

15            Exhibits 13 A and 13 B are offered for identification  
16    purposes only as exemplars or samples. They will not be  
17    offered.

18            By agreement, the parties agree to the admissibility  
19    of Exhibits 14, 15, 16, 17; Exhibit 18 in its entirety, which  
20    is three parts, A, B, and C, offered for identification only  
21    again, as exemplars, samples, not for admissibility; Exhibit  
22    21 A, B and C by agreement of the offer.

23            THE COURT: In evidence?

24            MR. KELLY: In evidence.

25            MR. KELLY: Exhibit 36 A through F, in its entirety,

1 we offer in evidence by agreement; and Exhibit 51, offered in  
2 evidence by agreement. I think Mr. Segal may have some...  
3 that's correct.

4 THE COURT: The record will so reflect.

5 [Government's Exhibits 14, 15, 16, 17, 21 A-C,  
6 36 A-F, and 51 admitted into evidence.]

7 [Government's Exhibit 13 A-B, 18 A-C marked for  
8 identification.]

9 THE COURT: What is your name?

10 THE WITNESS: Cynthia L. Wallace, last name is  
11 spelled W A L L A C E.

12 CYNTHIA WALLACE, Sworn

13 Direct Examination by Mr. Kelly

14 Q. Good morning, Ms. Wallace. Can you tell us by whom you  
15 are employed, please.

16 A. I work for the U.S. Treasury Bureau of Alcohol, Tobacco &  
17 Firearms at their forensic science lab.

18 Q. What position do you hold?

19 A. I'm a forensic chemist.

20 Q. How long have you served as a forensic chemist at the  
21 Bureau of Alcohol, Tobacco & Firearms?

22 A. Just about seven years now.

23 Q. Would you describe your duties as a forensic chemist?

24 A. Sure. I work in the explosives section, so we analyze  
25 evidence submitted to a laboratory in association with bombing

1 cases, I'll identify any explosives that were used, and also  
2 any components that may be present as necessary, when evidence  
3 is submitted to the laboratory for a search warrant, I will  
4 compare that evidence to what we recovered from the bomb, from  
5 the device, and also I will go out to scenes to assist in the  
6 collection of preservation of evidence, either with our  
7 national response team or on a technical assist, which is what  
8 it is sometimes called.

9 Q. What's your educational background, Ms. Wallace?

10 A. I have a B.S. and biochemistry from the University of  
11 Maryland in 1985.

12 Q. What training and experience do you have relative to  
13 explosives examinations?

14 A. Well, I've had extensive on-the-job training. Long ago I  
15 completed the training program for forensic chemist. I've  
16 considered a journeyman for several years now. I've also  
17 completed several short courses and continue to take these  
18 courses on an ongoing basis. Courses are on how to identify  
19 explosives and explosives residues and various analytical  
20 chemistry techniques.

21 Q. Is explosive analysis a specialty area, please?

22 A. Yes.

23 Q. Are you able to tell us, Ms. Wallace, approximately how  
24 many cases of this variety you worked on while you have been  
25 employed by Alcohol, Tobacco & Firearms?

1 A. I've worked well over a hundred each involving several  
2 examinations, sometimes hundreds of examinations.

3 Q. By that you mean, one particular explosion may result in  
4 lots of different materials that you have to look under a  
5 microscope?

6 A. Yes, I examine different materials, different types of  
7 examinations, that sort of thing.

8 Q. Do you belong to any professional societies?

9 A. Yes. Belong to the American Chemical Society, the  
10 International Association of Bomb Technicians, and  
11 investigators and the Chemical Society of Washington.

12 Q. Are you currently active in these societies?

13 A. Yes, I have given several presentations at these  
14 societies and others, and I attend meetings as I am able to.

15 Q. In your work, Ms. Wallace, do you get involved in the  
16 publication of books and articles in the field of forensic  
17 chemistry?

18 A. Just had a chapter that was published in books on  
19 explosives analysis. That's the only publication I have to  
20 this date. Primarily, I'm working on case work on day-to-day  
21 basis, research has to be accommodated in between the normal  
22 case work, we're required to do.

23 Q. Is it fair to say that on a full-time basis you're  
24 engaged in forensic analysis of bombings or criminal cases?

25 A. Yes, sir.

1 Q. Have you testified and qualified as an expert in the  
2 field of forensic chemistry in federal and state courts on  
3 previous occasions?

4 A. Yes.

5 MR. KELLY: Your Honor, at this time the United  
6 States would request that Ms. Wallace be considered as an  
7 expert forensic chemist specializing in the analysis of  
8 explosives and related evidence.

9 THE COURT: Who will cross-examine her?

10 THE COURT: Do you have any questions on voir dire?

11 MR. SEGAL: Briefly.

12 THE COURT: Let me explain this to the jury, the  
13 witnesses you heard heretofore are what we call fact  
14 witnesses. They told you what they did, what they saw, in the  
15 case of Mr. Adams, for example, what he knew about his  
16 product. Ms. Wallace is being offered I suspect partly as a  
17 fact witness but partly as an expert witness, that is she has  
18 some knowledge and experience in training in a particular  
19 field. And as a result of that, is allowed to give you  
20 opinions that are designed to hopefully assist you in finding  
21 the facts. Opinions about things that ordinary laypersons,  
22 like us, might not know about in the field of explosives.  
23 Whenever an expert is offered, then counsel have to let you  
24 know and let me know the qualifications to give the opinions  
25 and in that case, the other side is allowed also to ask

1 questions on qualifications before I decide initially whether  
2 the witness is allowed to testify.

3 Now, in your job is not finish, however, when I say  
4 she may testify. You, too, will have to judge her  
5 qualifications, and decide whether you are satisfied that she  
6 is qualified to give the opinions that she has given.

7 And also, it may be -- sometimes counsel when they  
8 are dealing with an expert ask the expert to assume certain  
9 facts, and then give the opinion based on those assumptions.  
10 When that happens, I warn you, listen carefully to the  
11 assumptions that the expert is asked to make because if your  
12 determination of the facts in this case is different from the  
13 assumptions that the witness is asked to make, then the  
14 opinion the witness gives you is of absolutely no value to  
15 you.

16 Do you understand?

17 Do you?

18 I mean, for example, in a case of chemist, the  
19 chemist were asked if you combine two parts of Chemical A and  
20 three of chemical B, will an explosion occur, and the witness  
21 says yes; but you find it wasn't two of A and three of B but  
22 rather three of A and four of B, then the opinion that the  
23 witness gave you is of no assistance to you whatsoever.

24 So you may now have your questions on qualifications  
25

Voir Dire Examination by Mr. Segal

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Q. Good morning, Ms. Wallace. My name is Terry Segal.

A. Good morning.

Q. When you graduated from the University of Maryland in -- did you graduate in 1985?

A. Yes, sir.

Q. And is it fair to say you were 21 years old at that time?

THE COURT: We don't need to get into that.

Q. How old are you today?

A. 31.

Q. How many times have you identified dynamite as the explosive main charge in a Court? Before this case?

A. I don't know that figure off the top of my head. I would say it is several times.

Q. Can you tell us, Ms. Wallace, what you mean by the term "journeyman"?

A. Meaning that I am qualified to independently make judgments about how the evidence is to be handled and how it is to be analyzed and that I am not in training program where I need to have a mentor looking over me and telling me what I need to do for each move.

Q. And you have been a journeyman for how many years?

A. Four years.

Q. I take it a journeyman versus journeywoman?

1 THE COURT: Journey person.

2 Q. Is that fair to say?

3 A. Yes.

4 THE COURT: Let us stretch before we hear the  
5 substantive testimony of the witnesses.

6 THE COURT: You may proceed, Mr. Kelly.

7 MR. KELLY: I presume there is no challenge of  
8 Ms. Wallace qualifications?

9 THE COURT: I find her qualified, and she may testify  
10 as an expert.

11 Continued Direct Examination by Mr. Kelly

12 Q. Ms. Wallace, I'll direct your attention to the date of  
13 October 28, 1991, and ask you whether or not you received  
14 notification to respond to the scene of a bombing at that  
15 time?

16 A. Yes, I did.

17 Q. And by whom were you notified?

18 A. Well, the chief of the explosives section at the  
19 laboratory was notified by the Alcohol, Tobacco & Firearms  
20 command center that the Northeast National Response Team was  
21 being activated and I was selected as the team chemist.

22 Q. What was your assignment as a team chemist?

23 A. The team chemist acts as liaison for the laboratory at  
24 the, at the bombing scene. And I'll primarily be searching in  
25 the immediate blast areas looking for any components that may

1 have been recovered, assisting in the preliminary  
2 recognition. Also as needed I'll assist in the collection of  
3 preservation of the evidence, I'll assist the evidence  
4 technician if required.

5 Q. How long have you been a member of the ATF Northeast  
6 National Response Team?

7 A. About five years.

8 Q. Are you still a member?

9 A. Yes, sir.

10 Q. On this particular explosion, can you tell us when it was  
11 that you arrived in the Boston area?

12 A. I arrived the evening of the explosion which I belief was  
13 October 28th, and --

14 Q. Go ahead.

15 When did you first go out to the actual scene of the  
16 explosion?

17 A. Well, the command center for the National Response Team  
18 had been set up in a local police station, and the members of  
19 the team were all to report there early on the morning of the  
20 29th so I reported that morning with my evidence collection  
21 kit. And we were briefed on what was known of the event up do  
22 that point.

23 Q. And after that briefing what was the first step that you  
24 engaged in?

25 A. I went out to the, the site of the explosion with Dan

1     Boeh, who is the team leader, and Chris Porreca who is the  
2     evidence technician, and several other people. And we did a  
3     preliminary walk-through of the scene, saw what we had to deal  
4     with, and began to develop our approach to how we were going  
5     to perform the evidence collection at that scene.

6     Q.    Now, can I take it you stayed in Boston for several days  
7     thereafter?

8     A.    Yes, I did.

9     Q.    Tell us, if you would, when the process of evidence  
10    collection is actually going on out there at the scene or  
11    these agents and people are out there crawling around on the  
12    ground picking stuff up, what do you do as forensic chemist  
13    what role do you actually serve?

14    A.    I answer any laboratory oriented questions that come up  
15    as far as how to package things, preserve them correctly, for  
16    laboratory analysis, and I'll also assist in the searching.  
17    Generally, like I said, I'm working in the central area  
18    looking for the components that may have been, that may have  
19    been recovered and are right there in what they call the seat  
20    of the blast which is a crater. But also, as needed as if the  
21    team leader calls me and asks me to look at some item from  
22    somewhere else, I'll look at it and give my opinion on it at  
23    that point.

24    Q.    Can you give us an example of the situation where you as  
25    a forensic chemist might get involved in the packaging of a

1 particular exhibit from a blast site?

2 A. Yes. In the case of explosives analysis, many explosives  
3 are -- they must be packaged in a tight seal because some of  
4 the components easily evaporate. So they will be placed in a  
5 clean paint can or a glass jar with a Teflon lid to insure  
6 that the all the residue stays in the job and doesn't  
7 disappear.

8 Q. As part of your work on the actual scene of a tall  
9 explosion do you actively participate with the investigators  
10 in this kind of hands and knees search for little pieces of  
11 debris?

12 A. Yes, I do.

13 Q. Are you familiar with this Bureau of Alcohol, Tobacco &  
14 Firearms investigations explosives investigation guide?

15 A. Yes.

16 Q. Okay. And this has a section in it called forensic  
17 chemist, and I just want to -- one final area to check with  
18 you, whether or not in this particular case, you performed  
19 some of the things that they list. It says, number one,  
20 selected and assemble equipment do you do that here?

21 A. Yes, I did that in the laboratory before I came actually.

22 Q. Preliminary walk through a scene with explosives  
23 technician and team leader?

24 A. Yes. That was the preliminary walk-through I just  
25 described.

1 Q. Assist team leader in evaluating situation and discussing  
2 method of approach?

3 A. Yes.

4 Q. Assist general area search unit where appropriate?

5 A. Yes.

6 Q. Assist immediate area search unit?

7 A. Yes, which means the immediate area around where the  
8 explosion occurred.

9 Q. That's what's known as the seat of the blast?

10 A. Yes, sir.

11 Q. Coordinate with state and/or local laboratory personnel  
12 as appropriate?

13 A. Yes. I do that as needed. I don't do that in this case.

14 Q. That was in the necessary here?

15 A. That's right that wasn't necessary.

16 Q. As this technical advisor for all laboratory oriented  
17 questions arising at the scene?

18 A. Yes.

19 Q. That means that if some fellow doesn't have a background  
20 in forensic chemistry and picks up something and doesn't know  
21 what that is, that person might come to and say, Cindy, this  
22 is something you can take?

23 A. That's true.

24 Q. Conduct field tests where appropriate?

25 A. Yes. I didn't do that in is that case because there were

1 none required.

2 Q. Assist evidence technician and team leader at the  
3 evaluation of collected evidence what does that mean?

4 A. That means once we collect all the items, we start  
5 taking -- well in this case what happened is that the evidence  
6 was collected at the scene according to where it fell after  
7 the explosion. After it was collected at the scene we  
8 transported it become to the command center at the local  
9 police station and there we started sorting through the  
10 evidence and noting what components were present and getting  
11 an idea as to what, what made this device, what parts made up  
12 this device.

13 Q. And finally, assist the evidence technician with proper  
14 packaging for submission to the laboratory, did you do that  
15 here?

16 A. Yes.

17 Q. Now, I want to begin, Ms. Wallace, by first, if I can  
18 request the Court's permission, can I come and go.

19 THE COURT: Yes.

20 MR. KELLY: Thank you.

21 Q. I want to begin by showing you what has been introduced  
22 previously as Exhibit 9E, if you can kind of hold this up as  
23 we can talk. I think this was published once before.

24 Can you tell us what is depicted in that photograph,  
25 Ms. Wallace?

1 A. Well, it may be hard to see from where you are, but what  
2 we noticed on this preliminary walk-through, was that there is  
3 a detonator or blasting cap right here that had been impelled  
4 into this wall that was next to where the seat of the blast  
5 was and the business end of that detonator was in the wall so  
6 we were unsure at that point whether or not it had actually  
7 expended or functioned. So we were first trying to evaluate  
8 that situation and decide how to deal with that as a safety  
9 issue. While we were looking at that --

10 MR. SEGAL: I have an objection, we maybe she can  
11 tell us what she did as opposed to collected.

12 A. Well, I look at it with the explosives technology branch  
13 representatives and other members of the team, but I did look  
14 at it personally.

15 And also, at this point what I noticed was some very  
16 small tiny crystalline globs of material that had been stuck  
17 up on this paneling. And I collected that material at that  
18 point, respecting it may have been from the explosive filler,  
19 from the device that had gotten, that had been unconsumed and  
20 had been impelled into this, this surface of this wall.

21 Q. Now, did you take that crystalline material that you  
22 found on that wall and did you bring it back to the laboratory  
23 for analysis?

24 A. Yes, actually that was shipped by overnight, actually it  
25 was personally delivered to the laboratory by one of the ATF

1 agents, and the next day some of the forensic chemists at the  
2 laboratory analyzed the materials and gave us some preliminary  
3 results as to what the explosive filler was.

4 Q. What were the preliminary results?

5 MR. SEGAL: Objection, your Honor. That's hearsay.

6 MR. KELLY: I'll ask a different question.

7 Q. Did you subsequently have occasion to test this  
8 crystalline material yourself?

9 A. Yes, I did.

10 Q. What did you find it to be?

11 A. I found that it was dynamite, and the identification of  
12 dynamite is based on the presence of certain chemicals and  
13 materials, including explosive oils, specifically, commonly,  
14 nitroglycerin or ethylene glycoldinitrate, and both of those  
15 materials were recovered. And I identified some material  
16 along with some of the other chemicals that were recovered as  
17 dynamite.

18 Q. In kinds of layman's terms, can you tell us Ms. Wallace  
19 what is dynamite?

20 A. Dynamite refers to a class of explosives. They are  
21 commonly used in commercial applications such as mining or  
22 quarrying.

23 Q. Now, just a bit a jump while on subject of dynamite, can  
24 you tell us where else among the bomb debris or fragments you  
25 found the presence of dynamite based on forensic analysis?

1 A. Certainly, and I'll explain this in more detail further  
2 on when I get more into the specifics. But there was some  
3 magazine fragments, tape fragments that were recovered from  
4 the device. And stuck to these surfaces with were more of  
5 this white crystalline material which was identified as  
6 dynamite. And also, the dirt at the seat of the blast was dug  
7 up and submitted to the laboratory, and residues of dynamite  
8 were recovered from that, too.

9 Q. Ms. Wallace, I'm now going to place before you Exhibit  
10 9-D which has been admitted in evidence, with the Court's  
11 permission as we go, I'll just...

12 Can you tell us what we're looking at in that  
13 photograph, Ms. Wallace?

14 A. Yes. This is working in the immediate site of the  
15 blast. We found this small sticker fragment right here. This  
16 is actually my hand holding it right there at the scene where  
17 we found it. And that sticker had the word Futaba on it,  
18 which we recognized as a common brand of radio control.

19 THE COURT: When you say we, you mean I?

20 THE WITNESS: Yes.

21 Q. And at the time of this discovery on the scene, did  
22 investigators such as yourself determine this to be a  
23 significant --

24 THE COURT: Perhaps -- excuse me. Mr. Kelly, you can  
25 assist her by not referring to what investigators may know but

1 asking her what she knew.

2 MR. KELLY: I'll change the question, your Honor.

3 Q. When you found this, did you deem it to be significant?

4 A. Yes, I did.

5 Q. Why?

6 A. Because I recognized it to be a brand name for common  
7 radio control component.

8 Q. When you use the phrase "radio control," is that  
9 synonymous where remote control?

10 A. Yes, sir.

11 Q. Let me show you Exhibit 9-C, can you tell the jury what  
12 is depicted in that photograph, please?

13 A. There was a truck at the, in the driveway where the  
14 incident occurred and this is the bumper of that truck, they  
15 refer to it as a panel truck and on that bumper, are two  
16 magnets, these are two of 12 magnets that were later recovered  
17 from the device or recovered at the scene.

18 Q. Now, after the fragments are identified and bagged at the  
19 scene, what happens to them? Where do they go next?

20 A. We take them to the command center. As I mentioned  
21 before, the evidence was collected at the scene according to  
22 where it fell. When we took it back to the command center, we  
23 began sorting the evidence to get an idea as to what  
24 components we might have present and then later the evidence  
25 is submitted to the laboratory where I perform a detailed

1 analysis, and examination of the device components that are  
2 submitted.

3 Q. And where is the ATF forensic laboratory?

4 A. It is in Rockville, Maryland.

5 Q. And once evidence from like a scene of an explosion is  
6 received back at the lab, how is it handled by people like  
7 you?

8 A. Well --

9 MR. SEGAL: Objection to, rather than general  
10 procedure, can she tell us what happened in--

11 THE COURT: He saw you rise and he changed the  
12 question.

13 MR. KELLY: Sorry, your Honor.

14 Q. Do you understand my question?

15 A. Yes, I do.

16 Okay, what I did was, when we got back to the  
17 laboratory, we had these bags of evidence, still mostly it was  
18 in the bags according to where it had been collected. At the  
19 command center we had done some packaging of taking components  
20 that were component parts from the same component that were in  
21 each bag and putting them into separate smaller bags. But  
22 when I got back to the laboratory, in other words, to get the  
23 most information out of the limited pieces that were  
24 recovered, I photographed each type -- well, I started pooling  
25 some of the pieces of evidence so I could get the most

1 information off each component. What I did before I pooled  
2 it, I took photographs, photographed it as it had been  
3 recovered at the scene with all the other items that had been  
4 recovered so it would be possible to reconstruct from where  
5 each one of these items individually came. At the same time  
6 it enabled me to get a good idea of the overall picture, and  
7 get the best sort of information I could.

8 Q. When you use the phrase pooling of exhibits can you tell  
9 us what that means?

10 A. That means that I -- as I mentioned -- I'll take all the  
11 parts for example, if I know something is from the, if I  
12 recover fragments of Futaba, radio control receiver in this  
13 case, I start looking for all the components of a radio -- of  
14 a Futaba receiver that is present among the debris.  
15 Photograph it where it was originally found and then put it  
16 altogether in the same bag so I can get all the pieces that  
17 were recovered and get ideas to how much I have left and what  
18 these pieces are to be able to tell me.

19 Q. Once the exhibits the entirety of all these physical  
20 pieces were received back at the lab in this case, can you  
21 just give us an overview of the types of forensic tests that  
22 you perform on them, what kind of tests?

23 A. Well, certainly, as a generality with all evidence we  
24 look at the items physically and make -- I look at them.

25 MR. SEGAL: I object to the "we."

1 THE COURT: He's also objecting to the generality.  
2 Tell us what you did in this case.

3 THE WITNESS: In this case as with all cases --

4 MR. SEGAL: I'll object "to all cases." We're here  
5 for this case.

6 MR. KELLY: That objection is meaningless.

7 THE COURT: You may tell us what you did in this case  
8 and to the extent that it is the same you did in every case  
9 you may tell us that. She may tell us what emphasis on what  
10 you did in this case.

11 THE WITNESS: Okay.

12 I just want to state that, you know, we follow a  
13 certain general procedure and followed it in this case and --

14 MR. SEGAL: Objection, and move it be stricken.

15 THE COURT: The objection is overruled, the motion is  
16 denied. You may proceed.

17 A. What I do is I examine the pieces physically,  
18 microscopically and chemically, if required. So each  
19 different type of evidence will require different types of  
20 testing. For example, if I'm examining what I believe to be  
21 explosives residue, I'll proceed in a certain manner with  
22 certain tests. If I'm examining paint I'll proceed in a  
23 certain manner with certain tests, and likewise as for all the  
24 different types of evidence, tapes that were recovered from  
25 the device.

1 Q. And eventually, based on the spectrum of tests that you  
2 performed, do you prepare a written report that contains your  
3 findings and conclusions based on these tests?

4 A. Yes, I do.

5 Q. I want to show you what has been introduced as Exhibit  
6 12-A, and would you tell us that is, Ms. Wallace?

7 A. This is a copy of the laboratory report that I supplied  
8 in this case as the original copy, the original signatures.

9 Q. You wrote that report based on your tests in this case?

10 A. Yes, sir.

11 Q. Now, in writing that report this case, what did you  
12 strive to accomplish, what were you trying to communicate to  
13 people in that report?

14 A. I was trying to present a summary of the, of the  
15 examinations that I had and the different tests that I had  
16 performed at the laboratory, in such a manner that it would be  
17 meaningful and useful to the agents and further down the  
18 line.

19 Q. Did you put each and every piece of information and  
20 subsidiary finding into the body of that report?

21 A. No, I didn't. There were a number of items that I only  
22 supplied verbally to the agents in the case.

23 Q. If you put every single finding of every single test that  
24 you performed into that report, would it be substantially  
25 longer than it is now?

1 MR. SEGAL: Objection.

2 THE COURT: What's the objection?

3 MR. SEGAL: That's irrelevant to this case. It is a  
4 hypothetical situation.

5 THE COURT: Well, you can take it on  
6 cross-examination, I will allow it.

7 Q. Isn't it true it would be substantially longer?

8 MR. SEGAL: Now he's leading the witness.

9 THE COURT: That's true.

10 Q. Go ahead, would you answer my last question.

11 A. Yes, it would be much longer.

12 Q. Okay.

13 MR. KELLY: A moment of the Court's time..

14 Q. Your Honor, with the Court's permission, I would like to  
15 ask Ms. Wallace if she would come down from the witness stand,  
16 so I can take her through this portion of the examination.

17 THE COURT: Are you going leave it right there?

18 MR. KELLY: Well, I was trying to accommodate the  
19 Court. Unless Court wishes to have the reporter actually  
20 move, I would like to, as she talks about particular  
21 categories, pull the photographs and publish them as we go.

22 THE COURT: All right.

23 THE COURT: Remember, Ms. Wallace, that you have no  
24 microphones, you just need to shout.

25 Q. Ms. Wallace, let's start first by having you explain to

1 the jury what it is we're looking at here on the easel next to  
2 you?

3 A. This is -- these are photographs that I took that were to  
4 illustrate some of the points that we -- I had identified  
5 from the recovered items. And some of these items, it is,  
6 just pictures of the recovered fragments; and some of these  
7 items, I'll make it clear in each one as I go through, I have  
8 an exemplar of the item, I took a known item, took it apart,  
9 photographed it, and then put the fragments that were  
10 recovered from the device in a separate area to show you the  
11 correlation between what we found and what we -- what it came  
12 from.

13 All these items are represented in these bags of  
14 evidence that are on the table. And I'll pull them out as  
15 necessary when I'm talking about this.

16 Q. Let's begin with the top board which, for the record, is  
17 Exhibit 17-A, to move this along.

18 Is it fair to say, Ms. Wallace, the top board are,  
19 effectively, nonelectric components, the bottom are more of  
20 the electric and battery-type components?

21 A. Yes.

22 Q. Let's start first with the first category, which is 17 A,  
23 the top board on the left, wood fragments, would you explain  
24 your fragments with respect to the wood fragments to the jury,  
25 using these items and any other items that you may deem

1 necessary?

2 A. Sure, actually, let me start with this picture, which is  
3 on the bottom left, because this shows some of the  
4 representative pieces of the wooden box that we recovered at  
5 the scene. You'll notice that we had pieces recovered with  
6 black paint on them. This board was approximately a  
7 quarter-inch thick, three layer plywood. And we could, by  
8 reconstructing some of the pieces, we could piece some of the  
9 pieces together and get some ideas as to minimum dimensions of  
10 the box. It was approximately 1 1/4 inches in thickness and  
11 at least 6 1/2 inches long on one side.

12 Some other features I'll show you this photograph  
13 are, are the black paint -- you may see this better when it is  
14 passed through the jury box; the blue paint, which came from  
15 one of the magnets. And you can see where some of the magnets  
16 had been placed on this on this device here, an impression is  
17 left when it came off.

18 Then this next photograph illustrates another feature  
19 about the box which was we could --

20 MR. SEGAL: I object to "we."

21 THE COURT: We understand that "we" means "I". She's  
22 talking about what she did.

23 MR. SEGAL: As long as it's what's she did, I have no  
24 problem.

25 THE COURT: Go ahead, Ms. Wallace.

1 THE WITNESS: Let ME illustrate with this exemplar  
2 device. Based on these pieces we could recover, we could  
3 identify the thickness the device had been.

4 MR. SEGAL: I object to the "we".

5 THE COURT: Mr. Segal, we understand it.

6 MR. SEGAL: The point is, there's a big lab down  
7 there, I'm not sure we are getting collective or individual --

8 THE COURT: Ms. Wallace, can we agree that what you  
9 are telling us now is what you alone did?

10 Right?

11 THE WITNESS: Yes.

12 THE COURT: If you use the term "we," we understand  
13 that you really mean that you yourself did it; is that  
14 correct?

15 THE WITNESS: Yes. I'll try to.

16 THE COURT: Members of the jury, it is exacerbating  
17 when counsel does that, and I'm showing my exasperation. On  
18 the other hand, he does have a right to insist, for purposes  
19 of cross-examining the witness, that she talk about what she  
20 did, and not what other people did. Sometimes we get hyper  
21 about these things, but with reason.

22 MR. KELLY: I'll withdraw my question.

23 THE COURT: I'm sorry?

24 MR. KELLY: After that.

25 Q. Go ahead, where were you?

1     A.     So, I could determine the thickness of the box and one of  
2     the dimensions of it was at least 6 1/2 inches in length; that  
3     it had had some of these magnets glued on it -- we'll discuss  
4     this more with some of the different photographs.

5             In addition, I can also determine that there had been  
6     an additional smaller box on one side of the larger box, as  
7     you see here, and that it's dimensions were approximately  
8     2 5/8 inches in length and width and in thickness,  
9     approximately -- I believe it was 1 1/4 inches in thickness.

10            And we can also tell some other items about what had  
11     been placed inside this small box. This information, I could  
12     determine this based on some of these other wood fragments you  
13     see in this photograph. And the pieces were pieced together  
14     where you could physically match where, just like a puzzle,  
15     where it goes together, and I see that these pieces go  
16     together.

17            What you are looking at here is the view looking into  
18     the fragments from on top. This, this piece is perpendicular  
19     to the board, and it's this wall of the small box, also with  
20     the same with this.

21            And here we have the portions of where the other wall  
22     had been glued to the larger box. And based on this we could  
23     come to the conclusions about the size of this smaller box.

24            We could also make -- there were also some other  
25     items that were visible on these pieces of wood, which is --

1 and some of them are shown better in this photograph, which is  
2 Government's Exhibit 17n E. This is a close-up of, of this  
3 corner of this fragment from this picture. And what it shows  
4 are pen markings which are from a template that had been drawn  
5 on the wood prior to the box being constructed and that there  
6 was also adhesive here, and that from this adhesive were  
7 impressions that can tell us certain information about how  
8 certain of the components has been placed inside the box --  
9 and I'll get into that, I'll refer to these photographs later  
10 when I'm showing you some of the individual components.

11 Q. Go on.

12 A. These are fragments of one of the two types of, of  
13 magnets that were recovered from the device. There were large  
14 ring magnets, as illustrated with this exemplar. I recovered  
15 fragments of at least one ring magnet; it was a certain type,  
16 it was strontium-ferrite ceramic magnet. And I could  
17 determine what its original diameter and thickness and height  
18 were.

19 And it was on these pieces of magnet, there is black  
20 paint visible which is consistent with it having been -- and  
21 there was adhesive on the other side -- consistent with it  
22 having been affixed to the box and then the entire device  
23 being painted black.

24 This next -- actually, we have, we have a sample of  
25 one of these.

1           This back is actually sealed up, but it is a ceramic  
2 magnet which is not exactly the same dimensions that was used  
3 in the device but it is about right, and just shows you that  
4 what was recovered was a ring magnet; actual dimensions, a  
5 little more than 3 1/2 inches in outer diameter, and it was  
6 about .6 inches tall, and it was about, I guess, .8,  
7 approximately, .8 inches in width here.

8           These are fragments of the smaller button-type  
9 magnets that we recovered. There were fragments of at least  
10 12 recovered. Ten of them had been originally painted red,  
11 like this one is -- that's the way it came from the  
12 manufacturer; and two of them were blue. And at least 12 of  
13 these had been affixed to the top of the device with adhesive  
14 and then painted over, as you see there in the exemplar.

15           This photograph shows some of the magazine fragments  
16 that were recovered. And they are placed on top of an  
17 exemplar of -- we later identified which magazine and which  
18 page these fragments had come from. And for clarity of the  
19 photograph, I took the fragments, as you see them here, and  
20 placed them on top of the page so that you could actually  
21 almost read across the fragments that we recovered.

22           These magazine pages had been wrapped with layers of  
23 duct tape and black electrical tape. And particles of what we  
24 identified as dynamite were also recovered from the -- from  
25 this surface. This is consistent with the dynamite having

1       been wrapped in the magazine page, then in layers of tape.

2               The way I identified this, it has the graphic  
3       artist's name here. So I called up, based on fact it looks  
4       like a muscle magazine, called up various magazines until I  
5       found out one who had this guy, Steve Douglas, as a graphic  
6       artist; sent them a Xerox of the recovered pieces, and they  
7       identified it, sent me a page of the magazine. It was a  
8       July-August issue of Muscle Mag International.

9               Here it is. It was page 26 from the July issue. And  
10      this actual page is not an advertisement, it is an actual  
11      article that appeared in the magazine.

12              The next photograph shows some of the types of tape  
13      that were recovered. We recovered three types of tape. There  
14      was three-quarter inch black electrical tape, silver duct tape  
15      fragments, and, also, one piece of white tape that is present  
16      in one of the photographs that we'll be showing shortly. And  
17      this just shows some of the types of tape. This shows some of  
18      the tape that was recovered in one exhibit and shows you the  
19      type of, of evidence that we recovered.

20              As Mr. Kelly explained, this board shows some of the  
21      electronic components of the device, as well as some of the  
22      batteries.

23              This first photograph is one of the components of the  
24      remote control system. It's a servo. And we identify it as a  
25      Futaba brand. Servo is used in conjunction with a receiver.

1     So that when the receiver receives a radio signal of the  
2     correct frequency, it sends an electrical signal to the servo,  
3     which is essentially a small motor, and which then performs  
4     mechanical work. And the part of the servo that actually  
5     forms the mechanical work that actually moves is this item  
6     that's on top.

7     Q.     Can you give us the exhibit number of that sample?

8     A.     Yes, it is 18-C. This is an exemplar Futaba servo.

9             And there are a number of different -- these,  
10     actually, these levers on the top the servo are termed horns.  
11     Futaba makes a number of different horns. But I can determine  
12     that this model of horn was the one that was used in the  
13     device.

14            Now, let me explain that. In this photograph,  
15     there's an intact servo here on top -- you are looking at it  
16     down from on top -- it has a different horn on it.

17            This is fragments of a servo that has been  
18     disassembled. Again, this is an exemplar on the right-hand  
19     side of this photograph that has been disassembled. And on  
20     the left-hand side are the fragments that we did recover from  
21     the servo.

22            For example, here's some of the screws that are used  
23     in the plastic housing. And here's one of the screws in the,  
24     in the plastic housing that we recovered. Other pieces that  
25     you can correlate to what was recovered, wire; and these other

1 internal components. But what we also recovered, and which we  
2 already showed you, that I was holding, that little sticker,  
3 that told us that it was a Futaba brand servo and told us what  
4 model it was.

5 And I guess that's all I was going to say about that  
6 photograph.

7 The next photograph.

8 The next photograph is another part of the Futaba  
9 remote control system; it is the receiver. As I explained  
10 before, that's the part that receives the signal and signals  
11 the servo to actually do the work.

12 This is a photograph of a, a receiver that we took  
13 apart to show you the different parts of plastic housing and  
14 some of the internal components, as well as -- and it's washed  
15 out in this photograph -- the white wire that is the antenna  
16 for the receiver.

17 Let me show you the exemplar.

18 This photograph shows a receiver put together, and  
19 the white wire is the antenna that comes out from the  
20 receiver.

21 We recovered components of this receiver and, also,  
22 we recovered, you see this sticker on the back side of the  
23 receiver is a silvery sticker with writing on it. We  
24 recovered this piece from the device, but we also recovered a  
25 piece of fragment of wood that had, had the receiver glued to

1 it, and the writing from that sticker had been transferred on  
2 to the adhesive. And from this adhesive we can make out the  
3 end part of the coding that you see on this photograph, and  
4 identify the model of the receiver that was used.

5 Also pieces of the, the white wire were recovered,  
6 they had adhesive on them and black paint to show they had  
7 been glued on to the outside of the box.

8 Q. Ms. Wallace, how would the number from the back of that  
9 receiver get transferred on to the wood of the box?

10 A. The adhesive transferred it to the adhesive that was on  
11 the wood. Again, this receiver had been glued to this wooden  
12 surface, and the writing was transferred into the adhesive  
13 like in a mirror image.

14 Q. Would that have had anything to do to the blast, or would  
15 that have happened, regardless? Do you have an opinion on  
16 that?

17 A. I don't know if it would have happened regardless or not.

18 One other thing, we could identify from this code  
19 that band of radio frequency this operated on. It operated on  
20 band 72 which is reserved for radio control aircraft only.

21 This photograph shows, again, this is pieces of an  
22 exemplar taken apart versus what we recovered from the  
23 device. And this is the mini slide switch, Futaba brand slide  
24 switch, that we recover from the debris. And based on, for  
25 example, you can see inside the plastic housing of one of

1     these switches, we do have a switch, is this, is this metal  
2     plate; these are the fragments of the metal plate that were  
3     recovered. These are the screws that are used in the  
4     exemplar, and here are the screws we recovered. This switch  
5     has the contacts, the part that the wires made contact with.  
6     These contacts were recovered here. Again, all these pieces  
7     of the different sections of switch were recovered that enable  
8     me to tell you that it is a Futaba brand mini slide switch.

9             This next photograph shows contacts that we recovered  
10     from a different switch that was also present. This  
11     photograph shows the two contacts that were recovered. First,  
12     it is two contacts from the switch that I identified these  
13     contacts to be from.

14             What I did was, we identified that these were switch  
15     contacts, and I start going through our exemplar collection,  
16     looking at different types of switches we had. And the only  
17     one that matched these contacts was from a radio -- sorry,  
18     from a Radio Shack brand toggle switch that we have an  
19     exemplar up here. It is item number eleven two --  
20     Government's Exhibit 36-B.

21             And also, to confirm this identification, we  
22     mentioned earlier in that small box I could identify how some  
23     of the components had been placed within the small box and  
24     showed you the one photograph that had the, the adhesive  
25     impressions left in it. The adhesive impressions are

1 identified as coming from the flanges on the servo housing.  
2 And we could also identify this switch, right, Government's  
3 Exhibit 17-E. Again, like I said, in addition to showing  
4 inclines here, it shows these impressions from the servo.

5 If you can look at the exemplar of the servo, the  
6 plastic housing has flanges in it for mounting for putting  
7 screws for mounting the servo on to another item, if  
8 necessary. In this case, it was glued on to this box, and you  
9 can see the impressions here. And we can also tell that it  
10 was glued to that, the top part of the servo with the horn,  
11 the moving part, was protruding into the smaller box.

12 Also recovered in these glue impressions were other  
13 items that confirm my identification of the Radio Shack  
14 product number 275602 toggle switch, because you can see that  
15 this item has an hexagonal nut on it, and that the column from  
16 the black housing up to the part of the switch, this is the  
17 toggle here, is a threaded item. And I identified in the  
18 adhesive impressions of this nut and impressions of the  
19 threads of this item which I believe were 34 threads per inch,  
20 and that was consistent from what we recovered from the  
21 smaller box.

22 This photograph is one -- represents one of what we  
23 identified as four Duracell brand AA batteries. I believe the  
24 batteries had an expiration on them of a date of July '94,  
25 which I contacted the manufacturer to find out what this might

1 mean. He told me that they are only marked every six months,  
2 only change markings every six months, July '94, January '94,  
3 July '95 January '95, and it really wasn't going to be of  
4 assistance to us in this case.

5 This photograph shows some of the -- over here there  
6 are a couple of pieces of the AA batteries, the plastic  
7 wrapping. Most of what this represents are the fragments of  
8 the Duracell brand 9 volt batteries that we -- I recovered.

9 The 9 volt batteries, the ones where I could read the  
10 freshness code, also read July '94. Into the top of one of  
11 these mag -- one of these batteries are the snaps. A snap  
12 connector was used to snap on to those contacts with wires.  
13 And 9 volt battery snap connectors like this were used in the  
14 device, and this could be determined based on the remains of  
15 this wiring and the plastic and cardboard that were recovered  
16 from, still in the contact of these 9 volt batteries that  
17 we --

18 Q. Ms. Wallace, were you able to determine the number of  
19 batteries that were contained within the device?

20 A. Yes, we -- I found fragments of five 9 volt batteries.  
21 Also in that one photograph we were just looking at again of  
22 the small box, and I told you that we could tell that the  
23 servo horn and the top part of the toggle switch were  
24 protruding into this small box, on the underside of one of  
25 those pieces of wood also transferred into the adhesive was

1 the writing from, from the coating on this, on these 9 volt  
2 batteries, and it could be told that at least two of them had  
3 been glued right next to each other and glued to the box right  
4 there on the inside next to the small box.

5 Q. Just so we're clear, Ms. Wallace, are you suggesting,  
6 using this exemplar, that this movable arm, that you call the  
7 horn, would have been actually protruding into this smaller  
8 box?

9 A. Yes. Actually --

10 Q. Or the top of the toggle switch?

11 A. Well, the horn was protruding into the action part of the  
12 toggle switch in such a manner that when the Servo arm moved  
13 it would hit the toggle on the toggle switch.

14 One other item, we don't have photograph here, is  
15 that, in addition to the four AA batteries that were  
16 recovered, we recovered the remains of a Futaba brand battery  
17 folder for four AA batteries. And that item is in the  
18 evidence. I don't remember exactly which exhibit.

19 (Pause.)

20 MR. KELLY: For the record, this is Exhibit 17-C.

21 MR. SEGAL: If we can just have a specific question  
22 that she can respond to, on this chart.

23 MR. KELLY: Sorry?

24 MR. LIBBY: Specific questions.

25 Q. These are the last two categories that we're going to

1 have, Ms. Wallace, talk about, obviously, from the chart,  
2 detonators and the wire, soldered wire.

3 If you can just move to the category of detonators  
4 Ms. Wallace, did you analyze the remains of the detonator  
5 fragments or debris from the scene?

6 A. That's right. And I know you've heard about this from a  
7 representative of Austin, so I'm not going into too much  
8 detail. But a detonator or a blasting cap is a device about  
9 the thickness of a pencil, that's designed for the to sole  
10 purpose of initiating or detonating high explosives.

11 This detonator is composed of various parts, such as,  
12 it has a shell, it has a plug on the end of it that holds the  
13 wires in and waterproofs the internal parts of the detonator.  
14 It has an initiator. And down at this end it has the base  
15 charge which actually initiates the high explosive.

16 We recovered fragments of wires, the plug, the manner  
17 in which the plugs was crimped, the delay elements; all of  
18 this told us that these could be identified as Austin Rock  
19 Star brand millisecond delay electric detonators.

20 And in addition to this, one of the fragments that  
21 was recovered was actually the base of the this part, very  
22 end, of the detonator where the, where the base charge is  
23 positioned, there's a delay period that is stamped into the  
24 metal there, and that piece was recovered from one of these  
25 detonators that had a number 6 on it, which told us that it

1 was delay period 6.

2 Also, there was a wire connection that was recovered,  
3 and this shows the third type of tape that I mentioned to you,  
4 I mentioned there was black electrical tape, silver duct tape,  
5 and this white tape. It was -- an intact width was not  
6 recovered. It was at least .7 inches in width. And that this  
7 was around two of these single strand yellow wires that had  
8 been twisted and then wrapped with this white tape. And that  
9 implies that the two detonators were wired together because  
10 there were two wires from the two detonators.

11 Q. Since we've already published that photo, if you can move  
12 to the last category, Ms. Wallace.

13 A. This photograph shows some of the types of wire that were  
14 recovered that had solder on them. For example, this item has  
15 two wires that had been knotted together and soldered on the  
16 end -- here's a close-up in this photograph -- and that this  
17 piece of tape had been over this connection. And you can tell  
18 because this black adhesive is the black adhesive from the  
19 black electrical tape that was used down here. Some of these  
20 other wires that were as recovered had solder on them, and  
21 implied that they had been also connected with solder. I  
22 guess I explained this picture, became a close-up of this  
23 item.

24 Q. Ms. Wallace, before asking you to retake your seat, I  
25 would ask you if you can tell us what exhibit number you have,

1 and then explain to the jury what we're looking at in that  
2 last photograph, please.

3 A. This is Government's Exhibit No. 17-D. And it shows  
4 some -- this shows you the configuration in which I might  
5 receive some of the evidence. This is some of the debris that  
6 was recovered from Jerry Hurley in the operating room. And  
7 these fragments were actually retained by his body. And they  
8 contained, for example, one of the cells, this is one of the  
9 cells from one of the 9 volt batteries, this item is part of  
10 the Futaba brand slide switch. You see a red plastic item  
11 here, which is one of the pin connectors from the Futaba, and  
12 part of the tape and other miscellaneous items of plastic and  
13 circuit boards that were recovered.

14 Q. Ms. Wallace, if I can ask you to retake your seat in the  
15 witness box, please.

16 (Whereupon the witness resumed the witness stand).

17 Q. Ms. Wallace, were there any device or components or  
18 materials that you identified during the course of your  
19 various examinations that are not depicted in the any of the  
20 photographs that we have just seen?

21 A. Yes, there were four other different types of wood.  
22 There was the Futaba brand battery holder for four AA  
23 batteries that I showed you the exemplar of. There were nails  
24 that were used in construction of the box for the device.  
25 There was the piece of white tape that, that -- actually, you

1 do see it in the photograph of the detonators -- that was  
2 wrapped around that one connection. And the 9 volt battery  
3 snap connectors, which I can see the remains of, in the snaps  
4 on top of the 9 volt batteries that were recovered.

5 Q. Now, as part of your work in this case, Ms. Wallace,  
6 while you were here in Massachusetts, the week of October 28,  
7 1991, did you have occasion to examine evidence from  
8 Mr. Thomas Shay, Sr.'s 1986 Buick Century automobile?

9 A. Yes, I did.

10 Q. And would you tell us when you had an opportunity to look  
11 at that car?

12 A. I don't recall the exact date, but it was a couple of  
13 days after the explosion. And the Explosives Enforcement  
14 officers from our Explosives Technology branch -- you'll be  
15 hearing from one of these guys later -- and I went out to this  
16 car which had been put up on blocks to examine the  
17 undercarriage for any items that might be recovered under  
18 there.

19 Q. And at whose request did you conduct this examination?

20 A. It was the investigators' request.

21 Q. And would you tell us what if anything you found based on  
22 your analysis of samples taken from that undercarriage?

23 A. There were some fresh scrapings, fresh metal scrapings,  
24 on the underside of the car. And in those, we could see  
25 fragments -- I could see fragments of red paint and magnet

1 fragments. Those were recovered. And when I got back to the  
2 laboratory, I found a -- that there were fragments of the  
3 large ring magnets, the ceramic magnets I told you about;  
4 there was also fragments of red paint from button magnets.

5 And there was actually a number of pieces of button  
6 magnets also recovered, including one piece that was the same  
7 composition and appearance as the button magnets from the  
8 device, and also had a red paint on it; red paint was  
9 consistent in appearance and composition with the red paint on  
10 the button magnets. And on top of that was black paint that  
11 was the same in composition and appearance as the paint on  
12 the, on the wooden box.

13 So not only do we have all these individual items  
14 that match, there is the extra part that the paint layer  
15 structure on this one magnet fragment are consistent with the  
16 button magnets which are supplied with red paint and then were  
17 painted with black paint.

18 Q. Ms. Wallace, let me show you what has been introduced as  
19 Exhibits 21 A, and very simply, is that a photograph of the  
20 vehicle that you examined as you just described?

21 A. Yes.

22 Q. Let me show you Exhibit 21 B, can you tell the jury what  
23 is depicted in that photograph, please..

24 A. This is the, the underneath of the car. This is, the  
25 photograph is labeled to give you an idea what you're looking

1 at. This is looking toward the front. This was the passenger  
2 side. And what we observed on the undercarriage of this car,  
3 were some fresh scratches. There are actually --

4 Q. This is Exhibit 21 C, for the record.

5 What is 21, before you begin?

6 A. 12 C is a close-up of, of the section of this section,  
7 upper part of the photograph in Exhibit --

8 Q. 21 B.

9 A. -- 21 B. What this shows are some of the fresh scratch  
10 marks where the material on the underneath of the car had been  
11 freshly scratched, and it was from these remarks that he  
12 recovered various types of magnets particles and paint.

13 MR. KELLY: It will be five minutes, your Honor.

14 Q. Ms. Wallace, another witness previously told us that at  
15 the scene in the driveway that day, observations of the top of  
16 this device appeared to indicate that the circular things were  
17 shiny. Can you tell us what might account for that?

18 A. If you recall that one photograph I showed you earlier  
19 which had the two magnets that were placed on top of the. The  
20 bumper of that one truck that was near the seat of the blast.  
21 And on some of those items, the paint has apparently been  
22 scraped off. And I suppose the shininess would be the shiny  
23 metal surface, the shiny manufactured surface of those, of  
24 those button magnets.

25 Q. Now, your written report, Exhibit 12 A, makes note of the

1 fact that you observed and examined certain physical items  
2 that were provided to you as having originated from Mr. Thomas  
3 Shay, Sr. Would you describe for the jury what items that  
4 came from Mr. Shay, Sr., that you were asked to test or  
5 analyze?

6 A. I was asked to test scrapings and swabbings of  
7 Mr. Shay's, Sr.'s, hands, I was also asked to analyze  
8 clothing. I was asked to analyze a piece of board that was  
9 recovered from his garage. And one other item...

10 Q. Epoxy?

11 A. That's right. That he had, when he consented to have  
12 scrapings of this material taken from underneath his  
13 fingernails, he also sent in some samples -- the agents also  
14 collected some samples of epoxy that he said he had been  
15 working with.

16 Q. Who decision was it to have you analyze these items,  
17 Ms. Wallace?

18 A. That was investigators' decision.

19 Q. Starting with the swabbings from the hands or scrapings,  
20 would you tell us what you were looking for, please?

21 A. In that case, I was looking to identify the material that  
22 was present underneath his fingernails that was identified as  
23 a putty; also, to see if there were any explosives residues  
24 that were recovered on his hands, in the swabbings there were  
25 none. The epoxy that was submitted was identified as two

1 components of epoxy.

2 His clothing was submitted; it was analyzed for a  
3 fragment of, of some drops of black paint that were seen on  
4 his shirt, I believe, and on his shoe, and that these were  
5 different from the paint -- the paint was different from the  
6 paint that was used on the, on the device.

7 Q. Assume for a minute, if you would, Ms. Wallace, that  
8 Mr. Shay, Sr., actually had this intact item, whatever it was,  
9 in his hands, would the failure to find any explosive residue  
10 from the swabbings or scrapings from his hand, what would that  
11 indicate to you as chemist?

12 A. Actually, I wouldn't be surprised if we didn't find it.  
13 Because, as I described earlier, the dynamite had been taken  
14 out of its wrapper and packaged in a magazine page, wrapped in  
15 multiple layers of, of different types tape, placed within  
16 this box, and then the whole box had been sealed with, sealed  
17 and put together and covered with this black paint. So, he  
18 would -- if he had handled the outside of the box, it is quite  
19 conceivable that there would be no explosives residues there  
20 to be transferred to his hands.

21 Q. You said you looked at Mr. Shay's clothing. You may have  
22 already answered this, would you tell us again, what were you  
23 looking for in analyzing the clothing and what if anything did  
24 you find?

25 A. I was looking at some drops of black paint that were on

1 his clothing and any other items that I might see. The only  
2 items -- there was nothing that was similar on his clothes  
3 that was used in the device. This black paint I analyzed and  
4 found to be different.

5 Q. You said you examined some epoxy that was taken from  
6 Mr. Shay, Sr. What were you looking for in examining that  
7 item?

8 A. I was determining if it was -- what the item was and if  
9 it was what was recovered from the underneath his  
10 fingernails. It was different because that was epoxy and, and  
11 it was a putty underneath his fingernails.

12 Q. Finally, I think you said you were asked at a later point  
13 to look at a piece of plywood. What were you looking for in  
14 analyzing the piece of plywood?

15 A. This was a piece of plywood and the wood was to be  
16 compared to the wood that was used to construct the box. This  
17 piece of plywood also had two types of paint on it. It  
18 appeared to be a gray primer and a black paint. The wood was  
19 determined to be different; it was a different type of  
20 adhesive used to make it. It was different from the wood that  
21 was used for the device. And the, the black paint that was on  
22 this piece of wood was different from the black paint that was  
23 on the, on the device.

24 Q. Did forensic analysis reveal evidence of any kind of  
25 parallels between the actual device and any items or materials

1       acquired from Mr. Thomas Shay, Sr.?

2               MR. SEGAL:  Objection, unless it's her analysis.

3       Q.     I'm asking four your analysis.

4               MR. KELLY:  I'm sorry that wasn't clear.

5       Q.     Does your analysis indicate any parallels or connections  
6       to Mr. Thomas Shay, Sr., to the actual device that exploded in  
7       the driveway?

8       A.     No.

9       Q.     Ms. Wallace, on page 9 of your report, it indicates your  
10       findings based on analysis of a roll of silver duct tape that  
11       was sent to the lab.

12              I want to show you what has been marked as  
13       Exhibit 51, and ask you whether that is the item that's  
14       referred in your report that you performed certain analysis  
15       of?

16       A.     Yes, this is a, is a role of silver duct tape that was  
17       recovered.  I believe it will be the November of '91 and --  
18       I'm not sure if it was '91 or '92.  It was recovered from  
19       Alfred Trenkler's parents' garage when the agents went on a  
20       search of that location.  And this duct tape was submitted for  
21       comparison to the duct tape that was used in the device.

22       Q.     Directing your attention to page 3 of your report, does  
23       that refresh your memory as to when you received that item for  
24       testing purposes and, therefore, when it was recovered?

25       A.     Yes, this item was received by the laboratory on November

1 14, 1991.

2 Q. So, it would have been '91, not '92?

3 A. Yes.

4 Q. Okay.

5 And what were your findings concerning this item?

6 A. This is a roll, a three-inch wide roll of silver duct  
7 tape. And I analyzed its construction features and its  
8 composition, and found it to be the same or consistent with  
9 what I had found with the silver duct tape recovered from the  
10 device, and that, actually, I contacted a roll of Tuck brand  
11 tape. I contacted that company. And he told me that --

12 MR. SEGAL: Objection to...

13 THE COURT: You can't tell us what he said.

14 Q. And your finding, as indicated your report, that that  
15 tape was consistent in construction and composition to the  
16 duct tape fragments found in the device?

17 A. Yes.

18 Q. Did you find anything else that you deemed relevant or  
19 noteworthy about that tape?

20 A. One other feature was although this was a roll that was  
21 three inches wide, a strip approximately 1 7/8 inch wide had  
22 been stripped and removed for a length of 15 feet 3 inches  
23 from this roll.

24 Q. Somebody split the tape for 15 feet?

25 A. And removed a section that was approximately 1 7/8 inch

1 wide. The widest width of duct tape that we recovered from  
2 the device, didn't recover any intact width,, the widest width  
3 we recovered was 1 9/16 inch.

4 Q. As part of your work, Ms. Wallace, have you reviewed the  
5 forensic reports of the defendant's expert, Mr. Denny Kline?

6 A. Yes, I have.

7 Q. And is it fair to say that Mr. Kline, in his written  
8 report, agrees with the majority of your findings?

9 THE COURT: Well, the objection to that is  
10 sustained.

11 MR. SEGAL: I object. I ask his report be admitted,  
12 also.

13 MR. KELLY: I have no objection.

14 THE COURT: The report may be marked into evidence as  
15 whatever the next --

16 MR. SEGAL: I'll take it as the next defendant's  
17 exhibit.

18 MR. KELLY: That's fine.

19 **[Defendant's Exhibit 25 entered in evidence.]**

20 MR. SEGAL: Thank you.

21 MR. KELLY: Did you say 25?

22 THE COURT: Defendant's Exhibit 25 in evidence.

23 Q. Ms. Wallace, now that this report is in evidence, I just  
24 want to ask you couple of quick questions on it, ma'am.

25 Mr. Kline states in his report here:

1           That this silver duct tape roll that you have on the  
2 table there before you could not possibly have been the source  
3 of the duct tape in the device.

4           Are you familiar with that finding?

5       A.    Yes, I know he states that.

6       Q.    Is Mr. Kline correct in his finding?

7           MR. SEGAL:  Well, objection.

8           THE COURT:  Well, she can't tell us whether he is  
9 correct.  She can tell that disagrees with it.

10          MR. SEGAL:  Agree or disagree.

11       A.    Actually, I believe it is an error because I believe  
12 there was a mathematical error that was made.  He -- my  
13 recollection of his report is that he found that, that --

14          MR. SEGAL:  Objection to what her recollection of the  
15 report is.

16          THE COURT:  Let her have the report, Mr. Kelly.

17          MR. KELLY:  Yes, I will read the findings.

18          MR. SEGAL:  Page, please.

19          MR. KELLY:  Page 18.

20          Mr. Kline says:

21               The width of the torn tape, meaning the width of the  
22 torn tape on that item there, 51, and the width of the torn  
23 tape on the bomb -- meaning the little debris fragments,  
24 right?

25       A.    Yes.

1 Q. -- Exceed three inches, meaning if you take that  
2 remaining strip and you add the debris from the bomb together,  
3 they are wider than three inches. And then he says,  
4 "Therefore, the debris pieces did not originate from the torn  
5 piece recovered from Mr. Trenkler"; am I correct?

6 MR. SEGAL: He read a portion of it. I'd ask him to  
7 read --

8 MR. KELLY: I'll read it in its entirety. I was  
9 trying to make it understand --

10 THE COURT: I thought we were going to be able to  
11 finish this before the recess, but we're not, so we'll take  
12 the recess first.

13 MR. KELLY: Okay.

14 [Whereupon, the jury was excused.]

15 THE COURT: Resume at 10 past 11.

16 MR. SEGAL: Your Honor, can we have a couple of extra  
17 minutes? Mr. Kelly and are working with the clerk on the  
18 exhibits. I have about 40 exhibits I want to put in in this  
19 cross-examination, and we want to get them marked. And many  
20 of them just came over, through no fault of anybody, they came  
21 over from ATF. It think it might streamline things if we took  
22 a couple of extra minutes.

23 THE COURT: Let's see what we can do in the 10 or 15  
24 minutes and see where we are at the end of 15.

25 [Recess.]

1 THE COURT: You may proceed. That is you may  
2 conclude.

3 MR. KELLY: Thank you, your Honor.

4 Q. Ms. Wallace, Mr. Klein says in his report, and I will  
5 read it accurately:

6 The width of this torn tape and the width of the torn  
7 tape from the bomb exceed three inches, and therefore did not  
8 originate from the torn piece recovered from Trenkler.

9 Do you disagree with that finding by Mr. Klein?

10 A. Yes, I do.

11 Q. Why?

12 A. Because there had been an approximate  $1 \frac{7}{8}$ th inch strip  
13 taken off this three-inch wide role. Therefore, and that  $1 \frac{7}{8}$   
14 equals approximately 1.88 inch.

15 And the width of the tape that was recovered from the  
16 device, the widest piece we recovered, was  $1 \frac{9}{16}$ ths inch  
17 which is 1.56 inches. Therefore, if the part that was missing  
18 from the device was 1 and  $\frac{7}{8}$ ths inch or 1.88 inch and that  
19 was less than 1.88 inch, which it was because it was 1.56  
20 inches, then it is not wider than the piece that is remaining  
21 on the tape that is the piece that was recovered from the  
22 device did add up to more than three inches.

23 Q. So Mr. Klein has committed a mathematical error?

24 MR. SEGAL: Objection. Well, she explained what she  
25 thinks.

1 Q. Are you just telling us that the math is wrong?

2 MR. SEGAL: Objection. It is another  
3 interpretation.

4 MR. KELLY: It seems a simple question, your Honor.

5 THE COURT: She may tell us what in her view is the  
6 matter with Mr. Klein's report.

7 Q. What did he do wrong?

8 A. I believe that he took the width that was missing 1.88  
9 inch, added that to the width that we recovered 1.56 inches  
10 and said that equals more than three inches, which it does.  
11 But that's not an accurate representation of what this piece  
12 of evidence represents. As I said 1.88 inches was missing.  
13 Less than 1.88 inches was recovered.

14 Q. Two other questions on Mr. Klein's report. Mr. Klein on  
15 page 13 in his report mentions a paint stirrer that is  
16 depicted in a photograph that was taken the day of the  
17 explosion and he states in his report that that item should  
18 have been recovered and tested. Was the item recovered and  
19 tested?

20 A. Yes, it was recovered and examined and found to be  
21 different, the paint was found to be different from the paint  
22 that was on the device and wood was different too.

23 Q. Finally, on page 18 of his report, Mr. Klein says that  
24 when he looked at the physical evidence in March of this year,  
25 he saw no indication that the bomb debris had been processed

1 for fingerprints?

2 MR. SEGAL: Could we read the exact language from the  
3 report, please?

4 THE COURT: Yes.

5 Q. It is noted that the six layers of the black plastic tape  
6 recovered from the IED, what is that IED?

7 A. IED stands for improvised explosive device, and it  
8 essentially means homemade bomb.

9 Q. It is noted that the six layers of plastic tape recovered  
10 from the IED have not been separated and there is no visible  
11 indication on the remains that the detonators, paper tape,  
12 remaining components that they were processed for  
13 fingerprints. Were the bomb debris components processed for  
14 fingerprints?

15 A. Yes, the fingerprint examiner was called to look at the  
16 evidence that was recovered and take those items which he  
17 thought should be examined. He did so, and when he examined  
18 them --

19 MR. SEGAL: Well, objection to anything he did, your  
20 Honor.

21 THE COURT: She can certainly tell us what she  
22 observed him to do. She cannot tell us what his opinion was  
23 or the conclusion about that event or items.

24 MR. SEGAL: If he was right there in the examination,  
25 I don't disagree.

1 THE WITNESS: I was.

2 Q. Were you present when the fingerprint expert did his  
3 work?

4 A. When he took the evidence to be analyzed, yes.

5 Q. And you're not a fingerprint expert?

6 A. No.

7 Q. Finally, Ms. Wallace, is it the forensic chemist's job,  
8 is it your job to give opinions on the functioning of an  
9 explosive device, a homemade bomb?

10 A. No. My role is to describe what I found and identify,  
11 like I said, the explosive and any components that are  
12 present, not my role to talk about the design, function, or  
13 the effects that the device would have.

14 Q. Who's role is that at ATF?

15 A. That's the role of our explosives enforcement officers  
16 who work for our explosives technology branch.

17 Q. And in this case who specifically was that?

18 A. That was Mr. Thomas Waskom.

19 Q. Further, is it the forensic chemist's job to make  
20 determinations as to who should or should not be a suspect of  
21 a particular bombing?

22 A. Oh, that's an investigative decision, and no, that's not  
23 my call.

24 Q. Or is it the forensic chemist's job to decide whether  
25 evidence or material should be gathered from other persons or

1 other places apart from the bomb blast site itself?

2 A. Based on what we recover, I can supply to the agents what  
3 sort of items you might want to look for based on what we  
4 found. I don't tell them where to look.

5 Q. Can you give us an example in this case where you  
6 provided investigators with some guidance as to what they  
7 might want to look for in this very case?

8 A. In this case, there was the example of the Radio Shack  
9 toggle switch which we had the contacts from and the  
10 impressions in the adhesive. Once I identified this as  
11 consistent with the Radio Shack toggle switch, I told the --  
12 called up the investigators and told them that I identified it  
13 --

14 MS. GERTNER: Objection, to what she said, your  
15 Honor.

16 THE COURT: I'll allow it.

17 Q. Continue, please.

18 A. I don't know what I said.

19 THE COURT: Told them --

20 Q. Called the investigators --

21 A. I called the investigators and told them that Radio Shack  
22 keeps an central computer in Texas that has all the purchases  
23 that have been made at computerized Radio Shack stores. I  
24 told them that they could contact Radio Shack and have them,  
25 they could perform a search based on a catalog number and

1 based on geographical time constrictions.

2 MR. KELLY: I have no further questions, your Honor.

3 THE COURT: You may cross-examine.

4 MR. SEGAL: May I have two minutes to set my material  
5 up there, your Honor?

6 THE COURT: You can stretch, if you want.

7 MR. SEGAL: Thank you, your Honor.

8 Cross-examination by Mr. Segal

9 Q. Ms. Wallace, I would like to go through some various  
10 components of this bomb that were recovered. Let's start  
11 about the explosive main charge. I think you testified there  
12 was no residue found on the hands of Shay, Sr.; is that  
13 correct?

14 A. Yes.

15 Q. No residue of dynamite?

16 A. Yes.

17 Q. Ms. Wallace, isn't it true that repeated washings up to  
18 six times with soap and water will remove all dynamite  
19 residues from somebody's hands?

20 A. Yes.

21 Q. I think you also told us the way the dynamite was wrapped  
22 in the magazine in the box, he could have still handled it and  
23 not have residue of dynamite in his hands?

24 A. Yes, I did say that.

25 Q. Let me show you what's been put into evidence as

1 Defendant's Exhibit 9, which is a document I believe you wrote  
2 on November 1, 1991.

3 Can you identify that document as a document you  
4 wrote to aid in the investigation in this case?

5 A. Yes.

6 Q. This is a document that you wrote after coming up with  
7 the National Response Team on October 28th, 1991?

8 A. Yes, I actually wrote it before I went home.

9 Q. All right. You were up here two or three days assisting  
10 with the work you told us about with Mr. Kelly, am I right?

11 A. Right.

12 Q. Collecting evidence at the scene?

13 A. Right.

14 Q. And you then wrote this document to aid people who were  
15 doing the investigation on the ground after you go back to  
16 Rockville, Maryland; is that fair to say?

17 A. Yes.

18 Q. And in fact you put your card up in the upper right-hand  
19 corner of this document so if anybody had a question they  
20 could call you; is that fair to say?

21 A. Yes.

22 Q. All right. Would you turn, the pages aren't numbered,  
23 but I would ask you to turn, what appears to be page 4, the  
24 category of explosives, are we on the same page now?

25 A. Yes.

1 Q. Now, do I read it correctly where it says dynamite  
2 unknown brand and type. Is that your writing at the top of  
3 that?

4 A. Yes.

5 Q. Then it says "for search," and I assume this is a leave  
6 for investigators when they're out searching, and you say "for  
7 search"; is that right?

8 A. Yes.

9 Q. All right. Now, "the components of dynamite, I believe,  
10 leave a characteristic residue which is easily recovered from  
11 any surface where the dynamite was handled or stored, period.  
12 The residue can remain for months and can be detected at  
13 extremely low concentrations, period." Did I read it  
14 correctly?

15 A. Yes, you did.

16 Q. And you wrote that on November 1st, 1991?

17 A. Yes.

18 Q. Now, Ms. Wallace, isn't it true that ATF searched a  
19 number of places after November 1, 1991 frequented by Al  
20 Trenkler for the presence of dynamite and other explosives?

21 THE COURT: Ms. Wallace doesn't know anything about  
22 that. How can she testify about her own personal knowledge  
23 about that?

24 MR. KELLY: Exactly what he objected to previously.

25 THE COURT: Then the objection is sustained to the

1 question as put because you're asking her for something she  
2 doesn't know about it.

3 Q. All right. Ms. Wallace, you were on the scene October  
4 28th til about November 1, isn't that right?

5 A. Yes.

6 Q. You returned to Boston in connection with this case about  
7 January 31st, 1992; isn't that correct?

8 A. Yes.

9 Q. And in fact, didn't you request that ATF hire Dr. John  
10 Hobbs, an MIT analytical chemist, to assist you people?

11 A. Yes.

12 Q. All right. And you and Dr. Hobbs went to the Trenklers'  
13 garage at 7 White Lawn Avenue in Milton on January 31, 1992;  
14 isn't that correct?

15 A. Yes.

16 Q. And Dr. Hobbs took air samples and processed them at that  
17 time to determine if there was any explosive residue at that  
18 garage; is that correct?

19 A. Yes.

20 Q. And you were present -- supervised, you were there when  
21 he was doing this?

22 A. Yes.

23 Q. And he was really doing it at your request, isn't that  
24 right?

25 A. Yes.

1 Q. Because you wanted to determine if there was still  
2 dynamite residue over in that garage which contained a number  
3 of tools and storage areas, and things like that, used by my  
4 client; isn't that correct?

5 A. Yes.

6 Q. All right. And isn't it true that the result of that  
7 test done by Dr. Hobbs of MIT indicated, there was no residue  
8 of dynamite found at the Trenkler garage on January 31, 1992?

9 A. Yes.

10 Q. To your knowledge, from the ATF investigation, was any  
11 residue of dynamite found at any other location?

12 MR. KELLY: Objection.

13 THE COURT: The objection to that is sustained. You  
14 will disregard the import of that question.

15 Q. Let me show you what's been put into evidence as  
16 Defendant's Exhibit 10 which I'll represent is a Boston PD  
17 photo of the garage at 7 White Lawn Avenue. Can you identify  
18 that particular photo? I'm sorry.

19 A. Yes, that looks like the garage.

20 Q. All right. This device, here, that's on the table in  
21 Exhibit 10, is that the device that Dr. Hobbs brought over  
22 there on January 31 to take samples of air residue for  
23 dynamite?

24 A. Yes.

25 Q. So you were there that day when this device -- in fact,

1 this picture was taken on January 31, 1992 when personnel from  
2 ATF not only searched the garage, but collected air samples;  
3 isn't that fair to say?

4 A. Yes, that was the day I was there.

5 Q. All right. So you were in that garage?

6 A. Yes.

7 Q. Assisting and making suggestions to the investigators,  
8 right?

9 A. Yes.

10 MR. SEGAL: I ask that this be published to the jury  
11 at this time, your Honor.

12 MR. KELLY: No objection.

13 Q. What do you recall that device that's depicted in Exhibit  
14 10 to search for dynamite?

15 A. I believe the instrument's called an E V D 1.

16 THE COURT: The who?

17 THE WITNESS: E V D 1.

18 Q. Is there a common name that's called a "sniffer" too,  
19 it's referred to as a sniffer?

20 A. Yes.

21 Q. But the purpose is to determine residue of dynamite and  
22 other explosives in the air?

23 A. Yes.

24 Q. And you made the decision to have that test done on that  
25 site on that day; isn't that fair to say?

1 A. Yes.

2 Q. Did you contact Dr. Hobbs and ask him to come over?

3 A. Yes.

4 Q. And was he retained or paid by ATF to assist in this  
5 investigation by doing that test?

6 A. Not that I know of.

7 Q. Did he, to your knowledge, that day go around and perform  
8 similar tests on other locations?

9 THE COURT: If she knows of her own personal  
10 knowledge, she may tell us.

11 MR. KELLY: Well, was she present?

12 Q. No, no, no, to your knowledge?

13 THE COURT: Personal knowledge means being present  
14 and how you observed it, what you observed about Dr. Hobbs?

15 A. I was only present when he was at the garage.

16 Q. Were you aware that he went to other locations?

17 MR. KELLY: Objection.

18 THE COURT: The objection to that is sustained.

19 Q. Are you aware whether any other locations were checked by  
20 ATF for dynamite residue in this case?

21 THE COURT: Mr. Segal, you're asking her for rank  
22 hearsay. The objection to all of that will be sustained.

23 MR. SEGAL: All right.

24 Q. Ms. Wallace, when dynamite explodes, wouldn't you expect  
25 to find -- strike that. When dynamite explodes, would you

1 expect to find remnants of the original wrapper of that  
2 dynamite?

3 A. Sometimes you find it, sometimes you don't.

4 Q. What does that depend on?

5 A. It depends on, in this particular case, because we had  
6 the magazine pages and all the tape that was recovered, and  
7 the dynamite was found directly on that magazine page of the  
8 adhesive and there was no dynamite wrapper found there, it was  
9 my opinion that the dynamite had been removed from its  
10 original packaging and repackaged as I described in the  
11 magazine page and tape.

12 Q. Isn't it true when dynamite low orders, you also find the  
13 residue of the original wrapper. Do you understand what "low  
14 orders" means?

15 A. The term refers to high explosives, and it means that the  
16 explosive function at less than optimal efficiency and speed,  
17 and when an explosive charge of low orders, what it  
18 essentially means is that you'll have larger chunks of the  
19 dynamite left that did not explode, and that's what that  
20 means.

21 Q. But when it doesn't low order, isn't it true that you  
22 probably wouldn't expect to find the original wrapper with  
23 dynamite after explosion?

24 A. No.

25 Q. Let me ask you about the muscle magazine remnants that

1     you found, you came up on January '92, what locations did you  
2     go to at that time, Ms. Wallace?

3     A.    I went to three locations.

4     Q.    All right.  Could you tell us which ones, please.

5     A.    Yes, I went to the garage at White Lawn avenue which was  
6     Mr. Trenkler's parents' garage.  I went to Mr. Trenkler's --  
7     if you can wait a minute, and I'll refresh myself with the  
8     addresses.

9     Q.    That's fine.

10    A.    I went to 133 Atlantic Street which is Mr. Trenkler's  
11    apartment.

12    Q.    Do you understand that he was moving at that location at  
13    that time when you went there?

14    A.    Yes, that was my understanding.

15    Q.    Was he there when you went there?

16    A.    He wasn't there when we first got there.

17    Q.    And this is pursuant to a search warrant?

18    A.    Yes.

19    Q.    All right.  133 Atlantic Street, Quincy, that was a  
20    location you went through, am I right?

21    A.    Yes.

22    Q.    All right.  7 White Lawn Avenue in Milton, his parents'  
23    house with the detached garage?

24    A.    Yes.

25    Q.    And did you search beyond the garage, did you also go

1     into the house?

2     A.    No.

3     Q.    All right.  How about the third location you went to on  
4     January 31, 1992?

5     A.    That was at 82 Broad Street, Weymouth, and I understand  
6     that was his place of business.

7     Q.    And did you go in and search at that place?

8     A.    Yes.

9     Q.    And how many rooms could you go into and -- how many  
10    rooms could you go into at 82 Broad Street, Weymouth?

11    A.    Well, I recall that there was one large room when you  
12    initially came in the door, and I believe that there was a  
13    little hall at the end of that that went to a little room back  
14    there.  We also in the back of this large room was another  
15    door that went back to, what appeared to be a work shop room  
16    and then there's a door from there that went into some storage  
17    rooms.  We essentially went into every door and into every  
18    room that we could.

19    Q.    How many people were with you in connection with these  
20    searches of three locations you've just described?

21    A.    I don't remember how many people.

22    Q.    Give me your best estimate, was it 2, 5, or 10?

23    A.    I would say at his business for --

24    Q.    No, I meant people with you, people with ATF or the  
25    Boston PD; is that what you're giving me?

1 A. Yes.

2 Q. So you went in with three other people?

3 A. To the best of my memory.

4 Q. Do you remember who they were?

5 MR. KELLY: Objection.

6 THE COURT: The objection is sustained.

7 Q. The garage at White Lawn, how many people beside yourself  
8 searched that facility?

9 A. There were -- again I don't have a memory of exactly how  
10 many people were there and --

11 Q. Well, give me your best estimate?

12 A. My best estimate would be nine.

13 Q. And how about 133 Atlantic Avenue?

14 A. Best estimate would be six.

15 Q. Were you basically supervising these people in terms of  
16 suggesting what they look for on these premises?

17 A. No, I wouldn't say that I was supervising them.

18 Q. But you were making suggestions; is that fair to say?

19 A. Yes.

20 Q. Such as Dr. Hobbs could take the air sample?

21 A. Yes.

22 Q. Were you involved in any air samples, did you see Dr.  
23 Hobbs on that day take any air samples from Mr. Trenkler's  
24 car?

25 A. I didn't see him do it.

1 Q. All right. Did you see the car being examined by any of  
2 these personnel or --

3 A. Yes.

4 Q. And what did that examination consist of that you saw?

5 A. I remember looking in the car.

6 Q. Oh, you were in the car?

7 A. Yes.

8 Q. What were you looking for?

9 A. Any of the items that I had a supply in this list which I  
10 wrote up on November 1 or any other items I had determined  
11 were present in the device based on my examinations that had  
12 been made a year since then.

13 Q. Was Mr. Trenkler present when you were looking through in  
14 the car?

15 A. Yes.

16 Q. Did he give you consent to look through that?

17 A. He didn't give me consent.

18 Q. Did he appear cooperative. He wasn't preventing you from  
19 doing any search; is that fair to say?

20 A. That's my understanding.

21 Q. Now, in all those searches on that date, to your  
22 knowledge, were any original muscle magazine particles  
23 recovered?

24 A. No.

25 Q. Any muscle magazine at all, not just the particles of

1 that July/August, were any muscle magazines found at any of  
2 those locations, the four locations you searched in January of  
3 '92?

4 A. I don't remember.

5 Q. You have no memory that any were found; is that fair to  
6 say? Can you point to any muscle magazine that was found that  
7 day in those searches?

8 A. I don't remember it. We had found one that wasn't the  
9 same issue we were looking for. We wouldn't have taken it. I  
10 don't recall if we found one or not.

11 Q. Okay. Let me ask you about the electric detonators. I  
12 think you told us that there were two Austin Rockstar No. 6  
13 delay electric detonators recovered from the debris of the  
14 scene; is that right?

15 A. Yes.

16 Q. Isn't it true that no Austin star detonators or any  
17 remnants of them were recovered during the searches you just  
18 described?

19 A. Yes.

20 Q. Let me turn to this using the firing system of the '91  
21 bomb. I think you told us that there were Futaba radio  
22 component recovered, correct?

23 A. Yes.

24 Q. And there were two switch contacts that were recovered,  
25 Radio Shack No. 275602?

1 A. Yes, based on my comparison to the exemplar collection,  
2 those contacts and the impressions in the adhesive were  
3 consistent with this catalog number from Radio Shack.

4 Q. Isn't it true, Ms. Wallace, on the searches that you  
5 describe for us on January 31, 1992 no items were recovered  
6 that suggest Mr. Trenkler ever had possession of a Futaba  
7 radio control system?

8 MR. KELLY: Objection, your Honor.

9 THE COURT: Well, as put, the question is  
10 objectionable.

11 MR. SEGAL: Well, let me try another way.

12 Q. Did you find any parts of a Futaba radio control system  
13 in the searches of the five place, four places that you told  
14 us about on January 31, 1992, Ms. Wallace?

15 A. I --

16 MR. KELLY: For clarification, did she find?

17 THE COURT: That was the question.

18 Q. Sorry.

19 A. Not that I recall.

20 Q. Are you aware while you were on the search while you were  
21 present that anybody found such parts?

22 A. I don't recall.

23 Q. Do you recall anybody coming up to you with any Futaba  
24 parts taken from Mr. Trenkler's habitats, those four locations  
25 on January 31, 1992?

1 A. No, I don't recall.

2 MR. KELLY: I think there were three locations.

3 THE COURT: Well, the car is the fourth.

4 Q. I'm sorry?

5 A. No, I don't recall that.

6 Q. So you have no memory anybody came up to you and said  
7 this is a Futaba part we found here; is that right?

8 A. That's what I recall.

9 Q. But they didn't come -- is that right, you have no  
10 memory?

11 A. Yes.

12 Q. Now, let me ask you in the searches of those four  
13 locations, did you find any evidence suggesting Mr. Trenkler  
14 had ever first purchased a Radio Shack toggle switch brand No.  
15 275602?

16 A. We did not find any packaging for such a search, if  
17 that's what you're asking.

18 Q. That was part of it, yes. Did you find any switch like  
19 that around too, 275602?

20 A. No.

21 Q. Didn't you learn, at some point, Ms. Wallace, that that  
22 Radio Shack toggle switch is made in Formosa?

23 MR. KELLY: Objection, your Honor.

24 THE COURT: Well, her understanding may be relevant  
25 to her opinion. I'll allow, that's what it is that she knew,

1 not for the fact that it was made in Formosa?

2 A. I understand that it was -- my understanding is that it  
3 was made in Asia and that package that I have seen, if I  
4 recall correctly says made in Taiwan.

5 Q. And as part of your investigation, Ms. Wallace, you  
6 didn't contact anybody in Taiwan or Asia in connection with  
7 that particular toggle switch; isn't that correct?

8 A. I personally did not contact anybody.

9 Q. Now, Ms. Wallace in your experience, a toggle switch is  
10 not a unique item, is it?

11 A. Well, there are a large number of toggle switches, many  
12 different types, this was identified as one type.

13 Q. No. I'm just asking the toggle switch generally has a  
14 number of legitimate uses, doesn't it, to turn on and off a  
15 switch?

16 A. Yes.

17 Q. What are some other uses that you know of for a toggle  
18 switch?

19 A. Well, it's hard to come up with something off the top of  
20 my head, I guess. Any application like the light switch, like  
21 you said, where you want something to be on or off.

22 Q. Let me turn to wire, Ms. Wallace. Isn't it true, and I'm  
23 not including red and yellow detonator leg wires. Besides  
24 that isn't it true, four different types of wire were  
25 recovered and identified as having been associated with the

1 bomb circuitry; and if you'd like to refer to your report,  
2 please do so.

3 A. Well, there are a number of different types of wire that  
4 were recovered.

5 Q. Putting aside the red and yellow, one of the types is red  
6 and yellow detonator leg wires; isn't that true?

7 A. Yes.

8 Q. Putting that aside, weren't there four additional types  
9 of wire recovered and identified as being associated with the  
10 circuitry of this bomb?

11 A. I looked at the wire that was recovered and compared it  
12 to the wiring that's used in Futaba remote control system,  
13 there are a number of different types of wire used in it and  
14 wires that I recovered were consistent with that.

15 Q. No, my question was, if I -- please, if you don't  
16 understand, please tell me. My question was simply, isn't it  
17 true setting aside the red and yellow detonator leg wires,  
18 there were only four other different types of wires recovered  
19 from the bomb?

20 A. I don't know if that number is correct or not.

21 Q. Is there anything in your report that would help answer  
22 that?

23 A. Well, there was a number of different types of wires used  
24 with the Futaba brand and there were the wires from the nine  
25 volt battery snap connectors plus there was another type of

1 wire recovered. There's more than type of wire used with the  
2 Futaba components, and I didn't count all the different kinds.

3 Q. Ms. Wallace, as part of the work you did in the lab in  
4 this case, and by the way, all the items -- you're aware  
5 certain items were taken from Mr. Trenkler on November 5th and  
6 6th of '91; isn't that correct?

7 A. Yes.

8 Q. All right. And those items were sent down to you for  
9 analysis at the lab, isn't that correct?

10 A. I received some of those items, yes.

11 Q. Tools, things like that?

12 A. Are you referring to what I call submission 6 in my  
13 report?

14 Q. Yes, what is submission 6 of your report?

15 A. It contained a number of different exhibits that were  
16 submitted for comparison to the device components.

17 Q. Didn't you understand submission 6 to be items taken from  
18 Mr. Trenkler on November 5th and 6th of 1991?

19 A. I understand they were taken from him, yes.

20 Q. And submission 6, according to your report, you received  
21 by Federal Express on November 14th, 1991; isn't that correct?

22 A. Yes.

23 Q. All right. Now, some of the items that are listed in  
24 submission 6 are things like wire cutters, isn't that correct,  
25 and wire?

1 A. Yes.

2 Q. Now, Ms. Wallace, didn't you compare the tool marks on  
3 the lengths of wire from the bomb with the tools taken from  
4 Mr. Trenkler and sent to you as submission 6?

5 A. Tool mark examinations are referred to our tool marks  
6 examiners.

7 Q. So somebody did that for you at the lab?

8 A. Not for me, but they did it.

9 Q. And isn't it true that the examination came back  
10 negative?

11 A. That's my understanding.

12 Q. And I mean by negative that none of the tool marks from  
13 the wires of the bomb were found to match any of the tools  
14 taken from Mr. Trenkler and submitted to you on November 14th,  
15 1991; is that fair to say?

16 A. Yes.

17 Q. Isn't it true, Ms. Wallace, that numerous wires and wire  
18 scraps were recovered from Mr. Trenkler's apartment, business,  
19 and parents' garage on or about January 31, 1992?

20 A. Yes.

21 Q. All right. And which submission is that in your report,  
22 please?

23 A. Submission 13.

24 Q. Now, submission 13 talks about evidence from three search  
25 warrants delivered to the ATF lab; is that correct?

1 A. Yes.

2 Q. And it has about 31 items that were taken from 82 Broad  
3 Street, Weymouth, 7 White Lawn Avenue, parentheses, garage and  
4 133 Atlantic Street; isn't that correct?

5 A. Yes, that's correct.

6 Q. Now, Ms. Wallace, isn't it true that none of those items  
7 recovered, none of the wires recovered from those locations  
8 were found to be identical from the wires recovered from the  
9 bomb?

10 A. That's right.

11 Q. Now, I think you told Mr. Kelly it was, you people  
12 recovered one fragment of white plastic tape about an inch and  
13 a quarter long, isn't that so?

14 A. I believe that was in a different submission, but yes.

15 Q. All right. And it had in it two single yellow insulated  
16 wires that came from detonators connected together, isn't that  
17 correct?

18 A. Oh, you mean from the device.

19 Q. I'm sorry, I apologize. Just so we're clear and I  
20 apologize if I misled you, from the device, you people  
21 recovered one fragment of a white plastic tape about an inch  
22 and a quarter long, isn't that so?

23 A. Yes.

24 Q. And it had in it two single yellow insulated wires that  
25 came from detonators connected together; isn't that true?

1 A. Yes, it contained two yellow single strand copper wires  
2 which are consistent with having the two detonators connected  
3 together.

4 Q. Right. And isn't it true that those wires are just  
5 referred to or connected by twisting?

6 A. Well, generally when I took the connection apart, the  
7 wires were no longer touching, they both had a curly kink in  
8 it which to my eye, in my opinion, they had been twisted.

9 Q. Are those depicted anywhere on those photographs, if you  
10 know?

11 A. Yes, on the photograph with the detonators, it's not a  
12 very good close-up but it's down at the very bottom. I think  
13 it's on this board.

14 Q. Is it this one?

15 A. No.

16 Q. I'm sorry?

17 A. That one.

18 Q. I apologize. The wires we just referred to are right  
19 here on Government Exhibit 17(c), can you point them out?

20 A. They're right here.

21 Q. And those are the wires that you found twisted together;  
22 is that right?

23 A. Yes, that I found inside this tape connection.

24 Q. And they were twisted and then what, taped together?

25 A. That's what it appeared to be.

1 Q. And they came from the device, you found in connection  
2 with the device?

3 A. Yes.

4 Q. And isn't it true that those wires were not soldered?

5 A. Yes.

6 Q. Ms. Wallace, -- thank you, I'll put that back down.

7 Ms. Wallace, in your experience as a forensic chemist, isn't  
8 it common for someone to solder the connections and protect  
9 the connection with tape?

10 MR. KELLY: Your Honor, I'm going to object to that.

11 MR. SEGAL: If you know.

12 THE COURT: You may answer that if you know.

13 A. I don't recall specifically seeing them twisted. You're  
14 asking me if I saw them soldered and then --

15 Q. I meant generally, in your experience as a forensic  
16 chemist, isn't it common having seen a situation where someone  
17 saw these connections and then protects the connections with  
18 tape?

19 A. I believe I've seen that before.

20 Q. From your experience as a forensic chemist in the  
21 laboratory at ATF, is it unusual for someone to solder some  
22 connections and not others in the same device, have you ever  
23 seen that before?

24 A. I don't recall specifically.

25 Q. I'm not talking about this case, just general experience?

1 A. I don't recall specifically any case where there --

2 Q. Where there what?

3 A. Where there were connections that were soldered and  
4 connections that were not soldered. I've probably seen them.  
5 I don't recall.

6 Q. You can't point to any individual case today though?

7 A. Right.

8 Q. Let me talk to you a little about batteries. I think you  
9 told us fragments from at least five Duracell 9-volt batteries  
10 are, were recovered; is that correct?

11 A. Yes.

12 Q. Isn't it -- four of the batteries, fragments of the bomb,  
13 reveal the freshness code July '94; is that correct?

14 A. Yes.

15 Q. Now, isn't it true you need one nine-volt battery to  
16 ignite the two detonators in that case?

17 A. That's not really my area of expertise. The question is  
18 better directed toward Tom Waskom, the enforcement officer.

19 Q. So I've gone beyond my area there?

20 A. That's right.

21 Q. All right. Now, isn't it true, based upon the  
22 submissions that you received at the lab and the searches you  
23 were involved with, that there were no batteries recovered  
24 from Mr. Trenkler's locations that bore the freshness code of  
25 July '94. Also based on your report, you've got some

1 submissions from Mr. Trenkler's locations in November, isn't  
2 that so?

3 A. In November? Yes.

4 Q. How many submissions were submitted to you in November  
5 that were identified as coming from any location associated  
6 with Mr. Trenkler?

7 A. Two.

8 Q. And that is submission 6 and submission 7, right?

9 A. Yes.

10 Q. And that would take in about 15 items, am I right,  
11 submission 646 through 661?

12 A. I haven't counted them, but.

13 Q. Well, I just, the first one on submission 6 is 646 and  
14 then the last one on submission 7 is No. 61, so, am I right,  
15 about 14 items were submitted to you, they were taken from  
16 Mr. Trenkler's locations in November '91?

17 MR. KELLY: Your Honor, for clarification purposes,  
18 he uses the phrase, Mr. Trenkler's locations. Can we get an  
19 understanding of what that means so that if he continues to  
20 use it we all know what it means.

21 Q. All right. Do you know where those came from? You said  
22 you knew they were from Mr. Trenkler, your associate with  
23 Mr. Trenkler; is that right?

24 A. That's my understanding.

25 Q. What's your understanding where the items must have been,

1 submission 6, on your report came from?

2 A. If I could look at the bag of evidence, that might make  
3 it clearer.

4 THE COURT: Can't we stipulate that?

5 MR. KELLY: We're prepared to stipulate that the  
6 items in submission 7 came from one of three locations, four  
7 locations which I think he's already identified 133 Atlantic  
8 Street, the Broad Street business in Weymouth, parents' garage  
9 in Milton and the car.

10 THE COURT: Now we're talking about submission 6.

11 MR. KELLY: Submission 6, right.

12 THE COURT: I thought you said 7 a moment ago.

13 MR. KELLY: I'm sorry, submission 6, I misspoke.

14 He's referring to those four and nothing else, to my  
15 knowledge.

16 THE COURT: The same applies to 7.

17 MR. SEGAL: No. I think we could agree -- some of 7  
18 came from Mr. Trenkler's, the location on top of the Christian  
19 Science Monitor building where Mr. Trenkler was working in  
20 October or September 1991.

21 THE COURT: Let's stop for a moment and stretch.

22 (Pause.)

23 THE COURT: All right. Let us proceed.

24 Q. I might have been incorrect, your Honor, about submission  
25 7. I believe some of that came from 82 Broad Street which is

1     Weymouth, the business. Submission 10, though, Ms. Wallace,  
2     would you look at that? Weren't those submissions that you  
3     understood came from Mr. Trenkler's job location at the  
4     Christian Science Monitor church?

5     A.    Yeah, that's what I believe.

6     Q.    So, Exhibit -- submission 1063, the woods fragments and  
7     1064, wooden tape fragments came to you on December 6th, 1991,  
8     Federal Express, and you understand they were taken from the  
9     Christian Science church, 174 Huntington avenue?

10    A.    Yes, that's what I remember.

11    Q.    In fact, those submissions that I just talked about, are  
12    they contained in these bags, one of which is marked  
13    Defendant's Exhibit 28 in evidence, and the other Defendant's  
14    Exhibit 29?

15    A.    Yes.

16    Q.    Would you open those and just show us the signature,  
17    please.

18    A.    Okay. Government Exhibit 29 contains two envelopes.

19    Q.    Just tell us what's -- I don't want to -- is it fair to  
20    say there is some tape in there?

21    A.    It's wood in this one.

22    Q.    I'm sorry, that's Defendant's Exhibit 29?

23    A.    Oh, I'm sorry. And it's a bit like those boxes, inside  
24    those boxes. Also this other envelope from Defense Exhibit 29  
25    also contains pieces of wood.

1 Q. Go over to 28, and just hold it up and tell us what's in  
2 there?

3 A. Yes, there are three bags. One of which contains wood  
4 and tape. And two which contain samples of tape that have  
5 been labeled by me, piece 1 and piece 2.

6 Q. So, in connection with your analysis in the lab, you have  
7 a number of items submitted that are associated with  
8 Mr. Trenkler, more particularly everything in submission 6, 7,  
9 10, and 13; isn't that fair to say?

10 A. Yes.

11 Q. 40 or 50 items in all?

12 A. I'll take your word for it.

13 Q. Now, let me go back to the batteries. From all these  
14 submissions, were any batteries submitted to you or remnants  
15 submitted to you that had the same freshness that was in the  
16 bomb device, in other words, July '94?

17 A. No. There were some batteries submitted, but they had  
18 different freshness states.

19 Q. All right. Now, there were battery contacts recovered  
20 from the debris of the bomb; is that correct?

21 A. Yes.

22 Q. And isn't it true that none of those exhibit the presence  
23 of solder?

24 A. Well, they have the remains of 9-volt batteries snap  
25 connectors on them which has solder on it.

1 Q. But that's manufacturing solder, isn't it?

2 A. That's my understanding.

3 Q. In other words, that came from the device from the  
4 manufacturer; isn't that fair to say?

5 A. Yes.

6 Q. There was no solder put on by somebody from what you  
7 could see, after it came from the manufacturer?

8 A. Not from what I could see but I didn't remove --

9 Q. Isn't it true that battery fragments recovered from the  
10 crime scene reveal remains of battery connected still attach  
11 to some of the batteries?

12 A. Yes.

13 Q. You showed us some in some exhibit; is that right?

14 A. Yes.

15 Q. Is it on the photo?

16 A. Yes. That's the one.

17 Q. I'm getting the number, Government's Exhibit 17B, does  
18 that show what we're talk about?

19 A. Yes, it does.

20 Q. Which is what?

21 A. You can't exactly see it in this photograph, but there's  
22 some snap connectors here that were recovered, and there are  
23 some other ones that were recovered, other items in here, and  
24 they had the remains of 9-volt battery snap connectors  
25 attached to the snaps.

1 Q. They're still attached to some of the batteries; is that  
2 right?

3 A. Yes.

4 Q. Okay. Doesn't that fact that they were covered attached  
5 to some of the batteries, doesn't this indicate that the  
6 battery snap connectors in the bomb were used to connect the  
7 power source into the electrical circuits in the bomb?

8 MR. KELLY: Again, your Honor, objection. She's  
9 already told us that that kind of configuration and  
10 functioning and design is outside of her area.

11 Q. If you know?

12 A. What it means to me that the 9-volt battery snap  
13 connector was on the nine-volt batteries. It's outside of my  
14 expertise to tell you how they were on the circuit.

15 Q. By the way, Ms. Wallace, you didn't do any test for life  
16 of batteries in this case, did you?

17 A. No.

18 Q. In other words, you didn't put batteries on the device  
19 and see if they could last for 24 or 40 hours with current  
20 going in there?

21 A. No.

22 Q. The switch off?

23 A. No.

24 Q. You never took 4 double -- how many batteries were  
25 recovered, how many batteries were in the device that you

1       became aware of?

2       A.     I recovered fragments of 4 AA batteries and five 9-volt.

3       Q.     You didn't do any test to determine whether those  
4       batteries would last between 24 and 40 hours once a slide  
5       switch was put on?

6       A.     No, I'm not an expert in battery life and I didn't  
7       perform a test.

8       Q.     When we're talking about a slide switch, are we talking  
9       about the same thing? I don't know if the Government's device  
10      is up here?

11      A.     If I have a slide switch, I mean the Futaba mini slide  
12      switch.

13      Q.     And you found one of those type switches or remnants of  
14      it in the debris; isn't that right?

15      A.     Yes.

16      Q.     And you understood that to activate that device, the  
17      switch had to be on?

18      A.     I don't know how it was configured within the device. I  
19      can just tell you what I found.

20      Q.     Ms. Wallace, isn't it true that your lab report makes no  
21      mention of solder being used in the construction of the bomb?

22      A.     That's right.

23      Q.     And you didn't examine any solder from this device, the  
24      bomb?

25      A.     The laboratory report is a summary of my notes when I

1 examined solder. It was not mentioned in my report.

2 Q. Now, Ms. Wallace, based first on the searches that you  
3 participated in, those four locations in January, did you  
4 recover any solder from Mr. Trenkler?

5 A. No, we didn't take any solder.

6 Q. From the items submitted to you in connection with your  
7 report, are you aware of any solder from, associated with  
8 Mr. Trenkler who was compared to the solder in the bomb?

9 A. I did not ask for solder to be submitted because the  
10 comparison --

11 Q. No, that's not my question. My question is simply, are  
12 you aware whether there was solder submitted to you and  
13 compared to the '91 --

14 A. It was not submitted to me.

15 Q. All right. Let me talk a little about the, with you  
16 about the box that contained the bomb. I think you told us  
17 that the bomb was contained in a homemade plywood box; isn't  
18 that correct?

19 A. Yes.

20 Q. Now, I think your lab report which is, I believe -- do  
21 you have it in front you, it's Exhibit 12?

22 A. Yes.

23 Q. I'm sorry 12 A, page 5, there's a mention of the type of  
24 nails; isn't that correct?

25 A. I'm sorry. What page?

1 Q. Page 5 of your lab report which is Government's Exhibit  
2 12 A?

3 A. Yes.

4 Q. In other words, at the top of that page in the first  
5 paragraph, you talk about the container, and we agree that the  
6 container is the box that contained the device; is that  
7 correct?

8 A. Mm-hmm, yes.

9 Q. And you say, quote, the container had been constructed  
10 with two penny nails and what's that next word?

11 A. Cyanoacrylate.

12 Q. Superglue type adhesive?

13 A. Cyanoacrylate, C Y A N O A C R Y L A T E.

14 Q. So in the lab analysis you found that the, the box that  
15 contained the device had been constructed with two penny  
16 nails, that's a distinctive type of nail, isn't it?

17 A. That's a size.

18 Q. What size is that?

19 A. Well, I measured it, two penny first the size of nail, I  
20 measured the nails, and if I remember correctly they're about  
21 an inch and an eighth in length in emphasis, same size as two  
22 penny nails.

23 Q. Let me just ask you, Ms. Wallace, in connection with your  
24 search suggestions, the document dated November 1, 1991 which  
25 is Defendant's Exhibit 9, would you turn to the section and

1 it's about, the pages aren't numbered, it starts, the top of  
2 page -- the top of the page I'm interested in says tape which  
3 is about -- it's the ninth page in?

4 A. Is this the correct page?

5 Q. If it says tape, we're all on the same ballpark?

6 A. I believe that's correct.

7 Q. It says black electrical tape on top?

8 A. Right.

9 Q. This is your search suggestion, it says hardware there  
10 nails used on box one inch finishing nails. Did I read that  
11 correctly?

12 A. Yes.

13 Q. So, between the time of the search suggestion, by the way  
14 you did the search suggestions after you had come up here and  
15 analyzed the debris and looked at the debris; isn't that fair  
16 to say?

17 A. We hadn't done a preliminary examination.

18 Q. So between the time you did that exam on November 1, and  
19 the time you wrote the report, you discovered that the nails  
20 were really different, that they turned out to be two penny  
21 nails versus finishing nails; isn't that correct?

22 A. Well, I --

23 Q. Well, can you answer that yes or no?

24 MR. KELLY: I think he was trying to cut her off.

25 MR. SEGAL: I think she can respond to a yes or no

1 answer, please.

2 THE COURT: You may explain.

3 A. Can you repeat the question, please, I'm sorry.

4 Q. The question is simply: Isn't there a difference between  
5 1 inch finishing nails and two penny nails?

6 MR. KELLY: I don't think that's the question.

7 THE COURT: Well, he may have the question he just  
8 put.

9 Q. Do you understand my question? Isn't there a difference  
10 between the one-inch finishing nails in your search suggestion  
11 of November 1 and the two penny nails you referred to in your  
12 report which is Exhibit 12 A?

13 A. I don't know, they are both descriptions of the size of  
14 the nails.

15 Q. All right. Now, from your examination of all the  
16 evidence that was submitted to you at the lab, isn't it true  
17 that no wood fragments were covered during any searches or  
18 like the plywood used to construct the box?

19 A. Yes.

20 Q. Being the box that had contained this device?

21 A. Yes.

22 Q. So, in other words, all the wood fragments that were  
23 submitted to you from all these searches and locations  
24 associated with Mr. Trenkler, none of them were found by you  
25 to be the same as the plywood used to construct the box; isn't

1     that fair to say?

2     A.     That's correct.

3     Q.     And in fact, no two penny nails were recovered and  
4     submitted to you from any of those locations associated with  
5     Mr. Trenkler; isn't that fair to say?

6             MR. KELLY: Can get a clarification on what that  
7     phrase means.

8             THE COURT: That she described -- you mean the  
9     locations.

10            MR. SEGAL: Let me clear it up.

11     Q.     We're on your report now, forget the locations. All the  
12     items submitted to you in your report, we've gone through the  
13     different submissions you got from that, right. In other  
14     words, you got a number of submissions of items associated  
15     with Mr. Trenkler; isn't that fair to say?

16     A.     Yes.

17     Q.     You got the submissions in connection with the search  
18     that you were involved in, in January; is that right?

19     A.     Yes.

20     Q.     That is submission 13 in your report?

21     A.     Yes.

22     Q.     You got the items which are submissions 6 and 7 which  
23     came from the four locations that Mr. Kelly and I talked about  
24     in November of 1991; is that fair to say?

25     A.     Yes.

1 Q. That being 131 Atlantic, 82 Broad Street, the garage at 7  
2 White Lawn, and the Christian Science -- strike the Christian  
3 Science, those three locations anyway, right?

4 A. Well, that's where it's Exhibit 6 and 13 are from.

5 Q. Right. The reason I said strike the Christian Science,  
6 the Christian Science material came from submission 10, do we  
7 agree on that, and those are the two exhibits I showed you up  
8 there, 28 and 29?

9 A. Yes.

10 Q. All associated with Mr. Trenkler; isn't that so?

11 A. That's my understanding.

12 Q. And from all of those submissions, isn't it true that  
13 there were no pending nails submitted to you?

14 A. I don't recall if there were any nails submitted you but  
15 I do know that if any had been submitted that they were the  
16 same as that device, I would have reported such, and I did  
17 not.

18 Q. All right. But if you look at these submissions, I don't  
19 want to spend too much time, would you agree looking at those  
20 briefly, it doesn't look like any of those nails were  
21 submitted from those locations?

22 MR. KELLY: Objection.

23 THE COURT: I think she's just answered the question.

24 Q. All right. That's fine. You told us that the plywood  
25 box was secured with Superglue, am I right?

1 A. Superglue type adhesive, yes.

2 Q. And isn't it true ATF recovered some, submitted to you  
3 some Superglue from one of those locations submitted to you  
4 from Mr. Trenkler?

5 A. Yes.

6 Q. Now, isn't it true that this type of adhesive is class  
7 evidence and cannot be identified as having been originated  
8 from a specific source?

9 A. If you mean that the cyanoacrylate type adhesive is a  
10 chemical, there's no difference that I can measure then I  
11 agree with that statement, yes.

12 Q. Let me explain to you, Superglue and crazy glue are  
13 common to most households in this country?

14 MR. KELLY: I object to that.

15 THE COURT: Objection to that is sustained.

16 Q. You'll agree that Superglue and crazy glue cannot be  
17 considered unique for identification purposes?

18 A. Yes.

19 Q. Do you have some in your house?

20 MR. KELLY: I object to that. No relevance.

21 THE COURT: Sustained.

22 Q. Now, let me talk about paint with you for a moment. Do  
23 you recall receiving, let me first show you what's been marked  
24 in evidence as Defendant's Exhibits 13 and 14 which I'll ask  
25 you to identify holding up so you can all see. Can you

1 identify that particular exhibit which is Defendant's Exhibit  
2 13?

3 A. This is a picture of a board of a paint on it that was  
4 found in Mr. Shay, Sr.'s garage.

5 Q. By the way, didn't you see that particular exhibit when  
6 you were up there on October 29th or 30th?

7 A. Yes.

8 Q. So you actually saw the board that's depicted on that  
9 exhibit?

10 A. Yes.

11 Q. Is this another picture of that same piece of board?

12 A. Yes, it is.

13 Q. Does the rough outline of that spray painting come fairly  
14 close to the box that's in evidence here?

15 MR. KELLY: Objection, your Honor.

16 MR. SEGAL: If you know.

17 MR. KELLY: Does the rough outline come fairly close?

18 MR. SEGAL: Let me ask it this way.

19 Q. How does that outline of this, the spray painting compare  
20 to the outline of the box that was reconstructed in connection  
21 with the bomb, if you know?

22 MR. KELLY: I object to the question in the form of  
23 that question.

24 THE COURT: If she has measured it, she can tell us  
25 whether there is a similarity in measurements. I think that's

1     what you're getting at.

2     Q.    Do you notice any similarity in measuring it?

3     A.    I didn't measure it.

4     Q.    All right.  Now, that particular board that you saw, what  
5     date did you see it?

6     A.    I believe I saw it on the 29th.

7     Q.    Of October of 1991?

8     A.    Yes.

9     Q.    And do you recall when that particular board was  
10    submitted to the ATF lab for examination?

11    A.    It was submitted later.

12    Q.    Could you look at your report and tell us exactly when it  
13    was submitted?  Let me direct your attention to submission No.  
14    9, Ms. Wallace on page 3 and see if that helps us.

15    A.    Okay.  It was submitted in two pieces.  Some of it was  
16    submitted on December 10, 1991 and the rest of the board was  
17    submitted on December 18th, 1991.

18    Q.    And this piece of board that has been admitted in  
19    evidence as Defendant's Exhibit 12, does this correspond with  
20    the full board that's reflected in those two photos?

21    A.    Yes, that's part of this board.

22    Q.    In other words, this is the board, Defendant's Exhibit 12  
23    that you received on December 10th, 1991, or maybe December  
24    18th, I'm sorry?

25    A.    Yes.

1 Q. And this is the board that you people did an analysis on  
2 in connection with this case; is that right?

3 A. Yes.

4 Q. And that's why it's missing a piece; am I right?

5 A. Yes.

6 Q. In fact that piece is somewhere around the courtroom,  
7 isn't it, if you know. This board doesn't it have two colors  
8 of paint?

9 A. Yes.

10 Q. What did you understand from your investigation Mr. Shay,  
11 Sr. did for a living?

12 A. I'm not clear on what he did for a living.

13 Q. Were you aware that he was in the auto body business?

14 A. I had heard that, yes.

15 Q. Now, these two pieces that I have now taken out of  
16 submission 65, are these the pieces of board that would, and  
17 I'll hold this up, when you put these all together, do we  
18 have, do we have the complete board that was submitted to ATF,  
19 to your lab in December 1991?

20 A. Yes, I believe we do.

21 Q. Okay. And you did some test to determine whether the  
22 paint in this particular board was the same as the paint on  
23 the box that could paint the bomb; is that correct?

24 A. Yes, I examined the paint.

25 Q. And you analyzed the wood; is that fair to say?

1 A. I examined the wood.

2 Q. And did you do some analysis to make sure that the wood  
3 wasn't the same as the wood was in the bomb?

4 A. Actually what I did was I did some measurements of the  
5 thickness and looked at the physical construction,  
6 characteristics of the board, and then looked at the  
7 microscopic features and found that the board was different  
8 from the board used in the device and that the adhesive used  
9 to hold the layers together was visually different.

10 Q. You requested somebody send that you particular board in  
11 December?

12 A. I'm sorry?

13 Q. Ms. Wallace did you request that somebody up in Boston go  
14 over to Mr. Shay's house and get that particular board and  
15 send it down to you in December '91?

16 A. Yes.

17 Q. All right. Let me show you two photographs that are in  
18 evidence as Defendant's Exhibit 15 and 16, and I'll ask if you  
19 can identify these two documents?

20 A. This I believe is a photograph of the inside of Mr. Shay,  
21 Sr.'s garage, and two paint stirrers.

22 Q. Is this another one of that particular stirrer?

23 A. Yes.

24 Q. And you -- thank you. You saw the paint stirrers on  
25 October 28, 29th, 1991; isn't that correct?

1 A. Yes.

2 Q. At some point, are you aware of the original paint  
3 stirrers are down in the lab today, it's not up here?

4 A. Yes.

5 Q. You'll agree that that photograph is the same thing,  
6 right?

7 A. Yes.

8 Q. All right. At some point that paint stirrer was picked  
9 up by ATF and submitted to you; is that right?

10 A. Yes.

11 Q. Can you tell us when that happened?

12 A. I don't remember. It is --

13 Q. Let me show you Defendant's Exhibit 17 for identification  
14 and see if this ATF document refreshes your recollection when  
15 that particular paint stirrer was picked up by ATF here in  
16 Boston?

17 A. It says that ATF picked it up on April 9th, 1993. I  
18 received it sometime up here afterwards and took it back to  
19 the laboratory.

20 Q. And did you request them to go out to Mr. Shay's garage  
21 and pick it up?

22 MR. KELLY: Objection, your Honor. Mr. Segal knows  
23 the circumstances of that.

24 THE COURT: Sustained.

25 MR. SEGAL: I didn't hear the ruling.

1 THE COURT: I don't know what difference it makes.

2 The objection is sustained on relevance grounds.

3 Q. Did you analyze that particular stirrer also, Ms.  
4 Wallace?

5 A. I visually examined it and saw that the color the  
6 microscopic appearance and the texture were different from the  
7 paint in the device.

8 Q. Was that analysis different from the analysis you did on  
9 the wood that you received in December of 1991?

10 A. I did the same examination.

11 Q. Let me talk about ink for a moment. Isn't it true that  
12 you saw there was some blue ink lines which appear on some  
13 edges of the wood from the plywood container containing the  
14 bomb?

15 A. Yes.

16 Q. And according to your report, isn't it true there were 11  
17 blue ink pens recovered from 133 Atlantic Avenue in Quincy?

18 A. Yes.

19 Q. Was a comparison, just a moment -- sorry, I didn't get a  
20 chance to mark this before. I'd like to ask -- may I refer to  
21 it as Defendant's 31?

22 THE COURT: Just a put a number on it so --

23 Q. Let me show you what's been admitted into evidence as  
24 Defendant's Exhibit 31. Are those the blue pens submitted to  
25 you that came from Mr. Trenkler?

1 A. Yes.

2 Q. By the way, there's a photo in there, do you see there's  
3 a photo. What does that represent, can you tell us?

4 A. Yes. This evidence was taken back to the lab with me  
5 along with some other evidence which included a can of black  
6 and sprayed material which ended up being tree wound dressing  
7 and different from the black paint that was used on the  
8 device.

9 When I was done with my examinations, I sent the  
10 materials from the submission back to, I placed it back in the  
11 evidence room and it was placed, it was sent back to the ATF  
12 office up here. It's my understanding that during  
13 transportation, that black can of tree wound dressing started  
14 to leak and what you see in this photograph is the bag that  
15 these pens were originally in covered with a black sticky  
16 tarlike material and up here someone took a picture to  
17 document how it was received and then placed it another bag.

18 Q. All right. So, without, we'll submit these later for  
19 evidence, but you'll see a similar photograph in a number of  
20 other exhibits here; isn't that right, and that simply  
21 reflects the fact that apparently the paint leaked when it was  
22 being sent back from your lab and they took a photo --

23 A. It wasn't paint but something leaked, yes.

24 Q. And it got on some of these other exhibits?

25 A. Got on their packaging.

1 Q. So the photo reflects that and then there was a photo  
2 with the exhibit, right?

3 A. I believe that's true.

4 Q. Let's go back to the blue ink pens, how many blue ink  
5 pens, were there?

6 A. Yes.

7 Q. Was there a dozen blue ink lines from the container which  
8 contained the bomb and 11 blue ink pens taken from 133  
9 Atlantic Avenue?

10 A. No.

11 Q. Doesn't ATF maintain something called the National Ink  
12 File?

13 A. ATF used to for at least 20 years, until 1988, found that  
14 it had something in it, I believe it's called the  
15 International Ink Library or database. That database and all  
16 of its files have been transferred over to the U.S. Secret  
17 Service. However, we still have some examiners in our  
18 laboratory who did that work when it was still with us, and I  
19 consulted with specialists in that area on this examination.

20 Q. Don't tell us what was said, let me ask you this. Isn't  
21 it possible to identify the manufacturer of those blue ink  
22 pens?

23 A. I'm not a specialist at ink examination. I'm not sure  
24 exactly what is possible.

25 Q. So you didn't, you didn't do any ink comparison in this

1 particular case with the evidence that you have in front of  
2 you there?

3 A. Right.

4 Q. Would you agree it would have helped the investigation  
5 for somebody to have done such a comparison, not necessarily  
6 yourself, I understand.

7 MR. KELLY: Does he want to give the information that  
8 he started to give now.

9 MR. SEGAL: I think that's a yes or no question.

10 Q. Wouldn't you agree, yes or no?

11 A. Could you repeat the question.

12 Q. Sure. I'd be happy to. Wouldn't you agree it would have  
13 been helpful to have somebody who had expertise in this area  
14 beside yourself, I understand, making an analysis of those ink  
15 pens and compare that ink with the ink found on the wood that  
16 contained the bomb?

17 A. Based on my consultation with the chemist in our  
18 laboratory who would have done the ink comparison, no.

19 Q. Let's talk about magnets.

20 THE COURT: Before we do that we need to stretch  
21 again.

22 (Pause.)

23 THE COURT: Mr. Segal, the jury requests that you be  
24 clearer in whether you are asking questions in the negative or  
25 in the affirmative, because when you ask in the negative and

1 get an affirmative answer, it's not all together whether  
2 you're getting what it is that the witness is telling us.

3 MR. SEGAL: That's fine.

4 THE COURT: Are you going to finish by 1.

5 MR. SEGAL: I do not think so.

6 THE COURT: Well, see what you can do.

7 MR. SEGAL: You might get lucky.

8 Q. Ms. Wallace, do I understand the two types of magnets  
9 are, according to the ATF investigation, your analysis, two  
10 types of magnets were attached to the outside of the bomb  
11 container with adhesive?

12 A. Yes.

13 Q. And these magnets were identified as ring magnets and  
14 button magnets?

15 A. That was the descriptive term that was used to describe  
16 them.

17 Q. Isn't it true, let me ask you, is it true that fragments  
18 of 12 button magnets were recovered?

19 A. Yes.

20 Q. And that ten were painted red and two were painted blue  
21 and can be ordered in these colors to the manufacturer?

22 A. Could be ordered. It's my understanding that only the  
23 red ones are available now.

24 Q. Am I correct that button magnets, magnets are used with?

25 THE COURT: Say that again inclinometers.

1 MR. KELLY: It's inclinometers.

2 Q. Mr. Kelly is absolutely right, inclinometers?

3 A. Yes.

4 Q. And would you turn to your search suggestion which is  
5 Defendant's Exhibit 9 where it talks about magnets?

6 A. Yes.

7 Q. And you say there, there are two types of magnets found?

8 A. Yes.

9 Q. And that, then it says, this type of magnet may be from  
10 inclinometer used in auto body shop and used in a catalog, did  
11 you right write that?

12 A. Yes, that was my understanding on November 1st.

13 Q. By the way, can this be marked for identification. I  
14 apologize, it's probably about 30 --

15 THE CLERK: 32.

16 **(Defendant's Exhibit 32 entered into evidence.)**

17 Q. Is Defendant's Exhibit 32 for identification an exemplar  
18 of an inclinometer, and if I mispronounce it, I apologize.

19 A. Yes, if I recall correctly this is an exemplar of an  
20 inclinometer that the investigative side --

21 Q. You can identify that as that device?

22 A. That's what it says, yes.

23 Q. By the way, from the work you did up here on October, you  
24 stayed from October 28th around November 1st?

25 A. Yes.

1 Q. Did you become aware that Mr. Shay, Sr. was in the auto  
2 body business?

3 THE COURT: You had asked that question before and  
4 either it was ruled out or she didn't know.

5 MR. SEGAL: I'm sorry, I don't remember the answer.  
6 I'll take another question.

7 Q. Were fragments from at least one Strontrum Ferrite  
8 ceramic ring magnet?

9 A. Yes.

10 Q. Is it true that this type of magnet is used in antennas,  
11 speakers and small motors?

12 A. After consulting with people in the magnet business, that  
13 is my understanding, yes.

14 Q. Is it true that you recovered from the apartment at 133  
15 Atlantic Avenue in Quincy was a miniature speaker containing  
16 magnet and wires?

17 A. Yes.

18 Q. Was it also true that the miniature speaker recovered  
19 from the Trenkler apartment at 133 Atlantic Street was an  
20 intact speaker with the magnets still attached?

21 A. That's my, yes, that's what I remember.

22 Q. Is it also true that additionally the magnets still  
23 attached to the speaker was a different size then the ceramic  
24 ring type magnet used in the bomb?

25 A. Yes.

1 Q. Is it true that no button magnets or ceramic ring magnets  
2 like those recovered in the bomb were submitted to you as a  
3 result of any of the searches of the Trenkler locations?

4 A. Well, I can't remember if I analyzed the ring magnet that  
5 came from that miniature speaker, but based on what is  
6 consistent with a ceramic magnet and it was in a shape of a  
7 ring.

8 Q. Do you have any recollection that you received any button  
9 magnets in all of the submissions that we've just talked about  
10 that came from the Trenkler locations?

11 A. I don't believe I did.

12 Q. Do you have any recollection of receiving a ceramic ring  
13 magnet like that recovered in the bomb from any of the  
14 Trenkler locations?

15 MR. KELLY: As long as we can agree that the Trenkler  
16 locations means the items, the four locations plus some things  
17 that were taken off of the roof of the Christian Science --

18 Q. That's the universe we were all talking about. It's  
19 about five separate sights that are reflected in your report.  
20 I'm really asking, in terms of the submissions that you  
21 received from all of those locations, isn't it true that no  
22 ceramic ring magnets like those recovered in the bomb were  
23 submitted to you?

24 A. Nothing exactly like that in a bomb.

25 Q. Now, let's move on to tape. I think you told us that

1       there's sort of a duct tape and black electrical tape were  
2       recovered from a bomb?

3       A.    Yes.

4       Q.    Did you find that the silver duct tape was adhering to  
5       fragments of paper and covered with at least six layers of the  
6       black electrical tape?

7       A.    Yes.

8       Q.    Is Defendant's Exhibit 26 the tape we've just been  
9       talking about that was recovered from the bomb?

10           MR. KELLY: Your Honor, can we have a moment?

11           (Pause.)

12           THE COURT: What's the answer?

13       A.    What was the question.

14           THE COURT: Was it recovered from the bomb?

15       A.    It was recovered from the scene, but it was not part of  
16       the device.

17           MR. KELLY: Then I object to the premise of the  
18       question.

19           MR. SEGAL: Strike it. I apologize. I thought I had  
20       the right tape. I wonder if Mr. Kelly could give me that  
21       other tape.

22           THE COURT: Is that what you're looking for what's on  
23       the floor.

24           MR. SEGAL: No, that's --

25           MR. KELLY: I object to this being in evidence. It

1 has no relevance to anything. He wants to mark it for  
2 identification, but it doesn't have any relevance to anything.

3 THE COURT: What's the number, 35?

4 MR. KELLY: 26, your Honor. 26.

5 MR. SEGAL: We'll hold off on that.

6 THE COURT: If 26 is in evidence, you'll change it to  
7 identification for a moment until we get back to it.

8 Q. Let's first deal with the black electrical tape. I  
9 believe submission 7, 60 B is back, am I correct?

10 A. Exhibits 60 B, yes, there's a tape dispenser with black  
11 electrical tape.

12 MR. SEGAL: Can I have just a minute, your Honor.  
13 The exhibits are over --

14 (Pause.)

15 MR. SEGAL: I think there are two submissions, your  
16 Honor, that are not here in the courtroom, that you're trying  
17 to locate from the Government. I'd like to use that in  
18 connection with my exam, I thought they were here, but -- they  
19 brought over a huge number of exhibits. It's not that they  
20 didn't try. I talked to Mr. Palazza at the recess and he was  
21 going to check to see if he left them in the car, because when  
22 I went over there yesterday I asked for them and they said  
23 they would try to bring them over. I was wondering if I could  
24 move on to another area and come back to this.

25 THE COURT: By all means, keep moving.

1           MR. SEGAL: The point is if the tape doesn't show up  
2 by 1 o'clock, I won't be able to question in an area.

3           MR. KELLY: No way will the tape be here at 1  
4 o'clock.

5           MR. SEGAL: Mr. Palazza said he would go out and look  
6 for it, so.

7           THE COURT: Keep going.

8 Q. Let me pass over the tape for a moment and go to tool  
9 marks, Mr. Wallace. Is it true that the lengths of wire  
10 recovered from the device were examined microscopically from  
11 the presence of comparable tool marks compared to several  
12 tools recovered from Mr. Trenkler with negative results?

13 A. That's essentially what happened, yes.

14 Q. And the tools that were taken from Mr. Trenkler, can you  
15 identify, are these some of the tools you analyzed,  
16 Defendant's Exhibit 27?

17 A. Yes.

18 Q. And those, the tools that were submitted to you from his  
19 office in November 1991?

20 A. That's what I understand, yes.

21 Q. Were Exhibits 70 and 72 submissions, submission 70 and  
22 72, I think that's from, I'm sorry, Exhibit numbers 70 and 72  
23 for submission 13, were those vacuum sweepings taken from his  
24 business and apartment -- I'm sorry, just 72, I apologize.

25 A. Yes.

1 Q. Submission 13, number 72 says vacuum bag from a vacuum  
2 cleaner, is that vacuum sweepings that were taken from the  
3 apartment that you understand?

4 A. Yes.

5 Q. Are those analyzed for hairs and fibers?

6 A. Well, the only fibers that were recovered from the device  
7 were round fibers that were found on the white tape that had  
8 been used to wrap the connection of the two detonator wires  
9 and --

10 Q. My question, though, is did you examine Exhibit  
11 submission 1372, the vacuum bag with materials taken from  
12 Mr. Trenkler's office at Broad Street?

13 A. Yes, I examined it.

14 Q. And did you make, were you able to make any comparisons  
15 for, did you examine it for hairs and fibers?

16 A. I didn't recover any fibers from it.

17 Q. That wasn't my question. What was your purpose in  
18 examining it. Was it for hairs and fibers?

19 A. No, it was for what strippings, pieces of wire, pieces of  
20 wire insulation or other items.

21 Q. But there was nothing there that helped you compare that  
22 that debris with the debris of the bomb; isn't that fair to  
23 say?

24 A. I didn't compare it for that.

25 Q. And what's a hair and fiber analysis, if you know?

1 A. That's a, I will identify the presence of hairs and  
2 fibers and referred that to specialists within our laboratory  
3 forms the hair and fiber analysis.

4 Q. And from your knowledge what type of analysis exactly  
5 that's performed?

6 A. Microscopic and oftentimes chemical.

7 Q. Basically, we all leave hairs of fibers when we go into a  
8 room isn't that right?

9 A. Yeah, I'd say that.

10 Q. If I walk on this carpet, I would leave some sort of  
11 distinctive trace; is that fair to say?

12 A. If fibers fall off your clothing.

13 Q. Let me show you Government's Exhibit 20, the photo of the  
14 Trenkler garage, can you identify that as the garage that you  
15 saw on October -- or, January 31, 1992?

16 A. Yes.

17 Q. And that is the way it looked that day?

18 A. From what I remember, yes.

19 Q. Sort of like a general work area, you have all sorts of  
20 tools and storage and things?

21 A. Yes.

22 Q. Now, I noticed a lot of wood scrapings on the floor of  
23 the garage. Do you see those in the photos?

24 A. Yes.

25 Q. Were those taken and analyzed and compared to the wood in

1 the bomb?

2 A. The pieces of wood that we saw were examined, and found  
3 to be different. I don't believe we looked at every piece of  
4 sawdust.

5 Q. So you didn't collect any sawdust to make a comparison?

6 A. Not that I recall.

7 MR. SEGAL: May I publish some of these photos to the  
8 jury, your Honor?

9 THE COURT: Go ahead.

10 Q. Let me show you photographs taken by the Government of  
11 Mr. Shay, Sr.'s garage and his truck. And I'll ask you if you  
12 can identify it. It's Government Exhibit 24.

13 Does that appear to be Shay, Sr.'s garage --

14 MR. KELLY: Excuse me, that's not Government Exhibit  
15 anything.

16 MR. SEGAL: I'm sorry, Defendant's Exhibit.  
17 Mr. Kelly is absolutely right.

18 A. That appears to be Mr. Shay, Sr.'s garage.

19 Q. And that's the way it looked to you on October 29th or so  
20 when you came up?

21 A. I didn't closely examine the garage, but yes.

22 Q. We show you -- can you identify that catalog that's in  
23 that picture?

24 A. Yes, it's a photograph of the Grainger catalog.

25 Q. Do you know what a Grainger catalog is?

1 A. You can read that, it states: Industrial and Commercial  
2 Equipment Components and Supplies.

3 Q. What year and catalog number can you tell from that  
4 photograph number, is it?

5 A. It appears to be fall, 1989.

6 Q. The catalog number, could you tell from the photograph?

7 A. 376.

8 Q. Let me show you what's been marked for identification as  
9 Grainger Industrial Commercial Equipment Components and  
10 Supplies catalog in the fall of '89, Catalog 376. Does that  
11 appear to be in the same catalog that is in the photograph of  
12 the Shay garage?

13 MR. KELLY: Exhibit.

14 THE WITNESS: Defendant's Exhibit 18.

15 MR. SEGAL: For identification.

16 THE WITNESS: Yes, it appears to be the same.

17 Q. All right. Have you ever seen a Grainger catalog like  
18 that before?

19 A. No, I don't recall.

20 Q. So you don't know what type of items you buy with that  
21 sort of catalog?

22 A. Right.

23 Q. Do you remember seeing, in connection with your visit to  
24 the Shay, Sr. garage, on October 29th, 1991, that Grainger  
25 catalog that's depicted in the photograph?

1 A. No, I don't remember seeing it.

2 Q. Let me show you Defendant's Exhibits 22 and 23.

3 When you came over to Mr. Shay, Sr.'s house, did he  
4 have a truck in the driveway?

5 A. Yes.

6 Q. And did it have a number of supplies in it?

7 A. Yes.

8 Q. Did you look at those supplies?

9 A. I don't recall if I looked at them, but some member of  
10 the team looked at them.

11 Q. All right. Can you identify Defendant's Exhibits 22 and  
12 23 in evidence as depictions of that truck with some of the  
13 supplies in it that you saw on October 28th, 29th?

14 MR. KELLY: Well, your Honor, I would object to that  
15 characterization. Maybe she can say what's depicted, but  
16 that's not what's depicted.

17 MR. SEGAL: I strike the "depicted".

18 Q. Did you see anything in the truck that day?

19 A. No, I personally did not look at the truck. Some other  
20 members of the team did.

21 Q. All right. I'll show you Exhibit -- Defendant's Exhibit  
22 23, where there's a photograph, it shows a -- it appears to be  
23 a can of spray paint.

24 Did you have occasion to look at that paint and  
25 analyze it on that day?

1       A.    I don't have any specific memory of that, but I'm sure  
2       that a member of the team looked at it.

3       Q.    Do you remember if that particular can of glossy black  
4       spray paint was submitted to you in the lab?

5               MR. KELLY:  Objection, your Honor.  She already said  
6       she never looked inside the truck.

7               THE COURT:  This is a different question, whether  
8       this can of paint, wherever it came from, had been submitted  
9       for her analysis.

10      Q.    And please free to consult your report.

11              My question is:  Did you get a submission of glossy  
12      black spray paint in your submissions that came from  
13      Mr. Shay's surroundings?

14      A.    Well, there have been a number of items that were at the  
15      scene, were examined preliminarily, found to be different,  
16      such as --

17      Q.    That wasn't my question, Ms. Wallace.  My question is:

18              Looking at your report, does it reflect, does the  
19      report reflect that you got a submission for analysis of the  
20      black spray paint can depicted in Defendant's Exhibit 23.

21              MR. SEGAL:  I would object.  Because, as she's trying  
22      to explain, they didn't take certain items at the scene.

23              THE COURT:  Yes, but the question was is whether this  
24      particular one was submitted to her.

25              MR. KELLY:  She was there.  She was at the scene.

1           THE COURT: Was it submitted to her at any time for  
2 analysis?

3           MR. KELLY: I have no objection to that.

4           A. It was never submitted to the laboratory.

5           Q. How about the wood, next to that black spray paint, do  
6 you know if this particular piece of wood or any remnants of  
7 it were submitted to the laboratory for analysis in connection  
8 with the investigation of this case?

9           A. They were not submitted to the laboratory.

10          Q. All right. Do you know if the Grainger, Industrial and  
11 Commercial Equipment, the Components and Supply catalog, were  
12 submitted to the lab for investigation in connection with this  
13 particular case?

14          A. It was not submitted to the laboratory.

15          THE COURT: We will suspend here until tomorrow  
16 morning at 9.

17          Members of the jury, I neglected at the beginning of  
18 the case to give you badges that identify you as jurors. I  
19 will now do that, and ask you, please, to wear them into the  
20 courtroom. It will ease your entry into the building and it  
21 will ensure that anybody who sees you understands that you are  
22 jurors and that, therefore, you shouldn't be talked to or in  
23 any other way harassed.

24          You are now excused with the usual admonition not to  
25 talk about the case and not to read, watch or listen to

1 anything about the case.

2 We'll resume at 9 o'clock tomorrow morning.

3 Thank you.

4 [Whereupon, the jury left the courtroom.]

5 MR. SEGAL: I wonder if we could see the Court,  
6 briefly.

7 THE COURT: Court is in recess.

8 Ms. Wallace, please return, too.

9 THE COURT: What do I need to see you about?

10 MR. SEGAL: I have a question in connection with  
11 documents.

12 THE COURT: Well, if it has to do -- if it's on the  
13 record tell me.

14 MR. SEGAL: It is.

15 THE COURT: What's the problem?

16 MR. SEGAL: I would just ask to renew my motion that  
17 your Honor order the Government to turn over Ms. Wallace' lab  
18 notes, photographs she took of the evidence, and charts and  
19 graphs, she made in connection with her instrumental analysis  
20 that this explosive residue is dynamite.

21 MR. KELLY: Your Honor, as I understand it, there  
22 isn't any significant issue with the ultimate fact that this  
23 was a bomb, that this bomb contained dynamite.

24 THE COURT: Whether there is or there isn't, he's  
25 making an issue of it.

1           Do you have any notes or anything of the sort of the  
2           thing he described having to do with your determination that  
3           the crystallin stuff was dynamite.

4           THE WITNESS: Yes.

5           THE COURT: What do you have?

6           THE WITNESS: I have the laboratory notes I made on  
7           what I did.

8           THE COURT: Any reason why the defendant shouldn't  
9           have that?

10          MR. KELLY: I don't think --

11          THE COURT: Do you have them here?

12          THE WITNESS: They're in Mr. Kelly's office.

13          MR. KELLY: She has notes about this thick. What  
14          they do is they distill down all these analyses into a final  
15          report. There is no significant issue --

16          THE COURT: I don't know whether there is or there  
17          isn't. Mr. Segal seems to be making an issue of it.

18          Are you contesting that this was dynamite?

19          MR. SEGAL: I would like my expert to look at the  
20          notes and graphs.

21          THE COURT: Are you contesting that this is  
22          dynamite?

23          MR. SEGAL: Until I get the notes and graphs, and  
24          I've been pushing for over five months, and wrote Mr. Kelly a  
25          week ago about it, I'm not prepared to stipulate. Until I

1 have it analyzed by my own person, I'm not going to make an  
2 opinion. I'm not going to tell you. I'm not going to be  
3 cute.

4 THE COURT: Is there any reason why he shouldn't have  
5 them? I mean, if he wants to look at them, why shouldn't he  
6 look at them, Mr. Kelly?

7 MR. KELLY: Your Honor, he filed a motion for it. We  
8 opposed it. It was denied by the magistrate. He filed  
9 another motion. We opposed it, for a different reason. It  
10 was denied here. I know of no rule that entitles him to it;  
11 and furthermore, his own expert says in his report that it is  
12 probable the dynamite was the active main charge in the item.  
13 I don't know what his point is, what the issue is.

14 MR. SEGAL: The issue is my expert said: Get the  
15 graphs and notes so I can look at it. What's the problem? I  
16 don't think he should have to be in that position. He should  
17 be able to say: I looked at the notes and the graphs, and  
18 that's all I want.

19 MR. KELLY: It's a subsidiary issue. Because from a  
20 jurisdictional point of view, what has to be shown is that the  
21 electronic detonators were shipped or transported on --

22 THE COURT: I don't think he's talking about it as a  
23 jurisdictional issue. I don't know -- I frankly don't know  
24 what he's going to do with it, but conceivably he'll attack  
25 the expert's opinion with it, conceivably.

1           MR. KELLY: I don't hear the defense's argument that  
2 there wasn't a bomb that blew up -- that caused the damage  
3 here. I mean, there's never been --

4           THE COURT: It may go to the question of signature,  
5 for all I know.

6           MR. KELLY: Well, that's --

7           MR. SEGAL: If it turns out it's chocolate, not  
8 dynamite -- I don't mean to be facetious -- you know, it goes  
9 something to the expert's credibility. That's all I want to  
10 do, is get a chance to analyze that, and we tried for two or  
11 three times.

12           MR. KELLY: They've had access to every piece of  
13 evidence any time they wanted it. To my knowledge, there's  
14 been six or eight occasions that their experts, chemists,  
15 explosive experts --

16           THE COURT: I understand all that. Are you objecting  
17 to their getting these particular lab notes?

18           MR. KELLY: Yes, I am objecting to it, because  
19 they're not entitled to it under any of the Federal Rules of  
20 Criminal Procedure, any case that I'm aware of. It sets a  
21 terrible precedent where analysts perform lots and lots of  
22 tests and generate large quantities of notes. Here, they've  
23 got, not only the final report, but, as you've seen from  
24 Exhibit 9, they've got various evolutions of the report along  
25 the way. I see no reason whatsoever, unless they're

1 challenging the ultimate finding that dynamite is the  
2 explosive material, and they're not.

3 THE COURT: The objection to the motion to produce is  
4 sustained. Your objection is noted on the record.

5 Is there anything else that we have to do?

6 MR. SEGAL: No, other than I'd like to mark a whole  
7 bunch of exhibits to speed things up.

8 THE COURT: Well, I would like you, please, to put  
9 the stickers on them, make a list of them, let us have them  
10 tomorrow, we'll read it into the record. You can't have  
11 Mrs. Dello Russo now because I need her for a meeting with  
12 Judge Young.

13 MR. SEGAL: There's two exhibits that I would like to  
14 have, I'm sure the ATF will produce, that we'd like to get  
15 those.

16 THE COURT: Thank you.

17 MR. KELLY: Thank you, your Honor.

18 THE COURT: How much more do you have with  
19 Ms. Wallace?

20 MR. SEGAL: Could be up to 20, 25 minutes.

21 THE COURT: All right. See you in the morning.

22 [Whereupon, the jury trial adjourned at 1:07 p.m. to  
23 be reconvened on Friday, October 30th, 1993, at 9 a.m.]

24

25

CERTIFICATE

We certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

\_\_\_\_\_  
James E. McLaughlin

\_\_\_\_\_  
Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Stephen Adams, sworn (by Mr. Libby)       2				
(by Ms. Sharton)	12			
Cynthia Wallace, sworn (by Mr. Kelly) 16/22				
(Voir dire by Mr. Segal)		20		
(by Mr. Segal)	70			

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
14, 15, 16,	(See Clerk's Notes.)		
16 17, 21A-C,			
and 51A-F			
13A-B, 18A-C		16	
<u>Defendant's</u>			
25	(See Clerk's Notes.)		
62			
32			
117			

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CR 92-10369-Z

ZOBEL, D. J.

UNITED STATES OF AMERICA

v.

ALFRED TRENKLER

Fifth Day of Trial

APPEARANCES:

For the Government:

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Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

For the Defendant:

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and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
210 Commercial Street, Boston, MA. 02109.

Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

October 29, 1993

Computer-Aided Transcription

P R O C E E D I N G S

THE COURT: Please be seated.

Mr. Segal, I have your motion for reconsideration concerning Cynthia Wallace's notes.

MR. SEGAL: It could be she was looking at that material before testifying. My main point is that you talk about precedent. She testifies the main charge is ammonium dynamite. She has done a lot of tests. She does graphs and all sort of tests to come to that conclusion. I've never seen that. I think I'm entitled to have my expert look at that because if it turns out it is not ammonium dynamite but it is C 4, sure, there is an explosion. But this is a 13th stroke on the clock. You start wondering about the other 12 strokes. And that's why --

THE COURT: You want it solely for your purposes of your expert looking at it.

THE COURT: What does that have to do with Rule 612?

THE COURT: You are talking about rules of evidence, I assume?

MR. SEGAL: Yes. It could be she read that before coming up and was relying on that material to testify. I said maybe it is under 612. That's not my best argument. My best argument is on the precedent. If that's the key finding in this case, we're entitled to the material underneath it for the expert to look at and he can come --

1 THE COURT: To the extent that you don't want it now  
2 to cross-examine her, I'll think about it.

3 THE COURT: Is she here?

4 MR. SEGAL: No.

5 MR. KELLY: She's right outside the door.

6 THE COURT: Bring her in.

7 CYNTHIA WALLACE, Resumed

8 THE COURT: Good morning, Ms. Wallace. You will not  
9 again be sworn today, but do understand that you are still  
10 under oath.

11 Continued Cross-examination by Mr. Segal

12 Q Ms. Wallace, do you have your laboratory report in front  
13 of you which is in evidence as Exhibit 12?

14 A Yes, sir, I do.

15 Q Would you take a look at that and tell us whether there  
16 was black tape and silver duct tape received, recovered from  
17 the bomb and submitted to you?

18 I direct your attention to page 9, submission 7.

19 A Okay.

20 Okay. I have the lab page. This is -- 7 is not  
21 submission 7 though.

22 MR. SEGAL: I'm sorry.

23 Q That's a separate exhibit. In terms of the directing to  
24 page 9 of the report where it says submission 7.

25 A I'm with you.

1 Q Could you read for us what you wrote -- by the way,  
2 submission 7 is from which location, if you recall? Was it  
3 taken from one of the Trenkler locations, is that fair to say?

4 A That's what I remember.

5 Q Okay. Would you read what you wrote -- what -- please  
6 read submission 7 on page 9 of your report.

7 A Just the first paragraph?

8 Q Right under submission 7, yes.

9 A Exhibit 60 contained two roles of black electrical tape.  
10 Exhibit 60 A was a roll of unknown brand which was different  
11 from the tape used in the device. Exhibit 60 B was a roll of  
12 3M black electrical tape on a tape dispenser and had a nominal  
13 width of 3/4ths inch.

14 Q Let me just stop you, this exhibit which I marked and ask  
15 to be admitted as Defendant's Exhibit 67. Is this the exhibit  
16 you just referred to?

17 A Yes.

18 MR. SEGAL: Just for the record --

19 THE COURT: Can we finish hearing what she has  
20 written now that you asked her to read it, please.

21 MR. KELLY: I was going to say, for the record, that  
22 67 was just admitted into evidence?

23 A The tape dispenser had an angled cutting edge which was  
24 different from the surviving intact edges on some of the duct  
25 tape fragments from the device. The back end adhesive of this

1 tape was analyzed and found to have the same composition of  
2 the black electrical tape from the device. Both tapes appear  
3 to be the same manufacturer's product type, but cannot be more  
4 closely associated.

5 Q Is it fair to say that what you found based on the  
6 paragraph you just read is that the black tape submitted to  
7 you from Mr. Trenkler's location did not match the black tape  
8 recover from the bomb?

9 A I could identify they were both one line of 3M black  
10 electrical tapes. However, I did not get a physical match on  
11 the ends.

12 Q In fact, the ends did not match, you said something about  
13 that?

14 A That's right.

15 Q The fragments did not match; is that right?

16 A Yes.

17 Q All right.

18 And in your experience, the 3M scotch brand of tape  
19 is a very common type of tape today?

20 A Actually from the evidence, black electrical tape I see  
21 in the lab, I see a lot of it. It is not the most common I  
22 have seen; I see all different types.

23 Q Are you aware that that type is fairly common in the  
24 marketplace today?

25 A Yes, I'm aware they make it and sell it.

1 Q Now, turn to page 10 of your report and read us what it  
2 says about submission 10.

3 A Exhibit 63 contained samples of crating wood and roof  
4 wood that were not similar to the wood in the device. Exhibit  
5 64 contained four pieces of black electrical tape and three  
6 pieces of wood. The three wood fragments were solid wood,  
7 different from the plywood device. Two of the four black tape  
8 pieces were 3M brand with backing and adhesive of the same  
9 composition as the black electrical tape from the device, but  
10 the tapes could not be more closely associated.

11 Q By the way, submission 10 also came from materials  
12 associated with Mr. Trenkler?

13 THE COURT: I thought we agreed yesterday that all of  
14 the submissions came from one of the four different places  
15 associated with Mr. Trenkler? Was that not the agreement?

16 MR. SEGAL: Yes. In the submissions we're talking  
17 about, but there are other submissions in the report I want  
18 that I want to refer to.

19 THE COURT: Are there any submissions that do not  
20 pertain to the four places?

21 MR. SEGAL: Yes. There's been evidence about  
22 submissions from Mr. Shay Sr.'s garage.

23 THE COURT: Okay.

24 MR. KELLY: I would object to the form and foundation  
25 of the question, materials associated with Mr. Trenkler.

1 These submissions come from specific locations, and I would  
2 ask that he clarify where they came from.

3 Q Do you know where submission 10 came from?

4 A I believe these were pieces of evidence that were  
5 submitted from the roof of the Christian Science building.

6 Q Do you understand that Mr. Trenkler had been working  
7 there on a project installing microwave dishes in October '91?

8 A I understand that's why the investigators collected this  
9 evidence.

10 Q Is it fair to say, based upon that paragraph I've read  
11 about submission 10 that you could not match the tape taken  
12 from the Christian Science with the tape from the bomb?

13 A What that says is a physical match is basically the only  
14 way you can say two pieces tape are originally the same  
15 piece. What I say is that they were chemically,  
16 microscopically indistinguishable from the tape that was in  
17 the device, and that both tapes are consistent with a certain  
18 brand of 3M tape. And that's all I can say. I can't say  
19 whether or not it came from that roll. I can't say that.

20 Q But there is no fraction marks you can match?

21 A That's right.

22 Q You couldn't make that comparison, right?

23 A Right.

24 Q And the tape in submission 10 is simply once again 3M  
25 brand tape?

1 A Two of the pieces were.

2 Q What was the third piece?

3 A As I read it, before, two of the four pieces of tape  
4 submitted were identified as this certain line of 3M black  
5 electrical tape which they manufacture numerous lines of black  
6 electrical tape. The other pieces were different, and that's  
7 as far as I took that examination.

8 Q Now, I think you told us it is in your report, that there  
9 was some silver duct tape recovered from the bomb debris; am I  
10 right?

11 A Yes.

12 Q And that there was some silver duct tape seized from the  
13 garage of Mr. Trenkler's parents on January 31, 1992; is that  
14 correct?

15 A The tape -- yes, I believe there was some. So you're  
16 talk about my submission 13. Yes, there was some silver duct  
17 tape submitted in submission 13 which was the three searches  
18 that happened on one day at the parents' garage, his business  
19 and his apartment.

20 MR. SEGAL: I think that submission is now in  
21 evidence as Government's Exhibit 51.

22 A Okay.

23 MR. KELLY: No. That's wrong.

24 (Pause.)

25 MR. SEGAL: May I have just a moment?

1 (Pause.)

2 MR. SEGAL: I apologize, Mr. Kelly was kind to point  
3 out to me Exhibit 51 --

4 THE COURT: Defendant's Exhibit?

5 MR. SEGAL: No.

6 Q Government's Exhibit 51, there's a roll of silver duct  
7 tape that was submitted to you; am I correct?

8 A Yes.

9 Q And that roll, Mr. Kelly was kind to point out to me, was  
10 submitted after being taken from, by the agents from  
11 Mr. Trenkler's parents' garage on November 6th, 1991; is that  
12 correct?

13 A I believe it is.

14 Q And that's the silver duct tape that has a long strip of  
15 it, 15 feet long attached to it?

16 A Yes.

17 Q Did you microscopically examine the surface of that  
18 tape?

19 A Yes, I did.

20 Q What is --

21 A Do you know with the calendaring process in making tape?

22 THE COURT: What process?

23 A C A L E N D A R I N G?

24 A I believe that refers to the process where -- during the  
25 processing of the tape, where it is passed over rollers and

1 that the rollers impart texture to the surface of the tape.

2 Q Did you attempt to examine the tape to determine when  
3 that tape was manufactured?

4 A No.

5 Q But you were aware it is a process you can use to do  
6 that, am I right?

7 A Not that I'm familiar with.

8 Q Did you match the fraction and torn edges of that tape  
9 seized from Trenkler garage from the tape covered from the  
10 bomb?

11 A No. We didn't get any end matches.

12 Q There were no fracture or marks between Exhibit 51 and  
13 the tape recovered from the bomb; is that right?

14 A That's right. There was no physical match.

15 Q All right. But you tried to do that?

16 A Yes.

17 Q I'd like to ask you a couple of questions based on  
18 Mr. Kline's report which is in evidence as Defendant's Exhibit  
19 25, would you turn to page 17 of that report, please.

20 MR. SEGAL: Since it is an exhibit, your Honor, and  
21 since I'm going to be referring to it, I wonder if I might  
22 pass copies to the jury so they can follow the questions.

23 THE COURT: Any objection?

24 MR. KELLY: As long as he doesn't mind passing out  
25 Ms. Wallace's report at the same time, I have no objection.

1 MR. SEGAL: I'm happy to do both.

2 THE COURT: Are they already attached to each other?

3 MR. SEGAL: No, they are not, but --

4 THE COURT: Members of the jury, Mr. Kline, I gather  
5 will be a witness although he has not yet testified. You've  
6 sort of seen a disembodied witness in this report.

7 Q I take it you read Mr. Kline's report before testifying?

8 A Yes, I have.

9 Q Are you aware of his experience with the FBI?

10 MR. KELLY: Objection, your Honor.

11 THE COURT: The objection is sustained.

12 THE COURT: I explained to you yesterday, what an  
13 expert witness is. You will, of course, have to make  
14 judgments about the believability of the experts in the same  
15 way in which you make judgments about the believability of  
16 every other witness.

17 In addition to that, however, when you get opinions  
18 of experts that may be different from each other, you will  
19 need to make a judgment as to whose opinion you accept. One  
20 of the things you may take into account in doing that is the  
21 respective qualifications of the experts, that is, their  
22 respective experience, training, and so on.

23 You have not yet heard Mr. Kline. You will hear it  
24 from him when he testifies. You have heard Ms. Wallace, and  
25 ultimately you will have to compare and make that judgment.

1 Q Ms. Wallace, directing your attention to page 17?

2 MR. KELLY: Can I ask we collect back these items at  
3 the end of the testimony, both these reports.

4 Q Let me direct your attention to page 17 of Mr. Kline's  
5 report.

6 A Okay, I'm with you.

7 Q All right. Let me read the top paragraph.

8 "Tape examinations should include an instrumental  
9 analysis of the plastic backing and adhesive (composition),  
10 the microscopic examination of the surface impressions  
11 imparted on tape during the calendaring process (physical  
12 characteristics), and matching the fractured/torn edges of  
13 tape from the device with tape recovered from known sources."

14 Do you agree with that?

15 A I agree with that, and that's what I did.

16 Q My question is do you agree?

17 A Yes, I agree. The next paragraph:

18 The first sentence, "Instrumental analysis of the  
19 tape backing and adhesive is class evidence, and can only  
20 provide that a tape is similar, possibly originating from the  
21 same manufacturer."

22 Do you agree with that statement?

23 A It depends on the tape.

24 Q All right. Let me read the third paragraph:

25 "Microscopic analysis of the surface impressions of

1 plastic tape can reveal that the tape was processed on the  
2 same machine during the same period of time, which strengthens  
3 the assumption that two separate tapes may have originated  
4 from the same source and possibly the same roll, although this  
5 is still class characteristic evidence."

6 Do you agree with that statement?

7 A I agree that the calendaring process leaves a microscopic  
8 texture on the tape, yes.

9 Q Is there anything in that paragraph I've just read that  
10 you disagree with, Ms. Wallace?

11 A I don't believe that the calendaring process can tell you  
12 whether or not tape was manufactured at the same period of  
13 time.

14 Q What did you describe the calendaring process as?

15 A When the tapes are being manufactured and placed through  
16 various rollers, some microscopic texture that's imparted to  
17 the surface of the tape.

18 Q And to your knowledge, is there a test to determine  
19 that?

20 THE COURT: To determine what?

21 Q When the tape was imparted at the time?

22 MR. KELLY: I object to that question.

23 MR. SEGAL: That's not a very good question. Let me  
24 try it again.

25 Q The fourth paragraph of Mr. Kline's report on page 17

1 states, "A fracture match between two cut/torn free ends of  
2 tape is a positive identification that the two separate tapes  
3 originated from the same source."

4 Do you agree with that statement?

5 A Yes.

6 Q Now, let me direct your attention to Exhibit 51 which is  
7 the tape that was taken from the Trenkler's parents garage, I  
8 believe, on November 6, 1991.

9 Would you look at that, please?

10 A Yes, sir, this is it.

11 Q All right.

12 And I think you told us that you found or it was  
13 submitted to you a strip of tape that appears to have been cut  
14 or spliced or scored, how can you describe it?

15 A That the length of 15 feet and three inches, a strip of  
16 tape approximately 1 and 7/8s wide is missing.

17 Q Can you show us the length of this tape? Can you show us  
18 that in the exhibit?

19 Okay. That's the 15-foot piece, and the tape to  
20 start with was three feet wide; am I right?

21 A Yes.

22 Q Three inches, I apologize. Three inches wide and you say  
23 that it had been cut or there was a piece, 1 7/8 inches wide  
24 is missing; is that right?

25 A Yes.

1 Q All right.

2 Now, I think you told us that the widest piece  
3 recovered from the bomb was 1 and 9/16s inches of silver duct  
4 tape, am I right?

5 A Yes.

6 Q Now, you'll agree with me that when you add those two  
7 numbers together, the 1 and 7/8 and the 1 and 9/16s, it goes  
8 beyond three inches?

9 A When you add 1 7/8s plus 1 and 9/16ths, it equals more  
10 than three inches.

11 Q It is about 3 1/2 inches?

12 A I have to do the math.

13 Q And there were no fractured marks, fracture matches you  
14 could make between that tape you're looking at and the tape  
15 from the debris, am I right?

16 A The tape from the debris did not have any edges left for  
17 the duct tape fragments recovered from the debris did not have  
18 any edges left to be matched.

19 Q Now, let me ask you this question -- you can put that  
20 back in the...

21 MR. SEGAL: May I have just a moment, your Honor.

22 (Pause.)

23 THE COURT: Go ahead.

24 Do you have any more questions?

25 MR. SEGAL: I do, I'm just looking for my exhibit.

1 Q Let me direct your attention to page 7 of your laboratory  
2 report, Ms. Wallace?

3 A I'm with you.

4 Q Now, at the first paragraph, first full paragraph let me  
5 read something which states "This magazine page had originally  
6 been wrapped with several layers of silver duct tape and  
7 three-quarter inch normal width black electrical tape?

8 THE COURT: Nominal width.

9 Q On some fragments the black electrical tape was six  
10 layers thick. The silver duct tape was stuck to the paper  
11 with the black electrical tape layered on top.

12 Do you remember receiving an exhibit that had black  
13 electrical tape six layers thick?

14 A Yes.

15 Q And did you take that tape apart to have fingerprint  
16 analysis done?

17 A Those were small fragments --

18 Q My question is, did you take it apart?

19 A I took them apart.

20 Q And did you attempt to have some fingerprint analysis  
21 done of that particular tape?

22 MR. KELLY: I think she's trying to explain.

23 MR. SEGAL: I think I'm entitled to ask a question.

24 THE COURT: You may answer yes or no, and you may ask  
25 her about it on redirect.

1 A Did I do fingerprint analysis, no.

2 Q Did you ask somebody in the lab to do it?

3 A I asked them to look at the evaluate it and determine  
4 which pieces were suitable for analysis.

5 Q All right.

6 And you have people in the lab who do fingerprint  
7 analysis, am I right?

8 A Yes.

9 Q And when they did that analysis, would they sign the  
10 exhibit showing they had taken the tape out the container and  
11 taken it to do an analysis?

12 A I'm not sure if they do that or not.

13 Q What is the procedure in the lab on this case, when you  
14 send some of the items out for other people in the lab to work  
15 on. Is there a procedure where they sign it to show that they  
16 have taken it out to analyze it?

17 A The procedure in this case was that all of the evidence  
18 was spread out on my bench top. And as we mentioned  
19 yesterday, the fingerprint examiner came to my bench top,  
20 looked over all the items that were there, and took those  
21 items that were of value for recovering latent prints.

22 Q My question is when --

23 A Those items he took he did, I believe, initial that he  
24 did a laboratory examination.

25 Q All right. So, if we get the black layered tape items,

1 for instance that submission, can you tell us what submission  
2 that is, by the way, from your report?

3 A From my report that's in submission, submission 4.

4 Q Could you be any more specific than that?

5 A It was my Exhibit 15 in the bag marked, if I recall  
6 correctly, seat 4 tape.

7 Q I'm sorry? You lost me. I'm looking at page two of your  
8 report, submission four. Which particular exhibit on that  
9 submission are you referring to as the black layered tape?

10 A It was Exhibit 15.

11 MR. SEGAL: Do we have that up there?

12 I'll move on to other questions.

13 THE COURT: Let's stretch.

14 (Pause.)

15 THE COURT: All right, you may proceed.

16 Q Ms. Wallace, while I look for Exhibit 4-15, let me show  
17 you Defendant's Exhibit 26 for identification. Can you  
18 identify this particular exhibit, which on your submission  
19 list is 4-31, as an exhibit you received for analysis in this  
20 case?

21 A Yes.

22 Q Would you take it out and show us what it is, please.  
23 What is that particular exhibit, please?

24 A It's Defendant's Exhibit 26 D.

25 Q That's just our identification. I would ask it now be

1 admitted into evidence.

2 THE COURT: We don't know what it is.

3 MR. KELLY: I object.

4 THE COURT: What is in it?

5 THE WITNESS: It's the tape that I was asked to look  
6 at yesterday and which I referred to in my report on the next  
7 to last paragraph on page 7, which is the tape that was  
8 recovered during the search of the bomb scene but what was  
9 determined not to be part of the device.

10 Q And how was that so determined, by matching the fractured  
11 ends?

12 A No. By an examination of the construction  
13 characteristics of the tape, looking at just like Denny Kline  
14 says in his affidavit on page 17, microscopic examination of  
15 the surface impressions, the calendaring process and the  
16 other, the other features of its construction were clearly  
17 different.

18 Q So what you're telling us is that this Exhibit 4-31, your  
19 submission which is submitted to you as 4-31, which is  
20 Defendant's Exhibit 26 I.D., was determined by you or people  
21 in the lab, not to be connected with anything of the bomb; is  
22 that right?

23 A I knew where this was collected from. And when I got it  
24 back to the lab, I analyzed and found that it was different,  
25 and nothing about any of these items was similar to anything

1 in the device.

2 Q And you performed certain tests to determine that; am I  
3 right?

4 A Yes.

5 Q What were those tests?

6 MR. KELLY: I object. The tape has nothing do -- I  
7 withdraw the objection.

8 A The first thing with the duct tape comparisons, and  
9 analysis of its construction characteristics, the thickness of  
10 the backing, the color of the adhesive and the counting of  
11 the, of the, of the woven backing and you count the number of  
12 threads in a vertical direction and in a horizontal direction,  
13 those are called the warp and weft directions. And all of  
14 these I had identified the tape as different from that in the  
15 device. Adhesive was gray instead of the creamy color that  
16 the adhesive on the duct tape from the device was. The warp  
17 and weft strains were different in count and appearance.

18 And after I determined that it was different in  
19 construction characteristics, I determined that it was  
20 different and no further analysis was required.

21 Q Let me now show you Government's Exhibit 12-15 which is  
22 that submission you talked about earlier, I think on your  
23 report it is 4-15. Now, what does that particular submission  
24 consist of please?

25 A This bag consists of a number of bags of evidence that

1 were recovered from the area immediately around the seat of  
2 the blast.

3 Q And in some of that material has tape been in it, am I  
4 right?

5 A Yes.

6 Q And that's the tape that you asked somebody at the lab  
7 who was a fingerprint examiner to look at?

8 A I spread out all the evidence, and had that lab expert  
9 make his determination.

10 Q And do his initials appear on that bag anywhere? That he  
11 signed the bag; is there any indication?

12 A No, because he did not take these items to be examined.

13 Q So, the only signatures on those are your signature, am I  
14 right?

15 A Mine and Thomas Waskom.

16 Q He's the explosives expert for ATF?

17 A Yes.

18 Q But he's not involved in any fingerprint analysis, right?

19 A No.

20 Q All right.

21 Let me ask you a question about soldered wires, if I  
22 might.

23 THE COURT: How much more do you have with this  
24 witness?

25 MR. SEGAL: 20 minutes.

1 THE COURT: That's what you told us yesterday.

2 MR. SEGAL: I apologize. Overnight the things -- I  
3 will try to move along.

4 THE COURT: Yes, I wish you would.

5 Q Ms. Wallace, this is I believe 17, Line B, this is the  
6 slide switch over to the left recovered from the bomb; is that  
7 right?

8 A Yes.

9 Q And then there's an exemplar of a slide switch over here  
10 on the right, am I, correct?

11 A Yes.

12 Q Now, the wires in the exemplar appeared to be twisted; is  
13 that right?

14 A Yes.

15 Q All right. And don't they also appear to be soldered by  
16 the manufacturer?

17 A Well, I can't see in this photograph, but they are just  
18 as these are.

19 Q So you're saying that the wires found from the bomb  
20 debris from the slide switch were soldered as well as the  
21 exemplar wires; am I right?

22 A Yes.

23 Q And that's manufacturer's solder; is that right?

24 A Yes.

25 Q What other wires did you find in the debris that were

1 soldered?

2 A I found the contacts of the Radio Shack's switch which  
3 had solder on the contacts and strands of wire remaining in  
4 there. And also the wires that were consistent with coming  
5 from the 9-volt battery snap connectors.

6 Q Did you determine that the solder on the contacts was  
7 also manufacturer's solder?

8 A On the contacts of the Radio Shack switch?

9 Q Yes.

10 A No, I didn't.

11 Q How about the other ones you told us about, the batteries  
12 connectors?

13 A They are not consistent with the manufacturer's solder.

14 Q Do you have an opinion whether the heat from the  
15 detonation could have caused the solder to melt on those  
16 wires?

17 A No, not based on the appearance of the, of the  
18 connections.

19 Q Let me ask you about the toggle switch.

20 I'm going to show you --

21 MR. KELLY: Your Honor, all due respect we seem to go  
22 back and forth, tape yesterday, tape today, duct tape, wires,  
23 toggle switches.

24 THE COURT: As Mr. Segal explained he thought about  
25 it overnight, so now he's filling in what he didn't tell us

1 yesterday but he will do it by 10 clock, right?

2 MR. SEGAL: That's right.

3 MR. KELLY: At some level this becomes cumulative.

4 THE COURT: I understand.

5 Q Ms. Wallace, on the toggle switch, isn't it fair to say  
6 the only item recovered from the bomb debris that's connected  
7 with this Exhibit 33 A the purchase of the, of these items on  
8 October 18th, 1991, was a toggle switch 275602?

9 A I can't read the chart from here, but that's what I  
10 remember, yes.

11 Q And doesn't the -- we have the exhibit up there, those  
12 items from the Radio Shack or an exemplar, doesn't that say  
13 custom made for Radio Shack that particular toggle switch?

14 A Yes, that's what the packaging says.

15 Q It says custom made in Taiwan or Asia for Radio Shack?

16 A Yes.

17 Q Let me direct your attention to the last two pages of  
18 Mr. Kline's report. Page 20.

19 A Okay.

20 Q Looking at the top of page 20, let me read you the first  
21 paragraph. The recovery of physical evidence from postblast  
22 investigation --

23 A I'm sorry this exhibit fell to pieces on me, let me  
24 reassemble it.

25 Q Let me give you another copy, I apologize.

1 A Okay. I'm with you, page 20.

2 Q Summary. The recovery of physical evidence from  
3 postblast investigation is critical to the identification of  
4 bomb components reconstruction of the exploded bomb and  
5 identification of unique methods in assembling the bomb by  
6 the bomb maker; do you agree with that statement?

7 A Yes.

8 Q "The detailed analysis of all physical evidence is  
9 associated with the exploded bomb can provide invaluable  
10 information that can assist with the investigative leads and  
11 help to establish the identity of the bomb maker; can you do  
12 you agree with that statement?

13 A No, I don't agree the part. I agree that the -- analysis  
14 of all physical evidence associated with the exploded bomb can  
15 provide invaluable information that assists with the  
16 investigative leads. I agree with that, but it does not  
17 establish the identity of the bomb maker.

18 Q It doesn't help to establish?

19 A From my point of view, the work that I do, as I explained  
20 yesterday, if evidence is later submitted on a search warrant  
21 for comparison to that, that was recovered if the device I'll  
22 perform such comparison. That's the extent of my work.

23 Q Let me now quote the next paragraph?

24 MR. KELLY: Your Honor, I would object. He handed  
25 this out, do we now have to hand it out and read it on top of

1 that.

2 MR. SEGAL: I want to get her opinion on some of  
3 these facts. Mr. Kelly put this into evidence. He asked him  
4 questions about it, and I'm just asking other questions.

5 THE COURT: I don't believe he asked me any questions  
6 about Mr. Kline's report.

7 MR. SEGAL: He certainly did.

8 MR. KELLY: What I object to is this is something  
9 called summary. This fellow is making a bunch of statements  
10 that have nothing to do with forensic analysis and he's going  
11 to read down the page.

12 MR. SEGAL: I object to his --

13 THE COURT: It is in evidence. So the jury has it,  
14 but since we've been talking the jury has read the second  
15 paragraph and so has Mr. Wallace so you may have the question  
16 about it.

17 Q The following sets forth a summary of information?

18 THE COURT: What's the question about it?

19 Q Do you agree, these forensic intercomparisons reveal no  
20 association between Trenkler and the making of the IED and are  
21 identified thereafter.

22 Do you agree with that statement?

23 A No.

24 Q All right.

25 Now, do you agree with the next statement. No

1 explosives were found in the possession of Trenkler nor was  
2 there any indication --

3 MR. KELLY: Your Honor.

4 THE COURT: I believe you are now going beyond in  
5 person's expertise and knowledge.

6 Q Let me -- with all due respect that paragraph quotes  
7 Ms. Wallace about dynamite?

8 THE COURT: Ask about that. But the first sentence  
9 she's already told us three times is beyond her expertise.

10 Q Well, the question is: He states no explosives were  
11 found in the possession of Trenkler. The question is, did you  
12 get any submissions of explosives associated with  
13 Mr. Trenkler?

14 A No dynamite.

15 Q Okay. Did you get any plywood submitted to you  
16 associated with Mr. Trenkler?

17 MR. KELLY: Again --

18 THE COURT: Now, repeating what you spent about two  
19 hours exploring yesterday.

20 MR. SEGAL: I just wanted to summarize it. Let me  
21 jump to the -- cut to the conclusion.

22 THE COURT: The final argument is summary. Let us  
23 just stick to questions.

24 Q Let me ask you to look at page 21, the last paragraph, of  
25 Mr. Kline's report.

1           Where it states, based on the on the analysis of  
2 evidence collected, from the bombing scene and  
3 intercomparisons with physical evidence collected from  
4 Trenkler's habitats and my personal observations there appears  
5 to be no physical evidence that links Trenkler with  
6 construction of the bomb that exploded in Roslindale  
7 Massachusetts on October 28 of 1991.

8           Do you agree with that statement?

9     A     I agree --

10           THE COURT: I don't know how she can tell whether she  
11 agrees or disagrees with whatever Mr. Kline's personal  
12 observations may have been.

13     Q     Do you agree with the statement that -- from the  
14 submissions to you no physical evidence links Mr. Trenkler to  
15 the construction of the bomb?

16     A     No, I don't agree with that because --

17     Q     You've answered my question.

18           What was the test you did to determine there was  
19 ammonium dynamite in this bomb? Test or tests?

20     A     The exact names of the instruments I used?

21     Q     Tell us what, yes, tell us the test you made?

22     A     One of the tests involved using the gas chromatograph  
23 linked up to thermal energy analyzer. This instrument allows  
24 you to separate different volatile components that are in the  
25 sample and then run into a very selective and very sensitive

1 detector which will respond to certain nitro -- containing  
2 explosives. And that I determined based on my standards, that  
3 the explosive oils, nitroglycerin ethylene glycoldinitrate  
4 were present in several items of the evidence and that  
5 assisted me in making dynamite identification.

6 In addition to that, I had the intact particles that  
7 I recovered from -- if you recall yesterday they showed the  
8 wall, that had the detonator in it and I said I recovered some  
9 crystalline materials from there. I performed x-ray  
10 defraction on those samples. And x-ray defraction is a method  
11 for identifying crystalline materials and I identified the  
12 presence of ammonium nitrate and calcium carbonate. I also  
13 performed some other testing.

14 Q Let me ask you this question because my time is getting  
15 short. Yesterday we marked -- we put in evidence, about 35  
16 exhibits. I just ask you to look at them briefly, but they  
17 are basically exhibits you and I spoke about yesterday that  
18 were taken from the --

19 MR. KELLY: I object to putting those things in front  
20 of her on the table for starters just as matter of courtesy.

21 MR. SEGAL: I apologize. I'll put them down.

22 Q Is it fair to say that the exhibits which are now  
23 Defendant's Exhibits 30 or 65 or 66 in evidence, these  
24 exhibits are the type of exhibits that you looked at and  
25 examined to compare with debris from the bomb?

1 A Yes.

2 Q And these I will represent were the -- is it fair to say,  
3 are the exhibits --

4 MR. KELLY: Can we stop him for a second.

5 THE COURT: Mr. Libby, would kindly sit down.

6 MR. SEGAL: They have one good prosecutor. They  
7 don't need two.

8 MR. KELLY: They are mixing the bags of items  
9 identified with bomb debris, with bags all over place, and  
10 that is very difficult and dangerous.

11 MR. SEGAL: With all due respect, each item is marked  
12 with a sticker number it is in evidence.

13 THE COURT: Can we have a question, and then I'll be  
14 able to rule on it.

15 Q The question is, without putting all these items in front  
16 of you, Ms. Wallace, I'll represent that these are items  
17 submitted to you seized from the five different locations  
18 associated with Mr. Trenkler.

19 Would you agree with that, first?

20 A Yes.

21 Q All right. And these are the items you examined, and  
22 isn't it fair to say, you determined that none of these items  
23 could be connected in any way with the bomb debris in this  
24 case?

25 MR. KELLY: Asked and answered, your Honor.

1 THE COURT: She may answer once, and for the last  
2 time.

3 A Can you rephrase the last part of that question again,  
4 please.

5 Q Sure.

6 Isn't fair to say, Ms. Wallace, that after you  
7 analyzed all of these items --

8 THE COURT: Can we just have a question.

9 Q -- that you concluded that, that you could not associate  
10 any of these items with the submissions to you of the bomb  
11 debris?

12 A There were associations that could be made, so I will not  
13 agree with that statement. There were not any physical  
14 matches on the tape, and we mentioned that before.

15 MR. SEGAL: Okay. All right.

16 Thank you. I have no further questions.

17 MR. KELLY: Can he clean up that mess.

18 THE COURT: Ah.

19 Ms. Wallace, can you put back into envelopes the  
20 things that you had taken out before.

21 Redirect Examination by Mr. Kelly

22 Q Ms. Wallace starting, first, with some of the testimony  
23 you gave on the duct tape, what was the largest fragment of  
24 duct tape that came from the actual exploded bomb that was  
25 recovered at the scene?

1 A The width of 1 9/16-inch which equals 1.56.

2 Q Did that piece have actual edges, fractured edge marks,  
3 that you could make comparisons with other exemplars of duct  
4 tape to see if, in fact, they had been cut by the same thing  
5 or torn in the same place, the 9/16s piece duct tape?

6 A No, they didn't. And that's, in my opinion, consistent  
7 with the fact that it was used to wrap the main charge.

8 Q So, in other words, you weren't able to take the largest  
9 piece duct tape that you recovered and match it or attempt to  
10 match it against, for example, this Exhibit 51, to see whether  
11 or not the edges, kind of married up; you were unable to do  
12 that because you didn't have a piece that had those edges from  
13 the actual bomb debris, would that be correct?

14 A That's correct.

15 Q Mr. Segal asked you about the math, let's just cover to  
16 that to make sure that we're clear. If I'm not mistaken, he  
17 said that would agree with him when you add 1 7/8s, which is  
18 the piece which is missing, for 15 feet, as we just seen,  
19 together with the largest piece you recovered, which was  
20 1 9/16ths, that that would be wider than three inches; you  
21 agreed with him, as matter of mathematics, didn't you?

22 A Yes.

23 Q But in fact, ma'am, he's asked you the wrong question,  
24 hasn't he?

25 MR. SEGAL: Objection.

1 MR. KELLY: I'll ask a different question.

2 Q The bomb debris comes, not from what's remaining on the  
3 roll, assuming for a minute that it came from this roll, it  
4 would have come from what is missing from the roll, correct?

5 A Right.

6 Q So, by adding what is already missing from the roll, the  
7  $1\frac{7}{8}$  together with the piece of debris came from,  
8 hypothetically, the same strip, that is meaningless as a  
9 matter of forensic analysis, is it not?

10 MR. SEGAL: Objection.

11 THE COURT: You are sort of leading the witness.  
12 Maybe she can explain to us what she means in her own words.

13 Q Go ahead, Ms. Wallace.

14 A Okay. There is an approximate width  $1\frac{7}{8}$ s inch missing  
15 which equals 1.88 inches. Three inches minus 1.88 inches  
16 equals 1.12 inches. So 1.12 inches width is what remains on  
17 that roll. I recovered from the device a width of 1.56  
18 inches. And 1.56 inches plus 1.12 inches equals, if my math  
19 is correct, 2.68 inches, which is less than three inches.

20 Q So, if I took my largest fragment,  $1\frac{9}{16}$ ths and held it  
21 next to the piece remaining on the roll, it would fit within  
22 the three-inch expanse, would it not?

23 A Yes.

24 Q Now, you said that there were no initials of the  
25 fingerprint analyst on the exhibit that Mr. Segal showed you,

1 Government's Exhibit 12-15. Would you explain to us why that  
2 is the case?

3 A The evidence, when it was taken back to the laboratory,  
4 was laid out on my work bench. And from there, the  
5 fingerprint analyst came down and he looked at all the  
6 evidence I had laid out. And based on his expertise and his  
7 knowledge of his field, he took those items that he thought  
8 would be of significance to come back to his lab to work on  
9 them. Those items that he did not take back with him, he did  
10 not consider to be, for example, large enough to have  
11 contained any latent prints of value, so he did not take  
12 them. And he did not initial that bag; he didn't take it.

13 Q Just one final question on this tape topic, since the  
14 jury now has the document in front of them, on page 18 of  
15 Exhibit 25 of the defendant's Mr. Kline's report?

16 A Actually, I don't have that in front of me.

17 Q Sorry.

18 A Thank you.

19 Q On page 18, at the top, Mr. Kline has effectively  
20 discounted the piece of debris, the largest piece you found,  
21 could have possibly come from this roll, has he not?

22 MR. SEGAL: I object to that characterization.

23 Q I'll read it. I'm sorry.

24 "The width of this torn tape and the width of the  
25 torn tape in the bomb exceeds three inches and therefore did

1 not originate from the torn piece recovered from Trenkler."

2 Isn't that what he says?

3 MR. SEGAL: I ask he read the whole paragraph in  
4 context.

5 MR. KELLY: I just read the last sentence. I'm not  
6 trying to mislead anyone. We already know what the first part  
7 of this is.

8 THE COURT: You have may have the question.

9 Q Have I read his finding correctly, Ms. Wallace?

10 A Yes.

11 Q And you disagree with it?

12 A Yes.

13 Q Now, Mr. Segal asked you some questions about solder.  
14 Your lab report did not expressly mention solder,  
15 Mrs. Wallace.

16 My question is: Did you find solder during the  
17 course of your analysis that was added by the builder of the  
18 device, as opposed to being manufacturer's solder, for  
19 example, that might come with one of these electronic  
20 components?

21 A Yes, I recovered a number of pieces of solder, some of  
22 which appear to come from the manufactured components and some  
23 of which did not.

24 Q Focusing on that which was non-manufacturer's solder,  
25 added by the builder the device, would you tell us precisely

1 where you found the presence of builder-added solder in this  
2 homemade bomb?

3 A I identified the presence of builder-added solder on the  
4 contacts from the Radio Shack toggle switch and on wires that  
5 were consistent with the wires used on the 9 volts battery  
6 snap connectors.

7 Q In fact, you took a photograph of this, did you not?

8 A Yes, I did.

9 Q And could you point out for us on this photograph, the  
10 two locations where you found this builder-added solder?

11 A These two items are the contacts from the Radio Shack  
12 switch. On the bottoms of these is a big blob of solder on  
13 each one. And also, you can see strands of multistrand wire  
14 that came -- coming out from that solder.

15 These wires and these wires are consistent with the  
16 lead wires on the 9 volt battery snap connector, and these  
17 items also have solder on the ends.

18 Q And what is this, this larger object on the lower  
19 left-hand quadrant here, what is depicted in that? What are  
20 we looking at there?

21 A We're looking at two wires which have been knotted  
22 together. These wires are consistent with the 9 vote battery  
23 snap connector lead wires. At the top here, the wires appear  
24 too have been twisted; there's a blob of solder; and this is a  
25 piece of tape that, in my opinion, originally wrapped this

1 connection because there is visible on close-up of this  
2 photograph, a black adhesive that was present on this black  
3 electrical tape.

4 Q And this picture down here is a kind of close-up of the  
5 top that shows what you just described?

6 A Yes.

7 Q Yesterday, you testified that, Mr. Segal asked you some  
8 questions, you testified, he asked you a question whether or  
9 not you had seen wires that had been soldered and taped in any  
10 past examinations. And I believe your answer was that you  
11 probably had; is that your testimony?

12 A Yes.

13 Q Do you recall any specific instances or specific  
14 examinations where you found that to be present?

15 A No, I don't remember specifically.

16 Q In your experience as a forensic chemist specializing in  
17 this analysis of bomb debris, have you ever encountered wires  
18 that were twisted, then soldered, and then taped, other than  
19 this case?

20 A I have no memory of seeing that. There was three modes  
21 of connecting wire together.

22 Q His question was "soldered and taped," and I've had added  
23 "twisted, soldered and taped." You've no memory of seeing  
24 that in any other instance prior to this tape?

25 A That's right.

1 Q Or after this examination?

2 A That's right.

3 Q Mrs. Wallace, are you familiar with the term "dual  
4 priming"?

5 A Yes.

6 Q And briefly, what does it mean to you?

7 MR. SEGAL: I object as being beyond the scope.

8 THE COURT: I don't know whether it is as of yet. .  
9 I will allow that question. It may be, but I don't know yet.

10 Q What does it mean to you?

11 A To me it means that dual, two initiators are used to --  
12 in a charge of explosive. Two initiators could be  
13 detonators.

14 Q Mr. Segal asked you some questions about the fusing and  
15 firing system. I believe it was your testimony that in this  
16 instance, in this particular examination, you found the  
17 remains of two, what are known as, electronic detonators or  
18 blasting caps?

19 A Yes.

20 Q Do those terms mean effectively the same thing?

21 A Yes.

22 Q And in your experience as a forensic chemist, again,  
23 doing this kind of work, have you found any instances of dual  
24 priming or double blasting caps in any case that you worked on  
25 prior to this examination of this homemade bomb?

1 A No, neither prior to this examination nor after.

2 Q Mr. Segal asked you some questions about pens and pen  
3 marks, and specifically asked you whether you conducted any  
4 ink comparisons between the pen marks found on the debris,  
5 which you pointed out is visible in this picture here, and the  
6 group of pens that had been recovered from Mr. Trenkler's  
7 apartment;; do you remember those questions?

8 A Yes.

9 Q Okay.

10 Did you conduct such ink comparisons between those  
11 markings on the wood and the pen from Trenkler's apartment?

12 A I spoke about the comparison with the --

13 MR. SEGAL: Objection.

14 THE COURT: The question is: Did you conduct one?

15 THE WITNESS: Personally, no.

16 Q Why not?

17 A Because I spoke with chemists --

18 MR. SEGAL: Objection.

19 Q Without telling us with whom you spoke with, can you tell  
20 us, can you give us your rationale for not conducting it?

21 A It was it was determined that that type of examination  
22 would not give any conclusions of value, either exculpatory or  
23 not, in this case.

24 Q In fact, directing your attention to page 14 of  
25 Mr. Kline's report --

1 A Page what?

2 Q Page 14 of Mr. Kline's report, very last paragraph, it  
3 says:

4 "It is noted that ink examinations can identify the  
5 type of ink and the manufacturer. However, ink  
6 identifications remain class-type evidence and do not provide  
7 information that a specimen of ink originated from a specific  
8 pen."

9 In other words, that you couldn't take the piece of  
10 wood here and take a pen or a group of pens and ever say --

11 MR. SEGAL: Objection.

12 THE COURT: The objection to the second part of the  
13 question is sustained.

14 Q Well, explain to us, in layman's terms, what Mr. Kline is  
15 saying here, as an expert?

16 MR. SEGAL: What you understand him to say.

17 THE COURT: Yes.

18 MR. KELLY: Correct.

19 A He's saying that even if the ink comparisons had been  
20 performed, that this is class-type evidence, meaning that this  
21 came from, for example, a BIC brand pen, but yet that doesn't  
22 identify that pen as having made that mark. It only says that  
23 a pen of that -- that the ink is consistent with the ink found  
24 in a pen of that type.

25 Q Consistent, not unlike the results you reached with some

1 of your tape --

2 A That's right.

3 Q -- examinations?

4 Even if you had done these tests, you couldn't have  
5 said it came or it did not come from those pens?

6 A Right.

7 Q And finally, Mr. Segal asked you some questions, and he  
8 marked as an exhibit, an item which is now Defendant's Exhibit  
9 Number 9, which is a handwritten multi-page document by you,  
10 with date on the top of it of November 1, 1991.

11 Could you explain to the jury what this is?

12 A Yes.

13 As we explained yesterday, that was written by me  
14 while we were -- while the National Response Team and I were  
15 still up here. And before I went home, I wrote down all my,  
16 my, my, I guess, conclusions that I had reached up until that  
17 point, and which was maybe four days after the blast. And I  
18 supplied it to investigators to assist them. And it was the  
19 result of the preliminary examinations that had been done back  
20 at the command center at the Boston Police.

21 Q And was this performed -- excuse me, was this reduced to  
22 writing before or after you had an opportunity to conduct all  
23 these laboratory tests with microscopes and things like that?

24 A Before.

25 MR. KELLY: I have no further questions.

1 THE COURT: Any recross?

2 MR. SEGAL: Briefly.

3 Recross-examination by Mr. Segal

4 Q Isn't it fair to say, Ms. Wallace, that solder is not  
5 mentioned in your report?

6 A Yes.

7 Q And that ink is class-type evidence, as is tape?

8 A Well, as is the type of comparisons I made in this case,  
9 yes.

10 Q So that the ink comparison are class-type evidence  
11 comparisons, right?

12 A Yes.

13 Q And the tape comparisons you made are class-type evidence  
14 comparisons?

15 A Yes. Meaning that I identified them as the same  
16 manufacturer's product type.

17 Q But you couldn't make further matches than that; isn't  
18 that fair to say?

19 A That's right, I couldn't make a physical match.

20 MR. SEGAL: Thank you, I have no further questions.

21 THE COURT: Thank you, Ms. Wallace, you are excused.  
22 We will stretch while the government calls the next  
23 witness.

24 MR. KELLY: Your Honor, may with the jurors pass the  
25 two reports down the end?

1 THE COURT: There is no reason not to pass the other  
2 exhibit, either?

3 MR. KELLY: No, there is not.

4 THE COURT: Pass it all.

5 Who's the next witness?

6 MR. KELLY: Mr. Waskom.

7 THE COURT: How long will you be on direct, Mr.  
8 Kelly? ?

9 MR. KELLY: Your Honor, I would say -- this is  
10 Mr. Libby's witness -- so I'm somewhat guessing, I would guess  
11 an hour and fifteen minutes.

12 MR. SEGAL: I have a brief motion in connection with  
13 this next witness, your Honor.

14 THE COURT: Denied.

15 MR. SEGAL: Can I be heard on it?

16 THE COURT: To the extent Mr. Libby wishes to be  
17 heard on this motion, Mr. Libby?

18 Will you kindly hold the evidence which is the  
19 subject of the motion until after I can hear what Mr. Segal  
20 argues.

21 MR. SEGAL: In fact, your Honor, if we can be heard  
22 at the side bar on another matter, a brief matter. Perhaps we  
23 can deal with both now.

24 [Pause.]

25 MR. SEGAL: We'll take care of it. I know what he

1 wants.

2 THE COURT: That is, I understand we will not finish  
3 with this witness before the recess, so at the time of the  
4 recess I can talk to you about the defendant's motion, and we  
5 don't have to take the jury's time in a bench, in a side-bar  
6 conference now. Withhold that evidence until after.

7 MR. KELLY: Thank you.

8 MR. LIBBY: Very well, your Honor.

9 Thomas Waskom, sworn

10 Direct Examination by Mr. Libby

11 Q Good morning, Mr. Waskom.

12 Have you already stated your name and spell your last  
13 name?

14 A No, I haven't.

15 My name is Thomas H. Waskom, spelled, W A S K O M.

16 Q And by whom are you employed, sir?

17 A I'm employed by THE ATF. The Bureau of Alcohol, Tobacco  
18 & Firearms. I'm an explosives enforcements officer with the  
19 Explosives Technology branch of that bureau.

20 Q What does an explosives enforcement officer do, sir?

21 A An explosives enforcements officer assists and gives  
22 support to agents, along with state and local law enforcement  
23 personnel, pertaining to the coordination and administration  
24 of the federal explosives laws.

25 Q All right. Now in English that means what?

1     A     I review evidence, reports, exhibits, materials relative  
2     to questions arising from federal and state and local law  
3     enforcement agencies, as well as from industry and the public,  
4     concerning the classification, design, construction, effect of  
5     explosive materials and devices.

6     Q     And have you heard the term "improvised explosives  
7     device"?

8     A     Yes, sir, I have.

9     Q     What is that?

10    A     An improvised explosives device could be best described  
11    as a homemade bomb.

12    Q     How long have you been around and working with improvised  
13    explosives devices or homemade bombs, sir?

14    A     Since 1974.

15    Q     Can you describe to the jury, please, how it is that you  
16    began coming involved with the construction and reconstruction  
17    of improvised explosives devices, beginning in 1974?

18    A     In 1974 I was in the U.S. Army. I requested a change of  
19    MOS, a change of jobs. I requested to become an explosives  
20    ordnance disposal technician, which is a bomb technician in  
21    the U.S. military. At that request, I went to school at  
22    Indian Head, Maryland, which is a bomb disposal school for all  
23    U.S. military personnel.

24    Q     How long did that school course take?

25    A     The school is between six and seven months.

1 Q Briefly describe the subject matter of the course of that  
2 instruction, sir?

3 A The subject matter taught at Indian Head, Maryland, at  
4 the bomb school concerned military ordnance, both U.S. and all  
5 foreign military ordnance, chemical ordnance, chemicals that  
6 are put in military ordnance, and also IEDs, homemade  
7 devices.

8 Q How long did you stay in the military, sir?

9 A I was in the military a total of 23 years.

10 Q And you retired from the Army when?

11 A I retired from the Army in 1990.

12 Q And your rank or retirement was?

13 A E-8, Master Sergeant.

14 Q Did you stay in the bomb technician field continuously  
15 from 1974 until your retirement, sir?

16 A Yes, I did.

17 Q Would you describe for us what you did during your active  
18 duty in that capacity?

19 A After graduating Indian Head, Maryland, Bomb Technician  
20 School, I was assigned to the bomb squad, 43rd Ordnance  
21 Detachment at Fort Knox Kentucky. Initially, when an  
22 individual comes out of bomb school, they join a bomb squad as  
23 a team member. It is -- you have at training and you have the  
24 knowledge to do the function that's needed, but they also want  
25 you to have the practical experience. So to give you the best

1 possible experience, you become a team member. You assist a  
2 team leader in doing the functions he needs to do to work on  
3 explosives devices.

4 After five years at Fort Knox I was transferred to  
5 the Panama Canal Zone. After one year there, I became a team  
6 leader. A team leader and a team member have basically the  
7 same function, the difference being the team leader has the  
8 experience, the field experience, that gives him the edge on  
9 understanding explosives devices, probably a little better  
10 than one just -- someone just out of school.

11 I stayed in Panama for three years. Coming out of  
12 Panama, I was assigned to Redstone Arsenal. Redstone Arsenal  
13 is also an Army school in Huntsville, Alabama, and I was  
14 assigned as an instructor at the Hazardous Devices School  
15 there. I spent eight years at Redstone and was transferred to  
16 Camp Shelby, Mississippi. In Camp Shelby, Mississippi -- and  
17 also. The reason for my transfer was, I was promoted to E-8,  
18 a Master Sergeant. A master sergeant in the bomb technician  
19 field, in the military, is a senior supervisor. He's the  
20 senior enlisted in a bomb squad. At that rank I took over, or  
21 became the supervisor of the 40th ordnance Detachment in Camp  
22 Shelby.

23 Q As senior supervisor, can you give us examples, and  
24 describe for us, please, the kinds of things that you would be  
25 supervising?

1           You're supervising other bomb technicians?

2       A     That is correct.

3       Q     What kind of activities, please?

4       A     All aspects of explosives ordnance, explosives disposal,  
5     training for the younger troops, training for the younger team  
6     leaders, getting materials necessary for the teams to do their  
7     job. And also, you're still a bomb technician. You're still  
8     on -- we have, what we call, a duty roster. You pull duties  
9     on certain nights of the week, or certain weeks of the month.  
10    If a call comes in, you're the one that goes on it. So even  
11    as a senior supervisor, you are still a team leader.

12    Q     When you say you get a call, sir, is that a render safe  
13    call?

14    A     Yes.

15    Q     What is render safe operation?

16    A     Render safe is, it's termed as RSP. It means render safe  
17    procedure. It means making a device or a component, putting  
18    it in a configuration to where it is not hazardous to the  
19    public or yourself.

20    Q     Now, you retired from the military in 1990, sir, and then  
21    what did you do?

22    A     I applied to the Jefferson Parish Sheriff's Department in  
23    New Orleans to fill the position of bomb technician.

24    Q     And did you fill that post, sir?

25    A     Yes, sir. I was -- actually, I got out of the U.S. Army,

1 retired from the U.S. Army on Friday, and went to work Monday  
2 morning as a bomb technician for the Jefferson Parish  
3 Sheriff's Department.

4 Q How long did you serve with Jefferson Parish?

5 A Only five to six months.

6 Q Then what did you do?

7 A While serving with the Jefferson Parish Sheriff's  
8 Department, a member of the Explosives Technology Branch was  
9 in New Orleans, and requested that I assist him in doing some  
10 training with the local bombing technicians and local federal  
11 agents. After doing this, he informed me that there was an  
12 opening coming up with ATF as an explosives enforcement  
13 officer, and asked me if I would be interested in applying,  
14 which I was. I applied to become an explosives enforcement  
15 officer, and was accepted.

16 Q And you have been an explosives enforcement officer, or  
17 EEO, with the Explosives Technology Branch of the ATF since  
18 that time, sir?

19 A Yes, I have.

20 Q Now, during your years, 1974 on to date, have you been  
21 engaged in teaching, instructing others in the field of  
22 improvised explosives devices?

23 A Yes.

24 Q Would you just briefly describe to the Court and jury,  
25 your instruction background.

1 THE COURT: I thought he just told us all that.

2 MR. LIBBY: Actually, your Honor, with respect to  
3 particular matters involving closer to the subject matter at  
4 hand, involving design, componentry, and reconstruction of an  
5 improvised device.

6 THE COURT: Tell about the contents of courses you've  
7 already described.

8 THE WITNESS: Yes, your Honor, while in the military,  
9 again, a job, a function of a team leader and a supervisor is  
10 to keep his younger personnel as well trained as he can. The  
11 way you train younger bomb technicians is to construct  
12 devices, reconstruct devices that maybe your unit responded  
13 to, you get information from other units where they responded  
14 to specific devices, and you get detailed information on the  
15 device. So we try to reconstruct devices so that our team  
16 members can practice what they need to know to keep themselves  
17 safe in doing their job.

18 Also while assigned at Redstone Arsenal, I was an  
19 instructor at the Hazardous Devices School. The Hazardous  
20 Devices School is a school that is funded by the FBI. It is a  
21 training school for civilian bomb techs in the United States.  
22 I served at that school as an instructor for six years.

23 In serving at the school, we covered a variety of  
24 topics. The majority of the training concerned training  
25 civilian bomb technicians how to identify and render safe

1 explosives ordnance items, typically IEDs, because civilian  
2 law enforcement work on homemade devices; military will  
3 typically handle all of the military ordnance.

4 In training these students, it is important to use  
5 actual devices because we want to instill in them what they  
6 will actually run into when they go back out on the job. So,  
7 it is important to try to use devices that have been used in  
8 the past. So, at that school we constructed devices, gave  
9 them scenarios, and they did the procedures that they were  
10 taught at the school.

11 Another portion of the school was crime scene  
12 investigation. It is important that bomb technician, because  
13 bomb technicians are typically law enforcement, understand  
14 what's required at a crime scene, to collect the evidence, how  
15 it is to be handled, what information they can glean from a  
16 crime scene, to help him understand what the device originally  
17 started as just before it functioned.

18 Q Now, you testified that you have given a good amount of  
19 initial training to initial entry individuals. Have you also  
20 taught senior bomb techs, sir?

21 A Yes, sir, I've done that, also.

22 Q At this Hazardous Devices School at Redstone?

23 A Yes, sir.

24 Q Over the years, sir, would you estimate for us, your best  
25 estimate, the number bomb technicians, you have instructed?

1 A Redstone during my six years there, I trained  
2 approximately 3000 civilian bomb techs in the United States.

3 Q Is that a course called basic training, as well as  
4 refresher training for senior bomb techs?

5 A Yes, sir, it is.

6 Q Have you instructed, also, in the course of your duties  
7 as an explosives enforcement officer, with the ATF since  
8 1990?

9 A Yes, sir, I have.

10 Q Describe that, please for us. .

11 A After becoming an explosives enforcement officer with  
12 ATF, one of the duties of an enforcement officer is to train  
13 ATF agents. ATF agents are responsible for implementing the  
14 gun laws that are in effect in the United States. And in  
15 doing so, under the gun laws, explosives and explosive devices  
16 fall.

17 In order for us our agents to understand how to keep  
18 themselves safe, how to identify materials, understand what  
19 they can do and what they can't do, they need training  
20 specifically designed in explosives materials and explosives  
21 devices.

22 During my time with the ATF, we had two classes set  
23 up for this, actually, three classes, set up for this. We  
24 had, we call, a new agent training. Any new agent that joins  
25 ATF, gets approximately two days, just basic, what an

1 explosive looks like, how far it functions, what materials  
2 they may run into in the performance of their duties. We have  
3 also have, what we call, explosive handlers, explosive  
4 handlers are agents that, more or less, specialize in  
5 explosives and explosive devices. And they get much more  
6 training. They get a week's worth of training on the  
7 identification of explosives materials, explosive components,  
8 also crime scene investigation involving bombings.

9           During that particular course, for the explosive  
10 handlers, we function live devices for them. They go out as  
11 teams, pick up the evidence, try to understand what caused the  
12 explosion, how the device was constructed, what they might  
13 want to look for; because if they found a certain component,  
14 that might indicate that there was another component there, so  
15 they will be looking for that.

16 Q   Now, you've also trained and instructed senior explosives  
17 agents, sir; is that right?

18 A   That's correct.

19 Q   That's the course known as recertification training?

20 A   Yes, sir.

21 Q   Very briefly, what does that consist of?

22 A   Recertification training is an ongoing training for the  
23 explosives handlers. When an explosives handler is selected,  
24 he goes through the basic course, and he get training like I  
25 just described. ATF realizes that people need recurring

1 training to stay current in new devices that are found, new  
2 components that are found, new materials. A lot of times,  
3 especially, the explosives companies in the United States,  
4 produce a lot of new materials, and we try to keep them  
5 abreast of what's happening around them.

6 So, the recertification is for the senior agents that  
7 have been in the explosives handlers' position for a period of  
8 time. Every two years, at a minimum, they have to return to a  
9 recertification course and basically be updated and retrained.

10 Q Now, we've heard of organization known as IABTI?

11 A Yes, sir.

12 Q What is that?

13 A IABTI, is the -- I've lost my train of thought.

14 Q The International Association?

15 A Bomb Technicians and Investigators, yes, sir.

16 Q Have you ever been involved in instructing and teaching  
17 those folks?

18 A Yes, sir, I have.

19 Q Can you describe that briefly for us?

20 A The International Association of Bomb Technicians and  
21 Investigators, is an association for, basically, what it says,  
22 bomb technicians in the United States and, also, around the  
23 world, and investigators of bombing scenarios. Each, they  
24 have their own little groups, their own little sections, like,  
25 Baltimore would have their own kind club, in a way, a group of

1 bomb technicians that work together. You might have State  
2 Police from the -- a bomb technician from the State Police in  
3 Maryland; also, you have Baltimore bomb technicians. They  
4 don't always work together on a day-to-day basis. So, the  
5 International Association of Bomb Technicians and  
6 Investigators is a unit that draws these bomb technicians  
7 together from certain areas so that they can exchange  
8 information and help train each other, keep each other  
9 current.

10 Q Is that something you would do, you would instruct them  
11 on trends and currents devices found in the field?

12 A Yes, sir, on their request.

13 Q In the course of your work as an EEO, how much time do  
14 you spend typically in a year instructing as you described  
15 here?

16 A The time spent will vary somewhat. But typically, two to  
17 three months a year involving training and preparation for  
18 training.

19 Q What do you do the rest of the time, sir?

20 A The rest of the time, my duties are to examine evidence,  
21 examine reports and explosive materials.

22 Q Where do you do that?

23 A At the National Laboratory in Rockville, Maryland.

24 Q Do you -- and would you work on active cases, sir?

25 A Yes, sir, I do.

1 Q Do you go anywhere from Rockville for that purpose?

2 A Yes, sir, on many occasions, I will be called on, we call  
3 them, tech assists. We'll be called by an agent who has  
4 recovered, or law enforcement agency in his area has recovered  
5 an explosive device or explosive components, that maybe they  
6 are not sure exactly what needs to be done, how they can  
7 safely be handled or how they can safely disassembled. On  
8 regular basis, we're called out into the field to assist these  
9 agents in the local law enforcement community in performing  
10 the procedures needed.

11 Q Now, you're presently assigned to the ATF's National Lab  
12 in Rockville, Maryland?

13 A Yes, sir.

14 Q How many other EEOs are there at the lab?

15 A There's on other EEO at the National Laboratory at  
16 Rockville, Maryland.

17 Q In addition to those duties you talked about already,  
18 instruction duties as an ATF EEO and case work, do you wear  
19 another hat, do something else?

20 A Yes, sir, as a explosives enforcement officer, you are a  
21 member of a team known as the National Response Team.

22 Q Are you so assigned?

23 A Yes, sir, I am.

24 Q What team is that?

25 A I'm on the Northeast team, sir.

1 Q How long have you been on this team?

2 A Since September of 1990.

3 Q Who is your team leader?

4 A Mr. Dan Boeh.

5 Q Have you been involved, sir, since 1990 on call-outs with  
6 the national Northeast National Response Team?

7 A Yes, sir, I have.

8 Q What call-outs are those?

9 A The call-out, of course, is the one at Roslindale in  
10 1991, and the Northeast team was also at the World Trade  
11 Center.

12 Q Did each of those cases involve, discussed here, as an  
13 IED, and improvised explosive device?

14 A Yes, sir, it did.

15 Q Now, will you tell us, please, the bottom line objective,  
16 when you go out on call-out with the NRT as an EEO, what's  
17 your objective in that call-out, sir?

18 A The primary objective of an explosives enforcement  
19 officer, is to absorb the information, absorb what the  
20 evidence is telling him, in an effort to determine what the  
21 device -- the way the device was constructed, how it was  
22 designed, and, in actual terms, is to be able to put it back  
23 together and understand exactly what it was just prior to it  
24 functioning.

25 Q Have you been called upon in the past, sir, to render

1 specialized assistance to any United States agencies?

2 A Yes, sir, I have.

3 Q What particular, sir?

4 A The United States State Department requested that I go to  
5 a school that they fund and assist in operating, in Baton  
6 Rouge, Louisiana. The school is set up to train foreign bomb  
7 technicians in the art and procedures used by bomb techs  
8 throughout the world.

9 Q Have you ever been called upon, sir, to supervise a good  
10 many other bomb techs for a particular mission?

11 A Yes, sir.

12 Q What was that example, please, sir?

13 A I was the senior non-commissioned officer in charge,  
14 which is a military term, the senior enlisted person in charge  
15 of a 141 bomb techs, whose duty it was to search the Superdome  
16 in New Orleans just prior to the Republican National  
17 Convention.

18 Q Over the course of the careers, sir, can you tell us,  
19 please, your best estimate as to the number of explosives  
20 incidents bombing, explosives incidents, that you have been  
21 involved in investigating, examining real evidence, forensic  
22 evidence?

23 A In the course of the year and/or very slightly, but  
24 approximately 100 to 150 a year, some to probably 80 or 90  
25 that I'm assigned to directly, and others that my counterpart,

1 the other enforcement officer, is assigned; and also, we  
2 examine materials while the chemist have it on bench, if they  
3 have particular question, especially on safety of some of the  
4 components.

5 Q Over the course your career, totally, how many improvised  
6 explosives devices have you been personally involved in or  
7 investigated on-scene or real evidence resulting from it?

8 A I don't know an exact number. It would be well over a  
9 thousand.

10 Q And how many of those incidents, sir, now, with the ATF,  
11 have involved particularly reconstructive efforts on your  
12 part; that is, to identify the componentry, try to put the  
13 homemade bomb together again as it appeared before it  
14 detonated?

15 A It would be on many occasions. And it needs to be, I  
16 guess, brought out, many times I don't physically reconstruct  
17 it, get the parts and put it together. But on almost every  
18 scenario, you reconstruct it in your mind. Your mind has to  
19 understand how the device is built, in order to understand how  
20 the device functions.

21 Q In those cases, do you draw schematic diagrams for  
22 yourself?

23 A In many cases, in order to understand some of the more  
24 complicated electronics of the device, you would need to draw  
25 a schematic to be able to look at it and see how it was

1 functioning. I would estimate 60 to 70 times in my career.

2 Q Now, among those, sir, were there any of those cases  
3 involving your expertise in determining the location of the  
4 improvised explosives device?

5 A Yes, sir.

6 Q Now, have you previously appeared in court and given  
7 expert opinion, qualified to give expert testimony, sir, with  
8 respect to the design and construction of improvised explosive  
9 devices, to include its configuration, housing, components,  
10 and means of initiation?

11 A Yes, sir, I have.

12 Q Can you tell us, please, how many times and where?

13 A It's a total of 12 times, if my memory serves me correct,  
14 ten times in Federal Court, and I think two times in state  
15 court.

16 Q And in doing so, sir, can you tell us, generically, those  
17 things to which you look in basing your expert opinion on  
18 those matters?

19 A The information that's needed to base a conclusion on an  
20 explosive device is the design of the device, how it was  
21 built, how it was intended to function, what the purpose of  
22 the components or materials inside were. You need to  
23 understand the circuitry of the device, how the electronic  
24 components function, what the actions of certain things will  
25 cause in the device, in order to understand, to get an opinion

1 in order to deduce how it would work.

2 Q In the course of giving those opinions, sir, you have  
3 visit the crime scene, you conduct a seat of the blast  
4 analysis, you look at photographs and ATF laboratory reports  
5 and the like?

6 A Yes, I do.

7 MR. LIBBY: Your Honor, at this time the government  
8 would request that Mr. Waskom be qualified to give expert  
9 testimony in the field of design, effect, placement,  
10 construction and reconstruction of improvised explosive  
11 devices?

12 MR. SEGAL: I would like to voir dire on this issue,  
13 briefly.

14 Voir-dire Examination by Mr. Segal

15 Q Good morning, Mr. Waskom?

16 A Good morning, sir.

17 Q My name is Terry Segal.

18 Up until 1990, you were in the United States  
19 military; isn't that correct?

20 A Yes, sir, that is correct.

21 Q You were not -- in your military experience, you were an  
22 explosives ordnance disposal officer; is that right?

23 A An explosives ordnance disposal technician, sir.

24 Q You were not involved in criminal bomb scenes  
25 investigations in that connection; is that right?

1 A I was not actively involved in going to the crime scene  
2 itself, sir.

3 Q In fact, the main duty of a explosives ordnance disposal  
4 officer is to render safe, military devices; isn't that fair  
5 to say?

6 A That is one of the primary duties, yes, sir.

7 Q You did not investigate crime scenes; isn't that  
8 correct?

9 A To the extent of actually being law enforcement and doing  
10 the investigation, you are correct, I did not do that.

11 Q And you did not, in connection -- strike that.

12 You did not, in your military experience, reconstruct  
13 the devices that had blown up at a crime scenes?

14 Isn't that fair to say?

15 A No, that's not actually true, sir.

16 Q Well, let me ask this question, you mentioned  
17 investigating a thousand explosive incidents; isn't that  
18 correct?

19 A That is correct.

20 Q How many of those were in the military?

21 A I would say several hundred while in the military. Three  
22 or four hundred.

23 Q And the purpose of that wasn't to determine who placed  
24 the bomb, was it?

25 A At that time that is correct, it was not to determine who

1 placed it.

2 Q It was to render safe, the device?

3 A It was to render safe, the device, understand how the  
4 device functions, so that the information could be given to  
5 the bomb technicians throughout the United States.

6 Q But there was not a law enforcement component, where you  
7 would go out and investigate and reconstruct the device, so  
8 there would be prosecution of somebody?

9 A That is true, that is not what I did.

10 Q That was a civilian function, and you were in the  
11 military; isn't that fair to say?

12 A Yes, sir.

13 Q You switched over to the civilian side in 1990; isn't  
14 that fair to say?

15 A Yes, sir.

16 Q Your duties and responsibilities changed at that point;  
17 isn't that fair to say?

18 A A portion of my duties, yes, sir.

19 Q You went after, -- I'm sorry, what month did you join the  
20 ATF?

21 A In September of 1990, sir.

22 Q All right. So for the past three years, you have been  
23 with the ATF; isn't that fair to say?

24 A Yes, sir.

25 Q And in that connection, how many cases have you -- prior

1 to October 28, 1991, the date of the explosion here, how many  
2 times had you responded as a member of the National Response  
3 Team to a bomb site?

4 A Prior to the Roslindale bombing?

5 Q Yes.

6 A I may be off one or two, but I would say four to five  
7 times.

8 Q And once you got to ATF, you went out and looked at crime  
9 scenes and attempted to reconstruct devices, so that cases  
10 could be solved; isn't that fair to say?

11 A I guess that would be fair to say, yes, sir.

12 Q And that was a much different function than the work you  
13 did for approximately 16 years or 20 years with the military?

14 MR. LIBBY: Objection, your Honor.

15 THE COURT: Because it is repetitive?

16 MR. LIBBY: No, your Honor, because what we're doing,  
17 characterizing something different. Done the same thing for a  
18 different purpose.

19 THE COURT: Well, but that's the question: Did he do  
20 the same thing?

21 MR. LIBBY: I object on grounds of relevance, with  
22 respect to the scope of this expert's testimony, at this  
23 point.

24 THE COURT: No, he may answer that question.

25 THE WITNESS: Yes, your Honor.

1 THE COURT: I thought the objection was that it was  
2 repetitive, which indeed it is, but he may tell us one more.

3 Q Do you recall the question?

4 A Would you restate it, please?

5 MR. SEGAL: Could I ask Mr. McLaughlin --

6 THE COURT: No.

7 Q Well, basically, do I understand that after you left the  
8 military, your function shifted to investigation of crime  
9 criminal scenes -- let me ask that. Am I correct?

10 A It shifted to where I was -- my duties were to go to the  
11 crime scene, to get information, look for information as to  
12 the construction and design of the device.

13 Q Did you respond to any crime scenes in the military to go  
14 there to try to help determine who planted the bomb?

15 A Not to determine who planted the bomb, no, sir.

16 MR. SEGAL: I have no further questions.

17 Thank you.

18 THE COURT: I find the witness to be qualified to  
19 speak on the areas on which he's being offered as an expert.  
20 However, before we hear him on those topics, we will take a  
21 recess.

22 [Whereupon, the jury left the courtroom.]

23 THE COURT: Let us deal with the motions before we  
24 actually recess.

25 Mr. Waskom, you may be excused until after the

1 recess.

2 THE WITNESS: Yes, your Honor.

3 THE COURT: Mr. Libby, is Mr. --

4 THE MARSHAL: A couple of the jurors are complaining  
5 about the cold.

6 THE COURT: Cold?

7 Mr. Libby, is this witness going to tell us now about  
8 signature?

9 MR. LIBBY: No.

10 THE COURT: Are you going to recall him?

11 MR. LIBBY: Yes.

12 THE COURT: He's going to talk in two parts.

13 MR. LIBBY: Your Honor, it is for this very reason I  
14 asked Mr. Segal to avoid talk about identification and  
15 signature, because we have to recall him in context. We're  
16 going to explain the '91 device here. And then we're going  
17 to, at the appropriate time down the road, in the next four or  
18 five trial days, introduce the circumstances leading up to  
19 '86.

20 THE COURT: And at that point we're not going to  
21 requalify him, right, having just spent about 45 minutes doing  
22 that.

23 MR. LIBBY: I anticipate there is going to be some  
24 voir dire on signature.

25 MR. SEGAL: I held my questions on signature now,

1 your Honor.

2 THE COURT: Sorry?

3 MR. SEGAL: I did not ask the signature questions,  
4 and Mr. Libby didn't qualify him on signature.

5 MR. LIBBY: Identity of the bomb.

6 THE COURT: Okay. Now, there is motion by the  
7 defendant not to permit the demonstration that we had the last  
8 time. And as I understand the motion, it is that, the basis  
9 of the motion, it is that we do not know how, in fact, this  
10 bomb exploded; and, therefore, we shouldn't have a  
11 demonstration that shows us an explosion. However, as I  
12 understood it, purpose of the explosion was to show how, in  
13 their view, the bomb was designed.

14 MR. LIBBY: Precisely, your Honor.

15 MR. SEGAL: I would like to be heard.

16 THE COURT: Well, that's why I'm telling you what I  
17 understand it to be for. Now, I'll hear you why that is  
18 irrelevant or improper evidence.

19 MR. SEGAL: I believe the testimony Mr. Waskom is  
20 that the bomb could have gone off any of three ways: radio,  
21 transmitter, or a stray radio wave, or something else. And  
22 the point is, Mr. Kelly has put in evidence of Mr. McKernan  
23 saying: I saw a small automobile in the vicinity of that  
24 house with a line of sight to the house at 1:20 on the day the  
25 bomb went off. When you couple that with a demonstration that

1 goes on for transmission by remote control, the inference is  
2 that that's how it must have happened, and Mr. Trenkler was in  
3 that car.

4 I think, in the light of Mr. Waskom's testimony,  
5 where he's not prepared to say that's how it happened, it is  
6 highly prejudicial to permit that sort of demonstration on  
7 this record. And that's my objection.

8 MR. LIBBY: Your Honor, the purpose, as the Court  
9 pointed out precisely, is the design and the mind of the maker  
10 indicated at the time to receive a signal sent by a  
11 transmitter to show how actually it was to function.

12 THE COURT: Is there any reason why, if this evidence  
13 comes in, I should not give the jury a limiting instruction  
14 that says: As of this point in time, there is no evidence  
15 that Mr. Trenkler or a co-conspirator were in the vicinity to  
16 set it off?

17 MR. LIBBY: I don't know if that's true.

18 THE COURT: Well, there is no evidence at this point  
19 in time, is there?

20 MR. SEGAL: All the more --

21 THE COURT: Hold it.

22 Is there any reason why -- first of all, is there  
23 such evidence?

24 MR. LIBBY: Well, your Honor, Mr. McKernan has  
25 testified as to a strange vehicle seen at the crosswalk.

1           THE COURT: That has not been in any way identified  
2 as being Mr. Trenkler or anybody associated with  
3 Mr. Trenkler.

4           MR. LIBBY: What we have, as Mr. Segal quite well  
5 knows from his prior testimony, trial testimony on  
6 cross-examination, he spoke to, Mr. Waskom spoke to Officer  
7 Foley's observations as to the servo arm moving. And he also  
8 speaks to, and so that leads him to conclude it may have  
9 picked up some radio signal somewhere, an ambient signal, he  
10 goes into that in some respect. He also speaks on  
11 cross-examination of mechanical potential, mechanical  
12 potential, for dislodging the device and how it may have been  
13 metal to metal contact at the base of the contact switch.

14           What we are suggesting, your Honor, is that package,  
15 immediately before detonation, as it appeared under the car,  
16 we have to show the intent, the design features, and so  
17 forth. It is relevant to show, for purposes of the  
18 indictment, how it was intended to go off. What happened  
19 thereafter is a matter of some dispute. Mr. Waskom has  
20 testified --

21           THE COURT: But you haven't answered my question as  
22 to why I should not tell the jury that --

23           At this point, it is Mr. Libby's witness, Mr. Kelly,  
24 as understand it.

25           MR. KELLY: He was relating to something I was

1 responsible for.

2 THE COURT: Yes, but it is Mr. Libby's witness.

3 MR. KELLY: Can I whisper in his ear, please.

4 [Pause.]

5 MR. SEGAL: Mr. Libby was doing pretty well. I'm  
6 double-teamed here.

7 MR. LIBBY: Your Honor, our position is there  
8 shouldn't be any limiting instruction at this point. They  
9 take it at face value, whatever weight they may give, based on  
10 the evidence, which has already been adduced, which includes  
11 the vehicle moving off upon Mr. McKernan's approaching.

12 THE COURT: Is this witness going to tell us that it  
13 could be set off by some mechanism other than remote control?

14 MR. LIBBY: There is a potential for it.

15 THE COURT: Is he going to tell us that it could be  
16 set off by some other mechanism.

17 MR. LIBBY: It is in cross-examination in his earlier  
18 testimony. I'm not going to get into it.

19 THE COURT: He'll get into it.

20 MR. SEGAL: Yes. It's in the record in the first  
21 trial.

22 MR. LIBBY: It is up to the jury to determine, your  
23 Honor, if they see fit, to the extent they consider it a  
24 relevant issue, how it actually detonated. We don't think  
25 that matters, frankly. The design features matter. And

1 that's why we're showing how it functions in front of the  
2 jury. It is clear that the defense, obviously, would not want  
3 us to have this display. It very effectively shows the design  
4 features of the '91 device. For that reason we believe the  
5 motion should be denied.

6 MR. SEGAL: It's a display, not for the design  
7 features. It's a display to try to, you know, associate it  
8 with a remote control device and flimsy evidence about  
9 somebody at an intersection. In light of the fact that  
10 Mr. Waskom on cross-examination of the prior trial says: I  
11 don't know how it went off. And he suggests three different  
12 reasons. Unless he can say definitively this is it, I think  
13 this is a highly prejudicial demonstration and shouldn't be  
14 permitted. But if it is, it should be a strong limiting  
15 instruction.

16 THE COURT: I will allow it.

17 MR. LIBBY: You will allow us to go forward with the  
18 display?

19 THE COURT: Yes. That is, I will deny the motion in  
20 limine. I will allow it to go forward. I will give you  
21 latitude in cross-examination to elicit from the witness any  
22 other possible way that it could have gone off. And I am not  
23 certain what if any limiting instruction I will give, at the  
24 moment.

25 MR. SEGAL: I'd ask you to reconsider the limiting

1 instruction issue.

2 THE COURT: Right.

3 Let us you was resume at 12 minutes past.

4 MR. KELLY: One minute on another legal matter. The  
5 Government has to start lining up witnesses. There are really  
6 two issues pending. One is a matter the Government's already  
7 filed, and, secondarily, there's an issue of, I think applies  
8 to a number of witnesses and pieces of evidence that we would  
9 like to discuss with the Court perhaps Monday morning, which  
10 is, for example, if the government calls Mr. Plant to testify,  
11 how much of what Mr. Plant will testify to will be  
12 admissible. I understand Mr. Segal to be objecting to  
13 virtually all of the testimony of any out-of-court statements  
14 by Thomas Shay. Our position is that many of those statements  
15 come in because they are not Bruton, out-of-court statements  
16 by the declarant against his penal interest made to law  
17 enforcement officials or others. But this is a matter which  
18 cuts across a number of witnesses.

19 THE COURT: If Shay testifies, are you going to call  
20 all those other guys?

21 MR. KELLY: No, that would reduce the field. We may  
22 call one or two. It will change. That's one of the reasons  
23 why we're in such a limbo. But we're getting to these  
24 witnesses Tuesday, Wednesday, and we really need some of kind  
25 of a clue here.

1 THE COURT: What is the government's expectation at  
2 the moment as to when it will complete its case in chief?

3 MR. KELLY: Again, this issue, really, is a  
4 substantial one. But I would guess sometime in the middle of,  
5 not next week, but the following week.

6 THE COURT: So, not before I leave for three days? I  
7 would be gone the 17th, 18th and 19th.

8 MR. KELLY: Next week is the week of the 1st through  
9 the 6th.

10 THE COURT: I guess it is two weeks.

11 MR. KELLY: We will finish.

12 THE COURT: Okay.

13 THE COURT: All right.

14 MR. SEGAL: I filed a brief on the issue of excluding  
15 hearsay statements by Mr. Shay, and that's one of the aspects  
16 Mr. Kelly, I just filed it. I'm happy to give him whatever  
17 time he wants to respond.

18 THE COURT: Thank you.

19 [Recess.]

20 [Whereupon, the jury entered the courtroom.]

21 THE COURT: We've closed all the windows behind the  
22 jury box. Mr. Wood's helped us. Ms. Walker can tell how cold  
23 this jury room sometimes gets. Last summer she was taking the  
24 notes with gloves on.

25 You may proceed.

1 MR. LIBBY: Thank you, your Honor.

2 Q Mr. Waskom, directing your attention to October 1991, do  
3 you recall being called to duty in your capacity an  
4 enforcement officer with the Northeast National Response Team  
5 in connection with this case?

6 A Yes, sir, I do.

7 Q When did you get the call?

8 A I got the call sometime during the morning hours, around  
9 noontime, if I remember correctly.

10 Q And what did you do?

11 A Initially when you get a National Response Team call, you  
12 go home and pack your baggage and go to the scene where they  
13 tell you go to.

14 Q Did you do that here?

15 A Yes, I did.

16 Q When did you hook up with your team members?

17 A We arrived later that evening.

18 Q And the following morning, what did you do?

19 A The following morning we attended a meeting, I believe it  
20 was E-5 police station, a briefing on what had occurred.

21 Q And what was your understanding at that time or was this  
22 before going into the crime scene?

23 A Yes, sir.

24 Q What was your understanding as to what had taken place  
25 the prior day?

1     A     It's my understanding that an explosion had occurred,  
2     that there was a local bomb technician killed in the explosion  
3     and another bomb technician injured in the explosion.

4     Q     And how long did you stay in E-5 for your briefing?

5     A     Approximately an hour.

6     Q     What did you do then?

7     A     Myself and a team went to the site of the explosion.

8     Q     Who was your team leader?

9     A     Mr. Dan Boeh.

10    Q     Now, when you say you and your team, did you spend any  
11    time specifically with your team leader, forensic chemist, and  
12    any others particularly doing any preliminary assessment of  
13    the crime scene?

14    A     Yes, sir.

15    Q     Who was with you at that time?

16    A     Initially when we arrived at the scene, myself, Mr. Larry  
17    McCune and another enforcement officer, Ms. Cindy Wallace, the  
18    chemist, Mr. Dan Boeh kind of took a brief look around at the  
19    scene itself to get the lay of the land, understand what was  
20    there, where things actually occurred, maybe the site of the  
21    explosion itself, where it actually occurred at and what was  
22    surrounding that explosion.

23    Q     Let me show you, Mr. Waskom, what's marked Government's  
24    Exhibit 3 B and ask you if you recognize what's depicted  
25    there?

1 A Yes, sir, I do.

2 Q What is that?

3 A That is the location of the explosion, right between this  
4 vehicle and this vehicle.

5 Q So as a general matter, it outlines for us the nature of  
6 the residential area where the crime took place?

7 A Yes, sir.

8 Q Directing your attention to Exhibit 10 A, I ask you if  
9 you recognize what's depicted there?

10 A Yes, sir.

11 Q What is that?

12 A That's the driveway, where the driveway comes off the  
13 street, this is residence where the device was at.

14 THE COURT: Is this evidence being offered to show  
15 what is there or what Mr. Waskom knows.

16 MR. LIBBY: His familiarity basically when he arrived  
17 at the scene, your Honor.

18 Q When you arrived at the scene, did it have this police  
19 tape on it?

20 A Yes, sir, it did.

21 Q Could you describe for us, please, whether there were  
22 people walking to and fro around the scene?

23 A There were several local law enforcement personnel at the  
24 scene when we arrived. I don't recall seeing anyone inside  
25 the crime scene area itself. They were on the street when we

1 first pulled up.

2 Q And is that common to see when you are called out on an  
3 explosive national response team call, sir, to see the crime  
4 scene set aside to secure the integrity of the scene?

5 A Yes, sir.

6 Q Now, would you describe for us, please, how you, what you  
7 determined, rather, you and the team leader, the forensic  
8 chemist and your fellow E E O, Mr. McCune, determined to set  
9 up your search patterns, your plan of attack?

10 A We looked at the overall carry on. We had a driveway  
11 going between two houses. At the back of the driveway was a,  
12 what appeared to be a garage. There were two vehicles in the  
13 driveway and from what we can see the explosion occurred  
14 between the two vehicles. From that you can assess what would  
15 be the best plan of attack, if you wish to call it, to do a  
16 crime scene search.

17 Q Now, would you describe for us, please, your objective as  
18 an E E O assigned to this teamster, what was your role, what  
19 was your objective?

20 A There's a couple of things to play into it, we advise the  
21 team members what they might look for if we, if they find  
22 something we don't understand what it is, most often they'll  
23 call one of the enforcement officers to see if we can  
24 identify, and by that we can give them further information  
25 because you found this piece, we know that other components

1 belong with this piece, so you might be looking for this type  
2 of material in this general area. The primary purpose,  
3 though, is to understand how the device was constructed,  
4 understand everything you can learn about the device from what  
5 is picked up at the scene. The job of an explosive  
6 enforcement officer is to determine how an explosive device  
7 fits into the federal explosive logs. In order to do that,  
8 you need to understand the design, the construction, the  
9 function and the effect. So it all comes into one place,  
10 being able to understand what the device started as.

11 Q Now, the explosion occurred on the Monday, sir, I believe  
12 you testified you appeared that evening. You appeared on the  
13 crime scene the first time Tuesday morning?

14 A I believe that's correct.

15 Q How long did you stay in Boston?

16 A I believe we stayed all week. We left, I think on  
17 Friday.

18 Q And during that time, sir, were you there throughout each  
19 day at the crime scene?

20 A Yes, sir.

21 Q Would you describe for us, please, with respect to all  
22 the real evidence that you see over here to your left at that  
23 box, that's been introduced by Mr. Porreca, that counsel have  
24 been using here, have you personally examined all of that  
25 evidence, sir?

1 A Yes, sir, I have.

2 Q Would you describe for the Court and jury when and how,  
3 what circumstances you first saw that evidence?

4 A When I first saw the evidence as it was being marked, as  
5 you do the crime scene, you don't walk over and pick a piece  
6 up and move it around. If a -- actually, we were crawling  
7 through the grass, someone would say they found something. We  
8 would go over and look at it in the place it was found which  
9 is the normal procedure for doing the crime scene.

10 We do that to assist the agents, tell them what, we  
11 found this so we might want to look for this. This should be  
12 in this general area. Also each night all of the materials  
13 that had been collected were present at the E-5 police  
14 station, myself, the other explosive enforcement officer,  
15 Mr. Larry McCune, Cindy Wallace, the chemist, and most often,  
16 Mr. Dan Boeh, looked through the evidence that had been bagged  
17 and tagged and marked to try to learn as much as quickly as we  
18 can about what components we found, try to identify those  
19 components to assist the team in doing further investigation.

20 Q And when you say to assist the team, could you give us an  
21 example of what suggestions you might make based on what you  
22 might find, what you found?

23 A Yes, the one of the photographs, and I'm on the scene, we  
24 recovered many battery parts, specifically like a 9-volt  
25 battery. Most people can look at a 9-volt battery on a table

1 or in someone's hand and know what it is. If you break one  
2 open, there are six cells inside that battery that look about  
3 the size of a triple A battery, if you're familiar with a  
4 triple A battery. A lot of people don't realize that's inside  
5 the 9-volt battery. By finding that, we can tell the agents  
6 we're looking for 9-volt battery components.

7 Q Let me ask you to take a look at this photograph and see  
8 if that would assist you in what you're talking about with  
9 battery cells?

10 A Yes, sir. A 9-volt battery it appears something similar  
11 to this, a kind of cubicle form. Inside the 9-volt battery  
12 there are these cells, six individual cells inside each 9-volt  
13 batteries. Also there are small clips, little push on clips  
14 for connecting the different types of surface.

15 Q You testified that you assist, when team members would  
16 approach you on the scene and ask you if you could give an  
17 opinion or explain to them or perhaps rule in and out the  
18 evidentiary value, significance of bits and pieces of what you  
19 found?

20 A Yes, sir.

21 Q Could you give us an example of something that you looked  
22 at and ruled out as having no evidentiary value in the crime  
23 scene?

24 A Yes. During the course of the investigation, because the  
25 garage was -- I'm going to be estimating, ten, 12, probably

1 more than that, a car length from where the explosion  
2 occurred, we felt there might be some materials in the  
3 garage. In looking in the garage we found a piece of plywood  
4 that had some cutting on it, some person had done some cutting  
5 on this piece of plywood and it also had some paint. We've  
6 picked up quite a few fragments of plywood from the  
7 surrounding scene, from the blast seat, where that explosion  
8 actually occurred in the surrounding area.

9 In comparing the fragments of the plywood that we had  
10 picked up from the surrounding area and this piece of plywood  
11 that we found in the garage, we determined that they did not  
12 match. They weren't the same type of wood. The paint that  
13 was on the plywood in the garage was a dark paint, but it had  
14 kind of a blue tinge to it. You could look at it and tell it  
15 was not the same thing that we were finding on the fragments  
16 of the wooden box.

17 MR. SEGAL: I just ask that Mr. Waskom talk about  
18 what he did as opposed to --

19 Q Sir, was that your personal conclusion?

20 A Yes, sir, it was.

21 Q Based on your participation of that examination process?

22 A Yes, sir.

23 Q Thank you. Did you reach any conclusion, sir, to the  
24 presence of an improvised explosive device and operation of an  
25 explosive device at 39 Eastbourne Street in Roslindale,

1 Massachusetts on 28th of October 1991?

2 A Yes, sir, I had.

3 Q What's your opinion?

4 A It's my opinion that the device was an improvised  
5 explosive device, consisting of basically in simple terms, a  
6 radio controlled IED, explosive improvised device.

7 Q And that's based on what type of subject matter  
8 generally?

9 A That's based on the materials recovered at the site,  
10 identification of those materials, components we found from  
11 the device itself that were on the scene.

12 Q Did you look to any other -- any other matters such as  
13 injuries to the officers?

14 A Yes, sir, that does play into it.

15 Q How was that play into it, sir?

16 A The injuries to the officers and the statements of what  
17 occurred that day indicate the position that the bomb  
18 technician was when the device functioned. When an explosion  
19 occurs it does damage to the surrounding area. If a person is  
20 there, it does damage to that person. By the injuries, by the  
21 damage that was done to Mr. Gerry Hurley, you could determine  
22 what position he was in when the device functioned.

23 Q Now, have you reached any conclusions, Mr. Waskom, based  
24 on your training, education, experience as a bomb technician,  
25 your expertise in the field, asked for the dimensions,

1 configuration, housing of the improvised explosive device  
2 which functioned at 39 Eastbourne Street that day?

3 A Yes, sir, I have.

4 MR. LIBBY: Your Honor, with the Court's permission,  
5 may Mr. Waskom could come down and explain the basis.

6 Q Would this assist you, Government's Exhibit 4, sir, in  
7 explaining, describe to the jury your opinions in that  
8 respect?

9 A Yes, sir, it would.

10 Q First, with respect to the size of the large box, the  
11 dimensions, please, would you explain your conclusions in that  
12 respect?

13 A Yes, sir, at the scene we recover a lot of fragments of  
14 wood that had a flat black paint. Many of the fragments also  
15 had some glue and some nails, different effects on it so you  
16 can see that something had been done to it or something had  
17 been next to it.

18 THE COURT: Could you speak a little bit louder,  
19 please, Mr. Waskom?

20 THE WITNESS: Yes, your Honor.

21 A The wood fragments that were recovered were not so small  
22 that they could not be matched back together in several  
23 occasions. The one thing that we know, for instance, about  
24 the larger box is we know the thickness of the larger box.

25 Q How do you know that?

1     A     We know that from the fragments of wood that were  
2     recovered that are pictured here and the -- from the physical  
3     evidence, the actual pieces of wood that were collected on the  
4     site. We know how thick this particular piece of wood was,  
5     and we know that that's the thickness of this portion of the  
6     large container.

7             MR. LIBBY: While Mr. Waskom is explaining, if I  
8     could approach the jury, your Honor, and give them a closer  
9     look?

10    A     We also know the width of the box because of the wood  
11    fragments that were collected. What we couldn't determine  
12    from the fragments that were collected was the length of the  
13    box. We didn't know how long it actually was. We were able  
14    to determine that by talking to the personnel on the site that  
15    had seen the device prior to it functioning. The personnel on  
16    the site were two local law enforcement, two local policemen  
17    who responded to the scene when the call came in.

18             Both of those people got an initial look at the  
19    device and also Mr. Shay, Sr. who initially found the device  
20    in his driveway. He talked about picking the device up,  
21    holding it in his hand, moving it, and he gave us a  
22    description of what he saw, that tells us approximately how  
23    long it was. Each of these personnel talked about what they  
24    saw on the device, the magnets, they estimated, they didn't  
25    stop and count each particular one, but they estimated this is

1     what they saw, and by using their information and a number of  
2     magnets they say they saw, we can conclude this was the  
3     appearance of the device.

4     Q     Now, is this Exhibit 4 in terms of its length, sir, as  
5     you were discussing, was this consistent with the componentry,  
6     the interior of this device that you were about to give an  
7     opinion on as well?

8     A     Yes, sir, the components that we found were of the size  
9     that could have been easily placed inside this box.

10    Q     Now, with respect to the smaller box, if you flip that  
11    exhibit over, with respect to the smaller box, do you have an  
12    opinion as to the locations and dimensions of that box, sir?

13    A     Yes, sir, we have evidence that was found, wooden  
14    fragments that were found from this section of the smaller  
15    box. The fragments that were found are depicted in this  
16    photograph. If I would hold the mockup in this form, you  
17    would see the smaller box which is here, the distance to the  
18    edge which is here, that told us how thick the smaller box  
19    was, how wide the smaller box was, and how much length the  
20    smaller box had.

21    Q     Now, with respect to -- what do we see here, sir, what am  
22    I pointing to there?

23    A     There's a wire coming out from the box, from the inside.  
24    That wire was described by Mr. Shay, Sr., the person who  
25    initially found the device.

1 Q Now, sir, you've testified a moment ago about these  
2 magnets on the other side, does that fairly and accurately  
3 depict both the number and types of magnets which appeared on  
4 the device at that time?

5 A Yes, sir.

6 Q Do you have an opinion as to the purpose of those  
7 magnets, sir?

8 A Well, the purpose of magnets, whether you use them at  
9 home or you use them anywhere is to adhere to a metal surface  
10 or to hold something else to a metal surface.

11 Q Now, with respect to the color and profile of the device,  
12 at first, do you have an opinion as to the color?

13 A Yes, sir, the device was painted a flat black.

14 Q In its entirety around?

15 A Yes, sir.

16 Q Do you have an opinion as to its profile?

17 A Yes, sir, because of the -- knowing the thickness of the  
18 larger box, we know the size of the smaller box, we know the  
19 magnets that were on it, we were able to determine exactly  
20 this. This was a very close resemblance of what it looked  
21 like. It's thin, you know, it was made to be in my opinion,  
22 to be hidden.

23 Q To avoid detection?

24 A Yes, sir, to avoid detection.

25 Q Now, before this case, sir, have you ever seen in terms

1 of configuration, color, profile any improvised explosive  
2 device which resembled that in terms of color profile?

3 A Not that I can recall.

4 Q If you would, please. Now, have you reached any  
5 conclusion, Mr. Waskom, as to the means of initiation, that is  
6 you testified what it is that makes the device explode, the  
7 means of initiation as designed in this device?

8 A Yes, sir, this device was designed to be functioned by  
9 radio remote control.

10 Q Would you just briefly describe what it takes to initiate  
11 a device by remote control?

12 A A remote control system, a radio remote control system  
13 comes with several components. Because it works on radio  
14 waves, it needs a receiver. Because it also functions on  
15 radio waves, it will have an antenna to pick up those waves.  
16 It has a power source. Typically it will have an on and off  
17 switch to protect the power switch when it's not used. It  
18 also has a Servo motor, a Servo motor is a small electric  
19 motor purchased as part of the unit and does the function of  
20 physical movement when the receiver gets the correct signal.  
21 Also going with a system like this would be a transmitter that  
22 provides that signal, something that sends the signal for the  
23 receiver to pick up.

24 Q In any remote control device, sir, improvised explosive  
25 device, are there any systems which are always present?

1 A Yes, sir.

2 Q What are those, please?

3 A In a remote control system, the components that are  
4 present are power source, battery pack that holds the power  
5 source together, a conductor that holds the components, a  
6 receiver, typically a slide switch on radio remote control.

7 THE COURT: What is the second item? Power source,  
8 what was the second item?

9 THE WITNESS: The second item would have been the  
10 conductor that connects the component, your Honor. It might  
11 be able to explain if I can show you on here.

12 Q If you can direct your attention to Government Exhibit --

13 THE COURT: I forgot the third device.

14 THE WITNESS: The third element would have been the  
15 receiver, your Honor.

16 Q Now, Mr. Waskom, briefly, with respect to the major  
17 systems, if you will, in each remote control device, I believe  
18 we say as we see here on this improvised detonation system, we  
19 have something in red, we have something in yellow, and we  
20 also have something in the left-hand corner, could you please  
21 describe what those are to the jury, please?

22 A The radial remote control device and an improvised  
23 explosive device basically has three sections, three systems  
24 in it. One system will be the radio remote control system  
25 itself.

1           On the diagram, we show a Futaba radio remote control  
2 system consisting of a power source for the radio remote  
3 control system itself, and on and off switch termed as a slide  
4 switch, a receiver -- a receiver is what picks up the signal  
5 when it's sent -- and a Servo motor, and is a Servo motor is  
6 what was, there's some gears in it so it has a certain amount  
7 of torque, the ability to move certain things. And on that  
8 Servo motor is an attachment known as a horn. This oblong  
9 shaped piece attached to the screw is known as a horn. They  
10 make different horns for different purposes in building remote  
11 control cars or remote control airplanes, things of that  
12 nature. We also have a second system which is indicated in  
13 red which is known as the firing system, okay. The remote  
14 control system is the fusing system. It's what decides when  
15 this chain of events actually occurred.

16           The fusing system is consisting of conductor or wire  
17 batteries, power source, a toggle switch or a switch of some  
18 type. This particular one had a toggle switch. It is the  
19 side of the circuit that sends the power to the explosive  
20 charge and tells it when to function.

21           The third component in a radio remote control device  
22 is an explosive section. In this particular case, two  
23 blasting caps or two detonators is a term that's used with  
24 blasting caps. We don't have it outlined on this particular  
25 diagram, but there was also a high explosive charge here, a

1 certain quantity of explosive.

2 Q Now, let's direct your attention to the yellow line which  
3 is, I believe, you just outlined as the components of the  
4 fusing circuit?

5 A Yes, sir.

6 Q And it's whole function in life is to receive a signal?

7 A Yes, sir.

8 Q How do we know, first of all, I draw your attention to  
9 the battery pack, sir, how do we know that was present in the  
10 device?

11 A We know the battery pack was present, the actual evidence  
12 is here, and let's see it says sub 4, Government Exhibit 12.

13 MR. LIBBY: Out of Government Exhibit 12, we'll  
14 represent, your Honor, if I may?

15 A We'll find the housing or the container, this outer  
16 container here that hold the batteries that went to the remote  
17 control system.

18 Q Now, with respect to the slide switch, how do we know  
19 that was present in the subject device, sir?

20 A The slide switch which is -- I'll find it here, is  
21 depicted in this photograph. You need to be aware that the  
22 photograph has two sides, from here this way is a purchased  
23 slide switch, from here this way is the components that we  
24 recovered during the investigation on the blast site.

25 By comparing the components, this particular portion

1 right here is this portion of the slide switch itself and  
2 these two contacts are the little metal contacts that you see  
3 inside. Also the screws and the metal housing are these  
4 portions of the slide switch.

5 Q Now, with respect to the Futaba receiver, please, how do  
6 we know that was present in the device which exploded in  
7 Roslindale?

8 A We know that the Futaba receiver was present in the  
9 explosion at Roslindale because of what we recovered at the  
10 scene also. The top portion are purchased receivers that have  
11 been taken apart and compared to the evidence that was  
12 recovered at the scene, we have the plastic housing, we have  
13 part of the circuit board which was inside of the receiver  
14 itself. Also we have like it's a piece of aluminum foil, it's  
15 a small piece of foil that is normally adhered to the back of  
16 the receiver itself. During the explosion and probably -- I'm  
17 going to give an idea here, it's my idea that because these  
18 components were glued to the plywood, that part of the writing  
19 that was on this piece of foil transferred to the glue and to  
20 the wood. If we take this little bit of writing that is on  
21 the wood and reverse it because it's a mirror image, it was  
22 this portion of writing that was on the back of the receiver.

23 Q Now, with respect to this antenna protruding from the  
24 Futaba receiver, sir, how do we know that's present?

25 A Well, the Futaba receiver is a manufactured item. It's

1 not something that someone gets some components at home and  
2 builds. They buy a Futaba receiver. Futaba receivers work on  
3 radio remote control. In order to work on radio waves, they  
4 need an antenna to function. Also we know the antenna was  
5 there because of statements made by Mr. Shay who initially  
6 found the device about a wire hanging from the device or  
7 coming out of the box.

8 Q And is that this wire here that we talked about  
9 previously on the mock?

10 A Yes, sir, it is.

11 Q Now, directing your attention to the red line on the  
12 chart there, sir, I believe you testified that outlines the  
13 firing circuit so-called; is that right?

14 A Yes, sir, it does, that is the firing circuit.

15 Q Would you please tell us, sir, the components of the  
16 firing circuit and what roles they play?

17 A Okay. The components that are in the firing circuit is,  
18 of course, wire or conductor that is symbolized by the red  
19 marker. Also we know that there was a power source involved  
20 with this firing circuit. You need a power source in the  
21 firing circuit or it wouldn't function. The battery  
22 components are these components here.

23 Okay, from what we recovered at the scene, we  
24 recovered the outer battery housing of nine-volt batteries and  
25 also a number of individual cells that came from within the

1 nine-volt battery. Now a nine-volt battery when you purchase  
2 it anywhere, the Duracells have a little bit of writing on it  
3 that says that it should be used before a certain date, kind  
4 of an expiration date. By finding pieces that had that  
5 writing on them, we can determine how many batteries there  
6 were, because that used before a certain date is only once on  
7 each battery. So we found four individual markings that said  
8 use before a certain date. We also found another portion of  
9 the battery housing which didn't have that marking on it, but  
10 it was too large to be any of the other battery housings that  
11 we have. So we know that there were five nine-volt batteries  
12 here in the firing system.

13 Also in the firing system ask a switch. Now, a  
14 switch is necessary to tell --

15 Q If I can stop there just a moment, Mr. Waskom, do you  
16 know anything about the nine-volt batteries with respect to  
17 their wirings?

18 A Yes, we did.

19 Q What do you know about that?

20 A We know that the nine-volt batteries had 9-volt battery  
21 snap clips in place. During our investigation and picking up  
22 the components, we found pieces of wire. These pieces of wire  
23 here, here, and this section here are the pieces of wire, are  
24 the small pieces of wire that extend out from this clip. You  
25 buy it. It's a plastic clip that presses on to the top of a

1 nine-volt battery. Out of that plastic clip come two wires.  
2 One's black and one's red. That way you don't have to connect  
3 to the battery terminal itself. You connect the wires coming  
4 off the clip to the other conductor in the system and that's  
5 what was done here.

6 The wires themselves were, had a knot, connecting the  
7 two wires together. They extended up. The wire was twisted,  
8 soldered, and then a piece of tape was put over that  
9 connection. We can see. I don't know if it's on this one or  
10 not -- it's hard to see on this one. You can see on this --  
11 compare the two if you can -- this portion of wire is another  
12 photograph, an enlargement of this portion. And we can see on  
13 this portion of wire the black adhesive and adhesive tape that  
14 covered that connection.

15 Q And for the record, Mr. Waskom, you're referring to this  
16 photograph, the enlargement of the end of the wire, the black  
17 and red wire?

18 A That is correct.

19 MR. KELLY: That's 17 C.

20 Q It's from Exhibit 17 C. Let me hand you what's been  
21 marked sub 4-14 wire and ask you, sir, what relation that  
22 bears, that real evidence bears to this photograph?

23 A The evidence that's in the bag and marked is this solder  
24 joint with these two wires connected also showing the knot  
25 that was on the photograph that gave a little larger view it

1 have.

2 MR. LIBBY: If you could publish this for the jury,  
3 your Honor. Thank you.

4 Q Now, Mr. Waskom, you mentioned that there was recovered  
5 at the scene -- strike that. You testified that there were  
6 five such battery connections, right?

7 A Yes, sir.

8 Q Recovered at the scene was one; is that right?

9 A Yes, sir.

10 Q Do you have an opinion, sir, as to the configuration of  
11 the remaining four batteries in that connector?

12 A Well, the five batteries that were recovered at the scene  
13 were all the same type, nine-volt batteries each one having  
14 the same little terminals sticking out the end, each one being  
15 able to accept the nine-volt snap connector. We only  
16 recovered the wires from one. It wouldn't make sense to have  
17 wires on one and not have wires on all of them.

18 The soldering that was done, it wouldn't make sense  
19 to solder one and not solder the one that's right next to it  
20 that's exactly the same. Batteries can be connected in two  
21 different ways as far as the electrical circuit connection.  
22 Can you wire batteries so they're in series or you can wire  
23 batteries so they're in parallel. By this connection, the way  
24 this connection is, a black wire and a red wire, it tells us  
25 that these batteries were wired in series, and being in series

1 that means that you would take the 9 volts from each battery  
2 and multiply it by the number of batteries that were in the  
3 firing circuit so you would end up with a total of 45-volt  
4 capability.

5 Q With respect to the twisting, soldering and taping that  
6 we see here, sir, do you have an opinion as to whether this  
7 technique was likewise used in the remaining four snap  
8 connectors?

9 A Yes, sir.

10 Q What is that opinion?

11 A My opinion is that if you twisted, soldered and taped  
12 one, he would twist and solder the other four because they're  
13 all exactly the same.

14 Q Now, with respect to -- directing your attention to the  
15 toggle switch, I'm sorry where I interrupted you a few moments  
16 ago what purpose was that, sir?

17 A The toggle switch it's an on and off switch, that's its  
18 purpose, like turning on the lights, you switch the lever up,  
19 the lights come on, if you push them down the lights go off.  
20 The firing circuit, it operates in the same manner. With it  
21 off, there is no power that can run through this circuit. It  
22 has to have a complete cycle, be able to make a complete cycle  
23 in the circuit before power will flow. When you turn the  
24 switch on, power is allowed to flow through the circuit and  
25 also at that point that would function the detonators in the

1 system.

2 Q How do you know, sir, that toggle switch was present  
3 there in the firing circuit in this device?

4 A From the materials recovered at the site, we recovered  
5 the contacts, the metal contacts that protrude from the bottom  
6 of the switch where the person would connect, conductor to the  
7 switch in order to have the switch in the circuit and to do  
8 the function it's intended to do. The contacts were compared  
9 at the national laboratory and the chemist determined that  
10 these contacts were from a toggle switch.

11 Q And could you tell us, please, specifically if you know,  
12 is there a presence of soldering on these toggle switch  
13 contact points?

14 A Yes, there is. You can see the soldering on this  
15 particular point of the switch.

16 Q Perhaps you can get closer to show the jury.

17 A Part of this metal contact is internal to the switch,  
18 this portion of the contact sticks outside the plastic housing  
19 and it's where the person, the individual constructing  
20 something would connect his wire. You can see the little blob  
21 of solder on the end and one strand of wire coming out of that  
22 solder.

23 Q I'm sorry, is there any means of attaching that wire to  
24 the contact point?

25 A The wire on a toggle switch can be attached in a couple

1 of ways. If the person wanted to just wrap it around this  
2 metal post sticking out and put a metal post on this place  
3 that would work. Also contacts on toggle switches have a  
4 small hole in this metal stem that comes out. He can push the  
5 wire through that hole and just twist the wire, that would  
6 hold it in place and also make the connection.

7 Q In this case, sir, do you have an opinion as to the  
8 source of the soldering and base of that contact, sir. In  
9 fact who or what or how that was applied by whom?

10 A The builder of the device would have replied to this.  
11 The factory doesn't put solder on the end of that connection,  
12 that's done by the person using the switch in something he  
13 built.

14 Q Let me show you what's been marked as Government's  
15 Exhibit 36 B, sir, and ask you if you recognize that.

16 A Yes, sir, I do.

17 Q What is that?

18 A It's a toggle switch that was purchased at Radio Shack,  
19 Archer is on the particular labeling of the packet. Archer is  
20 a name that Radio Shack puts on their materials. It  
21 specifically, it's a catalog No. 275 S602. It's a special  
22 switch shown by Radio Shack.

23 Q Does that accurately depict the toggle switch in the  
24 firing circuit that was used in this device?

25 A Yes, it does.

1 Q Now, with respect to the detonator, the electric  
2 detonator caps?

3 A Yes, sir.

4 Q Again, they're purpose was what?

5 A The purpose of detonators or blasting caps is to  
6 function, a high explosive material. A high explosive  
7 material needs certain things in order for it to do what it  
8 was designed to do, that is to explode or to detonate.  
9 Blasting caps are manufactured to do that purpose, to provide  
10 the environment needed to transfer that explosive wave on to a  
11 larger explosive charge and cause it to function.

12 Q Now, in this case, do you have an opinion as to the  
13 manufacturer of the detonator caps in this device?

14 A Yes, sir, I do.

15 Q And what's your opinion?

16 A The blasting caps that were recovered, I should say,  
17 pieces of the blasting caps that were recovered at the site of  
18 the explosion are these pieces here. These are the exact  
19 components that were recovered and photographed and they're  
20 made by Austin. Also one of the pieces recovered is the very  
21 end, what we would -- in bomb technician terms we would call  
22 the business end of the blasting cap. It's the end of the  
23 blasting cap that contains the explosive material that  
24 produces the wave that initiates the high explosive main  
25 charge. On the very end of that is a No. 6 and also this

1 small logo emblem which tells us which company made this  
2 blasting cap, and a No. 6 tells us what delay was built into a  
3 blasting cap, a blasting cap has delays built in for use in  
4 rock quarries and commercial blasting. That No. 6 indicates  
5 that it's 150 millisecond delay from the time energy is  
6 provided to the cap before it actually functions.

7 Q Do you have an opinion as to how many blasting caps were  
8 present in this explosive device, sir?

9 A Yes, sir.

10 Q How many?

11 A There were two blasting caps present. There were two  
12 blasting caps.

13 Q How do you base that opinion?

14 A I base that opinion on what was found at the blasting  
15 site.

16 MR. LIBBY: For the record, we are actually piercing  
17 Government Exhibit 12-1, and if Mr. Waskom may approach, your  
18 Honor, to the jury.

19 THE COURT: I thought he was there.

20 MR. LIBBY: Well, to get a better look.

21 A Well, this is a portion of the blasting cap, of one of  
22 the blasting caps that was recovered at the scene. From what  
23 we have, from what we can see here, and being experienced and  
24 trained in explosive materials, we know that it's an aluminum  
25 type housing. We know that it has a red plastic plug at the

1 end. It has the electrical conductor going in. We know that  
2 the electrical conductor is coded with insulation: One is red  
3 and one is yellow. We know there are factory crimps on the  
4 blasting cap, that rubber plug was sealed in place at the  
5 factory when they produced this component.

6 Q Now, Mr. Waskom, is this safe to pass to the jury?

7 A It might have a sharp edge, but it's not dangerous in any  
8 other way.

9 Q What amount of electrical power, Mr. Waskom, is required  
10 to initiate these blasting caps as you have outlined here on  
11 the chart?

12 A Blasting caps are manufactured to initiate on a -- after  
13 a certain amount of amperage is applied. Typically, they will  
14 say if it's 250 milliamps or less it won't function. If it's  
15 between 250 milliamps or 350 milliamps it will function.  
16 Anything over 350 milliamps should function the detonator as  
17 it's designed to be functioned.

18 Q As you have it configured here, sir, does this device as  
19 configured provide sufficient electrical power to initiate  
20 these Austin Rock Star detonators?

21 A Yes, sir, there's more than enough power there.

22 Q Now, did you reach an opinion, sir, with respect to the  
23 configuration of the so-called leg wires to the electric  
24 detonators?

25 A Yes, sir.

1 Q What's your opinion?

2 A The leg wires to the detonator were connected in what we  
3 would call a series circuit. One leg of wire would come down  
4 and connect to one leg of the detonator itself. The leg wire  
5 that came out of that detonator, the second leg wire that came  
6 out of that detonator would connect to one leg wire of the  
7 second detonator. The detonator -- the second wire that came  
8 out of that one would continue on going to the toggle switch,  
9 to the switch itself.

10 Q Now, directing your attention to the connection itself,  
11 do you have an opinion as to the configuration of that  
12 configuration, how it was configured?

13 A Yes, sir, we recovered that.

14 Q Would you explain that to the jury, please?

15 A Recovered at the scene was a small piece of white tape  
16 and underneath that piece of white tape was two small yellow,  
17 two small wires with yellow insulation. These yellow wires  
18 are consistent with the, what we would call leg wires of a  
19 blasting cap, the wires come out of a blasting cap, and they  
20 were twisted, twisted together and then a piece of white tape  
21 was put over that connection, that tells us that these two  
22 detonators were hooked in series. If there had been a  
23 parallel connection which is a different type of connection  
24 that's also possible, there would have been three wires  
25 connected underneath that piece of tape and not two.

1 Q Now, is it common, sir, in your experience as a seasoned  
2 veteran explosives officers to see the presence of two  
3 detonator caps in any explosive device?

4 A That's unusual.

5 Q That's known as dual priming?

6 A That is termed as dual priming.

7 Q Was there any presence of soldering in that connection  
8 between the leg wires?

9 A No, sir. We found no evidence of any soldering on that  
10 particular connection.

11 Q Do you consider that absence of soldering in any way to  
12 be unusual with respect to that connection?

13 A No, sir, I don't.

14 Q Why not?

15 A When you connect the two blasting caps together that  
16 would typically be the last thing you did before you closed  
17 the box. If you connect these detonators together in the  
18 firing circuit and then continue to do other things to the  
19 systems, to the device, it has the capability of exploding at  
20 that point. So to protect yourself, the last thing you would  
21 do before you close the device would be to make that  
22 connection.

23 Q Now, when you say close the device, in this case, would  
24 you explain what that entails for the jury?

25 A This device was enclosed in the wooden box that I showed

1 you earlier. The wooden box was glued together and in  
2 addition nailed together. So once the builder made this  
3 connection and closed the box, he no longer had easy access to  
4 the components that were inside.

5 Q Now, finally, Mr. Waskom, directing your attention to the  
6 Servo motor, if you would, please, would you explain first the  
7 significance that the Servo motor played in this dual circuit  
8 system?

9 A Okay. The Servo motor receives electrical energy from  
10 the receiver, and the Servo motor is a plastic housing that  
11 has little gears in it and a small electrical motor. When it  
12 receives electrical energy from the receiver, that motor moves  
13 in a way that the Futaba system works, this lever that is held  
14 on by a small screw rotates one way or the other. The reason  
15 for that in this device, this Servo motor flipped this switch,  
16 turned this switch on. If the switch was on prior to this  
17 Servo motor doing it, the device would have functioned.  
18 Instead of the bomber reaching over and throwing that switch  
19 over by hand, he had this remote control system energize this  
20 small motor moving the lever and turning the switch to the on  
21 position.

22 Q Let me show you what's been marked Government Exhibit 18  
23 C and if you could approach the jury and describe please the  
24 function of the Servo motor?

25 A Okay. This is an actual Servo motor purchased at a hobby

1 store, that's where these things are found at typically. It's  
2 a plastic housing, small motor inside. This is what I  
3 referred to as the horns of the oblong piece. It's what moves  
4 things in remote control cars, and in this case an explosive  
5 device. We know that, we know that this exact model of Servo  
6 motor was present because we recovered the small aluminum like  
7 tag, S-148 which is a specific model of a Futaba Servo motor.

8 Q Directing your attention to Exhibit government's Exhibit  
9 9 D, does that assist you?

10 A Yes, sir, this is a small metal tinfoil like type that  
11 was recovered that told us it was this exact Servo motor.

12 Q Also Government's Exhibit 17 B, does that assist you in  
13 describing the Servo motor?

14 A Okay. Other components that were recovered and again the  
15 components that are from the center in this direction are  
16 components of a Servo motor that were purchased and taken  
17 apart to compare. These components on this half were  
18 components that were recovered during the investigation at the  
19 site of the explosion. The wires that connect here, black,  
20 red, and white, the same as these wires here. The pieces of  
21 the small circuit board, the small tag, plastic housing match  
22 up with this device.

23 Q Can the jurors on this end see, everybody see?

24 A The primary thing that told us exactly which one it was,  
25 the small metal cap, another component that is in is a screw,

1 one here, there's also another one found here, it's a very  
2 unusual screw. You don't normally find it laying around the  
3 house. You don't normally go to a hardware store and purchase  
4 this type. It doesn't have the normal threads that you would  
5 see with a screw. I don't know the manufacturer's name for  
6 it, but one turn will take the screw in a long way so the  
7 threads are very far spread apart; it's like a spiral rather  
8 than a fine type screw type thread. It's an unusual screw, so  
9 when you find a screw like that after an explosion, it  
10 indicates that something like this was used. And by that  
11 indication you talk to the other members of your team and tell  
12 them they might want to look for components like this.

13 Q Thank you, Mr. Waskom.

14 Mr. Waskom, is it common in your experience to  
15 determine that the maker of an improvised explosive device as  
16 you see here depicted would wish to test the circuitry before  
17 operating it?

18 A Yes, sir, it's very common.

19 Q And how would one do that?

20 A The most common way, the most typical way of testing a  
21 circuit of this type is with a little light bulb and a couple  
22 of wires.

23 Q And why would you want to test it, sir?

24 A Two reasons, actually. The bomber wants to know he's  
25 connected the circuit correctly, that he's built the thing

1 correctly. He also wants to know that when he hooks the  
2 blasting caps up into the circuit, that it's not going to  
3 function on him at that moment, so he can use this little test  
4 system to test his firing circuit and insure that there is no  
5 power on that firing circuit, and that would make it safe for  
6 him to hook the blasting caps into the system.

7 Q And would you say that was done by means of a test?

8 A It's a common way of doing it, yes.

9 Q Have you reached an opinion, Mr. Waskom, as to whether  
10 this system, as depicted here would in fact actually function  
11 as designed?

12 A This system as it's depicted here would function as it's  
13 designed, as it was put together and constructed.

14 Q Would anything assist you in demonstrating that to the  
15 jury?

16 A Yes, sir.

17 Q Hold that, please.

18 MR. LIBBY: Your Honor, if we could move forward just  
19 a little bit and counsel could --

20 THE COURT: Let's leave it back there, please.

21 MR. LIBBY: Okay.

22 Q Directing your attention to Government's Exhibit 19  
23 Mr. Waskom, and also directing your attention to -- if we can  
24 move this -- at the same time, very gingerly to Government  
25 Exhibit 20 and ask you what does Exhibit 19 depict, please?

1 A Exhibit 19 exhibits the components that are depicted on  
2 the sketch. They're the actual components in place the way  
3 they're shown on the sketch and the way they were used in the  
4 device.

5 Q And would you please, first, with respect to the fusing  
6 circuit point out those elements, those components?

7 A In the fusing circuit which is one of the three systems  
8 in the explosive device was the Futaba radio remote control  
9 which consisted of the power pack with the batteries, AA  
10 batteries, the slide switch, Futaba receiver with antenna and  
11 the Servo motor with horn, all of these connected by  
12 conductor, with the display of the actual components, we have  
13 the power pack with four AA batteries connected by wire to the  
14 slide switch, an on and off switch for the radio remote  
15 control receiver system.

16 MR. LIBBY: Let me ask the jury if everyone can see  
17 the chart.

18 Okay.

19 A The receiver itself which it's function is to look for  
20 the signal. It's set to do something when it receives a  
21 certain signal. The antenna that is built onto this receiver  
22 at the factory and the Servo motor or the Servo housing with  
23 the horn.

24 Q Now, with respect to the firing circuit, please, could  
25 you marry that up for us?

1     A     Yes, sir. The firing circuit, the toggle switch is the  
2     firing switch, power source for the firing itself, the  
3     nine-volt batteries and the conductor that connected those.  
4     On the display here are the actual components, the toggle  
5     switch is here, the conductor connecting it to the nine-volt  
6     batteries, five nine-volt batteries, leading down to where the  
7     detonators are. The point about the relationship of the two,  
8     the receiver receives a signal, causes the Servo motor to  
9     physically move, this arm turns and that turning is right next  
10    to the toggle switch. Its purpose is to turn that toggle  
11    switch on.

12   Q     Now, with respect to the -- what do we have representing  
13   our detonator caps?

14   A     Detonator caps we have aluminum housing with the wires  
15   going in with the way detonators are manufactured with the  
16   crimps on it the way the factory was put in. The lower  
17   portion we have two flash bulbs, two flash bulbs to indicate  
18   that these detonators would function when the system  
19   operates.

20           Also there was a high explosive charge here that was  
21   determined to be dynamite. We don't have it depicted on our  
22   display, but it was there also.

23   Q     You have some test bulbs here which represent what, sir?

24   A     The test bulbs represent the detonators functioning it.  
25   It shows that the system operates, that it actually works.

1 Q Now, you have the Futaba receiver's function to receive  
2 the remote control signal, right?

3 A Yes, sir.

4 Q What sends that signal?

5 A The transmitter. When you buy a Futaba system, Futaba  
6 systems are made for people who put toy cars together, they  
7 fly they remote correctly. The purpose of the receiver is to  
8 receive a signal. In order to control that car you need  
9 something that sends that signal that's needed and that's a  
10 transmitter.

11 Q Let me hand that to you, please, and would you describe  
12 for us please the operational qualities of this receiver and  
13 transmitter as they work together?

14 A Transmitters are manufactured in several models, Futaba  
15 produces several transmitters. They produce several different  
16 receivers. They produce several different Servo motors. We  
17 know that these particular ones were used because of the  
18 components we've recovered. We don't know exactly which  
19 transmitter came with this system because we never recovered  
20 the transmitter. We know that a transmitter belongs to the  
21 system. It's part of the system when you buy it. In order  
22 for that system to function you need the transformer,  
23 transmitter.

24 What the transmitter has is what's of course plastic  
25 housing plastic in the back to provide power for it. An

1 antenna to send the signal the same as the antenna on the  
2 receiver receives the signal. It has an on and off switch, a  
3 slide switch that turns power on to the transmitter and allows  
4 it to generate this signal. It has levers, movable levers on  
5 it and the movable levers are for the operator if he wants a  
6 car to turn left he pushes one a certain way. If he wants to  
7 function something like this, he pushes a lever a certain  
8 way. It depends on how he actually hooks it up to the  
9 system. Transmitters work on a certain frequency. Because if  
10 you've got five kids or five adults out working with what  
11 they've built, you wouldn't want them all on the same  
12 frequency. I want my car to turn left so I turn in, all the  
13 cars turn left, you wouldn't want that, so what they do is  
14 they put a crystal in. The crystal determines the frequency  
15 that is produced by the transmitter.

16 Q Sir, in this case, do you know what frequency we're  
17 dealing with?

18 A We do, but I would like to have to look at my notes to be  
19 sure.

20 Q Please continue.

21 A The receiver also has a crystal because the transmitter  
22 is designed and a crystal is put in to transmit on a certain  
23 frequency. The crystal is also in the receiver that tells it  
24 that's the frequency it's looking for in order for it to do  
25 its operation.

1 Q What's the operational distance of a transmitter such as  
2 you're holding there?

3 A The distance that a transmitter of this type can be  
4 expected to be used at is approximately a mile, and that's  
5 according to the manufacturer of the component, and they term  
6 it as a mile line of sight. When they say line of sight, they  
7 mean that the transmitter, if it could see at all, it would be  
8 able to see the receiver. If it has to go, say, you're on the  
9 other side of a hill or other side of a building, it can't  
10 physically see it, that distance would be cut down some. It  
11 wouldn't be able to be effective at the distance you expect  
12 for line of sight.

13 Q When you say line of sight, you mean the transmitter  
14 works best when it has the line of sight?

15 A That's correct. Nothing is in between the two in its  
16 best condition to perform at the distance it's supposed to  
17 perform at.

18 Q So now, Mr. Waskom, your bottom line opinion is what we  
19 see here --

20 THE COURT: Perhaps he could give us his bottom line  
21 opinion.

22 Q Do you have an opinion, Mr. Waskom, with respect to  
23 Government Exhibit 19 as to whether as depicted there the real  
24 components, that is how this device which detonated in  
25 Roslindale, Massachusetts in October 1991 was so designed?

1 A Yes, sir, it is.

2 Q With the Court's permission, if Mr. Waskom can  
3 demonstrate?

4 A Okay. What a person would do --

5 THE COURT: Well, don't tell us what a person would  
6 do. Just tell us how it works.

7 A Okay. The device would be placed, the switch on and off  
8 switch for the receiver system would be turned to on, and the  
9 person would leave.

10 Q Now, let me stop you there. When you just flicked on  
11 that switch, could you depict for the jury, please, where you  
12 believe that slide switch appeared in the device?

13 A The slide switch, the on and off switch for the receiver  
14 system is part of that receiver system when you buy it. In  
15 constructing a mockup of the device, I made a small hole in  
16 the side of the wood to allow this portion, the part of the  
17 switch that you physically move back and forth to be accessed  
18 from outside the box. I didn't find that little cut out in  
19 the fragments of wood that I looked at, but I know that once  
20 this box is put together if that switch is totally sealed  
21 inside and you do not have access to it, you do not have any  
22 way to protect your batteries. If you have to wait for  
23 several days your batteries are in use.

24 The only logical way for a person to build something  
25 like this and be able to know that it will work when he's

1 ready to use it is to have access for that on and off power  
2 switch for the receiver.

3 Q Thank you, Mr. Waskom, if you would continue where I  
4 interrupted.

5 A Okay. The device will be placed, I would throw the power  
6 switch to on which provides power for the receiver and power  
7 for the Servo motor. The only thing that's keeping this  
8 device from exploding at this point is this toggle switch.  
9 It's in the off position. The transmitter can be used from  
10 some distance away. A person could be, like I said, line of  
11 sight up to a mile away. Typically, in a residential area, he  
12 would have to be somewhat closer, but not real close. He  
13 would extend his antenna up. He would turn the power switch  
14 on for the transmitter itself, and if you'll watch the display  
15 board I will try to count down, it would be 3, 2, 1, fire.  
16 And that's how the system would be used in this type of an  
17 application.

18 THE COURT: Do you have anything else?

19 MR. LIBBY: Yes, I do, your Honor. I have about ten  
20 more minutes.

21 THE COURT: Let's stretch.

22 (Pause.)

23 Q Finally, Mr. Waskom, have you reached any conclusions as  
24 to the actual location and configuration of these various  
25 components within the device as you describe it here today?

1       A     Yes, I have.

2       Q     Would anything assist you in describing that to the  
3     jury. Let me hand you what's been marked Government Exhibit 5  
4     and ask you if you briefly can describe that to the jury what  
5     that is?

6       A     Okay. Government Exhibit 5 is a reconstruction of the  
7     device that we used in this particular explosion. The  
8     information that I used to tell me that it appeared this way  
9     is the information that was recovered at the scene. We  
10    recovered the power pack receiver system, the slide switch,  
11    the receiver itself, the Servo motor, the toggle switch within  
12    the firing circuit, batteries for the firing circuit, the two  
13    detonators that were found at the scene, and quantity of  
14    explosive material. Of the components that were here, we know  
15    certain things about them. We know certain places that they  
16    were put inside this box. The batteries that were in the  
17    firing circuit. They were glued in place, the battery,  
18    nine-volt batteries were glued together and glued to the  
19    inside of the box. The printing that's on the battery was  
20    transferred to some of that glue, and you could under  
21    magnifying equipment could read what was actually on the  
22    batteries. We know where it was at in the device.

23               The smaller box that was attached to the larger box  
24    was in this position. Inside the smaller box were these two  
25    components, the Servo motor with its horn and the toggle

1 switch. We know that those components were in that position  
2 because of what we found when we would piece together this  
3 portion of the box. The Servo motor left impressions in the  
4 wood where it was glued in place. The Servo motor itself on  
5 what we would call the lip has two round holes for fastening  
6 it in this place. It was glued in place, and that glue pushed  
7 up in those two small holes and you could put it right back  
8 and tell where it was at. The toggle switch itself has  
9 threads on it, and those threads were pressed into the glue,  
10 and into the wood right on this curvature cutout of the wood.  
11 We know that the box was fairly carefully designed, fairly  
12 carefully built because of the markings on the wood. Whoever  
13 built it didn't get a saw and cut different directions and  
14 said I think this will work. He drew marks on the wood and  
15 then made his cuts. So he planned what he was doing here, how  
16 things would fit together.

17 Q Would you tell us what further information you see in  
18 that photograph, sir, with respect to the smaller box?

19 A This is a blowup basically, an enlargement of the wooden  
20 fragment we see here. These round circular glue spots are  
21 what I talked about the Servo motor itself being glued into  
22 place, and they were made by the housing where the Servo motor  
23 would be fastened in. Also you could see the blue marking on  
24 the edges of the wood where the guy drew a template and then  
25 made his cuts.

1 Q Now, with respect to the battery snap connectors which  
2 you've spent sometime describing for the jury please would you  
3 point that out to the jury?

4 A Okay. Battery snap connectors snap to the top of each  
5 nine-volt battery, maybe from an angle if I can turn it  
6 correctly, it's a black plastic cover which has a red and a  
7 black wire coming out of it. It's made to be pressed on to a  
8 nine-volt battery to make that connection, and we also  
9 recovered the soldered connections where they were twisted  
10 soldered and taped where the two snap connectors were actually  
11 attached together.

12 Q This was configured, consistent with your opinion, sir,  
13 that each of these snap connectors was so designed and built?

14 A Yes, sir, it is.

15 Q With respect to the main charge in this Plexiglas mock  
16 device, sir, could you describe for us, what you see here with  
17 respect to this black object.

18 A Okay, what we see on the reconstruction of the explosive  
19 main charge is something that's wrapped in black tape,  
20 underneath the black tape is gray what we would call duct  
21 tape. It's a wide gray tape that's used in ceiling duct work  
22 when you're doing duct work in the building. We recovered  
23 that from the crime scene.

24 Also we recovered a page out of a magazine, a muscle  
25 magazine. Ms. Cindy Wallace, the chemist was able to identify

1 that particular page, and that particular page also had  
2 explosive residue on it. Explosive residue that came from the  
3 dynamite itself that was recovered inside.

4 Q Could you tell us very briefly about the texture of  
5 dynamite and its weight, please?

6 A Dynamite typically has a texture of a dry oatmeal. Not  
7 the flakes before it's actually had water added. But after  
8 you add the water in it a little bit, sometimes it gets a  
9 little pasty when you cook it too long. Similar to that.  
10 It's a sticky material, and because it's sticky, tape won't  
11 stick directly to it. It's my opinion, that's the reason why  
12 the magazine page was put in. They wrapped the material in  
13 the magazine page and then wrapped tape around the magazine  
14 page to hold it together, and then put black tape over that.

15 Q How is dynamite typically packaged and distributed, sir?

16 A When dynamite comes from the factory, it comes in several  
17 forms. One of the most common ways of finding dynamite is  
18 what we call in stick form, a stick of dynamite. It's  
19 normally an inch and a quarter in diameter, approximately  
20 eight inches long, a brown paper wrapper. If you would take a  
21 broom handle and cut off an 8-inch length of it, and wrap  
22 brown paper around it, it would be very similar to what you  
23 would see if you saw a stick of dynamite.

24 Q Are there any markings that typically appear on a stick  
25 of manufactured dynamite?

1 A Yes, sir, there's markings on sticks of dynamite that do  
2 a couple of things, the logo from the factory that made it is  
3 typically going to be on that stick of dynamite because the  
4 company takes credit for what they do. They're selling those  
5 products, so they're proud of what they build. Also a  
6 requirement on explosive materials is to put what they put a  
7 date shift code. And a date shift code is a code that's  
8 required by the Government that will tell someone that looks  
9 at this stick of dynamite and reads that code. They can trace  
10 it back and find out what factory made this particular stick  
11 of dynamite, what shift made it and when it was made.

12 Q Now, in the course of this investigation, Mr. Waskom was  
13 there any such brown manufacturers paper recovered?

14 A No, sir. There was no typical dynamite wrapper paper  
15 recovered.

16 Q Do you consider that significant, sir?

17 A I do in the fact that the person that rewrapped it had a  
18 reason for rewapping it. And that's my opinion, my opinion  
19 is it has the markings, it identified who made it, when it was  
20 made, that's the way that the Government helps to, tries to  
21 trace explosives to make sure it's stored in the proper way,  
22 to recover stolen explosives, they can match it by this  
23 particular date.

24 Q Do you have an opinion as to the amount of explosive, the  
25 amount of dynamite which was used in this device that was

1 floated in Roslindale on October 28th, 1991, sir?

2 A Yes, sir.

3 Q What is your opinion?

4 A It was my opinion that it was two to three sticks of  
5 dynamite.

6 Q What do you base your opinion?

7 A My opinion is based on a couple of things. One the size  
8 of the box that was recovered, the size of the box kind of  
9 restricts to you a certain amount of explosives. You only  
10 have so much room to put it in.

11 Another thing that will play into determining how  
12 much explosive was present was how far away it propels things  
13 that are next to the explosive when it functions. One of the  
14 best ways is the crater that's left when this explosive  
15 material functions. It cuts a little hole of the earth out if  
16 it's next to the earth. That's what happened at the  
17 Roslindale bomb.

18 Q Let me show you what was Government Exhibit 9 F, and ask  
19 you what's depicted in that photograph?

20 A Yes, sir, I do.

21 Q What do you recognize that as?

22 A That's what we call the seat of the blast, it's difficult  
23 to see because on a photograph it's hard to tell, but right  
24 here, the little chunking up, there is a small hole in the  
25 ground here that is where the explosive actually functioned

1 and blew that dirt out of the way.

2 Q If I may, now Mr. Waskom, with respect to the  
3 configuration of the main charge, here, please, of detonators,  
4 would you explain that to the jury very briefly?

5 A Okay. In order for the detonators and the blasting caps  
6 to do their function, they need to be in contact with the main  
7 charge with the high explosive. The components recovered at  
8 the scene indicate that the blasting caps were in this  
9 position. If we looked at the scene where the device was  
10 placed, and we go to where we found the detonators sticking  
11 out of the side of the neighbor's residence, it tells us what  
12 side of the explosive that blasting cap was on when it  
13 functioned.

14 Q Is that what's depicted here in Government's Exhibit 9 E,  
15 sir?

16 A Yes, sir, it is. It's small sticking out of the side of  
17 the neighbor's house is one of the blasting caps that was  
18 recovered during the investigation.

19 Q Do you have an opinion, sir, as to the weight of the  
20 device with the explosion of Roslindale, Massachusetts?

21 A Yes, sir, the components and the wood, the nails and the  
22 glue, the batteries, I weighed everything that is here. The  
23 weight of that came to approximately five pounds. I took into  
24 account, I didn't actually weigh a stick of dynamite, because  
25 a stick of dynamite is manufactured typically in a half pound

1 stick. From what I saw of the crater and the distance the  
2 components were thrown, I estimated that there were two to  
3 three sticks of dynamite. So I added a pound and a half,  
4 approximate to the five pounds that was used in the device  
5 itself. So the device weighed approximately 6, to 6 and a  
6 half pounds depending on whether there were two sticks of  
7 dynamite used or possibly three.

8 Q And finally, Mr. Waskom, do you have an opinion as to the  
9 location of the improvised explosive device in this case at  
10 any time before it functioned?

11 A Yes, sir, I have.

12 Q And what's your opinion on that?

13 A The device when it was first recorded had come from the  
14 underneath side of the car. We went to the site where the  
15 explosion occurred and we talked to the person that owned that  
16 car, the person that was, heard something rumbling when he  
17 went into his driveway, heard something rumbling when he came  
18 out of his driveway, came, walked back up in the driveway  
19 after he parked on the street and found something laying in  
20 the driveway and picked it up. It's my opinion that that  
21 device was held by the magnets underneath the driver's side of  
22 that car.

23 Q Did you personally examine that area, sir?

24 A Yes, sir, I did.

25 Q Let me show you what's been marked Government Exhibit 21

1 B and ask if you recognize what's depicted there?

2 A Yes.

3 Q Would you point out to the jury, please, what's depicted  
4 there?

5 A The underneath side of the car that was backed into the  
6 driveway by Mr. Shay, Sr. and it shows the markings of where  
7 scraping has occurred under the driver's side of that vehicle.

8 Q Showing you Government Exhibit 21 C is that an  
9 enlargement of that area, sir?

10 A Yes, it is.

11 Q And making sure that everyone in the jury can see,  
12 please, would you tell us what significance -- what findings  
13 you made and what significance you attached to them?

14 A The purpose in looking under the car was to verify that  
15 the device had been there, not only to go by what the person  
16 said but to confirm what he said, so we put the car on a lift  
17 and got underneath the car and you could see the scraping  
18 marks in several locations underneath the car. The car is  
19 typically, cars have another coating to protect the metal.  
20 This undercoding was scraped away in several places where  
21 something had slid along.

22 Q Were there any other findings to your knowledge, sir,  
23 forensically with respect to what was left there?

24 A Yes, there was.

25 Q What was left there?

1       A     Underneath the car we saw small fragments of magnet,  
2     little chunks where pieces of magnet had been broken off. We  
3     also found a small sample of orange paint, and the orange  
4     paint matched the paint that was on the smaller magnets that  
5     was on the device.

6               MR. LIBBY: Can I have a moment, your Honor. Thank  
7     you, Mr. Waskom. Your Honor, I have nothing further at this  
8     time, reserving the right to recall Mr. Waskom at a later  
9     time.

10                       Cross-examination by Mr. Segal

11       Q     Mr. Waskom, isn't it true that you have several opinions  
12     about why that device went off on October 28th, 1991?

13       A     I have several opinions as to what could have set it off,  
14     that is correct.

15       Q     One of them is it could have received the signal you  
16     demonstrated; is that correct?

17       A     That is true.

18       Q     Isn't another that it could have received a signal from  
19     somewhere other than the intended transmitter?

20       A     Yes, sir; that's definitely true.

21       Q     Such as a remote control apparatus opening a garage door?

22       A     It's a possibility, yes.

23       Q     A toy car in the neighborhood being used by a child?

24       A     Yes, sir.

25       Q     There are a lot of things in that neighborhood putting

1 out radio signals that could have activated this device; isn't  
2 that fair to say?

3 A I would say that is fair to say, yes.

4 Q And there could be other reasons why it went off also,  
5 isn't that fair to say?

6 A Yes, sir.

7 MR. SEGAL: I'd ask to renew my motion for the  
8 instruction at this time based on this testimony.

9 THE COURT: No, I don't think there is any need, can  
10 you certainly argue the point.

11 Q Mr. Waskom, did you personally examine the physical  
12 evidence for identification?

13 A Is your understanding did I examine the evidence and the  
14 numbering and the tags that were put on to make sure.

15 Q No, no, just the physical evidence at the scene, did you  
16 do an exam for identification purposes. In other words, did  
17 you look at it and determine what it was or did you leave that  
18 to the lab?

19 A No, I attempted to do that, sir.

20 Q Did you use a microscope to analyze any physical  
21 evidence?

22 A No, sir. We did not have a microscope there.

23 Q Did you rely on Ms. Wallace and the lab on that for the  
24 analysis?

25 A As far as the microscopic analysis, yes, sir.

1 Q Did you do component identification?

2 A Yes, sir.

3 Q Isn't it true that magnets are fairly commonly used to  
4 place bombs under cars?

5 MR. LIBBY: Objection, your Honor.

6 THE COURT: Well, are we not -- you got into some of  
7 that. He can have that question, but I think we want to  
8 separate out the two portions of Mr. Waskom's testimony.  
9 Members of the jury, he's coming back again to give us  
10 additional testimony at a later date, and we're now -- the  
11 lawyers know what he's going to say. I have some notion of  
12 what he's going to say and Mr. Segal was about to get into the  
13 second half of Mr. Waskom's testimony.

14 A The question is --

15 THE COURT: Are they fairly common?

16 THE WITNESS: They are common to attach devices to  
17 metal. They are not used to attach all devices to a vehicle.

18 Q They are common to attach the devices to the bottom of  
19 the car?

20 A It's a very restrictive question as far as whether  
21 they're common to attach devices to the bottom of the car.  
22 They have been used before, yes.

23 Q And you know that from your experience?

24 A Yes, sir.

25 Q Weren't the batteries in this device connected to the

1 firing circuit wired with battery snap connectors?

2 A In the firing circuit, sir.

3 Q Yes?

4 A Yes, sir, they were.

5 Q Weren't the leg wires connected by twisting and secured  
6 by tape?

7 A The two yellow leg wires from the blasting caps were  
8 twisted and tape, yes.

9 Q But not soldered from your examination?

10 A But not soldered, that's correct.

11 Q Is it possible to test the bomb circuit with a volt  
12 ohmmeter or other commercial circuit tester?

13 A Yes, it would be possible.

14 Q You said it would be possible to test it with a light  
15 bulb, but there are other ways to test it, also?

16 A There are other ways that it could be tested.

17 Q Let me show you what I've marked for identification as  
18 Defendant's Exhibit 68. Is this a volt ohmmeter?

19 A Yes, this is a volt ohmmeter.

20 Q Would you just hold that up. How would you use that to  
21 test the circuitry in this particular device that you talked  
22 about?

23 A If you wanted to know if voltage was present in a certain  
24 circuit, you could turn the knob to where it was reading  
25 voltage, touch the two terminals from the contacts to two

1 different points in the circuit and it would tell you how much  
2 voltage was present in that circuit.

3 Q In that volt ohmmeter you can purchase for about ten or  
4 \$12, it's a common device in your experience?

5 A It's a fairly common device.

6 Q Would you expect a person with engineering background to  
7 use such equipment as that as opposed to an ordinary light to  
8 test the circuitry?

9 MR. KELLY: Objection, your Honor.

10 THE COURT: Well, I don't know if that's an expert  
11 question or a speculative question.

12 MR. SEGAL: Based upon his experience.

13 THE COURT: His experience as a bomb technician.

14 MR. SEGAL: Just his general experience.

15 THE COURT: The objection is sustained.

16 MR. LIBBY: Thank you, your Honor.

17 Q I think you said the circuit in this particular device  
18 had 45 volts; isn't that correct?

19 A The firing circuit had 45 volts.

20 Q And you only needed 1 and a half volts to be detonated?

21 A One and a half volts would have performed the procedure.

22 Q Now, if I might have Government's Exhibit 36,. Now, I'm  
23 going to show you what's in evidence as Government's Exhibit  
24 36 C which is one the items from the Radio Shack purchase of  
25 October 18, 1991. This is a -- that's the light bulb?

1 A Exhibit 36 is two small light bulbs.

2 Q All right. And I'll represent that that matches the  
3 purchase on Exhibit 33 A which is the October 18th Radio Shack  
4 receipt. How many volts are in those light bulbs?

5 A How many volts are in the light bulbs?

6 Q Well, what does it say about volts on that exhibit?

7 A From the package I'm presuming that the light bulbs came  
8 out of, it says 7 and a half volts.

9 Q Well, I have another one here just that I purchased this  
10 morning; is that the same, 7 and a half volts?

11 A Well, it also says 7 and a half volts, yes.

12 Q Isn't it fair to say that the way that that device is  
13 configured, if you use that light bulb in it to test it, it  
14 would blow it right out, it would blow out the light bulb  
15 right away?

16 A It may not be instantaneous, but it would not last for a  
17 period of time, yes.

18 Q Because you've got 45 volts going against 7 and a half  
19 volt light bulb; isn't that correct?

20 A That's correct.

21 Q Isn't it fair to say that from the work you've done on  
22 this case that the only item recovered from the bomb debris  
23 that is, that is connected with the purchase on October 18th,  
24 1991 at the Radio Shack was the toggle switch. Well, let me  
25 ask it this way.

1 MR. LIBBY: Objection.

2 THE COURT: He may answer the question.

3 A Yes, the toggle switch that was in the device is  
4 consistent with the exact toggle switch that was purchased,  
5 I'm not -- I don't totally recall everything else that was on  
6 that purchase.

7 Q Let me show you Government Exhibit 33 A which is a blowup  
8 of that October 18th purchase. Now, there was -- what else  
9 was purchased, 4 AA battery holder?

10 A What was purchased and it's listed by stock number and  
11 then description and quantity and price, four AA battery  
12 holder was one item.

13 Q There were no remnants of that particular item found at  
14 the bomb scene; isn't that correct?

15 A That is correct, that particular holder was not found.

16 Q Now, we've talked about the toggle switches model No.  
17 275-602, and you say the same generic model was found in the  
18 bomb, right?

19 A I'm saying the exact same model of the bomb was found.

20 Q Now, the next item is 2721133, those are the two lamps  
21 that we just spoke about; am I right?

22 A Yes, sir, that is correct.

23 Q And no remnants of those two lamps were found at the bomb  
24 scene; isn't that correct?

25 A That is correct.

1 Q The next items is a plastic lamp holder, no remnants of  
2 that were found at the bomb scene; isn't that correct?

3 A We did not find plastic lamps.

4 Q The next two items are these project boxes which I  
5 believe match the numbers, 270223, 270220, are those the other  
6 two items that match the purchase on that toggle switch, on  
7 that date. Yes?

8 A Yes, sir, there are.

9 Q These two items are not connected in any way with testing  
10 that circuit; isn't that fair to say. These are project  
11 boxes, wouldn't you call them project boxes?

12 A They call them project boxes or experimental boxes, yes.

13 Q These items remnants of those weren't found at the bomb  
14 scene?

15 A We could not identify any remnants of those, that is  
16 correct.

17 Q And it's your theory, isn't it, that the light bulbs  
18 could have been used to test the circuit; isn't that right?

19 A Yes, sir.

20 Q You could have just as easily though used an ohmmeter;  
21 isn't that fair to say?

22 A An ohmmeter would be a little more difficult to use than  
23 just attaching a light bulb to it. Also an ohmmeter would  
24 give a measurement of electrical energy because it's what it  
25 is. It measures energy. It doesn't just say whether it's

1       there or not.

2       Q       It's important to measure the energy to know how much you  
3       have in connection with that device, isn't it?

4       A       If you put five nine-volt batteries in a series on takes  
5       something that takes much less, you wouldn't need the energy  
6       of a nine-volt battery.

7       Q       If you were at the Paladin Press, sir?

8       A       Yes, sir, I have.

9       Q       And doesn't the Paladin Press, to your knowledge, sell  
10       manuals to the public on how to build explosive devices?

11       A       That's one of the things they do, yes, sir.

12       Q       Let me show you, are you familiar with this manual which  
13       is marked Defendant's Exhibit 65 from the Paladin Press  
14       entitled improvised explosives manual?

15       A       By being familiar, I've seen it before, yes, sir.

16       Q       Would you turn to page 49 of that exhibit?

17       A       Yes, sir.

18       Q       Now, is there a schematic there of a radio receiver and  
19       firing circuit?

20       A       Yes, sir.

21               MR. LIBBY: Your Honor, please, excuse me. Before we  
22       start showing anything to the jury out of an exhibit that's  
23       been marked for identification, we would not show anything to  
24       the jury on something that's not in evidence.

25               THE COURT: It isn't in evidence. None of it is in

1 evidence.

2 MR. SEGAL: This is 65 A. I'm using this as a chalk  
3 to Mr. Waskom to demonstrate.

4 MR. LIBBY: I haven't seen this chalk.

5 THE COURT: Wait a minute. Please.

6 THE COURT: Members of the jury, let us suspend now  
7 because I need to talk to the lawyers about a number of  
8 things. We will resume at 9 o'clock on Monday morning, and  
9 again I remind you, having in mind particularly the time  
10 between then and now not to talk about the case, not to read  
11 about it, et cetera. Have a good weekend, I'll see you Monday  
12 at nine.

13 [Whereupon, the jury leave the courtroom.]

14 THE COURT: Please be seated. Mr. Waskom, you're  
15 excused until Monday at 9 as well.

16 THE WITNESS: Thank you, your Honor.

17 THE COURT: Now, first the issue of this chalk.

18 MR. SEGAL: Very simply, your Honor, in connection  
19 with our exhibits which is only ID, we sent the Government  
20 this particular manual, Exhibit 65, which has on it the  
21 schematic, and then I'm asking Mr. Waskom about -- which is  
22 the same schematic Ms. Gertner asked him about -- I simply did  
23 a Xerox and blew it up so that everybody could see it, because  
24 I would like him to do exactly what he did in the first trial  
25 which is point out the differences in similarities between

1 this device and what's out there in the public on page 49. He  
2 could go over, I guess --

3 THE COURT: And the purpose of this is to show that  
4 anybody can do it?

5 MR. SEGAL: These things are readily available and  
6 permitted this --

7 THE COURT: Why shouldn't he be allowed to do that?

8 MR. LIBBY: First, as a matter of principle, I've  
9 never seen this before today. This particular item. Mr.  
10 Segal has had access to virtually every chalk, every exhibit,  
11 every piece of evidence.

12 THE COURT: You'll have the opportunity to examine it  
13 over the weekend.

14 MR. LIBBY: I've had reference to this manual, but no  
15 specific page reference and no indication at all until he  
16 started showing something from a matter which was marked for  
17 identification only in front of a jury until now. We would  
18 object, as matters presently stand. We would have objected to  
19 the introduction, this evidence, it would be marked for  
20 identification.

21 MR. SEGAL: I want to use it as a chalk which is the  
22 same way Ms. Gertner used it and it's the same --

23 THE COURT: I don't understand why he can't use it to  
24 demonstrate to the jury that it doesn't take somebody of  
25 particular knowledge to do that. I understand the purpose of

1       that.

2               MR. SEGAL: That's what it was in the first trial and  
3       that's the purpose.

4               MR. LIBBY: It wasn't used in the trial for any  
5       evidentiary value. Your Honor, I had it marked for  
6       identification because counsel was waving it in front of the  
7       jury. Now, for any meeting here I understand he may be able  
8       to establish this foundation for Mr. Waskom. You know simply  
9       it's out in there in the public somehow.

10              THE COURT: Hold it. You will have the weekend.  
11       Mr. Waskom will have the weekend to look at it so he can then  
12       examine about it. But in the future, Mr. Segal please don't  
13       show the jury something until we have decided whether the jury  
14       can or cannot see it. That takes care of that.

15              There are some other motions. You can be seated if  
16       you wish.

17              MR. SEGAL: Thank you.

18              THE COURT: One of them is the defendant's motion in  
19       limine to exclude certain other 404(b) evidence. It is in  
20       several parts. One of them has to do with evidence of the  
21       alleged solicitation by the defendant of teenage males. I  
22       allowed that motion in limine with respect to that because  
23       unlike the cases cited by the Government, in this case the  
24       defendant's homosexuality is not a central issue in the case,  
25       and the evidence -- apart from the fact of not being

1 particularly probative -- is unfairly prejudicial.

2           The second item there was the defendant's alleged use  
3 of drugs, I think for the same purpose apparently,, I find  
4 that irrelevant as well, and certainly prejudicial in today's  
5 environment. With respect to the third element, the alleged  
6 electronic eavesdropping on the roommate and the hot wiring of  
7 the garage door, that is, without question, relevant on the  
8 issue of the defendant's knowledge and expertise with respect  
9 to electronics in general. As I understand it, the  
10 Government's ample evidence of such knowledge that doesn't  
11 carry the same baggage of prejudice, and is in any event  
12 closer to the mark. There is for example -- oh, do sit down.

13           MR. LOPEZ: Your Honor, I wanted to note in the  
14 Government's brief, C D and E have been waived. The only  
15 question is with respect to B and instead of putting findings  
16 they've already waived. I thought I would bring that to the  
17 Court's attention.

18           THE COURT: There remains also the Government's  
19 motion to reconsider the allowance of Mr. Shay's motion to  
20 quash the subpoena. I have reviewed the Government's  
21 submission and read the cases that were cited, and I am  
22 persuaded that I was in error about the effect of the immunity  
23 order, that is the order does protect Mr. Shay against the use  
24 of any testimony that he will give here in both any possible  
25 subsequent state prosecutions as well as any federal

1 prosecutions. Accordingly, I do reconsider and I now deny the  
2 motion on reconsideration, deny the motion to quash the  
3 subpoena to Mr. Shay.

4 There also remains Mr. Shay's motion to quash  
5 O'Rourke, the testimony of O'Rourke, and along the same lines  
6 is the defendant's recently filed motion to quash the, to  
7 exclude statements by Mr. Shay as we count it by other  
8 people. First, let me ask, is the Government intending to  
9 proceed with any of that in light of the ruling on the motion  
10 to quash Mr. Shay?

11 MR. KELLY: Your Honor, at this point, I would ask  
12 two things: One, I will withdraw or at least suspend my  
13 motion on Mr. O'Rourke. I understand some of the  
14 sensitivities associated with that.

15 With respect to 804(b)(3) statements against penal  
16 interest by Mr. Shay, I've just only received Mr. Segal's  
17 papers within the hour. If the Court could give us over the  
18 weekend to look at some of the cases and file something in  
19 writing, I can envision a situation where Mr. Shay may  
20 nonetheless refuse to testify, and may become important to the  
21 Government to offer. I understand the Bruton issues very,  
22 very clearly.

23 THE COURT: It's more than Bruton. There's the basic  
24 confrontation clause issue which none of you have mentioned,  
25 but it's there. And given the difficulty of reliability of

1 testimony and statements in this case, I have some very  
2 serious questions that anybody can tell us what Mr. Shay said  
3 unless he be Mr. Shay and he be cross-examined. I -- we've  
4 done some fast research, and I think that given, A, that there  
5 is no -- that the indicia of reliability are thin to say the  
6 least; given that it is not a little, but a major part of the  
7 Government's case, I have some serious questions that anybody  
8 can tell us what Mr. Shay said unless it be Mr. Shay itself.

9 MR. KELLY: With respect to that for two reasons,  
10 your Honor, I would ask that we address that one early next  
11 week. One is the ruling of the Court on the other matter; and  
12 two, I haven't had a chance to look at the cases they've cited  
13 or do any research myself.

14 THE COURT: They didn't recite the cases that I'm  
15 referring to.

16 MR. KELLY: If I could have it, your Honor, on Monday  
17 I'd appreciate it.

18 THE COURT: Do we need it?

19 MR. KELLY: We may not.

20 THE COURT: So that one is moot in any event or at  
21 least it's moot as far as I'm concerned. That leaves  
22 undecided the motion of Cynthia Wallace's notes which I am  
23 still thinking about. I think that's all.

24 MR. KELLY: Your Honor, with respect to the very  
25 first ruling the Court made on evidence that the defendant's

1 past solicitation, again it may be that the Government may  
2 want to, as the case unfolds, ask the Court revisit that  
3 simply because it's the thrust of the Government's motivation,  
4 but I do understand the Court's ruling.

5 THE COURT: Thank you. Court is in recess, we'll see  
6 you at 9 Monday.

7 [Whereupon, the jury trial adjourned at 1:05, to be  
8 reconvened on November 1st, 1993 at 9 a.m.]

9  
10 **CERTIFICATE**

11 We certify that the foregoing is a correct  
12 transcription of our computer-aided stenographic notes of the  
13 proceedings in the above-entitled matter.

14 \_\_\_\_\_  
15 James E. McLaughlin

16 \_\_\_\_\_  
17 Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Voir Dire</u>
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Cynthia Wallace, resumed					
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(by Mr. Segal)	3			42	
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(by Mr. Kelly)		31			
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Thomas Waskom, sworn					
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(by Mr. Libby)	44				
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(by Mr. Segal)		124			61
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(No exhibits marked or entered into evidence.)

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Sixth Day of Trial

11  
12  
13 APPEARANCES:

14 For the Government:

15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

17  
18 For the Defendant:

19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
21 210 Commercial Street, Boston, MA. 02109.

22  
23 Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

24 November 1, 1993

25 Computer-Aided Transcription

P R O C E E D I N G S

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THE COURT: Is Mr. Waskom here?

MR. LIBBY: He's right outside, your Honor.

THE COURT: Why don't you bring him in.

THE COURT: The defendant has filed a motion to  
compel certain information about Lindholm?

MR. KELLY: Yes, your Honor, there is.

THE COURT: What's the objection?

MR. KELLY: There are a number of issues that relate  
to this situation involving --

THE COURT: When is Lindholm going to be called as a  
witness?

MR. KELLY: Not until sometime next week, your Honor.

THE COURT: In that case, do you want to respond in  
writing to this?

MR. KELLY: Either respond in writing or if we have  
five minutes at the end of the day this week, just to confer  
with the Court.

THE COURT: All right.

Mr. Segal, what do you want me to do about the letter  
you delivered to me today?

MR. SEGAL: Well, I ask, can you ask Mr. Kelly not to  
write him again. I don't think a prospective witness should  
get letters during a case.

THE COURT: Philips will be a witness in this case.

1           MR. SEGAL: I've listed him as a potential witness on  
2 my list, yes. My concern that while this case is going on he  
3 receives this letter, I just don't think he should be getting  
4 letters like that.

5           THE COURT: He's right, isn't he?

6           MR. KELLY: I'm not aware why Mr. Philips would be a  
7 witness in this case.

8           THE COURT: If he's listed as witness, Government  
9 shouldn't write him a letter that discourages him from  
10 talking.

11          MR. KELLY: If the letter doesn't discourage him from  
12 talking, and with all due respect, a copy of the letter that I  
13 sent was served on Mr. Segal and on Ms. Gertner, I wasn't  
14 attempting to communicate with this gentleman.

15          MR. SEGAL: I received a copy.

16          THE COURT: I don't understand the purpose of the  
17 letter unless it is to discourage the witness.

18          MR. KELLY: It had nothing to do with this case, your  
19 Honor. It was seen captioned United States versus Thomas  
20 Shay. It was not my intention to in any manner affect this  
21 particular proceeding. I served Mr. Segal as a courtesy.

22          THE COURT: Mr. Shay's case is finished. Why does  
23 one need to send a letter to a witness in the other case when  
24 one is listed as a witness in this case.

25          MR. KELLY: As my letter points out, I sent it out

1 only because I understand Mr. Philips also works for United  
2 States Attorney's Offices such as ours, and I had some  
3 concerns in that regard. And that's why I sent him the  
4 letter.

5 MR. SEGAL: I don't object to those concerns, your  
6 Honor. He can notify the U.S. Attorneys around the country,  
7 not to use this fellow but for a witness, a potential witness  
8 to get that letter in this case. I view that, if I got that,  
9 I'd try to keep him from testifying here. I'm not saying it  
10 that was Mr. Kelly's purpose --

11 THE COURT: What do you want me to do about it?

12 MR. SEGAL: I'll ask him not to write another letter  
13 to Dr. Philips.

14 MR. KELLY: That's a moot point. I'm not going to  
15 write this fellow any other letters.

16 THE COURT: I assumed not.

17 [Whereupon, the jury entered the courtroom.]

18 THE COURT: Good morning, please be seated.

19 Mr. Waskom, you are still under oath.

20 You may proceed.

21 MR. SEGAL: Thank you.

Thomas Waskom, resumed

Continued Direct Examination by Mr. Segal

Q Mr. Waskom, would you look at page 49 of what I identified as, for identification as Exhibit 5?

A Yes.

Q Do you see a schematic there?

A Yes, sir, there is a diagram.

Q And have you had a chance to look at 65 A for identification. Is that the same diagram that appears on 65 above?

If you want to come around, please do.

(Pause.)

MR. SEGAL: Maybe for the next question, you can stand by the diagram and use the pointer.

Q Sir, looking at Defendant's Exhibit 65 for identification which is a copy of, it is a blowup of page 49 of that Paladin Press manual. How -- is that schematic in any way similar to the bomb reconstruction you've done in this case?

A The schematic is similar in certain areas, but very different in other areas.

Q All right. Give me the areas and if you want to use the pointer, the areas that the schematic is similar.

A Well, it is similar if the fact that it still has the three systems that go into a remote control system.

MR. KELLY: Which are what, can you point them out,

1 please?

2 A Yes, sir, the fusing system, which is the slide switch,  
3 receiver, and the servo, are similar.

4 THE COURT: Can all of you see it?

5 Q Again, the diagram is similar in the systems that are  
6 involved. Remote control systems typically have three  
7 sections. They have a fusing system, a firing system and an  
8 explosive system. In this diagram which is from that  
9 publication, the antenna, receiver, slide switch and servo are  
10 the fusing system. That is the same only in the fact that  
11 both have a fusing system using these components, not  
12 necessarily in this exact order. Also the battery pack in  
13 this situation is part of the fusing system and it's also part  
14 of the firing system, only on this diagram, not on the '91.  
15 The firing system itself, a second portion of remote control  
16 devices in this case uses a battery pack. In the '91 it had a  
17 separate set of batteries for the firing system, goes to a  
18 switch. '91 had a toggle switch. This is a microswitch. A  
19 microswitch is -- performs the same function as an on-and-off  
20 switch, but it is a totally different switch. It's not  
21 similar in construction and not similar in actual purpose.

22 The firing system also has a conductor necessary to  
23 make a circuit.

24 The explosives system in this particular diagram,  
25 doesn't show an explosives system. It shows three, I believe,

1 three flash bulbs. The '91 device had two detonators,  
2 blasting caps, that would have been hooked in the same place  
3 or generally the same place as the three flash bulbs were.

4 Q Let me show you, if you want to stand there, that's  
5 fine. Defendant's Exhibit 66 for ID, another the Paladin  
6 Press publication of September '91, Federal Bomb Intelligence,  
7 and I direct your attention to page 150, would you look at the  
8 schematic on that page and see if I accurately reproduced it  
9 here in the courtroom.

10 A What page did you say, sir?

11 Q 150.

12 A Yes, sir.

13 Q All right.

14 Using the pointer, would you once against tell us,  
15 the similarities between Exhibit 66.

16 Using the schematic in front of you, which is  
17 Defendant's Exhibit 66 A for identification, Mr. Waskom, would  
18 you please tell us the similarities that you find between that  
19 schematic, which is page 150 of the Federal Bomb Intelligence  
20 Digest published by Paladin Press in September 1991, and the  
21 1991 device?

22 A Okay. The device that's on the schematic which is a copy  
23 on page 150 of the publication that was discussed, shows a  
24 remote control system, again, three sections, fusing, firing,  
25 and the explosives section.

1           The fusing section starts here. I believe it is B 1,  
2   it is little blurred, B 1 is batteries for the receiver.  
3   Conductor connects into S 1 which is not listed.

4           S 1, which is not listed, which would apparently be  
5   the receiver. The wire also connects on to -- that's wrong.

6           B 1 is the batteries. S 1 is the slide switch,  
7   on-and-off switch for the receiver system itself.

8   Q   Is that similar to the slide switch you made in this  
9   schematic on the '91?

10   A   It is in a similar place. By looking at this I can't say  
11   it is the same switch.

12   Q   Okay.

13   A   If I follow the conductor from the slide switch, go on to  
14   the receiver, the receiver shows an antenna which is typical  
15   of remote control receivers, then the conductor goes on to M 1  
16   which is a servo motor, remote control systems have those four  
17   components in their kit. They have the power source,  
18   on-and-off switch, a receiver, and a servo motor.

19           On the firing side which would be in this portion,  
20   we're showing a power source, okay, B 2, which is a six-volt  
21   battery, from the six-volt-one terminal six-volt battery  
22   conductor from S 2, S 2 is an on-and-off switch. It doesn't  
23   really specify what type. The conductor comes out of that  
24   switch and goes to C 1. C 1 is a blasting cap, so it does  
25   depict the blasting cap, which would be the explosives part,

1 and then back to the batteries.

2 It also shows another component, a light bulb, a  
3 small diagram view of what a light bulb would be. The light  
4 bulb in this position would tell you if this switch was turned  
5 on or turned off, also wired in the way it is wired in now.  
6 At same time the light bulb would tell you that blasting cap  
7 would function because it is also wired into the system.

8 C 1 would be the explosives portion of the device,  
9 the third section, and depicting here it is listed as a  
10 blasting cap. Blasting caps have one purpose and that's to  
11 set off the main charge, a high explosives material.

12 Q I think you said the schematic has one blasting cap. I  
13 think you found in this case there were two blasting caps,  
14 sir?

15 A Yes, sir, that is correct.

16 Also it shows here at the top, a monofilament line, a  
17 fishing line, a small fishing line that connects the servo  
18 motor to S 2 which is the switch. So, when the arm on the  
19 servo motor moved, apparently it would pull this fishing line  
20 which is attached to the switch and turn the switch from off  
21 to on or on to off. Depending on how they had it set up.

22 Q How about on the left, what's that thing that looks like  
23 a television sets thing on the left? Is that the transmitter?

24 A Yes, sir, that's the transmitter, yes.

25 Q Is it fair to say what's depicted in schematic has

1 basically the same components as the '91 device?

2 A With the exception of apparently a recharger for the  
3 transmitter, monofilament fishing line, we found no evidence  
4 of being affixed in or attached to the '91 light bulb and the  
5 '91 also had two blasting caps.

6 Q Besides those four elements, are there two of these  
7 devices similar? Beside the four you just listed, one the  
8 four was well, -- let me become up. In the schematic there is  
9 one blasting cap. In the device there's two, right?

10 A Yes.

11 Q Taking that aside, you mentioned three other differences  
12 between this schematic and the '91 device; am I correct?

13 A I believe that's correct.

14 Q Are there any other differences?

15 MR. LIBBY: Objection, your Honor, as to components?

16 MR. SEGAL: Yes, as to components.

17 A Well, it shows, it shows S 2, a switch, but I don't know  
18 what type of switch.

19 Q Okay.

20 A The other components that are portrayed appear similar,  
21 it looks as though there's only one battery, typically that  
22 would be a battery pack.

23 Q Okay.

24 A Basically the three major groups are there.

25 Q The three major groups being the fusing system, the

1 firing system, and what's the third one?

2 A The third one is the explosives system.

3 Q Could you resume the witness stand, please, sir.

4 (Pause.)

5 Q To your knowledge, are these books from Paladin Press  
6 readily available to the public?

7 A Would you explain readily available?

8 Q Well, could you or I just write to Paladin press and  
9 purchase either those two books I put in front of you?

10 A It's my understanding, you can, yes.

11 Q Have you ever seen either of these books before this  
12 case?

13 A I had heard of the improvised explosives manual. I don't  
14 know that I had actually physically looked at it. The second  
15 one, Federal Bomb Intelligence, no, I don't believe I've seen  
16 it.

17 Q Mr. Waskom, was the transmitter recovered during the  
18 investigation in this case?

19 A No, sir, it was not.

20 Q In connection with the main charge, did Ms. Wallace give  
21 you the test results to examine; do you understand my  
22 question?

23 A No, sir.

24 Q I believe she's testified that the main charge was  
25 ammonium dynamite. Did you make an independent examination of

1       that finding?

2       A     No, sir, I'm not a chemist.

3       Q     Did you rely on her finding for that?

4       A     Yes, sir.

5       Q     Your job is basically to reconstruct the device based  
6       upon tests of others, in connection with the case; is that  
7       fair to say?

8       A     No, sir, that's only partially true.

9       Q     All right. What's the other part that I left out?

10      A     Well, I rely on the chemist's report to identify the  
11     explosive material in a possible device. I rely on my own  
12     training and expertise as far as determining how a device is  
13     constructed, what components are used, and in what way they  
14     are used.

15               There's other reports that do also apply.

16      Q     In connection with these types of crime scene  
17     investigations, you don't do an investigation to interview  
18     people on the street, that's not your function, is it? That's  
19     somebody else's?

20      A     I do not normally interview people on the street, no,  
21     sir.

22      Q     Isn't it true, Mr. Waskom, the only time you can expect  
23     to find a paper wrapper after the detonation of dynamite is  
24     when you have a low order detonation?

25      A     No, sir. That's not actually true.

1 Q Okay. What's incorrect about that?

2 A Dynamite, the paper wrapper on dynamite is not part of  
3 the chemically formed explosive material. It is a wrapper for  
4 the dynamite. The wrapper for the dynamite is typically  
5 consumed almost totally during the explosion itself during the  
6 actual process of the explosion. There is typically small  
7 fragments of that brown paper wrapper at the scene after the  
8 explosion.

9 Q In this particular, in your investigation of the '91  
10 device I think you found that the paper wrapper had been  
11 removed; isn't that correct, sir, by the bomb maker?

12 A In the '91 we found no signs of brown paper wrapper at  
13 the scene.

14 Q Have you ever encountered that before in connection with  
15 a bomb detonation?

16 A Of the paper wrapper being removed?

17 Q Right?

18 A On rare occasions we found that, we have found where they  
19 have removed the day shift code. We have found for other  
20 reasons if they were putting the dynamite into something else  
21 they would have taken the dynamite out or the explosives  
22 material out and put it into something else.

23 Q From your experience, Mr. Waskom, is the fact that the  
24 paper wrapper had been removed suggest that the bomb maker had  
25 some specialized training?

1 A Well, I don't know whether I would term it "specialized  
2 training," maybe some experience in the past.

3 Q That he was a seasoned bomb maker?

4 A I would not sea say a seasoned bomb maker, no.

5 Q But prior experience?

6 A When you say "experience," I tend to think, you know,  
7 he's studied years in the field. I don't know that that would  
8 be true.

9 Q In this case there were two detonators and a single  
10 firing system in your investigation; is that right?

11 A Yes, sir.

12 Q Have you ever have you seen that before, in the military  
13 that type of set up?

14 A Dual prime detonators?

15 Q Yes.

16 A I have seen it in the military. In many cases it is a  
17 requirement if the military. But it's not the same as the  
18 dual primer that was used.

19 Q Because the dual priming here is just one circuit that it  
20 went into; is that right?

21 A That is correct.

22 Q Have you seen that type of set up before in the  
23 military?

24 A Yes, I have seen two detonators connected to one firing  
25 line in the military, typically for training, not for, not for

1 use.

2 Q Have you seen it taught that way in the military  
3 personnel?

4 A Military personnel is the same as any other personnel  
5 that are trained, are trained as many different ways to do  
6 something as there are, and this is a way to do something.

7 Q And you're familiar it was taught that way in the  
8 military as one of the ways?

9 A Yes, sir, I taught it that way.

10 Q Okay. When you came up to Boston on October 29th, did  
11 you participate in the search of Shay, Sr.'s garage?

12 A Not actively in the search itself. I examined items that  
13 were recovered from the garage, and I was in the garage doing  
14 the examination. I would have to say I did look around when I  
15 was in the garage also.

16 Q Was one of the items that you examined, a large piece of  
17 wood?

18 A Yes, sir, I remember a piece of wood.

19 Q Can you identify Defendant's Exhibit 12 as the piece of  
20 wood that you examined up here in Roslindale in late October,  
21 1991?

22 A If you're asking if I remember that this is the exact  
23 piece of wood that I found in the garage, no, I can't say it  
24 is.

25 Q Does it appear to be similar to that?

1 A Yes, it does appear similar.

2 Q Did you examine a paint stirrer that was found in the  
3 garage, too?

4 A I do not remember a paint stirrer, no.

5 Q Did you go to the Rolling Wrench garage and examine any  
6 items there, sir?

7 MR. LIBBY: Objection, your Honor.

8 THE COURT: Well, it is a bit beyond the scope, but  
9 not really, he may answer that.

10 A The Rolling Wrench garage.

11 Q Do you know what the Rolling Wrench garage is?

12 A No, sir. So I would say I was not there.

13 THE COURT: That's the answer.

14 Q Did you go to the Dedham Service Center and examine any  
15 items when you came up here in late October, 1991?

16 A Not to my knowledge.

17 Q All right.

18 Did you go to any location beside the Shay residence  
19 and garage to look at items in connection with your visit to  
20 Boston in October 1991?

21 A We went to a law enforcement garage where we examined the  
22 underside of the car. Other than that the only place I was at  
23 was the Shay's residence and the E-5 police station where we  
24 examined evidence.

25 Q The underside of the car you examined, you understood to

1 Mr. Shay's 1986 Buick which had been parked in the driveway of  
2 the house there?

3 A That is my understanding, yes.

4 MR. SEGAL: I would like to borrow one other  
5 exhibit.

6 Q I have some questions about this exhibit, Mr. Waskom. If  
7 it is easier for you to come down and use a pointer, please do  
8 so.

9 (Pause.)

10 Q Isn't the basic circuitry of this device quite simple?

11 A Not actually simple, no, anytime you use something that  
12 uses a radio frequency, I don't think I can say it was simple.

13 Q Let me ask this: If you substitute two bulbs for the  
14 blasting caps, doesn't the firing system contain the same  
15 components as a flash light would?

16 A If you substitute two bulbs for the blasting caps, would  
17 it contain the components of a flash light, is that your  
18 question?

19 Q Yes.

20 A It would contain the same type of components, batteries,  
21 a switch, something to conduct electricity and bulbs as you  
22 had stated.

23 Q Would you agree a flash light, like the firing circuit  
24 here, contained batteries as a power source?

25 A Well, you're if saying this is a flash light your

1 incorrect on that, but yes, a flashlight contains batteries  
2 for a power source.

3 Q And both this device and the flash light contain an on  
4 and off switch, is that fair to say?

5 A Yes, sir.

6 Q All right.

7 Isn't the Futaba fusing circuit a ready built off the  
8 shelf component of toy cars and planes?

9 A Yes, sir, it is.

10 Q This fusing circuit here didn't require any modification  
11 to the wires to use it in the bomb; is that correct?

12 A The fusing circuit?

13 Q Yes.

14 A The yellow circuit?

15 Q Yes. Tell us what the fusing circuit is, please?

16 A The fusing circuit is the Futaba system, the way it is  
17 purchased, contains battery pack, slide switch, on-and-off  
18 switch, receiver with antenna, and the servo motor with one of  
19 the horns attached, several that come with the package.

20 What was your question about the Futaba?

21 Q That this fusing circuit doesn't require any modification  
22 in the wires that are used in the bomb, just basically a ready  
23 made --

24 A That is true. There are no modifications needed for the  
25 wiring itself in the Futaba system.

1 Q By the way, the red depicts the firing circuit in the  
2 device?

3 A That is correct.

4 Q And what does that consist of? What items make up firing  
5 circuit?

6 A The firing circuit is made up of conductor which is  
7 identified by the red; the switch, on-and-off switch for the  
8 firing circuit itself, what allows current to flow or not to  
9 flow in the firing circuit or in the red conductor, five  
10 nine-volt batteries, five 9-volt, 9-volt battery press on  
11 clips; in the 1991, two blasting caps, also the soldering that  
12 was done to connect the circuit.

13 Q From your examination in this case, Mr. Waskom, doesn't  
14 it appear the bomb maker didn't do much with the fusing system  
15 except replace the batteries?

16 A In the 1991 the person that built this device, did --  
17 well they didn't replace batteries he put batteries in. It  
18 doesn't come with batteries. He did glue the components in  
19 place. He did connect the wire plugs or small plugs on the  
20 ends of the wire that just plug into the end of the receiver.  
21 It is built in the factory that way to be able to plug into  
22 the little slots that are depicted on the display.

23 He did decide how he wanted it laid out in the  
24 device. Had to be in certain places to do what he wanted to  
25 do. He needed the Futaba receiver, actually right against the

1 toggle switch itself so when it moved, it would throw that  
2 switch. So he did some planning to build it, but he did not  
3 change the Futaba receiving system itself.

4 Q The servo horn is used in that device to close the firing  
5 switch, am I correct?

6 A The servo horn, which is here, is used to close the -- to  
7 flip the lever on the toggle switch.

8 Q That is fairly common?

9 A The toggle switches are not common in remote control  
10 devices.

11 Q I misspoke. Isn't the use of a servo horn to close the  
12 firing switch fairly common?

13 A Yes.

14 Q And that was depicted in those two schematics that we've  
15 seen?

16 A Yes. That's what was done in both of the schematics  
17 although in different ways.

18 Q If you can resume the witness stand, please.

19 THE COURT: Let's stretch one moment.

20 (Pause.)

21 Q Mr. Waskom, in your experience in explosives, have you  
22 ever seen this Futaba remote control system before in any  
23 device?

24 A Yes, sir.

25 Q In explosives devices that you've encountered before?

1       A     I can't remember if they were cases that were assigned  
2 directly to me, cases that I saw. I see a lot of cases at the  
3 lab that are not necessarily assigned to me; but yes, I have  
4 seen a Futaba system.

5       Q     I think you told us from your investigation that the bomb  
6 contained four AA batteries; am I correct?

7       A     That is what the chemist's report says, and that's what I  
8 have also determined.

9       Q     Now, assume Mr. Shay, Sr., reports discovering that  
10 device around noon on October 27th and the device doesn't go  
11 off for another 24 hours, first, did you learn when the device  
12 was placed on this car?

13      A     No, sir.

14      Q     Do you have any opinion when it was placed on the car?

15      A     Not really, sir.

16      Q     Is it logical to assume that the bomber armed or turned  
17 the slide switch on when he placed it on the car?

18      A     That would be a logical assumption, yes, sir.

19      Q     And the slide switch is just that little switch on the  
20 outside of Government's Exhibit 5?

21      A     The slide switch is the one that is accessible from the  
22 outside that controls power to the fusing system, the toggle  
23 system.

24      Q     In Exhibit 5 for identification, the slide switch is  
25 this, is this little switch over here on the side; am I right?

1 A That is correct.

2 Q Do you have an opinion, Mr. Waskom, how long those  
3 batteries would last before they would not have enough current  
4 to activate the fusing system once somebody flicked that slide  
5 switch?

6 A I have not formed any test to make a positive  
7 determination of that, no.

8 Q Are you aware if anybody else in connection with this  
9 investigation at ATF did such a test?

10 A I'm not aware of anyone, no.

11 Q Would the device, in your opinion, function if the slide  
12 switch was in the off position?

13 A The device should not function with the slide switch in  
14 the off position because there would be no power to operate  
15 the receiver or the servo motor itself.

16 Q Do you have a son who has a remote control device?

17 A Yes, sir, I have.

18 Q And does he run down those batteries all the time?

19 A He does.

20 Q Were you able to determine how fresh those batteries were  
21 that were in the system?

22 A In the 1991 device?

23 Q Right?

24 A No, sir.

25 Q I think the freshness code was, what, July '94?

1 A I would have to look at the reports to remember the  
2 coding on it.

3 Q But there was no test done to determine how fresh they  
4 were because there was no way to tell that?

5 A To my knowledge, there's no way to tell that because the  
6 batteries were damaged.

7 Q Assume Mr. Shay drove around Boston on Sunday morning  
8 with the device on his car.

9 A Yes, sir.

10 Q And he drove near downtown Boston, would stray radio  
11 signals further drain the batteries on this device if it was  
12 in the on position?

13 A If the Futaba fusing system was in the on position, in  
14 other words, power was flowing to the receiver and to the  
15 servo motor and the system went to an area where it was  
16 receiving stray signals, whether it was the signal intended  
17 for it to receive or not, that would have a slight effect to  
18 the system. Because even though they are, to my term, fairly  
19 expensive, they are still not extremely sophisticated as far  
20 as blocking out other signals. Any quivering of the servo  
21 motor itself would have some drain on the battery.

22 Q From your experience with explosives, Mr. Waskom, to your  
23 knowledge, why on construction sites do you see signs that say  
24 turn off two-way radios?

25 A They have signs on construction sites for the purpose of

1 preventing RF energy, radio frequency, from possibly  
2 initiating their electric detonators, their electric blasting  
3 caps.

4 Q And why would two-way radios be any more sensitive to  
5 such a wave than my normal radio?

6 A Now, you've lost me on your question, sir.

7 Q The signs I always see say: Turn off two-way radios; am I  
8 right?

9 A Yes.

10 Q You don't, I don't remember too many signs saying: Turn  
11 off radios.

12 A That's primarily because when it says turn off two-way  
13 radios, you have the capability of transmitting. Other radios  
14 like your AM/FM radio, one, are on basically all the time;  
15 two, you don't normally use electric blasting caps underneath  
16 an AM/FM radio transmitter yourself, you're some distance  
17 away. What they are trying to preclude is a transmitter  
18 getting close to their electric detonators.

19 Q And a two-way radio has a potential to transmit, so it  
20 could be a hazard near a construction site where there's  
21 blasting; am I right?

22 A A two-way radio has the potential of being hazardous  
23 around blasting caps, period.

24 Q Let me ask you about the wooden box that is reflected in  
25 Government Exhibit 5 for identification.

1           Isn't it fair to say it was built rather  
2 painstakingly?

3       A     Yes, sir, in my determination it was.

4       Q     And the builder was very careful in what he did?

5       A     Well, I want can't say what the builder was careful of.  
6 But just the construction the box itself took some care.

7       Q     Did you have a problem getting the two 2 penny nails into  
8 the quarter-inch plywood without splitting them?

9       A     Yes, sir, I did.

10      Q     You feel you're fairly competent with woodworking?

11      A     Well, dabble is a good term, I have dabbled in it.

12      Q     How long did it take you to build this box which is  
13 Government's 5 for identification?

14           I'm talking about the one to the left that's in front  
15 of you?

16      A     That's this one. It's -- I'd have to think because I  
17 didn't just say I'm going to build it all at once. I thought  
18 about it and I would go work some and I thought about it some  
19 more and then would work some. I would estimate working  
20 continuous two to three hours.

21      Q     The cuts in that box, those weren't rough cuts, were  
22 they?

23      A     No, sir.

24      Q     Did you see blue lines drawn on the inside of this  
25 well-constructed box?

1 A You could see evidence of what looked like ink markings  
2 where lines had been drawn, yes, sir.

3 Q Would you agree it took somebody who works with wood to  
4 be able to build the box for the '91 device?

5 A I would think it would be much easier for a persons that  
6 worked with wood in the past. I can't say a person that  
7 hasn't worked with wood couldn't build it.

8 Q In terms of electronics, Mr. Waskom, what do you  
9 understand the term "shunt" to be?

10 A A shunt is, is not normally associated with electronics.  
11 It is associated with blasting caps. A shunt on a blasting  
12 cap is a small device, in the past it has typically been like  
13 aluminum foil or a small metal ring clip, that connects the  
14 two wires coming out of the blasting cap together. It is  
15 designed to prevent static electricity from building up on one  
16 leg of the blasting cap and not on the other leg. If it  
17 builds up on one and not on the other, it has the potential of  
18 flowing through the blasting cap and could probably function.  
19 By having a shunt connected to both leg wires coming off the  
20 blasting cap, there are what would be considered same  
21 potential. There is no difference in potential, so  
22 electricity would not through the cap itself.

23 Q Isn't there also a use for shunts in electronics, as well  
24 as in blasting?

25 A I'm sure there is, but I'm not, I'm not into real serious

1       electronics.

2       Q       Okay.

3               Do you know what an amp meter is, sir?

4       A       Yes, sir.

5       Q       And does it measure current?

6       A       An amp meter measures current. Current is rated in  
7       amps.

8       Q       And to your knowledge, does an amp meter have a shunt?

9       A       I don't know of, of a shunt being involved with an amp  
10       meter.

11       Q       From your investigation and reconstruction of the '91  
12       device, is it your opinion that screws were used to mount the  
13       servo motor?

14       A       In the '91 device?

15       Q       Yes.

16       A       No, sir.

17       Q       How was that servo motor mounted, according to your  
18       investigation?

19       A       From the fragments of wood that was recovered and the  
20       glue that was adhering to those fragments of wood, it is my  
21       determination that the servo motor was glued into place.

22       Q       And the servo motor and the toggle switch assembly,  
23       weren't they fairly cumbersome in this device?

24               Let me ask it this way, if you were building this  
25       device, wouldn't it have been easier to use a single relay as,

1     opposed to servo arm and toggle switch that you had to mount  
2     and glue and all that?

3     A     It could have been done. I don't know that I would say  
4     that it would have been easier.

5     Q     Wouldn't a single relay have been much more efficient  
6     than a servo arm and toggle switch assembly in the device?

7     A     The way this device is set up, it is very efficient.

8     Q     Wouldn't a single relay have been more a fail-safe device  
9     than this servo arm and toggle switch?

10    A     No, I don't think I can say it would have been, meaning  
11    fail safe to be more reliable, no, I don't.

12    Q     But it took some real effort to mount the servo arm and  
13    toggle switch. You had to do it vigorously to get it in  
14    place?

15    A     It took some planning to get it in the right position,  
16    yes.

17    Q     You wouldn't agree it would make more sense  
18    electronically to use a relay, as opposed to a servo arm  
19    toggle switch?

20           MR. LIBBY: Objection, your Honor.

21           THE COURT: The objection is sustained.

22    Q     The detonators in this case were wired in series; am I  
23    correct?

24    A     Yes, sir.

25    Q     Doesn't the U.S. military manuals suggest wiring

1     detonators in series?

2     A     The U.S. military manuals do look at series, series  
3     connections being the better ones to use for their purpose.

4     Q     In your work in the military, sir, have you wired two  
5     blasting caps in a series to prime the explosive main charge?

6     A     Yes, sir, I have.

7     Q     Mr. Waskom, is your reconstruction of the '91 device the  
8     only way that the device could have been wired?

9     A     No, sir, I can't say it is the only way that it could  
10    have been wired.

11    Q     How else could it have been wired?

12                 Well, let me ask it this way.

13                 You can't really be positive, then, about the wiring  
14    circuit of this device; this is your best estimate?

15    A     From, I don't with to call it an estimate, from the  
16    materials examined that were recovered at the scene, this is  
17    the logical way. We found no materials that indicated it was  
18    wired any differently.

19    Q     From the evidence that you examined, you felt this was  
20    the most logical way to put this device together; is that fair  
21    to say?

22    A     From the evidence and the connections that were recovered  
23    from the scene.

24    Q     Now, on the diagram that's up on the board, which is  
25    Government's Exhibit 20 for identification, next to you, there

1 are really two independent circuits in that; am I correct?

2 A Yes. There are the firing side and the fusing side.

3 Q The firing circuit has what in it, the switch and the  
4 batteries?

5 A The firing circuit has --

6 THE COURT: Haven't we gone over that, Mr. Segal,  
7 several times.

8 Q Let me ask you this: Would agree it doesn't require any  
9 particular electrical knowledge to put together that firing  
10 circuit?

11 A I don't think the normal person could do electrical  
12 wiring.

13 Q My question, though, is that particular circuit in this  
14 device, in your opinion, does it require any specialized  
15 electrical knowledge to put it together?

16 MR. LIBBY: Objection, your Honor.

17 THE COURT: Well, if he can tell us, he may answer  
18 it.

19 MR. LIBBY: The question goes to just one portion of  
20 the complex device.

21 THE COURT: That's right. He's entitled to ask about  
22 that one portion.

23 Q How about the fusing system that's in the circuit  
24 consists of what, the receiver, antenna and the slide?

25 A The fusing system consisted of the battery pack, the

1 slide switch, the receiver with antenna, and the servo motor  
2 with horn and conductor.

3 Q And that's depicted in yellow in that diagram?

4 A Yes, sir.

5 Q Would you agree with me it didn't take any great  
6 electrical knowledge to put that system together?

7 A When you buy it at the store, it comes with a set of  
8 instructions.

9 Q Does someone, in your opinion, need electrical knowledge  
10 to use the transmitter and receiver used here?

11 A I wouldn't say they had to have specific electrical  
12 knowledge. It is illustrated and comes with instructions in  
13 the instruction packet that comes with it.

14 Q All you do is turn on the firing circuit and connect the  
15 servo horn; isn't that about it?

16 A Turn on the firing circuit, that wouldn't be the proper  
17 thing to do.

18 Q What would you do if you bought this system to get it  
19 operational?

20 THE COURT: To make it operational in what context?

21 MR. SEGAL: The Futaba system.

22 A The fusing circuit. You said firing circuit.

23 Q I'm sorry, the fusing circuit.

24 A Well, it would take a little more than just turning it  
25 on. There are little connectors that have specific places or

1 plugged into. The frequency if the crystals that control the  
2 frequency aren't plugged into the receiver, those would have  
3 to be installed, which is push in a two-pronged component and  
4 hooking up the servo horn to do what you wanted it to do.

5 Q From your reconstruction of this device, sir, isn't the  
6 reel workmanship here, the craftsmanship relating to the  
7 building of that box?

8 A No, sir.

9 MR. SEGAL: No further questions.

10 THE COURT: Anything else, Mr. Libby?

11 MR. LIBBY: Yes, your Honor, briefly.

12 Redirect Direct Examination by Mr. Libby

13 Q Mr. Waskom, concerning counsels's questions generally  
14 about this Paladin Press schematics --

15 A Yes, sir.

16 Q Are you familiar --

17 Are you familiar with when these were published in  
18 those publications?

19 A Well, in looking at the copyright in the front of the  
20 book, the Federal Bomb Intelligence was 1991. It doesn't give  
21 a month for the book, entitled, Federal Bomb Intelligence. It  
22 does say it was copyrighted in 1991 by Paladin Press.

23 Q Do you recall Mr. Segal indicating they were published in  
24 September of 1991?

25 A Yes, sir, he did say September.

1 Q Now, specifically, with respect to counsel's comments  
2 about each of the two Paladin schematics, I believe you  
3 testified they were similar to the '91 schematic, in that each  
4 presented three major systems; is that right?

5 A That is correct.

6 Q Do you consider any significance, do you attach any  
7 significance to the fact that each of these two schematic from  
8 Paladin Press, in fact, presented with same three systems as  
9 the '91 schematic?

10 A The three systems are in all remote control systems. So  
11 any remote control system that we recover or find should have  
12 those three systems if it was involved in a device of any  
13 kind.

14 Q And when you are doing a comparison with respect to the  
15 two schematics we see her from Paladin, comparing that, as  
16 Mr. Segal had asked to you do, with the '91 schematic, I  
17 believe you testified that certain of the components  
18 generically were the same and others were different; is that  
19 correct?

20 A That is correct.

21 Q Do you consider those differences to be significant, sir,  
22 when making this comparison?

23 A Yes, sir.

24 Q What is significant about it?

25 A In the one that is portrayed at the bottom of the easel

1 at this point, the difference are they are using one battery  
2 pack to do everything, instead of having separate batteries  
3 for the firing circuit, which is typical of improvised  
4 explosives devices. Also, it shows the most common switch  
5 found in remote control devices, and that is a microswitch.  
6 It does show flash bulbs. This particular device had a  
7 electrical detonators.

8 Q And when you are conducting a comparative analysis, sir,  
9 between, for example, the Paladin schematic that we have on  
10 the bottom and the '91 schematic, Government Exhibit 20 for  
11 identification, do you look solely to the components?

12 A No, sir. The components are generally similar. We look  
13 at personal touches, actually, what a person does that he  
14 makes the decision on, not what comes from the factory.

15 Q For example, sir, looking to the '91 device, I believe  
16 you testified it was your opinion that the device was affixed  
17 by means of round magnets; is that correct?

18 A That is correct.

19 Q Do we see either of that -- do we see that indicated on  
20 either of these Paladin charts?

21 A No, sir, we don't.

22 Q Do we see any reference to the Paladin charts to the  
23 presence or absence of soldering?

24 A No, it is not listed on anything that I've seen that  
25 talks about soldering.

1 Q Same question with respect to presence of duct tape, is  
2 there any indication on the Paladin charts here?

3 A There is no indication of taping at all on these charts.

4 Q And finally, with respect to, I believe you testified,  
5 the touch regarding the twisting, soldering and taping of  
6 wires, particularly with respect to the battery snap  
7 connectors here in the firing circuit on the '91 device?

8 A Yes, sir.

9 Q Do we see that indicated on either of the Paladin charts?

10 A No, sir, not at all.

11 Q Speaking with respect to the main charge here, the two  
12 detonators, two blasting caps, into the main charge in the '91  
13 device?

14 A Yes, sir.

15 Q I believe you testified that you had experience with that  
16 technique in the military; is that right?

17 A Yes, sir, I have.

18 Q Is it common, in your experience, Mr. Waskom, to see that  
19 technique used outside of the military, that is, in your  
20 experience with the ATF?

21 A It is, it is not common outside of the military. And  
22 it's not actually common inside the military. It is taught,  
23 it is an understood system in the military. Typically, a  
24 dual priming system is taught to the engineers in the  
25 military. It would be one electric circuit and one

1 non-electric circuit. Basically, they're building a backup in  
2 case the initial, original circuit does not function  
3 correctly.

4 Q With respect to the batteries, Mr. Waskom, particularly  
5 counsel's question about their, I believe, shelf life and how  
6 long it lasts and so forth?

7 A Yes, sir.

8 Q Did you see any need to perform that kind of test in  
9 these circumstances?

10 A No, sir.

11 Q Why not?

12 A Mainly because the device functioned, which tells me  
13 there was enough power there for it to operate.

14 MR. LIBBY: I have nothing further, your Honor.

15 Thank you.

16 Recross-examination by Mr. Segal

17 Q Mr. Waskom, would you look at the Paladin Press  
18 publication, which is Exhibit 65 for identification, the EEOD  
19 manual. Would you look in the front for the copyright date  
20 for that, please.

21 A Copyrighted in 1990.

22 Q The device here really wasn't dual prime because it was  
23 only one firing circuit; isn't that right?

24 A The device would not fit the technical military version  
25 of what a dual prime is.

1 Q Just dual priming militarily is two firing circuits or  
2 backup, I think you told us?

3 A Well, it's what a lot of people would determine as a  
4 backup, which I did. Normally, it would be considered a  
5 second independent system.

6 Q The Paladin diagrams, the schematics, they don't show how  
7 batteries were connected in those diagrams; is that right?

8 A You mean how each individual battery was connected?

9 Q Right?

10 A That's true, it's just a diagram.

11 Q They don't show you how they're affixed to the vehicle or  
12 whatever, right?

13 A Right. That would be a person's -- a personal technique  
14 or style.

15 MR. SEGAL: May I have just a minute, your Honor?

16 (Pause.)

17 Q I think you told us THAT you didn't and a battery life  
18 test because the device went off; isn't that correct?

19 A That is true.

20 Q Assume, however, that somebody put the device on the  
21 automobile 40 hours before it went off. And then when it came  
22 off the automobile, flicked off, put the slide switch on off,  
23 and then didn't put it on again for another 10 or 15 hours, is  
24 it possible that the batteries wouldn't have run down?

25 A I'm not sure that I understand. You're saying it was on,

1 and on the car, and then came off the car. It was on the car  
2 40 hours, came off the car, someone turned it off?

3 Q I apologize, that wasn't a very good question. Let me  
4 try it again.

5 Let's assume the device was put on the vehicle on  
6 Saturday night, which is about, what, 40 hours before it went  
7 off?

8 A Well, if you saw 40 hours, I will work with that.

9 Q Okay.

10 Now, it is armed. The slide switch is on the on  
11 position.

12 A Yes, sir.

13 Q Then somebody finds it and switches the slide switch to  
14 the off position; in other words, the batteries have only been  
15 on eight or ten hours.

16 A It was on for 40 hours, now someone found it and flicked  
17 it off, and it is eight hours.

18 Q Let me try it again.

19 Let's assume somebody finds the device on their car  
20 on Sunday morning.

21 A Okay.

22 Q And takes the device, and on the outside of it you say  
23 there is a slide switch that goes on and off, right?

24 A I'm saying there would be access to that, yes.

25 Q And that person flicks the slide switch and turns off the

1 power.

2 A You're asking me to assume this?

3 Q Right.

4 A Okay.

5 Q And assume he doesn't turn the power on again for another  
6 15 or, say, another 20 hours?

7 A Okay.

8 Q Shouldn't there still be plenty of life in the batteries  
9 at that point to receive a signal to activate?

10 A Well, I haven't tested it, but I would think there  
11 probably would be. But without testing, I can't say for sure.

12 Q But assume now that the device was placed on the  
13 automobile on Saturday night, say, 40 hours before it went off  
14 on Monday. All right?

15 A Right.

16 Q And when it is placed, the switch is put in the on  
17 position.

18 A Yes, sir, it should have been.

19 Q Yes.

20 Is it your opinion that those batteries wouldn't  
21 have, have worn down in that 40-hour period?

22 A Well, haven't done tests to determine whether it would  
23 actually or wouldn't, I can say the device did function. I  
24 can say from information I received, the servo horn did move.  
25 So I would say no.

1 Q You don't know whether the device was in the on position  
2 continuously for those 40 hours from Saturday night until  
3 Monday noon, do you?

4 A That's true, I do not know whether it was on continually.

5 MR. SEGAL: Thank you.

6 THE COURT: Thank you, Mr. Waskom, you are excused,  
7 subject to be recalled later on.

8 You have may call your next witness while we  
9 stretch.

10 MR. KELLY: Your Honor, the United States calls  
11 Thomas Shay.

12 (Pause.)

13 THE COURT: Mr. Shay, will you raise your right  
14 hand.

15 Do you swear or affirm that you will tell Court and  
16 the jury the truth, the whole truth, and nothing but the  
17 truth?

18 THE WITNESS: Yes, your Honor.

19 THE COURT: How long is the direct?

20 MR. KELLY: I'm anticipating about two hours, your  
21 Honor.

22 THE COURT: You may proceed.  
23  
24  
25

Thomas Leroy Shay, sworn

Direct Examination by Mr. Kelly

Q Good morning.

Would you state your name, and spell your last name for us, please.

A Thomas Leroy Shay, S H A Y.

Q Where do you reside, Mr. Shay?

A At 39 Eastbourne Street, in Roslindale, Massachusetts.

Q How long have you lived at that address?

A Yes, since 1988.

Q And with whom do you live at that location, sir?

A Yes, Mary Flanagan and my daughter, Crysten Flanagan.

Q How old is your daughter Crysten?

A Eight years old.

Q How hold a person are you, Mr. Shay?

A 49-years old.

Q And what is your current marital status, sir?

A Divorced.

Q How many times have you been married?

A Once.

Q And to whom were you married, sir?

A Nancy Peters.

Q And does she currently go by the name Nancy Peters, to your knowledge?

A I think she goes by the name of Nancy Shay.

1 Q Can you tell us how long you were married to Mrs. Nancy  
2 Shay or Nancy Peters?

3 A 22 years.

4 Q And when were you divorced, Mr. Shay?

5 A I believe it was in 1988.

6 Q Did you have any children by that marriage to Mrs. Shay?

7 A Yes.

8 Q Can you tell us their names and approximate ages, if you  
9 know, sir?

10 A Yes, I have two step daughters. And I also have three  
11 children, Jeannie is 30; Amy is 28; Nancy is 27; Paula, I  
12 believe, is going to be 24, and Tommy is 21.

13 Q Which of those children are your natural children, as a  
14 result of your marriage to Mrs. Nancy Shay?

15 A Nancy, Paula and Tom.

16 Q You mentioned two other girls, Jeannie and Amy,  
17 apparently they are the two older girls?

18 A Yes.

19 Q They are your step daughters. Can you describe their  
20 relationship to you, sir?

21 A They are my step daughters.

22 Q They are the natural daughters of Mrs. Nancy Shay by a  
23 previous marriage, would that be correct?

24 A Yes, sir.

25 Q And is Thomas Shay, Jr., your son?

1 A He's not a junior but Thomas is my son.

2 Q You are Thomas Leroy Shay?

3 A Yes.

4 Q What is his middle name?

5 A Thomas Arthur Shay.

6 Q You are aware that for purposes of not confusing you and  
7 he, we've been referring to you as senior and he as junior,  
8 correct?

9 A Yes, sir.

10 Q Legally you are not a senior, and he's not a junior?

11 A That's true.

12 Q How old is your son, again?

13 A 21-years old.

14 Q How far did you go in school, Mr. Shay?

15 A 10th Grade.

16 Q Where was that, sir?

17 A Went through the Boston Public Schools. And I went to  
18 English High School and, also, the Boston Trade School.

19 Q Did you ever serve in the United States military,  
20 Mr. Shay?

21 A Yes, sir.

22 Q And for what branch?

23 A In the Army National Guard.

24 Q For how long, sir?

25 A Six years.

1 Q And can you give us the time frame of that service?

2 A I think it was in between 1961 through 1967.

3 Q Are you employed on a full-time basis at the present  
4 time, Mr. Shay?

5 A No, sir.

6 Q And do you perform any part-time work at present?

7 A Sometimes periodically I'll do some work, yes.

8 MR. KELLY: Your Honor, for record, Mr. Segal and I  
9 have discussed, and there's no difficulty with Mr. Waskom  
10 remaining in the courtroom for this testimony.

11 Q I'm sorry, Mr. Shay, I was distracted for a moment.

12 What if any part-time work do you perform, sir?

13 A Yes, sometimes I'll do some autobody work periodically.

14 Q Can you tell us when you ceased performing full-time  
15 employment?

16 A Yes, sir, 1989.

17 Q And do you have a month in 1989?

18 A October.

19 Q And what if anything happened in October of 1989 that led  
20 you to discontinue full-time employment?

21 A It was an incident back in 1987 that caused me permanent  
22 disability.

23 Q What was the nature of that incident, sir,?

24 A There was an explosion.

25 Q At what type of a location?

1 A It was at a gas station.

2 Q Okay. And did you have any physical or other impairments  
3 which attributed to your inability to work after that time?

4 A Yes, sir. My eyesight and hearing, and I was diagnosed  
5 with a posttraumatic stress syndrome.

6 Q Now, prior to ceasing full-time employment, what had been  
7 your full-time occupation prior to October of 1989?

8 A Yes, I was an autobody worker.

9 Q And how long had you been in the business of autobody  
10 repair prior to October of 1989, sir?

11 A 20 years, sir.

12 Q And by the way, sir, you mentioned that you had a  
13 disability as of October 1989. Do you receive Social Security  
14 disability payments at the present time as a result of any  
15 injuries or impairments that you sustained in connection with  
16 this incident you described?

17 A Yes, sir.

18 Q And approximately how much do you receive on a monthly  
19 basis in the way of Social Security payments, sir?

20 A I receive a little over \$600 a month.

21 Q Okay.

22 And you described being in the business of autobody  
23 repair. Would you tell the jury the types of activities that  
24 you engage in, or engaged in, in connection with that  
25 occupation, sir?

1 A It would consist of straightening, refinishing and  
2 replacing the auto body parts.

3 Q And do you also get involved in giving estimates on car  
4 cars that are damaged in accidents and the like?

5 A Yes, sir.

6 Q Are you an auto mechanic, Mr. Shay?

7 A No, sir.

8 Q Do you have any working knowledge of engines,  
9 transmissions, things like that, for example?

10 A No, sir.

11 Q Now, when you were operating your auto repair business on  
12 a full-time time basis, Mr. Shay, would you tell us what  
13 location or locations you performed those services at?

14 A I'll start with the last place of employment. It was a  
15 106 Washington Street in Dedham, and it was under the name of  
16 Shay Auto Body, S H A Y. And prior to that, we were at  
17 17 Rear Griggs Street, Allston, Massachusetts.

18 Q In the rear of 17 LaGrange Street?

19 A Griggs, G R I G G S.

20 Q How long were you at the location in Allston, sir?

21 A Yes, about 18 years.

22 Q Okay. And approximately how long were you at the Dedham  
23 location under the title Shay Auto Body?

24 A Yes, approximately three years.

25 Q And can you give us the time frame when you were at this

1 Dedham garage?

2 A I believe I started there in, I think it was, the summer  
3 of '86.

4 Q Okay.

5 Now, you told us you sometime perform part-time  
6 autobody work; is that correct?

7 A Yes, sir.

8 Q And would you tell us, sir, where you conduct this work  
9 when you do perform it on a part-time basis?

10 A Well, at one point, I was able to use a garage in South  
11 Boston, which my brother was a renting it with another fellow,  
12 and then I've done some work in my driveway.

13 Q And what kind work did you perform in your driveway in  
14 this field of autobody repair?

15 A I do some straightening and refinishing, replacing.

16 Q Okay.

17 By the way, what was the name the garage in South  
18 Boston that your brother used to be associated with?

19 A Yes, the Rolling Wrench.

20 Q And does your brother continue operate that garage today?

21 A No, sir.

22 Q Did he operate that garage in October of 1991?

23 A Yes, sir.

24 Q Now when you left the garage in Dedham, back in 1989,  
25 sir, did you send out some type of information to your

1 customers to alert them as to how to reach you to if they  
2 desired to have services performed by you on their vehicles?

3 A Yes, sir.

4 Q And how did you communicate with your customers in this  
5 regard, sir?

6 A I made up a preferred list of certain customers and I  
7 mailed them out a card.

8 Q Do you remember approximately how many such customers you  
9 mailed this out to, sir?

10 A It could have been maybe over a hundred.

11 MR. KELLY: Your Honor, Exhibit No. 26 to be offered  
12 without objection.

13 THE COURT: It may be marketed.

14 **[Government's Exhibit 26 entered in evidence.]**

15 Q Mr. Shay, I placed before you what has been marked as  
16 exhibit, and introduced as Exhibit 26.

17 Is that a copy of one of the postcards that you just  
18 described having mailed out to your customers?

19 A Yes, sir.

20 MR. KELLY: 26 A by agreement offered for admission.

21 Q And, Mr. Shay, is this an enlargement of the postcard,  
22 26, which is before you?

23 A Yes, sir.

24 Q Now, this postcard has a number of stamps on it. But in  
25 at least three locations, by my count, there is a telephone

1 number up in the upper left-hand corner, on the right-hand  
2 side, and at the bottom, the number is 327-7380.

3 Mr. Shay, when someone dials that number today, where  
4 does that telephone ring?

5 A Yes, that would ring at my home at 39 Eastbourne Street  
6 in Roslindale.

7 Q At the time you sent these postcards out to your existing  
8 customers in 1989, where would that phone ring if it was  
9 dialed by customers?

10 A Yes, in Roslindale, at 39 Eastbourne Street.

11 Q Now, in addition to sending out this postal card, did you  
12 from time to time continue to do some autobody repair work at  
13 a garage in West Roxbury, sir?

14 A Yes, sir, I did.

15 Q And who owns that facility, if you know?

16 A I don't know who the owner of the property is.

17 Q And did you sublease some space in that location?

18 A Yes, sir.

19 Q And for how long a period of time, sir?

20 A I believe it was three, three months.

21 Q And did you have to apply for a certificate from the City  
22 of Boston, in order to conduct business at that location,  
23 Mr. Shay?

24 A Yes, sir, I did, sir.

25 MR. SEGAL: I don't object to the document, but I do

1 object on relevance grounds. I don't object to the  
2 foundation, only to the relevance.

3 THE COURT: Why do we need all of this?

4 MR. KELLY: It goes to the jurisdictional issue, your  
5 Honor.

6 THE COURT: It may be marked.

7 [Government's Exhibit 25 entered in evidence.]

8 Q Mr. Shay, I place before you what has been marked as  
9 Government's Exhibit 25, for identification, do you recognize  
10 it, sir?

11 A Yes, sir.

12 Q Is that your signature on the document?

13 A Yes, sir.

14 Q Can you tell us what that is, please?

15 A It is a business certificate from the City of Boston.

16 Q And what is your understanding as to what that permits  
17 you to do, if anything?

18 A Yes, it permits me to do autobody work at a certain  
19 location.

20 Q After what date, sir?

21 A After what date?

22 Q After what date?

23 Is there is a date on the document?

24 A It expires 3/19 of '95.

25 MR. KELLY: Your Honor, the United States would offer

1 Government Exhibit 25.

2 THE COURT: I think we already marked it.

3 Members of the jury, when counsel talk about the  
4 jurisdictional issue, it is the interstate commerce business  
5 that I explained to you last week.

6 MR. KELLY: When you say you've already marked it, do  
7 I understand it has been admitted?

8 THE COURT: I understood that Mr. Segal had no  
9 objection to authenticity; he objected on relevance. In light  
10 of the fact that you are offering it on the jurisdictional  
11 issue, it is in evidence as Exhibit 25.

12 MR. KELLY: Thank you, your Honor.

13 Q Mr. Shay, what kind of car do you own and operate at the  
14 present time, sir?

15 A Yes, I have a 1984 Oldsmobile Cutlass Ciera.

16 Q And what kind of a car did you own and operate in October  
17 of 1991?

18 A Yes, I had a 1986 Buick Century.

19 Q And when did you purchase the 1986 Buick Century,  
20 Mr. Shay?

21 A Yes, January of 1986.

22 Q When you purchased it, did you buy it new or used?

23 A New, sir.

24 Q What color was that car, sir?

25 A Black.

1 Q I show you what's already in evidence as Exhibit 21 A, is  
2 that a photograph of your 1986 Buick Century?

3 A Yes, sir.

4 Q Do you still own or operate that vehicle?

5 THE COURT: What difference does that make?

6 MR. KELLY: Excuse me, your Honor.

7 THE COURT: What difference does that make?

8 MR. KELLY: Well, I'm going to tie it up, your  
9 Honor. With the Court's permission, there will be testimony  
10 about the vehicle. I want to make sure --

11 THE COURT: But whether he owns it today is relevant  
12 to this case?

13 MR. SEGAL: I think it is, your Honor.

14 THE COURT: Okay.

15 Q Do you still own or operate that vehicle today, sir?

16 A No, sir.

17 Q Can you tell us what happened to it, please?

18 A I gave it to a person I know.

19 Q When was that?

20 A Maybe, maybe a year and a half or so.

21 Q And do you have that person's name?

22 A Yes.

23 Q What's his name?

24 A Philip Smith.

25 Q And did Mr. Smith purchase that vehicle from you, sir?

1 A No. No moneys were exchanged.

2 Q Can you describe the circumstances of your transferring  
3 the vehicle to Mr. Smith?

4 A He was a friend of mine that needed a vehicle, and he  
5 didn't have any money. And I had another vehicle, and I gave  
6 it to Phil.

7 Q Now, during the years that you owned that vehicle, sir,  
8 did you use the 1986 Buick in connection with your business?

9 A Yes, sir.

10 Q Would you describe for us how you used it in that regard,  
11 please?

12 A Yes, sir. I used it to pick up parts, go to different  
13 insurance companies to do business; sometimes I would give it  
14 out as a loaner.

15 Q Now, typically, where did your customers for autobody  
16 repair work come from, Mr. Shay?

17 A In the Boston area and surrounding towns.

18 Q Did you ever get any customers from outside of the state;  
19 do you recall?

20 A Yes, sir.

21 Q Now, when you purchased parts for use in connection with  
22 your business, do you know where those parts were  
23 manufactured?

24 A Throughout the country, I'd say.

25 Q When you used your car to pick up parts, I assume you

1       went to some kind of an auto distributor of some kind?

2       A     Yes, sir.

3       Q     Did you use different auto distributors of parts?

4       A     Yes, sir.

5       Q     Did you also work on foreign automobiles, as well as  
6       domestic vehicles, Mr. Shay?

7       A     Yes, sir.

8       Q     And in connection with parts you may have used in  
9       connection with that type of works, do you know where those  
10      parts were manufactured?

11      A     They could have been made probably inside the country or  
12      even outside the country.

13      Q     Now, you mentioned that you also from time to time allow  
14      that vehicle to be used a loaner. Can you describe what you  
15      mean by that, please?

16      A     If I was working on a customer's car, and if they needed  
17      a car to use or if they had insurance, for the purpose of  
18      getting some moneys for use of driving, I would let them use  
19      it.

20      Q     And when you would allow a customer to take this black  
21      Buick would you place restrictions on how they could use the  
22      car, where they could go, things such as that?

23      A     No, sir.

24      Q     Now, we've seen a number of photographs, Mr. Shay, of the  
25      property at 39 Eastbourne Street. And on the photographs that

1 we've seen, from October of 1991, sir, there are depicted two  
2 other vehicles in the driveway.

3 We have referred loosely to one of them as a panel  
4 truck, and referring to Exhibit 3 B; and then there's another  
5 vehicle behind that panel truck.

6 Can you tell us, sir, first of all, identify the two  
7 vehicles that were parked in your driveway on October 28th,  
8 1991, that are indict depicted here in Exhibit 3 B.

9 A Could you bring that a little closer, sir.

10 Q Start with the truck. Can you tell us, roughly, what  
11 that is?

12 A Yes, that's a 1983 General Motors, 18-foot walk-in van.

13 Q Do you own that, sir?

14 A Yes, sir.

15 Q And how, if at all, did you use it?

16 A It's, it's not insured to be driven.

17 Q So, in October 1991, you weren't actively driving it  
18 around?

19 A No, sir.

20 Q Were you using it for any purpose?

21 A Yes, sir.

22 Q What purpose was that?

23 A The purpose when, one purpose I used it for, when I  
24 closed the shop on Spring Street, West Roxbury, I used it to  
25 move all my equipment out of that garage.

1 Q What about the vehicle behind it that you can barely see  
2 in Exhibit 3 B, what kind of vehicle is that?

3 A Yes, that's a 1969 Pontiac GTO.

4 Q And who owns that vehicle, sir?

5 A I do, sir.

6 Q And what if anything did you use that car for?

7 A That's a car that I have had for a number of years as a  
8 restoration project.

9 Q You still own those two vehicles, sir?

10 A Yes, sir.

11 Q Mr. Shay, I want to direct your attention to the date of  
12 October 28th, 1991, and ask you first, sir, what was the last  
13 autobody repair job that you performed or completed prior to  
14 that date, October 28, 1991?

15 A Yes, I had done some work on Mr. Lewis Rotman's  
16 automobile.

17 Q Where did Mr. Rotman come from?

18 A I believe, I'm not too clear from what town, either  
19 Randolph or Stoughton.

20 Q Do you recall what was with Mr. Rotman's car?

21 A Yes, sir. It had damage to the rear and left rear.

22 Q And how long were you in possession of Mr. Rotman's car?

23 A Approximately two weeks.

24 Q Do you remember the date that you completed the work and  
25 delivered Mr. Rotman's car back to him?

1 A Yes, sir.

2 Q When was that, sir?

3 A That was October the 25th, I believe. It was on a  
4 Friday.

5 Q So, do you remember what time of day on Friday, October  
6 25th, that you delivered Mr. Rotman's car back to him, sir?

7 A It was after 10 clock in the morning.

8 Q And you had had the vehicle, you say, for approximately  
9 two weeks?

10 A Yes, sir.

11 Q So would I be correct, sir, that you picked it up on or  
12 about the 12th or the 13th of October?

13 A Yes, sir.

14 Q Now, during the time that you had Mr. Rotman's car, did  
15 Mr. Rotman require a loaner vehicle?

16 A Yes, sir.

17 Q And which vehicle did you allow him to use?

18 A Yes, my 1986 Buick Century.

19 Q So, were you effectively without the use of your car, the  
20 one we've seen here in the photograph, for that two-week  
21 period immediately prior to Friday morning, October 25th,  
22 1991, at 10 a.m.

23 A Yes, sir.

24 Q Now, how did you -- how and where did you transfer  
25 Mr. Rotman's car back to him and retake possession of your

1 1986 Buick?

2 A Yes, Mr. and Mrs. Rotman had a business, I believe, in  
3 the town of Randolph, and I drove his car out there that  
4 Friday morning, and we swapped cars at the parking area where  
5 his business is.

6 Q Now, I'm going to jump ahead for a couple of minutes from  
7 that Friday, over again to Monday, October 28th, 1991. Were  
8 scheduled to do some autobody repair work on another person's  
9 vehicle that day?

10 A Yes, sir.

11 Q Whose car was that?

12 A It was a neighbor of mine, a Ruth Leary.

13 Q And do you recall what kind of a vehicle Ms. Leary  
14 owned?

15 A I believe it was a 1990 Mazda.

16 Q And what was wrong with Ms. Leary's car, if you recall?

17 A She had damage to the hood area, the roof panel, and the  
18 trunk area of her car.

19 Q And did Ms. Leary require a loaner vehicle while you were  
20 going to repair her car?

21 A No, sir.

22 Q And do you know why that was?

23 A I believe she went to Texas on some business for that  
24 week.

25 Q Did you actually pick up Ms. Leary's car on Monday,

1     October 28th, and drive it for the purpose of getting it  
2     repaired?

3     A     Yes, sir.

4     Q     Now, I want to go back to Friday, October 25th, sir, and  
5     talk for a minute, a few minutes, about the events of that  
6     weekend, Friday, Saturday, and Sunday, beginning with Friday  
7     afternoon, October 25th.

8             Can you describe your activities for us, sir, Friday  
9     afternoon and into Friday evening, as best you can recall it?

10    A     Yes, myself, Mary, and Crysten, sometime late afternoon,  
11    went down to the Boston Gardens to the circus. And after that  
12    we went to some type of a political fund raiser in the Town of  
13    Revere.

14    Q     Now, when you went to the circus in Boston on Friday  
15    afternoon, whose vehicle did you drive?

16    A     We took Mary's car.

17    Q     What kind a car does Ms. Flanagan drive?

18    A     Yes, a 1989 Lincoln town car.

19    Q     And while you were off to the circus and out for the  
20    evening, where was the 1986 Buick Century parked, sir?

21    A     It was in front of my house.

22    Q     It remained there throughout the afternoon and evening,  
23    to the best of your knowledge?

24    A     Yes, sir.

25    Q     Do you recall what time you left the house that day to go

1 to the circus, Mr. Shay?

2 A It was probably between three, 3:30 in the afternoon.

3 Q Okay. Do you recall what time it was when you returned  
4 home that night?

5 A Probably sometime midnight or after.

6 Q Let's turn to the following day, Saturday, October 26,  
7 1991, would you describe for us first, Mr. Shay, your  
8 activities during the day, on October 26th?

9 A Saturday morning, I probably stayed home. And Saturday  
10 afternoon, I was probably in the house, probably watching  
11 football games. Mary had gone out that early evening with  
12 Crysten, I believe, to some type of a Halloween party, around  
13 6:30ish, maybe a little later. I decided I wanted to get  
14 something to eat. Then I was thinking it was kind of early,  
15 I'll take a ride down to the South End, and that's what I  
16 did.

17 I drove down to South End. I went to a club down  
18 there and watched some fellows play cards. Around 8:30 I  
19 called the Chinese restaurant in Brookline, the Golden Temple  
20 restaurant, and I ordered some food. Around 8:30 I left, and  
21 left club went over to Brookline and picked up my food and got  
22 home around 9:30ish.

23 Q Let me take you back a few minutes, sir, during the  
24 course of the day, prior to a6:30 when you left to go to the  
25 South End, did you have occasion to use the 1986 Buick at any

1 time during the day on Saturday, the 26th of October?

2 A I don't think so, sir.

3 Q You say you ran some errands. Did you require the use of  
4 your vehicle to do that?

5 A When, what date?

6 Q On Saturday, the 26th, you say you may have run some  
7 errands?

8 A No, probably just things around the house.

9 Q I see.

10 A I might have walked down the store to get a paper or  
11 something.

12 Q I see. And your best recollection is that you watched  
13 football games during the afternoon on Saturday?

14 A Probably so, sir.

15 Q Now, when you left to go to the South End at around 6:30,  
16 you testified, was anyone with you, sir?

17 A No, sir.

18 Q And how did you get to the South End?

19 A I guess I drove the '86 Buick.

20 Q And for what period of time were you in the South End  
21 watching the guys play cards?

22 A I probably got down there maybe around 7 o'clock, and I  
23 left there around 8:30.

24 Q Could you describe for us, sir, what location or  
25 locations you were at during that that 90-minute period from

1 7 o'clock to 8:30 p.m. on Saturday, October 26th?

2 A I don't know the exact address, but I was parked on  
3 Shawmut Avenue in the South End section of Boston, and my car  
4 was double parked across the street from where I was.

5 Q Do you know the name of the location that you were at?  
6 Is there a name to the business?

7 A No, sir.

8 Q And your car remained double parked for the entire  
9 90-minute period?

10 A Yes, sir.

11 Q Thereafter, you say you went to a Chinese food restaurant  
12 in Brookline?

13 A Yes.

14 Q Did you have to wait for any period of time inside the  
15 restaurant for your order to be ready?

16 A I wouldn't think so, sir, because I had called up.

17 Q Okay. When you went into the location there in  
18 Brookline, where was your car parked, if you recall? Parked  
19 right outside the parking lot?

20 A There is no parking lot. It is Beacon Street. I might  
21 have found a spot on Beacon Street.

22 Q But in any event, you recall being in there a few moments  
23 to pick up the food?

24 A Yes, sir.

25 Q After you picked up your order at the Chinese food

1 restaurant, what did you do next?

2 A I went home.

3 Q And when you went home, do you remember approximately  
4 what time it was that you arrived back at 39 Eastbourne  
5 Street?

6 A Around 9:30ish.

7 Q Where did you park the vehicle at that time, sir?

8 A Out in front of the house.

9 Q Where did you typically park that vehicle when you  
10 returned home?

11 A Out in front of the house.

12 Q Why don't you park in the driveway, Mr. Shay?

13 A Because Mary usually parks in the driveway.

14 Q When you returned home at about 9:30 that Saturday night,  
15 was your fiancée or your daughter home at the house?

16 A I believe so.

17 Q Was the Lincoln Town car parked in the driveway?

18 A I believe so.

19 Q Did you receive any visitors at all that evening,  
20 Saturday evening, at the house after you had returned home at  
21 or about 9:30 p.m.

22 A I don't think so, sir.

23 Q Do you recall receiving any telephone calls at home that  
24 evening, Saturday night, the 26th, after you returned home?

25 A I don't think so, sir.

1 Q Did anything at all happen during the day on Saturday,  
2 the 26th, or that evening, in or around your house in the  
3 immediate vicinity of your house in the neighborhood that you  
4 deemed unusual or out of the ordinary?

5 A I don't think so, sir.

6 Q By the way, Mr. Shay, what if any security devices do you  
7 have at your home which protect the exterior of your  
8 residence?

9 A Yes, we have a two motion detectors. One is on the side  
10 of the house, at the driveway. And then we have one that's on  
11 the back of the garage. And we have a flood light that's on  
12 the back of the house for the backyard.

13 Q Will you describe to us how these motion detector lights  
14 function?

15 A Yes, if somebody or something were to walk by it, it  
16 would light.

17 Q And with respect to the light on the side of the house  
18 that points to the vicinity of your driveway, does a person  
19 have to walk up off the street or the sidewalk and actually  
20 into the garage before that light will activate?

21 A Yes, sir.

22 Q Did the motion detector lights at your house operate by  
23 virtue of somebody simply walking across the front of the  
24 house on the sidewalk?

25 A Not usually.

1 Q If someone was to walk in the vicinity of your 1986 black  
2 Buick, which is parked in the street in the front of your  
3 house, would that set off your motion detector lights?

4 A I wouldn't think so.

5 Q By the way, Mr. Shay, can you tell us when these motion  
6 detector devices were installed at your residence?

7 A I don't know the exact date, sir.

8 Q Okay.

9 Can you tell us why they were installed?

10 A The reason that Mary goes out early morning, five, 5:30,  
11 Mary works for the Postal Service. And when she goes out it  
12 gets very dark. That was the reason for motion lights.

13 Q Once the motion lights are activated, Mr. Shay, do they  
14 stay on for period of time?

15 A Yes, sir.

16 Q How long?

17 A I think it is three minutes.

18 Q They shut off automatically at that time?

19 A Yes, sir.

20 Q Now, in any of the days immediately prior to October  
21 28th, and why don't we go back a week, for example, in the  
22 week prior to October 28th, 1991, do you recall any instance  
23 of those motion detector lights at your home being triggered  
24 during the evening hours while you were at the residence?

25 A I'm not too clear on your question, sir.

1 Q Did you take the week period of time prior to October  
2 28th, 1991, working back a week, do you recall any instances  
3 during the evening hours when those motion detectors lights  
4 were triggered at your house in some manner other  
5 Mrs. Flanagan returning home?

6 A Well, I remember one time that a neighbor of ours had  
7 told us that they had seen somebody running out of the  
8 driveway which caused the light to go on. Whether it was a  
9 week or more, I'm not too clear on the time.

10 Q Is it your best judgment, it was within at least a couple  
11 weeks of October 28th?

12 A It could have been.

13 Q You don't have a clear memory of the time frame?

14 A No, sir.

15 Q I want to turn your attention now to Sunday, October  
16 27th, 1991, can you describe your activities that day,  
17 Mr. Shay, beginning in the morning?

18 A Yes, sir. I was probably up around 7:30 in the morning.  
19 Around 8:30 in the morning, I was going out to look at  
20 somebody's car. A friend of mine had asked me if I would go  
21 over to, I believe, it was the town of Malden or Medford to  
22 look at somebody's car and give them some advice about the  
23 accident they had had, and I agreed to do that.

24 And so I left of the house around eight, 8:30, Sunday  
25 morning. I stopped at a Burger King or McDonald's over on

1     Boylston Street in the Fenway area to go to the bathroom.  
2     From there I proceeded, and I got on to Storrow Drive, then on  
3     to 93, and I found the exit to get off at. And I proceeded  
4     down the road, and I stopped at a Dunkin Donuts to use the  
5     bathroom, which they didn't have a bathroom, and then I used  
6     an area out in back of the abandoned buildings, I believe.  
7     And then I proceeded to find the address which was only a  
8     short distance away. And I seen the fellow there that had the  
9     automobile that had some work to be done, and I gave him some  
10    advice the best thing to do.

11   Q     How long were you at the fellow's house there?

12   A     Could have been maybe about a half hour.

13   Q     Where did you go next?

14   A     From there I went over to the Old Soldiers Homes in  
15    Chelsea Naval Hospital to visit with my uncle for a short  
16    time.

17   Q     And after that, what did you do, sir?

18   A     Well my uncle had given me a couple of articles that he  
19    wanted me to give to my aunt. There I proceeded over to South  
20    Boston to a donut shop. I got a cup of coffee and a couple of  
21    donuts. And from there I went down to the Castle Island area  
22    in South Boston and had my coffee and donuts. From there I  
23    went over to my aunt's house to give her the articles that my  
24    uncle wanted me to give her. I spent a short time with her  
25    and then I went home.

1 Q What time did you leave your house that morning to go on  
2 this trip with the various jobs you just outlined?

3 A It was around 8:30.

4 Q What time was when you returned back to the house in  
5 Roslindale?

6 A Around 11:30ish.

7 Q What car what you driving that morning when you made  
8 these stops?

9 A Yes, I had my 1986 Buick.

10 Q You told us you had returned home the previous evening  
11 after stopping at the Chinese food restaurant, at about 9:30  
12 you got home. Did that car, the 1986 Buick, remain parked out  
13 in front of your house from 9:30 p.m. on Saturday until the  
14 following morning, Sunday, at about 8:30 when you left on this  
15 trip?

16 A I believe so, yes.

17 Q You didn't move it or drive it?

18 A No, sir.

19 Q Your fiancée didn't move it or drive it?

20 A I don't think so.

21 Q Does anybody else have keys to that vehicle?

22 A No, sir.

23 Q Now, along the road you just described, stopping at these  
24 various locations, sir, do you recall if you encountered any  
25 large pot holes along the way driving that morning on Sunday,

1 the 27th?

2 A No, sir.

3 Q Do you have any recollection of driving over any heavy  
4 bumps or railroad tracks?

5 A No, sir.

6 Q Do you recall hitting any speed bumps at high speeds that  
7 morning?

8 A No, sir.

9 Q And you say you returned home at about 11:30, Sunday  
10 morning. Would you tell what you did when you returned to the  
11 house?

12 A When I got home, Mary's car was parked in front of the  
13 house. I then proceeded, I backed my car into the driveway.  
14 As I was backing up, I heard a noise from underneath. I  
15 backed the car up, and I parked it. I got out of the car,  
16 went to the back of the car. I looked under the car, and I  
17 didn't see anything. Then I went into the house.

18 Q Let me stop you there for a second.

19 You say when you returned home that Mrs. Flanagan's  
20 car was parked in front of the house?

21 A Yes, sir.

22 Q Was that unusual?

23 A Yes.

24 Q I think you've already told us that she typically parks  
25 in the driveway?

1 A Yes, sir.

2 Q So, on that occasion you had to use the driveway  
3 yourself?

4 A Yes, sir.

5 Q And did you pull nose in or did you back in the driveway?

6 A I backed the car in, sir.

7 Q Now, you said you heard a sound as you were backing into  
8 the driveway. A couple of questions:

9 Are you able to describe for us the sound that you  
10 heard?

11 A Something like a bdddrd.

12 (Reporter's note: Simulation of sound.)

13 Q Did the sounds that you heard, are you able to describe  
14 it as approximating a thump or scrape or some other  
15 descriptive term?

16 A Not really, sir.

17 Q Can you tell us, Mr. Shay, prior to that Sunday morning,  
18 October 27th, had you ever had the occasion to back your 1986  
19 Buick into that driveway?

20 A Yes, sir.

21 Q Had you ever heard that sound previously?

22 A No, sir.

23 Q Are you able to tell us from what location on your car  
24 that sound appeared to be emanating from?

25 A It seemed to be right underneath me.

1 Q Are you able to tell us, Mr. Shay, where your vehicle was  
2 in the driveway when you heard this sound?

3 A As I was backing up, just getting over the crest, or  
4 right on the crest.

5 Q You heard the sound?

6 A Yes, sir.

7 Q What portion of your car was at or about the crest of the  
8 driveway when you heard the sound that you just tried to  
9 repeat?

10 A Approximately mid-point.

11 Q Did you have to do anything special, in terms of the  
12 operation of the vehicle, in other words, to get it back into  
13 the driveway?

14 A I had to give it a little gas, a little extra gas.

15 Q Why was that?

16 A Well, it was a four-cylinder car. Even though the  
17 driveway wasn't really that steep, I needed to give it a  
18 little gas to get it up.

19 Q Mr. Shay, I'm showing you what's previously been  
20 introduced as Exhibit 10 B. Do you recognize what is depicted  
21 in this photograph, sir?

22 A Yes, sir.

23 Q What is it?

24 A It is the driveway at 39 Eastbourne Street, in  
25 Roslindale.

1 Q Can you point out for us, sir, approximately where your  
2 car was in the driveway when heard the sound? You used the  
3 phrase "crest." Can you tell us where you're referring to in  
4 this photograph?

5 A (Indicating) Can I use your pointer, please.

6 Thank you.

7 Approximately in this area here.

8 Q Where, for the record, there appears to be some kind of a  
9 bend?

10 A Yes, sir.

11 Q Now, can you describe your driveway for us? I mean,  
12 there appears to be two kind of strips. What is your driveway  
13 made out of, Mr. Shay.

14 A There were two concrete strips, and in the center there  
15 is a grassy area.

16 Q Does that grassy area continue all the way to the back of  
17 the driveway?

18 A Yes, sir.

19 Q And what lies behind the two vehicles that are marked  
20 parked in the vehicle at the end the driveway.

21 A There is a garage.

22 Q And do you use that garage, Mr. Shay?

23 A Yes, sir.

24 Q What do you use it for?

25 A I got tools for my business, and just general things,

1 lawn mower and those types of things.

2 Q Now, you heard the sound, backed the car up, you stopped  
3 the car. Again, Mr. Shay, what did you do then?

4 A I got out of the car, went to the back the car, looked  
5 under the car, didn't see anything, went into the house.

6 Q Was anyone home at the time?

7 A Yes.

8 Q Who was home?

9 A Mary and Crysten.

10 Q What happened next, sir?

11 A Mary and Crysten left to go to some type of a party,  
12 around 1 clock. When Mary left, I went outside and I got into  
13 the car, and pulling the car down driveway I heard that same  
14 noise.

15 Q Go ahead.

16 A I pulled the car out to the street, and I backed the car  
17 into the house. I noticed something lying in the driveway.

18 Q Now, after Ms. Flanagan and your daughter Crysten left  
19 the house at around 1 o'clock, why did you go out to move your  
20 1986 Buick?

21 A Because I wanted to get my parking spot out in front of  
22 the house, and I wanted to do it then because I knew I wasn't  
23 going out again that day.

24 Q And you wanted to free up the driveway so that  
25 Ms. Flanagan --

1 A Could park her car.

2 Q Describe sound that you heard and where your vehicle was  
3 in the driveway at the time you heard this sound, Mr. Shay.

4 A Yes, when I was pulling down, approximately the same area  
5 as I described, I heard that pretty much the same type of  
6 noise, bdddrd.

7 (Reporter's note: simulation of sound.)

8 Q And had you ever heard that sound before on any occasion  
9 when you were pulling out of your driveway?

10 A No, sir.

11 Q And were you a able to tell where that sound was  
12 emanating from when you heard it on the vehicle?

13 A Seemed to be underneath.

14 Q And what portion of the car had reached that area of the  
15 driveway when you heard the sounds?

16 A About that mid-point.

17 Q Now, when you pulled the car out of the driveway, what  
18 actually did you do, sir?

19 A I pulled the car out of the driveway, and I backed into  
20 the curb in front of the house.

21 Q So we're clear, Mr. Shay, would you use this aerial  
22 diagram, you can just, assuming this picture that your car is  
23 not depicted, but if your car was parked in front of this  
24 panel truck, can you just demonstrate the movement of your car  
25 as it pulled out, what you have done?

1 A I would have pulled it down this way and back in this  
2 way.

3 Q You have pulled the nose of the vehicle, turned slightly  
4 to the left --

5 A Maybe slightly here.

6 THE COURT: Can't hear you.

7 Q Talk up, sir.

8 A I would probably have just pulled pretty much straight,  
9 or maybe cut a little way to this angle here, and backed it in  
10 this way in front of the house.

11 Q So that when you were finished with this move, your car  
12 would have been parked against this curb on the left side of  
13 the street facing in the direction towards the elementary  
14 school down at the corner?

15 A Well, if you were looking down the street this way, I  
16 believe probably on right side.

17 Q All right, sir. So, your car was parked -- if you're  
18 standing over here, sir, looking down the street, your car was  
19 parked on the left-hand curb, I'm looking down the street from  
20 this point, correct?

21 A Yes.

22 Q All right. Facing the school down at the corner?

23 A Yes, sir.

24 THE COURT: Why don't we take the morning recess now,  
25 and we'll continue thereafter.

1 [Whereupon, the jury was excused.]

2 THE COURT: Court is in recess.

3 I will be glad to the talk to the students in a  
4 moment.

5 [Recess.]

6 [Whereupon, the jury entered the courtroom.]

7 THE COURT: Please be seated. You may proceed.

8 MR. KELLY: Thank you, your Honor.

9 Q Mr. Shay, when we discontinued, to take the break, you  
10 had just told us that you had pulled the car up and parked it  
11 out in front of the house. After parking the vehicle in front  
12 of the house, pointing down towards the school, what happened  
13 next, Mr. Shay?

14 A This is after Mary had left.

15 Q She left, you moved the car --

16 A Yes, I noticed that there was something laying in the  
17 driveway.

18 Q So, what did you do, sir?

19 A I walked over and I observed some type of an object  
20 laying in the driveway. There was a couple of objects on it  
21 that appeared to be loose and I picked them off. I then  
22 picked up the object, looked at it, turned it over and placed  
23 it down at the side of the house. I went over to my car --  
24 these two objects that I picked up seemed to be magnets, but  
25 they didn't seem to be very heavy or very strong. I went over

1 to the car and placed them on the fender to detect whether  
2 they were magnets or not. I then opened the hood of my car  
3 and looked inside the engine compartment of my car to see if I  
4 could see anything. I didn't, I closed the hood. Then I  
5 went, I put these two round objects which were magnets, I  
6 believe on the table on the porch. I then went into the house  
7 and I sat down.

8 Q Let me stop you there. Looking at this photograph,  
9 Exhibit 10B, Mr. Shay, are you able to show us, show the jury,  
10 where in the driveway you saw this, this object after you got  
11 out of the car?

12 A Yes, in this general area here.

13 Q Was the object on the grassy area between the two  
14 concrete strips or was it actually on one of the concrete  
15 strips of the driveway?

16 A It was on the grassy area, sir.

17 Q So you walked over to the object. At that point, sir,  
18 would you describe what you saw. First of all, how large was  
19 the object?

20 A It appeared to be five or six inches wide and it appeared  
21 to be eight to ten inches long.

22 Q Eight to ten inches long?

23 A Yes.

24 Q What color was it?

25 A It was black.

1 Q Did you observe anything on the upper surface of the  
2 object.

3 A Yes.

4 Q What was it?

5 A It was a series of round objects and on each end it  
6 appeared to be two larger round objects.

7 Q Did you see any moving parts?

8 A No, sir.

9 Q Did you see any switches?

10 A No, sir.

11 Q Did you hear any noise emanating from the device?

12 A No, sir.

13 Q At that time, sir, when you first encountered this  
14 object, did you have any idea what it was?

15 A No, sir.

16 Q Did you pick the object up?

17 A Yes, sir.

18 Q And how did you handle the object when you picked it up?

19 A Just in a regular fashion.

20 Q Did you have occasion to look at the underside of the  
21 object.

22 A Yes, sir.

23 Q And in order to do that, did you have to flip the object  
24 over?

25 A Yes, sir.

1 Q And looking at the underside, what did you observe, sir?

2 A Yes. There appeared to be some type of a square, metal  
3 box.

4 Q What else did you see, if anything?

5 A There was a wire.

6 Q And where was this wire coming from, if you know?

7 A I really couldn't tell.

8 Q Do you remember what color the wire was?

9 A It appeared to be black.

10 Q And was the underside of the object also black as the top  
11 was?

12 A Yes, sir.

13 Q What was the approximate weight of the object that you  
14 were holding in your hands?

15 A I'm not too clear on that, the exact close -- maybe a  
16 couple of pounds, three pounds, maybe.

17 Q Now, at some subsequent point in the day, on October  
18 28th, 1991, were you asked by any authorities to draw a  
19 diagram of a sketch or a sketch of the object you saw in your  
20 driveway that day?

21 A Yes, sir.

22 MR. KELLY: Your Honor, at this time the United  
23 States offers without objection Government's Exhibit 24,  
24 Government Exhibit 24 A, an enlargement of the same.

25 THE COURT: It may be marked.

1                   [Government's Exhibit 24, 24A entered into evidence.]

2       Q     Mr. Shay, let me place before you what has been marked  
3       Government Exhibit 24. Sir, is that a copy of the sketch or  
4       diagram that, which you drew on October 28th, 1991?

5       A     Yes, sir.

6       Q     And am I correct, sir, that this item that I'm holding  
7       marked as Government Exhibit 24 A is an enlargement of that  
8       same diagram?

9       A     It appears to be, sir, yes.

10      Q     Now, on this diagram, Mr. Shay, you've drawn two circular  
11      items. What are you attempting to depict with that  
12      configuration, there, sir?

13      A     Those are the two objects that were on either end.

14      Q     And then there's a series of smaller circles, what are  
15      you attempting to depict with those, sir?

16      A     Those appear to be -- determined to be magnets.

17      Q     Did you say that two of these smaller items had actually  
18      become ajar, loose from the actual device?

19      A     Yes, sir.

20      Q     Now, when you picked up those two smaller objects, were  
21      they actually separated from the object you found lying on the  
22      grassy strip on your driveway?

23      A     No, they were just loose.

24      Q     They were loose, were they somehow magnetized or affixed  
25      on the surface of this object.

1 A Yes, sir.

2 Q Did you pick off those two round objects before you  
3 picked up the entire device in your hands?

4 A Yes, sir.

5 Q Did you know immediately when you picked up the two  
6 smaller circular objects that they were in fact magnets?

7 A Not until I tested them and determined that I found them  
8 to be.

9 Q You suspected them to be magnets?

10 A Yes.

11 Q You knew they were metal objects?

12 A I believed them to be.

13 Q Mr. Shay, I want to place before you what has been marked  
14 for identification as Government Exhibit No. 4, sir, and ask  
15 you whether Government Exhibit No. 4 resembles the object that  
16 you found in your driveway on October 28th, 1991?

17 A Yes, sir.

18 Q Is it approximately the same color?

19 A Yes, sir.

20 Q Same length?

21 A Approximately.

22 Q Width?

23 A Yes, sir.

24 Q And with respect to the circular objects which you  
25 observed on the upper surface of the object, while they may

1 not be in the precisely the same location or be precisely the  
2 same in number, do they appear to be similar to the objects  
3 that you observed that day?

4 A Yes, sir.

5 Q On the underside of this, Mr. Shay, there is a smaller  
6 square configuration. Did you observe anything like that on  
7 the item that you found in your driveway?

8 A Yes, sir.

9 Q And is it, is it in roughly the same location on the  
10 object that you recall, the little square configuration that  
11 you saw that day?

12 A I'm not too clear on that, sir.

13 Q If you could just hold this in your hands for a minute,  
14 Mr. Shay, and tell me whether or not the weight of this object  
15 is heavy or lighter than the object you recall picking up and  
16 handling on October 28th, 1991?

17 A Yes, this appears to be a little bit heavier.

18 Q A little bit heavier?

19 A Yes, sir.

20 Q One other question, Mr. Shay, can you show the jury, when  
21 you say you picked up the device, first of all -- and perhaps  
22 you can stand for this purpose -- show us how close to your  
23 face you held this object so you could make the observations  
24 that you've described. Okay. And you just flip the object  
25 over. Did you flip the object over like that on October 28th

1 to observe the underside?

2 A I'm not exactly sure how I flipped it over, but I  
3 probably went something like this.

4 Q Okay. You may resume your chair.

5 Now, Mr. Shay, I believe you commented that you took  
6 the two magnets that, the two circular items and you placed  
7 them on a bumper?

8 A I put them on my car, to test to see if they were  
9 magnets.

10 Q And what part of your car did you put them?

11 A On the left front fender.

12 Q And did they actually adhere to the car?

13 A They appear to be very strong.

14 Q Did they stay on the car?

15 A I didn't really see, I just put them on to see if they  
16 would stay, I just went and touched them to the fender.

17 Q And then what did you do with those two items?

18 A There's an oval table on the porch and I placed them on  
19 the table.

20 Q At some later point -- we're going to move ahead in a few  
21 moments here -- but at some later did you have occasion to  
22 remove the metal objects on your metal table on the porch and  
23 do something else?

24 A Yes, sir.

25 Q What did you do with those two magnets?

1 A I gave them to Officer Foley.

2 Q And later that day did you happen to make observations of  
3 those two small magnets again, did you see them again in some  
4 other location, the two magnets?

5 A I don't understand your question, sir.

6 Q At any subsequent point on Monday, October 28th, did you  
7 make any observations of the two circular magnets sitting or  
8 being placed somewhere?

9 A Yes, sir, Officer Foley had handed them back to me and  
10 then when we went in the back of the driveway, I had placed  
11 them on the rear part of the van.

12 Q Of the panel truck, the right panel truck?

13 A Yes, sir.

14 Q Let me show you what has been marked as Exhibit 9 C and  
15 introduced previously. This appears to be a photograph,  
16 looking downward, would you agree with me, sir, looking  
17 downward at a portion of a rear bumper of that panel truck?

18 A Yes, sir.

19 Q And do you see two round objects on that bumper, and if  
20 so do you recognize them?

21 A Yes, sir.

22 Q What are they?

23 A I believe them to be the two magnets that I had placed  
24 there.

25 Q The two items depicted in this photograph, do they look

1 similar to the items you saw that day that you just described?

2 A Yes, sir.

3 Q And are they approximately in the same basic location  
4 that you recall seeing Officer Foley place them on that  
5 bumper, Mr. Shay?

6 A I placed them on the bumper. Officer Foley had given  
7 them to me.

8 Q Are they roughly in the same location that you recall  
9 placing them at, sir?

10 A I think so.

11 Q Now, you told us, Mr. Shay, that after handling the  
12 device and placing it down, we're going to come back to that,  
13 that you went over to your vehicle and you popped the hood?

14 A Yes, sir.

15 Q Why did you do that?

16 A In the engine compartment of my car, there were two round  
17 objects, and that's the first thing that came into my mind was  
18 those two round objects in the engine compartment of my car.

19 Q So, what were you looking for when you opened the hood,  
20 sir?

21 A I have no idea.

22 Q And did you make any observations under the hood that  
23 helped you in any way understand what was lying in your  
24 driveway?

25 A No, sir.

1 Q What did you do next?

2 A At night, like I say, I closed the hood of the car and I  
3 put these round objects on the table on the porch and I went  
4 into the house, and I sat down, I proceeded to watch a  
5 football game, and I thought to myself, if this thing could be  
6 dangerous, or if it could be something that I needed, that I  
7 shouldn't leave it on the side of the driveway where I had put  
8 it, so I got up and I went outside. I went and picked it up  
9 at some point and I brought it and I put it down in front of  
10 the GTO car in back of the van.

11 Q How much time elapsed from when you went into the house  
12 after first seeing this in the driveway and placing it down  
13 and you opened the hood and went outside, how much time  
14 elapsed when you went back outside and picked up the object a  
15 second time?

16 A Just a matter of minutes.

17 Q So you turned on the TV, you sat down, and got back up  
18 again in a matter of minutes?

19 A The TV was already on.

20 Q Going back to when you first picked up the object. You  
21 made certain observations and then Mr. Shay, what did you do  
22 with the object, after you first observed it in the driveway,  
23 where did you put it, if anywhere?

24 A I'm not too sure if I understand you, sir.

25 Q After you first looked at this object we first talked

1 about, what did you do with it the first time?

2 A I placed it down at the side of the house.

3 Q And can you tell us where in the vicinity of the side of  
4 the house you placed it?

5 A Right below where the porch would be.

6 Q Would it help you to look at a photograph so you could  
7 show the jury approximately where you placed the device,  
8 Mr. Shay?

9 A Yes, sir.

10 Q Again, holding up Exhibit 10B, could you point to the  
11 location, where you placed the device after looking at it the  
12 first time, sir?

13 A In this general area, here.

14 Q All right. That's underneath some kind of a -- looks  
15 like the grate of a porch?

16 A Yes.

17 Q And between, what appears to be, a trash can and the  
18 street?

19 A Yes, sir.

20 Q And how close to the actual side of the house did you  
21 place the object, Mr. Shay?

22 A Probably within inches.

23 Q Okay. Now, describe for us how you put it down?

24 A I put it down in a fashion where you don't put anything  
25 down, just placing it down.

1 Q Did you put it down gently or did you drop it?

2 A If I had, in between putting it down gently.

3 Q How close did you get to the ground with the actual  
4 object if you released it with your hands, if you are able to  
5 tell us?

6 A Probably between one or two feet.

7 Q So you went into the house and you came back outside a  
8 few minutes later, tell us what you did, if anything, with the  
9 device when you came back out of the house?

10 A Yes, I picked it up, and I brought it down behind the van  
11 and in front of the GTO and I put it down in that area.

12 Q And when you picked it up the second time, did you make  
13 any further observations of the object, Mr. Shay?

14 A No.

15 Q Did you flip it over again to see the underside?

16 A I don't think I did.

17 Q When you placed it down the second time, can you describe  
18 how you did that?

19 A Probably in the same fashion as I did the first time.

20 Q The first time you told us you were between one and two  
21 feet. The second time you placed it between the panel truck  
22 and the GTO, approximately how far was the object from the  
23 ground before you released it to let it fall?

24 A Probably between one or two feet.

25 Q Mr. Shay, for the benefit of the jury, I'm looking at

1 what's been introduced as Government Exhibit No. 2, which is a  
2 diagram which depicts the house on 39 Eastbourne Street, the  
3 street, the driveway, the panel truck, the GTO, the garage,  
4 can you point out for the jury the precise location where you  
5 placed the object down the second time, sir?

6 A Now, is this the bumper of the GTO?

7 Q The front bumper of the GTO?

8 A Probably in this general area here.

9 Q So you placed it between the GTO and the back of the  
10 panel truck?

11 A Yes, sir.

12 Q At any point thereafter after placing it that second time  
13 did you have occasion to touch the device in any manner?

14 A No, sir.

15 Q Never picked it up again?

16 A No, sir.

17 Q Did you ever go back to make any observations of it  
18 again, that day Sunday or Sunday night October 27th?

19 A No, sir.

20 Q Now, at any time during the day on Sunday the 27th or the  
21 evening of the 27th, did you inform your fiancée, Ms.  
22 Flanagan, about the item you had discovered in the driveway  
23 that day?

24 A No, sir.

25 Q Why not?

1 A Mary and I had a little tiff, and when we do we just  
2 don't talk.

3 Q So did you not inform her about the object you had found?

4 A No, sir.

5 Q Now, did you -- directing your attention to the next day,  
6 Monday, October 28th, tell us what you did beginning, the  
7 first thing in the morning, on Monday, October 28th, Mr. Shay?

8 A I got Crysten ready for school, getting her clothes out  
9 and breakfast and those type of things, and brought Crysten to  
10 school.

11 THE COURT: And what?

12 THE WITNESS: Brought Crysten to school in West  
13 Roxbury. I had Ms. Leary's car that morning to bring Crysten  
14 to school. After I dropped Crysten off, I could see go down  
15 to South Boston where I was going to do repair work on Ms.  
16 Leary's car.

17 Q When did you take the possession or the keys to Ms.  
18 Leary's Mazda?

19 A Sometime in the afternoon.

20 Q Does Ms. Leary live somewhere in the vicinity?

21 A Yes, right next door.

22 Q Did you have occasion at any time on Monday, October  
23 28th, to drive your vehicle, the 1986 Buick century?

24 A No, sir.

25 Q So you used the Mazda to drive your daughter to school?

1 A Yes, sir.

2 Q And you proceeded directly to South Boston?

3 A Yes, sir.

4 Q And was that the garage that you previously mentioned,  
5 the Rolling Wrench garage?

6 A Yes, sir.

7 Q And again, sir, what was your purpose of going to the  
8 garage that morning?

9 A Ms. Leary's car had some damage to it and I was going  
10 there to do some repair work on her car.

11 Q And approximately how long were you at the garage that  
12 Monday morning, sir?

13 A Maybe got there 9ish, and I left there around 10:30ish.

14 Q And who was at the garage who had you contact with that  
15 morning?

16 A Yes, my brother Arthur and the fellow John Doering.

17 Q And what's your brother Arthur's association to that  
18 garage?

19 A I believe he was renting an area.

20 Q He was running a business there?

21 A Yes.

22 Q What about Mr. Doering, what was his association to the  
23 garage?

24 A Yes, I think he was also renting a space.

25 Q And that morning at the garage did you have occasion to

1 describe to your brother and this Mr. Doering what you had  
2 found in the driveway during the previous day?

3 A Yes, sir.

4 Q And did have you a conversation with Mr. Doering and your  
5 brother about this matter?

6 A Yes, sir.

7 Q And as a result of that conversation, what did you do,  
8 Mr. Shay?

9 A I told Mr. Doering and my brother what I had found, and I  
10 described it to them. And they said immediately, that doesn't  
11 sound right, and be careful, and I asked Mr. Doering, I said  
12 John, is this possible that this came off Mary's car, because  
13 Mary has a jack on her car. If you have the button in, the  
14 car shouldn't start, but I noticed when we had gone to the  
15 circus Friday we wanted to put on the security system, buttons  
16 were already in and we were using her car. So John called  
17 somebody at the Neponset Dealership to ask him if there was  
18 anything that I described to them that would be used in the  
19 security system and they said no.

20 Q Now, sir, you mentioned a Chapman, what are you referring  
21 to?

22 A It's like a security device, you know, something inside  
23 the car, if it's being stolen.

24 Q This is something that your fiancée has on her Lincoln  
25 Towne car?

1 A Yes.

2 Q Your reference is to pull the buttons in, pull the  
3 buttons out?

4 A Starting part of it, I think.

5 Q Did either Mr. Doering or your brother make any  
6 suggestions to you after this conversation about what you had  
7 found in the driveway?

8 A Like there was, making sort of statements that there  
9 could be something dangerous or something, to be careful.

10 Q And after leaving the garage, Mr. Shay, where did you go?

11 A I went up to the place, the security, a place where Mary  
12 had her Chapman put on your car.

13 Q What was your reason for going there?

14 A Well, I wanted to check to make sure to see if they do  
15 put anything like that, type of architect under the car for  
16 the purpose of some type of security system.

17 Q And did you actually go into the business there?

18 A No.

19 Q First of all, where was this business that you stopped  
20 at?

21 A Yes, it's on Summer Street on West Roxbury.

22 Q And do you know the name of the business?

23 A I'm not too clear of the exact business name.

24 Q Do you know what business they're in?

25 A It's a security system for cars and radios and those

1 types of systems.

2 Q And why didn't you go inside?

3 A I seen a fellow that I believe owned the business in the  
4 parking area.

5 Q Did you have a conversation with him?

6 A Yes, sir.

7 Q And what if anything did they tell you --

8 MS. GERTNER: Objection.

9 MR. KELLY: I'll withdraw that.

10 Q As a result of any contact that had you with that  
11 individual, what did you do next, and don't tell us what you  
12 told. What did you do next after conversing with this fellow  
13 in the parking lot?

14 A Yes, I went to the area E police station.

15 Q Okay. And why did you do that?

16 A Because I wanted to report to the police I had found  
17 something in my driveway.

18 Q And with whom did you speak at the West Roxbury Police  
19 Station?

20 A I talked to a detective, I think his name is Maloney, I'm  
21 not clear on his name.

22 Q Could it be Maloney?

23 A Yeah.

24 Q Do you remember what day you were at the West Roxbury  
25 Police Station, Mr. Shay?

1 A Probably after 11 o'clock sometime.

2 Q And what did you tell the detective?

3 A I told him what I had found in my driveway and I told him  
4 what work I had done down the street, and I asked him about it  
5 and he made a phone call to somebody to see if there was  
6 something like that under a car, and he got a negative  
7 response to that. And he said to me, maybe we should call the  
8 bomb squad. I told him I didn't think that was necessary and  
9 he said to me, better safe than sorry, and I agreed.

10 Q What, if anything, did Detective Maloney instruct you to  
11 do from that point?

12 A Instructed me to go home.

13 Q What did you do?

14 A I went home.

15 Q Tell us what happened next?

16 A I was waiting for somebody to come by and what to  
17 expect. At first, a female officer came by, an Officer Kraft,  
18 and I went outside and I met her, and she says to me where is  
19 it, and I said back here. We walked back together. She  
20 immediately knew and looked down, it's nothing I recognize.  
21 Let's make our report. So she went to a car to get some  
22 paper. I invited her to come to the house to make out the  
23 report in which she did. A few minutes later, we heard,  
24 called to name, called up Officer Kraft, Officer Kraft. So we  
25 go outside, and I believe it was Sergeant Creavin, so we're

1 standing outside. The two officers from the bomb squad  
2 appear.

3 Q So what happened next?

4 A So, we're standing there, and I'm describing to the  
5 officers what I had found, where I had found it, and I told  
6 him about the two round objects. So I went up on the porch  
7 and I got the two objects and I handed them to Officer Foley.  
8 He handed them back to me, and we all walked back to the area  
9 together. And when we got there, Officer Hurley had got down  
10 on his hands and knees and he was observing the object. We  
11 were all standing there, Officer Foley asked us to clear the  
12 area which we did. We went down, we stood on the sidewalk  
13 where the driveway area is. A minute later Officer Foley  
14 comes out and he's looking around, and he says to me, Don't  
15 worry, it doesn't look like anything. He goes back and then  
16 moments later I heard he's making a scratching noise and then  
17 the explosion.

18 Q When you say somebody moved to the front of the driveway,  
19 can you tell me specifically, sir, who was it in front of the  
20 driveway when Officer Foley came back out as you described?

21 A Myself, Officer Creavin -- Officer Kraft was next to me  
22 and then Officer Creavin.

23 Q Do you remember specifically where you were standing,  
24 sir, at that time?

25 A Right on the sidewalk.

1 Q Were there any other neighbors or other persons around at  
2 that time?

3 A I didn't notice.

4 Q Thank you. And at that time when the three of you were  
5 in the front of the driveway, before he actually came out,  
6 Mr. Foley came out, where were officers Foley and Hurley to  
7 your knowledge?

8 A They were in back of the van somewhere. I couldn't see  
9 them.

10 Q Now, at some point before Officer Foley came out and made  
11 this remark that you just described, had either Officer Foley  
12 or Officer Hurley asked you any questions?

13 A I think maybe when they first got there they went over a  
14 couple of questions, maybe, and a little conversation, and  
15 like I say, I was telling them what I had found and like I  
16 said, I went up and gave them these two objects of whom he  
17 went back there after Officer Foley had handed it back to  
18 them, I placed him on the rear of that bumper.

19 Q And you recall, sir, how long did you converse either of  
20 the two bomb squad officers before they went back for  
21 examination?

22 A Just a matter of minutes.

23 Q Do you remember the questions they may have asked you in  
24 this short conversation?

25 A No, sir.

1 Q Now, you say you've heard some kind of a sound before the  
2 actual explosion, Mr. Shay?

3 A Yes, sir.

4 Q Describe what you heard?

5 A It sounded like a scratching noise.

6 Q And then you heard an explosion?

7 A Yes, sir.

8 Q Did you make any visual observations of anything  
9 happening at the time of this explosion, sir?

10 A I saw Officer Foley leaning against the fence.

11 Q Did you see any smoke and debris?

12 A Yes, debris and smoke, yes.

13 Q Did you get hit by anything that showered over?

14 A No, sir.

15 Q And when the explosion occurred, Mr. Shay, what, if  
16 anything, did you do?

17 A At that point I just, I was just in shock, I didn't  
18 move -- like I said, it seemed like for the longest time.  
19 Officer Kraft like hitched, hitched up her belt like this, and  
20 she ran in, because, like I say, Officer Foley was laying  
21 against the fence, and he was moaning for help.

22 Q You could see Officer Foley from your vantage point  
23 looking down the driveway?

24 A Yes, sir.

25 Q Were you able to see Officer Hurley at all from your

1 vantage point?

2 A No, sir.

3 Q Looking at Exhibit 10 C, Mr. Shay, was there actually a  
4 space between this fenced area that I'm pointing to in the  
5 center of the photograph and the panel truck such that you  
6 could look down an alley?

7 A Yes, sir.

8 Q Would you have been down in this vicinity somewhere?

9 A No, I was at -- right in this area here, in front of the  
10 driveway.

11 Q Okay. What happened next, Mr. Shay?

12 A I was asking for the keys, following a vehicle that was  
13 parked across the driveway because I wanted to move and get it  
14 out of the way because I knew there were people who were going  
15 to be coming for help and I wanted to do something, I just  
16 didn't know what to do. I felt like, it was so useless,  
17 somebody yelled, I guess for towels. I ran in the house. I  
18 ran upstairs and I grabbed three towels off the bed, and I  
19 came down and gave them to somebody. I don't know exactly  
20 where it was at that time, and I had moved Ms. Leary's car  
21 because I had parked her car in front of her house, and I had  
22 moved her car, went down to the next house, get more room for  
23 emergency people coming.

24 Q And what was officer Creavin doing at this time, if you  
25 saw him?

1 A The last time I seen Officer Creavin he was in the middle  
2 of the street. He was making a call on his radio.

3 Q At any point after the explosion, Mr. Shay, did you go  
4 back to the back portion of the drive behind the panel truck?

5 A No, sir.

6 Q Why not?

7 A I just felt that I would, there was plenty of help there  
8 by then.

9 Q Did you see any other neighbors or persons come into the  
10 street to assist in any manner?

11 A I don't know -- there were people there, but I don't know  
12 if they were assisting or not.

13 Q And after you went back into the house, after delivering  
14 some towels, did you remain in the house at that point in  
15 time?

16 A I went back in the house after, after I had moved Ms.  
17 Leary's from the front of the house car down to the next  
18 house. By then the second emergency vehicle was there, and  
19 that's when I went back into the house.

20 Q Now, just a couple of quick aside questions here about  
21 Mr. Shay. When you returned home that Monday after stopping  
22 at the West Roxbury Police Station to wait for these officers  
23 that you had been instructed, were you carrying anything in  
24 your hands as you exited Mrs. Leary's Mazda?

25 A Yes, I might have had a tool box and I also carry a black

1 bag which I carry some personal items in.

2 Q This tool box, would you describe it for us, sir?

3 A It could have been a card board box.

4 MR. KELLY: Your Honor, can we suspend for a few  
5 moments. I understand that perhaps the spectators may want to  
6 file out. I'll take a few moments, your Honor.

7 (Pause.)

8 [conference at the bench, as follows:

9 THE COURT: Mr. Kelly, I understand this is a  
10 difficult trial. I wish you would stop trying to run the  
11 courtroom. If it's necessary to stop the trial, I will do  
12 that.

13 MR. KELLY: I understand that, your Honor.

14 THE COURT: Thank you.

15 ... End of conference at the bench.]

16 THE COURT: You may proceed.

17 Q Mr. Shay, let me show you what's been marked as  
18 Government Exhibit 28; do you recognize that, sir?

19 A Yes, sir.

20 Q Would you tell us what it is, please?

21 A This is my bag that I carried some personal items in.

22 Q And do you recall if you were carrying it that morning on  
23 October 28th?

24 A Yes, sir.

25 MR. KELLY: Your Honor, the United States offers

1 Exhibit 28.

2 THE COURT: No objection?

3 MR. SEGAL: No objection.

4 THE COURT: It may be so marked.

5 **[Government Exhibit 28 entered into evidence.]**

6 Q Another question before we move on, Mr. Shay, let me show  
7 you what has been previously introduced as Exhibit 54, a  
8 photograph. Do you recognize that photograph, Mr. Shay?

9 A Yes, sir.

10 Q Can you tell us what is depicted in the photograph,  
11 please?

12 A It looks like the area of the neighborhood where I'm  
13 living.

14 Q And do you know from what location that picture was  
15 taken?

16 A Yes, sir.

17 Q Where?

18 A It looks like it's on Beach Street.

19 Q And are you able to see your house in that Exhibit 54?

20 A Yes, sir.

21 Q And is it approximately right in the center of the  
22 photograph, would that be a fair description of its location  
23 on the picture?

24 A Yes, sir.

25 MR. KELLY: Your Honor, if I may publish this.

1 THE COURT: Yes.

2 Q Now, Mr. Shay, is it fair to state that on that  
3 afternoon, Monday, the 28th after that explosion, that you  
4 were questioned by the police?

5 A Yes, sir.

6 Q And during the course of your interaction with  
7 authorities in the afternoon, did the police ask your  
8 permission to look around?

9 A Yes, sir.

10 Q And did you give the police your permission to search  
11 your property in your house, your garage, your van, and all of  
12 the items and premises around your lot at 39 Eastbourne  
13 Street?

14 A Yes, sir.

15 Q Do you recall whether or not the police took custody of  
16 any physical items from you that day, October 28th, 1991?

17 A Yes, sir.

18 Q When do you recall they were taking?

19 A I was wearing a shirt that had my business name on it,  
20 and also they took some swabs of my hands.

21 Q Anything else that they took from you?

22 A I'm not too sure.

23 Q At any point on Monday the 28th or at any time  
24 thereafter, did you resist any of the requests by the police  
25 to take any items of the search any locations on your

1 property?

2 A No, sir.

3 Q Now, during the course of your being questioned by the  
4 police, Mr. Shay, were you asked about whether you had any  
5 ongoing lawsuits with anyone?

6 A Yes, sir.

7 Q And what did you tell the authorities at that time?

8 A Yes, sir. I told them, yes, there was a pending lawsuit.

9 Q And would you describe the lawsuit that was pending --  
10 strike that. Did you only have one lawsuit pending in October  
11 of 1991?

12 A Yes, sir.

13 Q And you were the plaintiff on that lawsuit?

14 A Yes, sir.

15 Q The complaining party, so to speak?

16 A Yes, sir.

17 Q And would you tell us what you told the police about that  
18 lawsuit?

19 A I told them that there was an incident back in 1987 where  
20 somebody had put -- it was described to knee as a quarter of a  
21 stick in a 55-gallon oil drum, and they ignited it in which  
22 case and there had been an explosion.

23 Q Is that the incident that you alluded to at the beginning  
24 of your testimony that led you to have a disability?

25 A Yes, sir.

1 Q And again the nature of your injuries were what, sir?

2 A My eye sight was blurred, ringing in my ears, and been  
3 diagnosed with a post traumatic stress syndrome.

4 Q And who were the defendants that you were suing in that  
5 lawsuit, Mr. Shay?

6 A Yes, there were fellows that were at the Dedham Service  
7 Center, a Jeffrey Berry and a Louis Giamarco.

8 Q And you mentioned that it was your understanding that a  
9 quarter stick had been placed in some type of an oil drum.  
10 What is your understanding of what a quarter stick is?

11 A At that time I didn't know exactly what a quarter of a  
12 stick was.

13 Q And where did you derive this phrase or this  
14 understanding of what had been placed in a drum, allegedly, in  
15 a drum?

16 A I believe my son Thomas might have mentioned it. It was  
17 some type of a powerful firework, and I believe I talked to an  
18 ATF agent and he had told me that a quarter of stick, a  
19 firework is equivalent to a quarter of a stick of dynamite.

20 Q And how close were you to this barrell at the time that  
21 this object was tossed into it?

22 A Approximately maybe 30 to 40 feet.

23 Q Now, Mr. Shay, do you have a working knowledge of the  
24 fireworks?

25 A No, sir.

1 Q Did you have any background or working knowledge of  
2 explosives, Mr. Shay?

3 A No, sir.

4 Q Have you ever received any specialized training or do you  
5 have any employment history involving explosives?

6 A No, sir.

7 Q Did you seek medical treatment for the injuries that you  
8 sustained from this explosion in the garage?

9 A Yes, sir.

10 Q Who was present at the time of that incident, sir?

11 A I could vision my son Thomas and my brother.

12 Q And is that your brother Arthur?

13 A Yes.

14 Q When you say Thomas, is he again the person that we refer  
15 to here as Thomas Shay, Jr.?

16 A Yes, sir.

17 Q You only have one son?

18 A Yes.

19 Q Now, when did you file that lawsuit against the  
20 proprietors of Dedham garage, sir?

21 A Sometime -- I think it was in 1989.

22 Q Or approximately it would be two years after the  
23 incident?

24 A Yes, sir.

25 Q And who was your attorney, the identity of your attorney

1 when that lawsuit was first initiated?

2 A Yes, Alan Pransky.

3 Q And where is Mr. Pransky's office located, if you know?

4 A It's in Dedham on East Street.

5 Q Have you had other legal services performed on your  
6 behalf by Mr. Pransky prior to this lawsuit?

7 A I think he's setting some type of a certificate one time  
8 for me so we could get some type of a license for my business.

9 Q Did Mr. Pransky remain your attorney throughout the  
10 lawsuit, Mr. Shay?

11 A No.

12 Q Why not?

13 A I believe he became some type of a witness in a lawsuit,  
14 and in turn he hired another attorney.

15 Q And as of October 1991, Mr. Shay, how much total  
16 insurance coverage did you understand was available from these  
17 defendants in connection with this lawsuit?

18 A Yes, I believe it was \$400,000.

19 Q Now, at some point were you asked to give a deposition, a  
20 sworn series of answers to questions in connection with that  
21 lawsuit?

22 A Yes, sir.

23 Q Were you in fact deposed on two separate occasions?

24 A I believe, so, sir.

25 Q And was your son Thomas also deposed, asked questions

1 under oath in connection with that lawsuit?

2 A Yes, sir.

3 Q And do you know when it was that your son Thomas gave a  
4 deposition in connection with a lawsuit, Mr. Shay?

5 A I believe it was in September of '91.

6 Q And do you recall the specific date?

7 A I'm not too sure. It could have been maybe the 13th.

8 Q The 13th of September?

9 A Maybe.

10 Q And did you actually drive your son to and from that  
11 deposition?

12 A No, I didn't.

13 Q Do you know who did?

14 A No, I don't.

15 Q Now, other than providing a deposition as a witness to  
16 this incident, did your son Thomas play any other role in  
17 connection with this lawsuit, Mr. Shay?

18 A No.

19 Q At the time that your son was summoned to give the  
20 lawsuit, where was he residing in or about September of 1991?

21 A I believe he had been living with his mother.

22 Q Do you know who if anyone reached out to contact him to  
23 have him appear at this deposition?

24 A Mr. Pransky had told me that his mother had been  
25 cooperative, to come in and do a deposition.

1 Q Did you participate in any manner in the effort to  
2 communicate with your son to have him appear at the deposition  
3 in September of 1991?

4 A I couldn't reach Tommy at that point.

5 Q This deposition, this desire to speak to your son was on  
6 the part of the lawyers for the defendants, these fellows you  
7 mentioned Mr. Berry and Mr. Giamarco, correct?

8 A I believe so.

9 Q So, in defending their lawsuit they wanted to talk to all  
10 the witnesses including your son?

11 A Yes, sir.

12 Q And did you make an effort to try and locate and find  
13 Tommy so that you could help get him to the office of the  
14 lawyer.

15 A Sometime prior to that there was an appointment for  
16 another deposition which Tommy was supposed to do, and he  
17 didn't show up for that deposition.

18 Q Well, when was the deposition first scheduled, Mr. Shay?

19 A It might have been sometime in the summertime, I'm not  
20 too sure exactly what the date was.

21 Q And have you participated in efforts to arrange to have  
22 your son Tommy show up for this deposition when it was first  
23 scheduled, sir?

24 A Yes.

25 Q And he failed to show?

1 A Yes.

2 Q And were you displeased with his failure to show for this  
3 first deposition?

4 A Yes.

5 Q Did you communicate that to him?

6 A Yes.

7 Q Did you participate in any manner to his appearance of  
8 the scheduled second deposition?

9 A I don't believe so.

10 Q In the fall of 1991, September and October of 1991,  
11 Mr. Shay, was this lawsuit important to you?

12 A Yes.

13 Q Did you express at any point to your son the importance  
14 of this lawsuit to you?

15 A Yes.

16 Q When did you next see your son after you gave this  
17 deposition on or about September 13th, 1991?

18 A Tommy had called me, I believe it was probably from his  
19 mother's house and he asked me if I would give him a ride back  
20 to North Dartmouth at the U. Mass. campus.

21 Q Did you give a ride to him?

22 A Yes, I did.

23 Q And what was your understanding as to why he was going to  
24 the U. Mass. campus in Dartmouth at that time?

25 A I believe he was with someone.

1 Q Did you meet this someone that he was living with?

2 A No.

3 Q Did he want you to meet this someone?

4 A Yes.

5 Q Did you effectively refuse to meet the person?

6 A No.

7 Q Why was it that you didn't get an opportunity to meet  
8 that person?

9 A The person wasn't home when we got there.

10 Q Do you know any of your son's friends, Mr. Shay?

11 A No.

12 Q Your involved in this lawsuit against the Dedham garage  
13 proprietors, Mr. Shay, is not the first time that you've been  
14 involved in as a plaintiff in connection with the bringing of  
15 lawsuits, is it, Mr. Shay?

16 A That's true.

17 Q How many times have you been the plaintiff or claimant in  
18 connection with legal actions filed in courts of  
19 Massachusetts, if you know?

20 A On several occasions.

21 Q Do you know how many specifically?

22 A Ten.

23 Q Can you briefly in kind of chronological sequence give us  
24 a brief overview of the nature Anne of these lawsuits and the  
25 results?

1 A Yes, we can start --

2 Q Chronologically, what's the first one you recall, sir?

3 A I was working for a lumber company and hurt my back, and  
4 I filed a lawsuit there. I was involved in an automobile  
5 accident sometime maybe in the late 60's, early '70s, I filed  
6 a lawsuit there, I slipped and fell one time at a gas  
7 station. I had another fall at the MBTA station. There was  
8 an accident in 1986. It was the explosion, 1987. There was  
9 another automobile accident back in 1981, and there's an  
10 accident in 19 -- 1990, I believe, or 1991.

11 Q Have all of these lawsuits or legal actions that you  
12 commenced been successful, Mr. Shay, have you received  
13 recovery, either by way of settlement or by way of trial?

14 A Yes.

15 Q Can you tell us, sir, what's the largest amount of money,  
16 financial recovery you've received in any of these losses?

17 A Yes, back in 1981 I was involved in an automobile  
18 accident, and they, it was a final settlement of \$98,000.

19 Q And is it fair to state that the other lawsuits have  
20 involved financial recoveries ranging from a couple of  
21 thousand dollars up to perhaps 30 or \$40,000?

22 A Not that much, sir.

23 Q You had one, that was for example a \$22,000 recovery?

24 A Yes.

25 Q Is that the second largest amount beyond the \$98,000

1 recovery in this automobile accident?

2 A No.

3 Q There was another one larger than 22,000?

4 A Yes.

5 Q How much was that?

6 A I am not going to disclose that.

7 Q You have a non-disclosure agreement?

8 A That's correct.

9 Q Were members of your family, meaning your wife, your  
10 children aware of the fact that you were a plaintiff of these  
11 various lawsuits while they were ongoing, to your knowledge?

12 A They might have had some knowledge.

13 Q Was it something that you discussed with them as a  
14 family?

15 A Not usually.

16 Q Did any members of your family get called in to serve as  
17 witnesses, for example, in connection with your lawsuits?

18 A Just Tommy.

19 Q And that's the one you just described for us, the garage  
20 incident?

21 A Yes.

22 Q To your knowledge, Mr. Shay, did you ever discuss any of  
23 these lawsuits or claims with your son Tommy?

24 A No.

25 Q Mr. Shay, describe for us, if you would, sir, the

1 relationship between yourself and your son between, while your  
2 son was between the ages of five and 18 years of age?

3 A It was very sporadic.

4 Q And why was that, sir?

5 A I was in maybe a case where I was in the house for  
6 periods of time and also periods of time Tommy was in  
7 placements.

8 Q Now, did something occur when your son Thomas was  
9 approximately the age of five years of age which led him to be  
10 removed from the family home?

11 A Yes, sir.

12 Q And what was it that had occurred at that time, sir?

13 A Tommy had had a fire in the house.

14 Q And what was the nature of the damage?

15 A Extensive damage to one bedroom.

16 Q He was only four or five years of age?

17 A Yes, sir.

18 Q What happened to him, Mr. Shay?

19 A His mother had signed him to Metropolitan State Hospital  
20 at the adolescent unit.

21 Q And did you agree with this action by your wife or did  
22 you make any efforts to stop that?

23 A I knew nothing about it.

24 Q Is it fair to state, Mr. Shay, that at that time  
25 approximately the age of 5 until he was almost the age of 18

1 that your son Thomas was in a series of different placements  
2 controlled by the Commonwealth of Massachusetts?

3 A Yes, sir.

4 Q Can you give us the names of any of the institutions or  
5 homes that you recall him being placed at during this period,  
6 sir?

7 A Like I said, the adolescent unit of the Metropolitan  
8 State Hospital, gave the unit; the Nazareth home in Jamaica  
9 Plain, and that there was a placement; the Spaulding Youth  
10 Center in New Hampshire; Fuller Memorial Hospital, I don't  
11 know which town, and then another hospital in Brookline.

12 Q And during this period of time--

13 A I'm sorry, Baird was Tommy's last place in Plymouth,  
14 Massachusetts.

15 Q During this period of time of approximately 14 years, was  
16 your son a ward of the State of Massachusetts?

17 A I don't really know he was a ward of the state or not.

18 Q Do you know whether or not he had legal custody as a  
19 parent during that 14-year period, Mr. Shay?

20 A We had some rights, but I don't think the custody went  
21 into it. I did eventually win custody of Tommy back, I  
22 believe, it was 1987.

23 Q Is it a fair statement, however, sir, between the ages of  
24 4 and 17 or 18, your son Thomas was not living with you or in  
25 the family home?

1 A That's true.

2 Q And I think you earlier described your contact with him  
3 over that period of time as sporadic?

4 A Yes.

5 Q Did you go to visit him when he was at these various  
6 institutions and placements?

7 A Yes.

8 Q Did you write him letters?

9 A Not only on occasion, maybe on an occasion, I wouldn't  
10 think --

11 Q And over this period of time, based on these sporadic  
12 contacts, what was your relationship with your son during that  
13 period?

14 A What period is that, sir.

15 Q Between the ages of five and the ages of 18 while he was  
16 in these various placements that you've described?

17 A What was our relationship?

18 Q Right.

19 A Like I say on an occasion I would visit Tommy, probably  
20 two to three times a week, maybe even before, I got to the  
21 point where I was able to take Tommy off of the -- of these  
22 places for day visits and even overnight visits periodically.

23 Q Prior to 1987 when your son was about 17 or 18, did you  
24 ever make any efforts to regain legal custody of your son,  
25 Mr. Shay?

1 A Yes.

2 Q Was it successful --

3 A Yes.

4 Q Finally in 1987?

5 A Yes.

6 Q Prior to your son being removed from the family home at  
7 the age of 5, Mr. Shay, did you ever physically abuse your  
8 son?

9 A Never.

10 Q Back at this period of time when your son was a small  
11 child, it's fair statement, is it not, that you had  
12 difficulties controlling your temper?

13 A Yes.

14 Q And during that period of time again when your son was a  
15 small child, did you ever strike or assault your wife?

16 A Yes.

17 Q Did this assaultive behavior contribute to your  
18 subsequent divorce from Nancy Shay?

19 A Yes.

20 Q Did your young son Tommy ever witness these altercations  
21 between you and your wife?

22 A Yes.

23 Q Let's go to the time that you, this began to describe,  
24 sir, in or about 1987 when you regained custody of your son.  
25 Did your son come to live with you at the time, sir?

1 A Yes.

2 Q And did you remember how old he was at that particular  
3 time in 1987, approximately?

4 A Maybe around 17.

5 Q I want to direct your attention to the time frame of May  
6 and June of 1988. Now, you had regained custody of your son  
7 in the latter part of 1987, correct?

8 A Yes. I believe so.

9 Q So your son had resided with you for like six months  
10 prior to May or June of 198, did he not?

11 A Yes.

12 Q And in May and June of 1988, where were you living at  
13 that time, Mr. Shay?

14 A Yes, I was living in Hyde Park.

15 Q Okay. And at that point did you have occasion to move to  
16 another residence?

17 A Yes.

18 Q Where did you move to?

19 A 39 Eastbourne Street in Roslindale.

20 Q The location you currently live at?

21 A Yes, sir.

22 Q And did your son Thomas move into that location with you?

23 A Yes.

24 Q And how long did your son Tommy reside with you at 39  
25 Eastbourne Street in Roslindale after the two of you moved in?

1 A Just for a short period of time.

2 Q And when you say a "short period of time," what do you  
3 mean, sir?

4 A I believe it was maybe just a few days after myself and  
5 Tommy had moved in, so that Tommy had stolen some money from  
6 me and he ran away.

7 Q So, are we talking a period of days or weeks?

8 A Just a few days, I believe.

9 Q And what happened thereafter, sir? Did he come back to  
10 live with you?

11 A A couple weeks away, Tommy came back and I was happy to  
12 see him.

13 Q Go ahead. I'm sorry.

14 A I'm sorry.

15 Q Did you have something else to add?

16 A No.

17 Q When you said your son had stolen money from you,  
18 Mr. Shay, how much money had he taken to you?

19 A \$300.

20 Q Did you ever get that money back?

21 A No.

22 Q Now, after Tommy came back running away, did he then  
23 thereafter reside with you and Ms. Flanagan for some period of  
24 time?

25 A For a day.

1 Q For a day?

2 A Yes.

3 Q What happened, Mr. Shay?

4 A I believe that day, probably Mary had gone to work and  
5 Tommy robbed myself of some silver units that I had been  
6 saving and he had robbed Mary of some personal items of  
7 jewelry, family heirlooms that Mary's mother had left for Mary  
8 and, which Mary would be leaving for Crysten and Mrs. Flanagan  
9 passed away in April of 1987.

10 Q Mrs. Flanagan meaning Mary's mother?

11 A Yes. And Mary was in a vulnerable state in her life, and  
12 she was very upset as I was by these actions of Tommy robbing  
13 us.

14 Q Are you able to estimate the approximate value of the  
15 items that were taken at that time?

16 A I believe it was probably in the vicinity of 10 to  
17 \$15,000.

18 Q Did you ever receive or obtain any of these values back?

19 A No, sir.

20 Q Did you ever discover what happened to any of those  
21 stolen items?

22 A I believe Tommy hocked some of those things, pawned them.

23 Q Pawned them, did you say?

24 A Yes.

25 Q Do you know where he may have done that?

1 A No. He was maybe led to believe it could have been --  
2 some of the stuff could have been in Boston and some other  
3 stuff in Florida.

4 Q Was your son living in other locations outside of  
5 Massachusetts beginning in or around this time frame, the  
6 spring of 1988?

7 A I don't know exactly where Tommy was living.

8 Q Is it fair to state, sir, that after this occurrence with  
9 the valuables, that you became extremely angry and upset with  
10 your son?

11 A Yes.

12 Q What, if any, action did you take with respect to whether  
13 or not your son continued to live with you there at 39  
14 Eastbourne Street?

15 A Well, I believe probably I told him, Tommy, how upset we  
16 were with him and that he wouldn't be forgiven, especially by  
17 Mary for the actions that he had taken, that he would not be  
18 able to live with us, and I also told Tommy how terrible  
19 everything that he done.

20 Q So, he was expelled from the family home?

21 A Yes.

22 Q And are you able to describe for us, Mr. Shay, the  
23 relationship between you and your son as it existed after that  
24 point, after June of 1988?

25 A Yes, strained.

1 Q Did the relationship continue to be strained up into and  
2 including the fall of 1991?

3 A Yes.

4 Q And how much contact did you have with your son, physical  
5 contact between that time, June of 1988 and the fall of 1991?

6 A Physical contact.

7 Q Yes. When you were in his presence.

8 A This is probably just a guess, probably six to 12 times.

9 Q That was a period of about three and a half years, 6 to  
10 12 times you were in each other's presence?

11 A That's a guess.

12 Q Sporadic contact?

13 A Yes.

14 Q During that 3-and-a-half year period, to your knowledge  
15 was your son residing outside of Massachusetts during any of  
16 those times?

17 A I believe he could have been.

18 Q Do you know for a fact whether he was or not?

19 A Not for a fact.

20 Q Did you ever have telephone contact with your son during  
21 that three and a half year period of time?

22 A Yes.

23 Q And how frequently?

24 A Sporadically.

25 Q Mr. Shay, I want to direct your attention to the month of

1 June, 1990, and ask you, sir, what if anything happened at  
2 that time that involved your son Tommy?

3 A There was a talk program on channel 4, the Tom Bergerand  
4 show which Tommy went on and the format of it was gay  
5 teenagers.

6 Q Do you know the name of the program that was posted by  
7 Mr. Bergerand?

8 A I think it was People Are Talking.

9 Q People are talking?

10 A I think so.

11 Q And did you watch the television show in June of 1990  
12 that your son had appeared on?

13 A Yes.

14 Q And what was your understanding as to the subject matter  
15 of the show?

16 A Gay teenagers.

17 Q Gay teenagers?

18 A Yes.

19 Q And during the course of the show did your son direct any  
20 remarks specifically to you?

21 A Yes.

22 MR. SEGAL: Judge.

23 THE COURT: This raises the issue we discussed on  
24 Friday which has not yet been resolved. Counsel were going to  
25 give me some authorities.

1 MR. KELLY: I don't think it does raise --

2 THE COURT: Well, if the next question is not what  
3 did he say, then we will not.

4 MR. SEGAL: That's what I was there for.

5 MR. KELLY: No, it's not.

6 Q As of June of 1990, prior to the airing of this  
7 television show, Mr. Shay, did you have an understanding of  
8 your son's sexual orientation?

9 A Not clear.

10 Q And thereafter, sir, did you have an understanding of  
11 your son's sexual orientation?

12 A Yes.

13 Q And what was your understanding?

14 A I believe that Tommy had come out and he said that he was  
15 gay.

16 Q Now, were you upset by your son's appearance on this  
17 television show in June of 1990?

18 A No.

19 Q Did it cause you any embarrassment with your friends or  
20 acquaintances?

21 A No.

22 Q Now, I want to direct your attention ahead to the fall of  
23 1991. You've already told us that your son was involved in  
24 giving these depositions. Mr. Shay, do you know when it was  
25 that your son actually returned to the Boston area in the

1 summer or fall of 1991, what month it might have been in?

2 A Maybe in the summertime, sometime.

3 Q Do you know where he had been residing prior to returning  
4 to the Boston area at that time?

5 A No.

6 Q Had you had telephonic contact with minimum wherever his  
7 residence happened to be?

8 A He might have called.

9 Q Did he ever say where he was?

10 A He could have been like in Florida or -- I don't even  
11 know. Maybe I can even remember it's like Washington or  
12 something like that too.

13 Q Now, during the time frame of late August and September  
14 and October of 1991, did you have contact with your son during  
15 that time frame?

16 A Yes.

17 Q On how many occasions, Mr. Shay?

18 A On a few occasions.

19 Q What would be, what was the first occasion that you had  
20 contact within that time frame?

21 A Like I said, Tommy called me from Derry, New Hampshire,  
22 the first time, he was supposed to do a deposition. I went  
23 out to Derry and I picked Tommy up and the next day he was  
24 supposed to do his deposition. He had just taken off. On  
25 another occasion, I think he was down at south end to a club,

1 on one occasion, we had gone to the Seabrook at a dog track  
2 and like I said, the indication, Tommy did do his deposition I  
3 did give him a ride to North Dartmouth.

4 Q Directing your attention--

5 A One time I gave him some money for dental work.

6 MR. KELLY: Your Honor, if I could lead the witness  
7 to avoid an issue.

8 Q Mr. Shay, I want to direct your attention for a few  
9 moments to an incident in the South End where Tommy was with  
10 you where some cars being played. There was an incident of  
11 some type that occurred that afternoon in the south end while  
12 your son was present, correct?

13 A Yes.

14 Q As a result of that occurrence, you became upset and  
15 angry with your son, did you not?

16 A Yes.

17 Q And you yelled at your son?

18 A Yes.

19 Q And following your yelling at your son, you immediately  
20 drove him home to his mother's home in Quincy?

21 A No, Dorchester.

22 Q Dorchester?

23 A Yes.

24 Q The next time you saw your son is when you went together  
25 to the dog track up in Seabrook; is that correct?

1 A Yes.

2 Q And you and some friends had rented a bus to go up to the  
3 dog track for an evening?

4 A Yes.

5 Q And was your son planning, was he scheduled to go on that  
6 trip with you?

7 A No.

8 Q Describe for us how it was that your son ended up going  
9 with you on the trip?

10 A That afternoon, around 5 o'clock, I had gone down to the  
11 South End. I was back in my car. I was on Waltham Street,  
12 close to Shawmut Avenue intersection and when I backed up the  
13 car and parked it, I woke up and I had just seen Tommy  
14 standing there.

15 Q He disappeared?

16 A He was just like all of a sudden just there.

17 Q So what happened?

18 A I asked Tommy if he wouldn't want to come to the dog  
19 track with us, and he said, yes, he would.

20 MR. SEGAL: Objection to anything that --

21 Q I'm sorry, I didn't mean to elicit that. Let me help  
22 you, Mr. Shay. You invited your son to go with you to the dog  
23 track that evening?

24 A Yes.

25 Q And what was his physical appearance as you recall it

1     that night, sir?

2     A     Tommy, he wasn't clean looking. He looked like he was  
3     tired. His hair wasn't combed. The clothing he was wearing  
4     looked like he had been wearing for a couple of days.

5     Q     He went with you to the dog track?

6     A     Yes.

7     Q     When you returned home on the bus to where your car had  
8     been parked, did you give him a ride back to his mother's  
9     house in Dorchester?

10    A     No.

11    Q     What happened, sir, without getting into anything you may  
12    have discussed, what happened, did you drive home or not?

13    A     No.

14    Q     Tell us what you did?

15    A     When we get back down to the Franklin Cafe, everybody  
16    went inside, and Tommy wrote me some type of a note describing  
17    that we did this and, you know --

18                 [Mr. Segal stands.]

19                 THE COURT: The objection to what is in the note is  
20    sustained.

21                 MR. KELLY: Sorry.

22    Q     You didn't drive your son home?

23    A     I asked Tommy if he needed a ride home, and he said no,  
24    and he left.

25    Q     What time of night was it when he left?

1 A Probably around 12 o'clock.

2 Q Midnight?

3 A Yes.

4 Q You're in the South End of Boston?

5 A Yes.

6 Q To your knowledge was your son at the time was living  
7 with his mother Nancy?

8 A Yes.

9 Q Did he tell you how he planned to get home?

10 MR. SEGAL: Objection.

11 MR. KELLY: I'm sorry, withdraw the question.

12 Q He just walked off into the darkness, Mr. Shay?

13 A Yes, he said a friend --

14 THE COURT: Don't tell us what he said, please.

15 THE WITNESS: I'm sorry.

16 Q Mr. Shay, I'm sorry. Now, as a result of seeing your son  
17 at this dog track, did you schedule an occasion to see him a  
18 few days later?

19 A Yes, sir.

20 Q What was the purpose of what you were going to see him  
21 for, without getting into discussion, what was the purpose of  
22 why you were going to see your son?

23 A You give money to Tommy for dental work.

24 Q Had you scheduled a specific time and place where you  
25 were scheduled to --

- 1 A Yes.
- 2 Q And did he appear at that time?
- 3 A No.
- 4 Q Were you upset by this?
- 5 A Yes.
- 6 Q Did you contact your son by telephone?
- 7 A No.
- 8 Q Did you express your anger to your son after you missed  
9 this appointment?
- 10 A He called me.
- 11 Q Okay. I'm sorry, he called you and during --
- 12 A Yes.
- 13 Q -- and during that conversation?
- 14 A He got upset with Tommy on the telephone.
- 15 Q You were angry. Did you scream and yell at him?
- 16 A Yes.
- 17 Q At any time in the fall of 1991 when you've had instances  
18 where you were unhappy with your son, did you ever make  
19 reference to this incident that you had earlier described in  
20 June of 1988 where you had cast him out of the house and told  
21 him that you were disappointed with the theft of these items?
- 22 A Yes.
- 23 Q Was your relationship in this time frame of  
24 September/October of 1991, did it continue to be strained?
- 25 A Yes.

1 Q Was it increasingly strained where it had been June 1988?

2 A I wouldn't think so.

3 Q Now, after the explosion that took place in your driveway  
4 on October 28th of 1991, when did you next have contact with  
5 your son, if at all?

6 A Physical contact?

7 Q Yes.

8 A Yeah, I had seen Tommy at the Dedham House of Correction.

9 Q Was anyone else present when you met with your son on  
10 that occasion?

11 A No.

12 Q Without telling us what you said, did you have a  
13 conversation with your son at that time?

14 A Yes.

15 MR. KELLY: If I may have a moment, your Honor.

16 (Pause.)

17 Q Just two quick final areas, Mr. Shay.

18 Does your son, Thomas, Jr., have any training or  
19 background in explosives, to your knowledge?

20 A Not to my knowledge.

21 Q Does he have any training or skill in electronics?

22 A I don't think so.

23 Q Does he have any training or experience in woodworking?

24 A I don't think so.

25 Q One final question, Mr. Shay. I want to show you what's

1     been marked as Exhibit 13 which is a photograph, and I believe  
2     we also have the item which has been chopped up a little.  
3     Exhibit No. 12, first of all, Mr. Shay, is the item which is  
4     depicted in Defendant's Exhibit 13, a photograph of this item  
5     that I'm holding before, and it had these two segments cut out  
6     of it?

7     A     Yes.

8     Q     And is this a piece of wood that you recognize, Mr. Shay?

9     A     Yes, sir.

10    Q     And do you know where this piece of wood was located  
11    before it came into the possession of the authorities?

12    A     Yes.

13    Q     Where was it?

14    A     In the garage.

15    Q     Now, Mr. Shay --

16    A     At 39 Eastbourne Street.

17    Q     You can see it better in the photograph because it  
18    doesn't have the pieces cut out, but it appears that something  
19    was painted on this board. Are you the person that put the  
20    paint on this board?

21    A     Yes, sir.

22    Q     Would you tell us what you were doing, and what you were  
23    painting when you used this board, sir?

24    A     Yes, I had done a job in the driveway, and what that is  
25    is, I believe it was on the 1985 Chevrolet Chevette and on the

1 -- that particular car that was hit in the left rear, it is  
2 what they call a bumper end, which is a flexible rubber or  
3 plastic piece and they used that board to place that piece on  
4 that, and scrape it.

5 MR. KELLY: I have no further questions, your Honor.

6 THE COURT: Let us stretch.

7 MR. KELLY: Your Honor, if I could publish this.

8 (Pause.)

9 THE COURT: Are you ready.

10 MR. SEGAL: Yes, your Honor.

11 THE COURT: How long will you be?

12 MR. SEGAL: I expect it will be 1, your Honor.

13 THE COURT: We're going to quit at 10 of 1 today.  
14 How much after that?

15 MR. SEGAL: Could I give you an estimate at that  
16 time?

17 THE COURT: You may proceed.

18 MR. SEGAL: Thank you.

19 Cross-examination by Mr. Segal

20 Q Mr. Shay, my name is Terry Segal. I represent Alfred  
21 Trenkler. Can you hear me all right?

22 A Yes, sir.

23 Q Is it safe to say you like to gamble?

24 A Yes, sir.

25 Q Do you gamble heavily?

1 A Sometimes, sir. It depends on what you mean by  
2 "heavily."

3 Q Do you recall ever testifying that you gamble heavily?

4 A Maybe so.

5 Q Let me read you your prior grand jury testimony on March  
6 19th, 1992, at page 117?

7 MR. KELLY: I would object to that, your Honor.

8 THE COURT: Since the witness has acknowledged having  
9 said so, I don't know why you need to read it. The objection  
10 is sustained.

11 Q Have you lost a lot of money gambling, sir?

12 A No, I wouldn't say a lot of money.

13 MR. SEGAL: I'd like to read the testimony of the  
14 grand jury on page 117.

15 Grand Juror Question: Do you gamble heavily?

16 Answer: It could be considered heavily.

17 Grand Juror Question: Have you lost a lot of money?

18 "Answer: Yes. Well, not to the extent where I mean  
19 I would go and lose my life savings or lose money, well, you  
20 know I wasn't like a compulsive gambler or anything like that  
21 or where I need help to gamble."

22 Do you recall being asked that question, sir, giving  
23 that answer?

24 A Not completely.

25 Q Let me show you the transcript which I marked Defendant's

1 Exhibit 69 for identification. Do you remember going into the  
2 grand jury on March 19th, 1992?

3 A Yes, sir.

4 Q Would you look at page 117, sir, of that testimony and  
5 ask -- and I'll just ask you, have I read the testimony  
6 correctly?

7 A What's your question, sir?

8 Q Did the stenographer accurately take down the testimony  
9 that I've read to you, sir?

10 A I believe so.

11 Q All right. Did you ever tell Nancy Shay, I have a real  
12 sickness for gambling?

13 A No, sir.

14 MR. KELLY: I would object to that.

15 Q Now, I think you told us you went up to the race track  
16 with your son Thomas in the fall of 1991?

17 A No, sir.

18 Q What month was that?

19 A October.

20 Q I take it you gambled on the dog tracks; is that right?

21 A Yes, sir.

22 Q What other types of gambling have you been involved in?

23 A I bet on the horses, periodic football game.

24 Q Sir, on October 26th, 1991, you told us you went to the  
25 South End of Boston and watched people play cards; do you

1 remember that testimony?

2 A October the 26th, would that be Saturday?

3 Q That's a Saturday night.

4 A Yes, sir.

5 Q Is that at the Waltham Tavern or the Franklin Cafe?

6 A Neither one.

7 Q What was the name of the place that you went to?

8 A I don't know about name.

9 Q But the club was on Shawmut Avenue; is that fair to say?

10 A Yes, sir.

11 Q You go down a group of steps to get into it?

12 A Yes.

13 Q Did you go there frequently prior to that date, sir?

14 A No, sir.

15 Q Did you ever play cards there before?

16 A No.

17 Q When you went to that club, you don't -- you're sure you  
18 don't know the name of it, am I right -- you can't recall the  
19 name of this club?

20 A No.

21 Q When you went there, sir, I think you told us you  
22 double-parked, am I correct?

23 A Yes.

24 Q In other words, where did you park, across the street at  
25 that Nadia's Restaurant?

1 A Yes.

2 Q And that's a well lighted street on October 26th, isn't  
3 it?

4 A I don't know.

5 Q There are cars along the sidewalk so you had to  
6 double-park, right?

7 A Yes.

8 Q So your car was almost in the middle of the street when  
9 you went into the club to play cards, right?

10 A I wouldn't say it was in the middle of the street. I was  
11 double-parked.

12 Q That's a fairly busy street at that hour, do you recall?

13 A I really don't know.

14 Q When you got out of the car, did you notice traffic both  
15 ways?

16 A I didn't notice.

17 Q Shawmut Avenue one way at that particular spot?

18 A Yes, sir.

19 Q But there appeared to be a lot of cars on the street when  
20 you parked that night, am I correct?

21 A Parked.

22 Q Parked?

23 A Yes.

24 Q Raining that night?

25 A I don't remember, I don't think so.

1 Q Now, Mr. Smith, you transferred the '86 Buick to him in  
2 '91, am I right?

3 A I believe it was '91.

4 Q He's a bartender in the South End?

5 A I don't know. He might be a bartender.

6 Q What do you know Mr. Smith's occupation to be?

7 A I don't know.

8 Q Did you owe him any money for gambling when you  
9 transferred the car?

10 A No, sir.

11 Q What would you estimate, Mr. Shay, was the value of your  
12 1986 Buick that you transferred to Mr. Smith in '91?

13 A I have no idea.

14 Q Is it in pretty good condition?

15 A Conditionwise there were problems with the car.

16 Q And it's your testimony, Mr. Smith did not pay you any  
17 money for the automobile?

18 A That's true.

19 Q Did you ever gamble with Mr. Smith?

20 A Yes.

21 Q Now, Officer Kraft came to your house on October 28th,  
22 the day of the bomb went off, do you recall that?

23 A Yes.

24 Q That wasn't the first time you saw Officer Kraft, isn't  
25 that fair to say?

1 A Yes.

2 Q You saw her in a couple of months before at the police  
3 station; isn't that correct?

4 A Sometime before.

5 Q You went to the police station, what's that E-5 in West  
6 Roxbury?

7 A Yes, sir.

8 Q To complain to her about being followed by somebody in an  
9 automobile; isn't that correct?

10 A Well, not particularly right to her. I mean she was the  
11 officer assigned detective report.

12 Q I apologize, you went to the station, Officer Kraft just  
13 happened to be on duty that day, am I right?

14 A I guess so.

15 Q You ended up making a report to her; isn't that right?

16 A Yes.

17 Q And do I state the report fairly accurately that you were  
18 complaining about somebody following you around during the  
19 day?

20 A Yes.

21 Q And you gave her the license plate number and told her  
22 that somebody had been following you?

23 A Yes.

24 Q Now, when Officer Kraft came to the house on October  
25 28th, did you tell her that you had picked up the device and

1       thrown it against the house?

2       A       No.

3       Q       You did have a conversation with Officer Kraft about the  
4       device before it went off, right?

5       A       Like I say when she first got there she said, where is  
6       it? And I said, Back there, we walked back there. I changed  
7       my paper she went to the car and got some paper and I invited  
8       her to the house, and we were sitting there just a short time  
9       when Officer Hurley came along we went outside.

10      Q       Do you have a memory of telling Officer Creavin that you  
11      threw the device on the grass?

12      A       No.

13      Q       Do you have a memory of saying to him, you threw it  
14      between the truck and the car?

15      A       No.

16      Q       You had a conversation with Officer Creavin on that day,  
17      am I correct?

18      A       He might have talked a very short period of time before  
19      the bomb squad officers got there.

20      Q       Let me show you Officer Creavin's report, and I'll you to  
21      read it to yourself to see if it refreshes your recollection  
22      about your conversation with Officer Creavin. I direct your  
23      attention to look at the second paragraph.

24      A       Do you want me to read it to myself?

25      Q       Yes. Please read it to yourself. Don't read it

1 allowed.

2 A Absolutely not.

3 Q My question, sir, is: Having read that paragraph, does  
4 that refresh your recollection as to whether you told Officer  
5 Creavin whether you threw the device?

6 MR. KELLY: Your Honor, can we have a yes or no  
7 answer?

8 A No.

9 Q Okay. Do you have a recollection of telling officers  
10 Messier and Bishop threw the device against the house?

11 A No.

12 Q Do you have a recollection of whether you told him that  
13 you threw it under the car?

14 A No.

15 Q All right. Let me show you their report Messier and  
16 Bishop, October 28th, 1991, which is dated -- Defendant's  
17 Exhibit 2 for identification, I'd ask you to read to yourself  
18 the last paragraph from this report to see if it refresh your  
19 recollection?

20 A Where is the last paragraph?

21 Q Right here, sir?

22 THE COURT: Excuse me, Mr. Segal.

23 THE CLERK: Which exhibit are you showing the  
24 witness?

25 MR. SEGAL: 72 for identification.

1           THE COURT: I did not understand the witness to tell  
2 us that his memory was exhausted. He simply denied whether he  
3 said so. You just asked whether it refreshes his  
4 recollection. His recollection has not been --

5           MS. GERTNER: I stand corrected. I thought I said,  
6 does he have a recollection of this, of telling Messier and  
7 Bishop that he threw it against the house, and I think he  
8 said, no. And I'm just saying, Does this refresh your  
9 recollection, the report of Bishop and Messier.

10          MR. KELLY: I think that the phraseology of the  
11 question is not entirely clear.

12          THE COURT: Well, having read it now, do you know any  
13 more about it then did you before?

14          THE WITNESS: I didn't read it, your Honor. The  
15 second paragraph.

16          THE COURT: Oh. I don't know what he wants you to  
17 read.

18 Q       Just the last paragraph on Exhibit 72, but read it to  
19 yourself, please.

20 A       Even words crossed out.

21 Q       Let me give you -- if it's crossed out, I apologize, it's  
22 underlined, are you able to read that? If you can't read it,  
23 could you get me I'll get you another copy.

24 A       I can't read it. Could you give me another copy,  
25 please?

1 Q Here's a copy of Defendant's Exhibit 72 for  
2 identification that isn't marked up. Would you read to  
3 yourself, please, the last paragraph and see if that refresh  
4 your recollection about speaking to Officers bishop and  
5 Messier?

6 MR. KELLY: Well, can we limit it to a yes or no  
7 answer.

8 THE COURT: Yes.

9 MR. KELLY: I'm not even sure he has a lack of  
10 recollection here.

11 THE COURT: Read it, please, to yourself.

12 (Pause.)

13 THE COURT: Does it refresh your recollection?

14 THE WITNESS: No, it doesn't.

15 THE COURT: We will suspend here until tomorrow  
16 morning at 9. I remind you not to talk about the case, watch  
17 or listen or read anything about the case and return at  
18 9 o'clock tomorrow morning. Thank you.

19 [Whereupon, the jury left the courtroom.]

20 THE COURT: Court is in recess until 2, this case  
21 until 9 a.m.

22 MR. KELLY: Your Honor, can we speak to you about a  
23 matter?

24 THE COURT: I can't do it now. We'll have to do it  
25 tomorrow morning.

1 [Whereupon the jury trial adjourned at 12:50 to be  
2 reconvened at 9 o'clock, Tuesday, November 2nd, 1993.]  
3

4 **CERTIFICATE**

5 We certify that the foregoing is a correct  
6 transcription of our computer-aided stenographic notes of the  
7 proceedings in the above-entitled matter.

8 \_\_\_\_\_  
9 James E. McLaughlin  
10

11 \_\_\_\_\_  
12 Laura K. S. Walker  
13  
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I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Thomas Waskom, resumed (by Mr. Segal)		5		36
(by Mr. Libby)			32	
Thomas Leroy Shay, sworn (by Mr. Kelly)	41			
(by Mr. Segal)		133		

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
26	(See Clerk's Notes.)		48
25			50
24, 24A			80
28			102

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Seventh Day of Trial

11  
12  
13 APPEARANCES:

14 For the Government:

15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

17  
18 For the Defendant:

19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
21 210 Commercial Street, Boston, MA. 02109.

22  
23 Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

24 November 2, 1993

25 Computer-Aided Transcription

P R O C E E D I N G S

[Whereupon, the jury entered the courtroom.]

THE COURT: Good morning, please be seated.

Where is Mr. Shay?

MR. KELLY: Right outside the door.

THE COURT: Would you bring him in.

Thomas Leroy Shay, resumed

THE COURT: Mr. Shay, understand that you are still under oath even though we will not again go through the form also today.

THE WITNESS: Yes, your Honor.

THE COURT: Please be seated, and you may proceed, Mr. Segal.

Continued Cross-Examination by Mr. Segal

Q Good morning, Mr. Shay.

A Good morning, Mr. Segal.

Q Do you recall telling Officer Ahern on October 29, that you threw the device against the house?

A No, sir.

Q Do you recall stating that on Saturday night, you backed your car into his drive -- and the driveway and felt the car bottom out?

A No, sir.

Q You have no recollection of stating that to Officer Ahern the next day, October 29th?

1 A That's correct, sir.

2 Q Do you recall telling Detective McCarthy, you threw it  
3 aside on the house?

4 A No, sir.

5 Q Do you remember meeting with Detective McCarthy and  
6 O'Malley and Ross?

7 A I'm not too familiar with a couple of those names, sir.

8 Q Do you recall saying to them, that you were afraid of Mr.  
9 Giamarco and Mr. Berry?

10 A No, sir.

11 Q Let me show you Defendant's Exhibit 81 for  
12 identification, the McCarthy report of 10/29/91. I direct  
13 your attention to page 7 of that report and I ask you if you  
14 would read it to yourself.

15 The first full paragraph.

16 A To where?

17 Q Right down to there.

18 A Okay.

19 (Pause.)

20 A I don't remember these statements, sir.

21 Q My question is, you have now read to yourself that  
22 paragraph on page 7 of Defendant's Exhibit 81?

23 A Yes, sir.

24 Q Does that refresh your recollection whether you told  
25 Detective McCarthy that you were afraid of Giamarco and

1 Berry?

2 A No, sir.

3 Q All right.

4 I'd ask if you would just come down from the stand --

5 THE COURT: Wait a minute. For what?

6 MR. SEGAL: I would like to show him an exhibit if I  
7 might.

8 Can you see this from where you are, sir?

9 A Yes.

10 Q All right. Would you look at what's been marked  
11 Defendant's Exhibit 80 for identification, and forgetting the  
12 color, look at the workmanship on this particular bookcase.  
13 Can you identify this exhibit as a bookcase made by Arthur  
14 Shay for you?

15 A No, sir.

16 Q Can you identify it as bookcase that was in the home of  
17 you and Nancy Shay when you were married?

18 A No, sir.

19 Q Do you do any work with wood, sir?

20 A No, sir.

21 Q Do you have a saw in your garage?

22 A Yes, sir.

23 Q Is that a power saw or a hand saw?

24 A A hand saw, sir.

25 Q At the Rolling Wrench garage, did you do any work with

1 wood?

2 A No, sir.

3 Q Was there a saw at the garage when you were there in '91?

4 A I don't know, sir.

5 Q To your knowledge, does your brother Arthur Shay have any  
6 capability in woodworking?

7 MR. KELLY: Your Honor, I have an objection to  
8 relevance, his brother, I object.

9 THE COURT: Why is it not relevant?

10 MR. KELLY: Whether his brother can work with wood.

11 THE COURT: There are have been allegations about the  
12 ability to work with wood.

13 A Would you repeat that question, please, sir.

14 Q To your knowledge, let me phrase it this way. Have you  
15 ever seen any pieces of wood done by Arthur Shay, your  
16 brother?

17 A Ever?

18 Q Ever.

19 A Not that I can recall, sir.

20 Q Have you ever seen Arthur Shay working with wood?

21 A Not that I can recall, sir.

22 Q Let me direct your attention, sir, to the lawsuit against  
23 the Dedham Service Center. That's the outfit that you rented  
24 space from in 1987, sir?

25 A Yes, sir.

1 Q All right. And that was run by Mr. Giamarco and  
2 Mr. Berry?

3 A I believe so, sir.

4 Q They were the landlords?

5 A Yes, sir.

6 Q And you, there was an incident in October 1987 where a  
7 quarter stick went off near you; is that correct?

8 A Yes, sir.

9 Q And that's while you were working at the automatic to  
10 body shop, you were leasing there, am I right?

11 A Yes, sir.

12 Q All right. You then filed a lawsuit against the,  
13 Mr. Giamarco and Mr. Berry two years later; isn't that  
14 correct?

15 A Yes, sir.

16 Q All right.

17 Now, did you ever tell your son Tom that the suit has  
18 nothing to do with money, this has to do with people being  
19 responsible for their actions?

20 A Yes, sir.

21 Q So you really weren't trying to get money from the  
22 lawsuit, you were just trying to get responsibility  
23 established; is that right?

24 A I was trying to get the point across to Tommy that the  
25 responsibility of people's actions is important.

1 Q But the ultimate purpose in the lawsuit, wasn't it to  
2 recover money against Mr. Giamarco and Mr. Berry?

3 A No, sir.

4 Q What was your purpose?

5 A The purpose was responsibility of people who are being  
6 responsible for their actions.

7 Q Was the case settled with an apology from Mr. Giamarco  
8 and Mr. Berry to you, sir?

9 A Apologies?

10 Q Yes.

11 A I don't think so, sir.

12 Q Was it settled for any money, sir?

13 A Yes, sir.

14 Q How much?

15 A That's not to be disclosed.

16 Q I'm not permitted to ask that sum of money, your Honor?

17 THE COURT: I didn't say you are not permitted to ask  
18 it. You've asked it and he's given an answer.

19 MR. SEGAL: Well, I asked he be directed to answer  
20 the exact sum of money that he received from that lawsuit.

21 THE COURT: You may tell us the exact amount of  
22 money.

23 THE WITNESS: May I ask the Court a question,  
24 please? I was directed not to disclose the amount of money.

25 THE COURT: By whom?

1 A By Judge Zobel in the Lowell state court.

2 THE COURT: I've just overruled him.

3 (Laughter.)

4 THE WITNESS: That's fine.

5 Q Having had a higher authority overrule the prior judge,  
6 what is the amount of money you received in that lawsuit  
7 against the Dedham Service Center?

8 A The settlement was for \$27,000.

9 Q And you received that money; isn't that correct?

10 A No, sir.

11 Q Thomas Shay, Jr., your son didn't receive it, am I right?

12 A That's correct.

13 Q He wasn't a plaintiff in the case?

14 A That's true.

15 Q Either you or your daughter received money; isn't that  
16 correct from this suit?

17 A Which daughter are you referring to, sir.

18 Q Crysten?

19 A Yes, sir.

20 Q All right.

21 Are we clear that Crysten Flanagan who lives with you  
22 on Eastbourne Avenue received the \$27,000 from the lawsuit?

23 A No, sir.

24 Q Who received the money?

25 A Yes, sir, it was a partial -- where I received, there was

1 a settlement of \$27,000, minus attorney fees and Crysten was  
2 allowed 10 percent of that money because she was a minor child  
3 of mine.

4 Q Her claim was sort of derivative. It was based on the  
5 fact she lost certain services or consortium because of the  
6 explosion that happened to you, am I right?

7 A Yes, sir.

8 Q All right. So she got 10 percent the recovery?

9 A Yes, sir.

10 Q Now, putting aside --- I take it, the attorneys got one  
11 third of the suit; is that right?

12 A I believe so.

13 Q All right.

14 Putting aside that one third which is about \$9,000,  
15 it is about 18,000 left to split, am I right?

16 A I believe so, sir.

17 Q Now, your daughter Crysten got 10 percent or 1800; am I  
18 right?

19 A Yes, sir.

20 Q Who got the other approximately 16,000, sir?

21 A Yes, I did.

22 Q Now, in connection with that lawsuit, did you attempt to  
23 get your son Tom Shay to appear for a deposition, sir?

24 A Yes, sir.

25 Q You were very interested in having him testify for you in

1     that case; isn't that correct?

2     A     Only because he was a witness.

3     Q     You understood he was present at the time of this  
4     explosion, am I right, sir?

5     A     Yes, sir.

6     Q     You understood his testimony would help you, as opposed  
7     to helping the defendant, right; he was an eye witness to what  
8     happened?

9     A     Well, I don't know that as just a fact that Tommy was  
10    present.

11    Q     But you understood he could basically corroborate your  
12    story, as to what happened; isn't that fair to say?

13    A     I would say so.

14    Q     And in fact, you went up to Derry, New Hampshire, drove  
15    up there, picked him up and brought him back the first time to  
16    testify for a deposition, am I right, sir?

17    A     Tommy called me and asked me if I would give him a ride,  
18    and I said I would.

19           MR. SEGAL: I object to anything that Tom Shay said  
20    to him. My question: Is you went up there.

21    Q     You went up there, though?

22    A     Yes, sir.

23    Q     All right.

24           He didn't -- you picked him up, but he didn't appear  
25    for the first deposition; isn't that right, sir?

1 A That's true.

2 Q You were upset about that? Is that fair to say? You  
3 weren't happy that he didn't appear for that first deposition?

4 A Only because --

5 Q No, yes or no, is it fair to say you were not unhappy  
6 that after having gone up to Derry, New Hampshire, picked up  
7 your son Tom, he then didn't appear for the deposition the  
8 next day?

9 MR. KELLY: Objection to the form.

10 MR. KELLY: I think he had a double negative there.  
11 He said you were not unhappy and I think it is confusing.

12 MR. SEGAL: I apologize.

13 Q Mr. Shay, isn't it fair to say that you were not happy  
14 about the fact Tom Shay, Jr. did not appear for that  
15 deposition?

16 A That's true, sir.

17 Q All right. Didn't, at some point, you call your exwife  
18 Nancy and take her out to dinner to ask her to get Tom to go  
19 to a deposition?

20 A That's not absolutely correct, no.

21 Q Am I correct that prior to this deposition, you called --  
22 you took your exwife out to dinner?

23 A We went out to lunch.

24 Q I'm sorry. All right.

25 And at that time you asked her to try to assist you

1 in getting Tom to go to a deposition, isn't that fair to say?

2 A That's not accurate.

3 Q Prior to taking her out to lunch, when was that lunch,  
4 can we pin it down?

5 A I believe that was the day that Tom was supposed to do  
6 his deposition, I went up the to the mother's house looking  
7 for Tom and I had seen Nancy and my daughter Paula and we went  
8 out to lunch together.

9 Q Who paid for the lunch?

10 A I did.

11 Q And was this the first deposition the one he didn't show  
12 up at or was this the one he showed up?

13 A Yes, this is the one he did not show up at.

14 Q Did not?

15 A True.

16 Q Prior to that date, had you ever gone out to lunch with  
17 your ex-wife and paid for that lunch?

18 A She's been to dinner at our house.

19 Q No, my question was lunch, sir, if you don't understand  
20 my question, please tell me. My question was: Prior to this  
21 date you just described, in connection with the deposition,  
22 had you ever taken Nancy, your ex-wife, out to lunch and paid  
23 for it, sir?

24 A Ever?

25 Q After being, after leaving the family house?

1 A In 1981?

2 Q Yes. After leaving the family house in '81.

3 A Not that I can recall.

4 Q Now, you understood that there was potentially \$400,000  
5 available for recovery in this lawsuit you brought against the  
6 Dedham Service Center; am I correct?

7 A Yes, sir.

8 Q All right.

9 And this suit was the deposition of Tom Shay, Jr. was  
10 in the fall of 1991; isn't that correct?

11 A Could you repeat that, please?

12 Q Surely.

13 The deposition of your son, the one, let's take the  
14 one where you went up to Derry, New Hampshire and picked him  
15 up, that deposition was scheduled in September 1991; am I  
16 correct?

17 A I don't know if that's true or not.

18 Q When do you think that deposition was scheduled?

19 A I don't know the exact date, sir.

20 Q Is it fair to say it was in 1991?

21 A Yes.

22 Q All right.

23 And in 1991, your income consisted of \$600 a month  
24 from Social Security; am I correct?

25 A Yes.

1 Q Were you working part-time at all fixing cars in the  
2 driveway?

3 A Yes, sir.

4 Q But that income was very nominal or small, is that fair  
5 to say?

6 A I get paid average for a job that I would perform.

7 Q But your main income that you were relying on to live on  
8 in 1991 was from the Social Security benefits, isn't that fair  
9 to say?

10 A Yes, sir.

11 Q All right. And was that total disability that you were  
12 receiving, sir?

13 A I believe so.

14 Q All right.

15 And that 600 a month total disability was as a result  
16 of this explosion in 1987, am I right, sir?

17 A Yes, sir.

18 Q All right, sir. Do you recall filing a complaint with  
19 the police in approximately October 1989 in relation to the  
20 dumping of some autobody parts on your driveway?

21 A Yes, sir.

22 Q And I take it you came home and found a big mess of  
23 autobody parts dumped on the driveway?

24 A Yes, sir.

25 Q And you could identify those parts as having been at your

1 garage over the Dedham Service Center?

2 A Yes, sir.

3 Q Didn't you learn that the people from the service center  
4 had basically dumped those parts on your driveway?

5 A Yes, sir.

6 Q You went to the police and made a complaint?

7 A We called the police, yes.

8 Q Did you go down and then make a report?

9 A They came to the house, sir.

10 Q Didn't you tell them that you believed that Mr. Giamarco  
11 and Mr. Berry were responsible for all that garbage that you  
12 found on your driveway?

13 A Yes, sir.

14 Q Was it on the lawn or just the driveway?

15 A It was scattered in the driveway, partially on the  
16 sidewalk, maybe.

17 Q After you found those parts, were you fearful of  
18 Mr. Giamarco and Mr. Berry?

19 A Yes, sir.

20 Q And were you fearful that they were going to get you  
21 because they dumped garbage on your lawn?

22 A Yes, sir.

23 Q Mr. Shay, I would like to show you some photographs that  
24 have been admitted into evidence of your garage, and truck.

25 I think Mr. Kelly showed you this one. Can you

1 identify that particular piece of wood?

2 A Yes, sir.

3 Q All right.

4 Was that a piece of wood that was in your garage on  
5 October 28th, 1991?

6 A I believe so.

7 Q All right.

8 And that's the same piece of wood with a couple of  
9 pieces cut out that's reflected, the actual wood is in  
10 Defendant's Exhibit 12, am I right?

11 A Yes, sir.

12 Q All right.

13 And at some point in December 1991, did somebody from  
14 the ATF come to your garage and pick this up?

15 A No, sir.

16 Q Do you recall how, when it left your garage?

17 A I don't know the exact date, sir.

18 Q All right.

19 Is it -- do you have a memory that it was sometime  
20 after the week of October 28th?

21 A Sometime after.

22 Q Somebody came from ATF and asked you for the piece of  
23 wood, is that fair to say?

24 A No, sir.

25 Q They telephoned, they called you and you brought it in?

1 How did the wood get from the garage to the ATF, if you know?

2 A I have no idea.

3 Q All right.

4 But you have a clear memory that this wood that's  
5 here was the same wood that was in your garage on October  
6 28th, 1991?

7 A I believe so, sir.

8 Q And that's its accurately reflected in Defendant's  
9 Exhibit 14 this picture of the garage wood, am I right?

10 A Yes, sir.

11 Q All right. Let me show you Defendant's Exhibit 15, a  
12 photograph, sir, which also is a photograph of your garage  
13 taken around October 28th, can you see that paint stirrer in  
14 that photograph?

15 A Yes, sir.

16 Q All right.

17 Was that stirrer in your garage on October 28th,  
18 1991?

19 A I don't recognize it to be, sir.

20 Q All right.

21 Do you recognize -- let me show you another  
22 photograph, Defendant's Exhibit 16 of your garage. Can you  
23 identify this photograph as your garage on October 28th, sir?

24 A Yes, sir.

25 Q I'm sorry?

1 A Yes, sir.

2 Q All right.

3 How can you identify that particular photograph, and  
4 maybe you can hold it up so we can all see it, or I'll hold  
5 it.

6 Mr. Shay, how do you identify this particular  
7 photograph, which is Defendant's Exhibit 16, as your garage on  
8 this date?

9 A May I? It looks like a couple of fishing boxes that are  
10 mine. There appears to be a buffer. I recognize a hedge  
11 cutter, and I recognize the table, and there's a cable there I  
12 use for the electric lawn mower.

13 Q You recognize a number of items. There's also a paint  
14 stirrer in Defendant's Exhibit 16 on the table next to those  
15 other items, do you recognize that paint stirrer now as being  
16 in your garage on October 28, 1991?

17 A There's two, there, sir. Which one are you talking  
18 about?

19 Q Well either one. Which one do you recognize if any?

20 A I see them there. And, you know, it appears they are in  
21 my garage.

22 Q All right.

23 And did you use those paint stirrers in connection  
24 with painting you did at the residence there, sir?

25 A Possible.

1 Q And wasn't some of that painting done in connection with  
2 fixing automobiles?

3 A That's a possibility.

4 Q You were working out of the house, sort of, on a  
5 part-time basis in connection with auto body repair business  
6 in October 1991; am I correct?

7 A I wasn't actually working there right out of the doing  
8 business, you know, work in the house or at the house.

9 Q But I meant you had some tools there and occasionally you  
10 would use those tools to assist you in your business; is that  
11 fair to say?

12 A Yes, sir.

13 Q All right.

14 Do you recall in April, somebody from the April '93,  
15 a man from the ATF coming to your house and picking up a used  
16 wood paint stirrer?

17 A What?

18 Q April of '93?

19 A Yes, sir.

20 Q Do you have a recollection now of Mr. Palaza from ATF  
21 coming over and picking up a paint stirrer?

22 A Yes, sir.

23 Q All right. And is that one of the stirrers reflected in  
24 photographs that we see next to you in the garage?

25 A I really don't know, sir.

1 Q Would you look at these two photographs which are  
2 Defendant's Exhibit 16 and Defendant's Exhibit 15 taken of the  
3 garage in October 1991 and tell us, if you can, whether one of  
4 those paint stirrers was the paint stirrer that Mr. Palaza  
5 picked up from you in April 1993?

6 A I don't know, sir.

7 Q All right. But there's no doubt he did pick up a used  
8 paint stirrer from you on this date?

9 A I believe so.

10 Q Is this Exhibit 24 in evidence, another picture of your  
11 garage that was taken around October 28, 1991?

12 A Yes, sir.

13 Q All right.

14 And can you tell us some of the items that are  
15 reflected in that picture that you can identify?

16 A Yes, sir.

17 There's a chair; there's a bicycle; there's a two  
18 wheeler, there's a trash barrel. There's the cable for lawn  
19 mower. There's some odds and ends, some cabinets.

20 Q Did you make any of those --

21 A There's a table.

22 Q That --

23 A There's a box.

24 Q That table that's reflected in the exhibit, did you make  
25 that table, Mr. Shay?

1 A No, sir.

2 Q What did you use it for?

3 A Just to pile things on.

4 Q Are there any items reflected in that picture that you  
5 personally made, sir?

6 A (Pause.) Nothing I recognize.

7 MR. SEGAL: May I publish these photos amongst the  
8 jury, please?

9 THE COURT: Yes.

10 (Pause.)

11 Q Mr. Shay, wasn't there a truck of yours in the driveway  
12 on October 28th, 1991?

13 A Yes, sir.

14 Q And didn't that -- what did you use that truck for at  
15 that time, sir?

16 A At that present time the truck was not registered, it was  
17 just parked there.

18 Q Did you use it to store some of your supplies?

19 A I would put things in there as far as like storing  
20 things, no.

21 Q Let me show you two photographs in evidence, Defendant's  
22 Exhibit 22, 23, photographs taken of your truck on October  
23 28th, 1991. Can you identify that particular piece of wood  
24 that's in the truck, sir?

25 A At this present time, yes.

1 Q All right.

2 What is it, what do you recall it, sir?

3 A That looks like a piece of paneling.

4 Q And what did you use that piece of paneling for, sir?

5 A I can't recall using it for anything.

6 Q All right.

7 Now, I'm showing you another photograph of your truck  
8 taken at the same date, and do you see the same piece of wood  
9 in it. This is Defendant's Exhibit 23, do you see -- can you  
10 hold it up, do you see the same piece of wood?

11 A I believe so.

12 Q All right.

13 Now, next to it there appears to be a can of black  
14 spray paint; do you see that, sir?

15 A Yes, sir.

16 Q All right.

17 And you had that in the truck on October 28th, 1991,  
18 sir?

19 A I believe so.

20 Q And you were using that in connection with the part-time  
21 work you were doing at the house?

22 A Could repeat that question, please?

23 Q Were you using that black spray paint for any work you  
24 were doing in your autobody business at the house?

25 A I don't think so.

1 Q Do you use black spray paint in connection with your  
2 autobody business?

3 A Periodically.

4 Q Your job as an autobody specialist is to sort of match up  
5 the fender with the, with the part of the car that is already  
6 on it, I'm talking about the new fender; isn't that right?

7 A Yes, sir.

8 Q So you want to get the fender to be just about the same  
9 texture and color as the old one, right?

10 A As close as possible, sir.

11 Q And how do you do that?

12 A As far as refinishing goes?

13 Q Yes. Tell us what you do to refinish fenders?

14 A It would depend on the color.

15 Q All right.

16 Let's take black. How would you do it?

17 A Black is a basic color. You would order paint through a  
18 dealer, automotive paint distributor, and use thinner and some  
19 other additives, and you would use a spray gun to spray the  
20 fender.

21 Q Would you have to sort of mix and match colors to make  
22 sure that the fender matched the fender on the car?

23 A Not black.

24 Q What other colors would you have to mix and match to get  
25 there to be a fairly good fit?

1 A Usually, I wouldn't.

2 Q Did you have somebody do that?

3 A At the automotive dealership where they would sell  
4 supplies, yes.

5 Q What sort of supplies did you buy in connection with your  
6 business, what sort of automotive -- just what sort of  
7 supplies did you buy, sir?

8 A Well, you would buy all different grades of sand papers,  
9 plastics for body filler, primer, compounds for cleaning cars,  
10 buffing pads, thinners, different additives that would go into  
11 different things, different paint. It's numerous amount of  
12 things.

13 Q You say you would buy, that's the type of thing you  
14 bought in connection with your business; do you agree with me?

15 A Yes.

16 MR. SEGAL: May I publish those other two  
17 photographs?

18 THE COURT: Yes.

19 Q Mr. Shay, let me show you another picture taken of your  
20 garage on October 28th, 1991. Can you identify this catalog  
21 that's reflected in this picture, sir?

22 MR. KELLY: Can we have the exhibit number?

23 MR. SEGAL: 21.

24 A Could you rephrase that whole question.

25 Q Sure.

1 A Please.

2 Q Sure.

3 Mr. Shay, can you identify the catalog that's  
4 reflected in the picture of your garage which is Defendant's  
5 Exhibit 21?

6 A No, sir.

7 Q Do you recall having that particular Grainger catalog in  
8 your garage on October 28th, 1991?

9 A No, sir.

10 Q Do you know what a Grainger catalog is?

11 A Yes, sir.

12 Q What is it?

13 A I believe it is a book that you can buy numerous things  
14 from. It is a catalog.

15 Q All right.

16 Would you agree with me that the photograph of your  
17 garage appears to have a picture of a Grainger catalog in it?  
18 Does that appear to be a Grainger catalog from what you can  
19 see, sir?

20 A That's a Grainger catalog.

21 Q But it is your testimony you didn't have such a catalog  
22 in your garage on October 28th, 1991?

23 A That's true, sir.

24 Q All right.

25 Did you ever buy anything from Grainger using this

1 type of catalog which is Defendant's Exhibit 18 for  
2 identification?

3 A Ever?

4 Q Yes.

5 A No, sir.

6 Q All right.

7 Would you look at this, have you seen this type of  
8 catalog before?

9 A I really don't know, sir.

10 Q All right. But it is your testimony that, you cannot  
11 recall that catalog being in your garage on October 28th,  
12 1991?

13 A That's true, sir.

14 Q And that you never purchased any items from a Grainger  
15 catalog similar to the one next to you?

16 A Not that I can recall, sir.

17 Q At the Rolling Wrench garage, you worked there in October  
18 '91; is that right, sir?

19 A I worked out of there.

20 Q All right.

21 A Yes.

22 Q When you say out of there, you did work on automobiles at  
23 the Rolling Wrench garage in South Boston; am I correct?

24 A Yes, sir.

25 Q All right.

1 Did you have paint there?

2 Was there paint?

3 A Yes, there was.

4 Q Was there a saw?

5 A Not that I can recall.

6 Q Was there wood?

7 A There might have been.

8 Q Was your brother Arthur Shay also working out of that  
9 garage in October 1991, sir?

10 A Yes, sir.

11 Q To your knowledge, had he been in the United States  
12 military?

13 A Yes, sir.

14 Q You had been in the military, the National Guard for  
15 about six years; am I correct?

16 A Yes, sir.

17 Q And he served in Viet Nam?

18 A Yes, sir.

19 Q Let me direct your attention to the coming back from the  
20 police station, now, on October 28th?

21 THE COURT: Before we get into at that, let's  
22 stretch.

23 [Pause.]

24 THE COURT: All right, you may proceed.

25 Q Mr. Shay, you went to the police station on October 28th,

1 1991, am I right, area E-5?

2 A Yes, sir.

3 Q Just to back up, you went to the Rolling Wrench garage  
4 and somebody said this could be a bomb, and you went over to  
5 the police station, am I right?

6 A No, sir.

7 Q You went to the Chapman lock place first?

8 A Nobody ever said, It could be a bomb.

9 Q Why did you go to the police station, sir?

10 A The reason being because I thought it could be a  
11 dangerous item, and my brother and John said to me that it  
12 doesn't sound right, you know, be careful.

13 Q Okay. And you spoke to a Detective Maloney there, sir?

14 A I believe so.

15 Q Did you tell him the item you had observed in your  
16 driveway was a metal box?

17 A I don't remember describing it. I might have said, made  
18 a description. I said it looked like it was a little metal  
19 box on top of it. I don't remember what I said to him.

20 Q Did you tell him you saw wires sticking out of the  
21 device?

22 A If I described it, I might have said that.

23 Q Okay. Let me just show you his report, Defendant's  
24 Exhibit 78 for identification, and read to yourself the first  
25 paragraph to see if you said it was a metal box with wires

1 sticking out?

2 A Right here?

3 Q Yes.

4 (Pause.)

5 A I don't really recall if that's exactly whether that is  
6 actually accurate.

7 Q Do you have a recollection now, saying it was a metal box  
8 with wires sticking out of it, having read that, sir?

9 A I might have. I might have described it with a little  
10 metal box on top.

11 Q Let me ask you, is it your testimony now that -- well,  
12 strike it. I'll move on.

13 After you went to the police station, sir, you went  
14 back to your house; isn't that correct?

15 A Yes.

16 Q And were you, when you went to the Rolling Wrench garage,  
17 you were driving a neighbor's Mazda; am I correct?

18 A Yes, sir.

19 Q You were going to do some work on the Mazda that morning?

20 A Yes, sir.

21 Q And did you put your tools in the little box to take with  
22 you to the garage to work on the Mazda?

23 A In a cardboard box, I believe so.

24 Q Do you have a clear recollection of doing that, sir?

25 A No, I don't, sir.

1 Q It is possible you did not put your tools in the  
2 cardboard box that morning when you took the Mazda to the  
3 Rolling Wrench?

4 A The box already contains some tools.

5 Q All right. You have a clear recollection of taking what  
6 you described as a cardboard box?

7 A Yes, sir.

8 Q What was the color?

9 A I believe it is white and blue.

10 Q All right.

11 How big was that box?

12 A Approximately maybe two by two by two maybe.

13 Q You took it, you took it out of your house and placed in  
14 the Mazda or was it already in the Mazda when you started out  
15 that morning?

16 A I really can't recall, sir. I know it probably wasn't  
17 already in that car, whether it was in the Buick or in the  
18 house at that time, it was either one or those two places.

19 Q But there's no doubt you took that white and blue box  
20 with the tools, with you to the Rolling Wrench garage that  
21 morning; am I correct?

22 A Yes, sir.

23 Q All right.

24 And you then took it with you home, am I right?

25 A Yes, sir.

1 Q When you came home, did you take that white and blue box  
2 out of your -- out of the automobile and walk into the house  
3 carrying a box?

4 A I believe so, sir.

5 Q And that had your tools in it; is that right?

6 A Yes, sir.

7 Q All right. Is it your testimony that when you walked out  
8 of the Mazda and went into your house, you were carrying  
9 something beside that white and blue tool box?

10 A Yes, sir.

11 Q And what were you carrying, please?

12 A I have a black bag which I carry some personal items in.

13 Q Now, how did the black bag get into the car that morning?

14 A Because I carry the black bag with me at my house, and I  
15 carry my license in that bag along with a wallet and spare set  
16 of keys and a hair brush, and I would have always taken the  
17 bag with me because that's where my license would be.

18 Q So you have a clear recollection of taking that black  
19 bag, putting it in the Mazda, and going to the Rolling Wrench;  
20 is that right?

21 A I dropped Crysten at school first, sir.

22 Q I'm sorry, dropping your daughter to the school?

23 A Yes, sir.

24 Q And then going with those two items, the tool box and the  
25 black bag to the Rolling Wrench?

1 A Yes, sir.

2 Q And I'm sorry, what did you say was in that black bag  
3 again, sir?

4 A Personal items.

5 Q Can you be a little more specific?

6 A A wallet, which carries my license and credit cards, a  
7 hair brush. There was a little tube of ointment in there, a  
8 spare set of keys, maybe some spare change, maybe a couple of  
9 Roll Aids.

10 Q Not maybe just give me your best recollection as to what  
11 you can recall was in there that morning, sir?

12 A That's what I recall, sir.

13 Q How long did you stay at the Rolling Wrench that morning?

14 A I left there around 10:30 in the morning.

15 Q And what time did you arrive?

16 A I probably got there quarter of 9, 9 o'clock, maybe a  
17 little later.

18 Q Did you use the hair brush at all while you were at the  
19 Rolling Wrench garage?

20 A I can't remember that, sir. Okay.

21 Q Okay.

22 Prior to testifying today, when was the first time  
23 you told the investigators about the black bag?

24 A I believe that was at my son's trial.

25 Q Do you recall calling -- do you recall testifying one day

1 at the grand jury and the next day calling Agent D'Ambrosio to  
2 clarify some testimony about the tool boxes?

3 A I don't recall that, sir.

4 Q All right.

5 Do you recall testifying at the grand jury in March,  
6 1992, is that fair to say?

7 A Yes, sir. All right.

8 And do you recall the next day, calling either  
9 Mr. Kelly or Special Agent D'Ambrosio in this case?

10 A I don't recall that, sir.

11 Q You know who Special Agent D'Ambrosio is? You know he's  
12 with the ATF?

13 A I believe so, sir.

14 Q In fact, can you identify him as seated in the front row  
15 on the left?

16 A Yes, sir.

17 Q And he's -- you've met him in connection with this case?

18 A Yes, sir.

19 Q Do you recall calling him and saying you want to clarify  
20 testimony about tool boxes, and saying you often carried a  
21 cardboard tool box that is approximately two by two feet which  
22 contains small hands tools and is white in color. And saying  
23 you also had two other tool boxes which are gray in color.

24 Do you recall saying that to Agent D'Ambrosio?

25 A No, sir.

1 Q All right.

2 Would you look at what's been marked Defendant's  
3 Exhibit 79 for identification, D'Ambrosio's report of  
4 February -- March 25th, 1992. And would read the entire first  
5 page to yourself.

6 THE COURT: Oh, come on, Mr. Segal, this will take  
7 forever.

8 MR. SEGAL: I'm almost through, your Honor. It is  
9 two paragraphs.

10 THE WITNESS: Do you want me to read the whole  
11 thing?

12 Q Just read to yourself what I've got in green.

13 A Right here, sir?

14 Q Yes.

15 A Okay. What's your question, sir?

16 Q Having read that, do you now have a memory of calling  
17 Agent D'Ambrosio and talking to him about the tool box?

18 A No, sir.

19 Q After you were learned this device could be dangerous,  
20 you went to the police station, am I right?

21 A At what point, sir?

22 Q That morning, October 28th?

23 A Yes, sir.

24 Q You never called Mary Flanagan and said, that device that  
25 we have sitting around the house, could be dangerous; is that

1 right?

2 A That's true, sir.

3 Q The next day, October 29th, did you go with a member of a  
4 Boston Police force and retrace the route you drove on Sunday,  
5 October 27th?

6 A Would you repeat that, please?

7 Q Sure.

8 Now, let me try to put it in focus. The bomb  
9 explodes on October 28th, am I right, sir?

10 A Yes, sir.

11 Q Do you recall after that day, driving with a member of  
12 the Boston Police force, perhaps, Officer Fogerty, the route  
13 that you drove on Sunday, October 27? In other words, did you  
14 redrive that route you told us about at any point?

15 A Yes, sir.

16 Q All right. And who was that with?

17 A In the police car? Officer Fogerty. There was another  
18 person there, and Alan Pransky, an attorney.

19 Q And when do you recall doing this drive?

20 A I don't recall the exact date, sir.

21 Q Without going to all the details, this is, you went over  
22 to McDonald's and the Burger King, and you went down to Story  
23 Drive and you went down out to Malden, is that about right,  
24 Castle Island?

25 A Yes, sir.

1 Q Now, how long after the 28th -- sorry, you don't recall  
2 it was after October 28th, you did this drive?

3 A No, sir.

4 Q All right.

5 Now, Mr. Pransky had been representing you in the  
6 suit against the Rolling Wrench garage; isn't that correct?

7 A No, sir.

8 Q He initially was representing you; is that right? And  
9 then?

10 THE COURT: You got the defendant.

11 MR. SEGAL: I apologize.

12 Q Mr. Pransky initially was representing you in the suit  
13 against the Dedham Service Center, am I correct?

14 A Yes, sir.

15 Q At some point he became a witness and had to withdraw, am  
16 I right?

17 A I believe so, yes.

18 Q Wasn't that before this bomb went off on October 28th?

19 A Yes, sir.

20 Q Now, so he was out of that case, am I right, by October  
21 28th?

22 A I believe so, sir.

23 Q When the bomb went off that day, you immediately called  
24 Mr. Pransky, isn't that fair to say?

25 A No, sir.

1 Q Didn't Mr. Pransky come over to your house that  
2 afternoon, October 28th, 1991?

3 A I don't know what time when he came over.

4 Q Did he come over that day?

5 A Sometime during the day or evening, yes.

6 Q Was, to your knowledge, was that at your request that  
7 Mr. Pransky arrived there at your house that day?

8 Did you ask him to come over?

9 A Well, the way it went, that I don't know if I had called  
10 Mr. Pransky to come over or if the police had. I don't know  
11 who called him to come over. All right.

12 Q When he came over, did he bring the file, the whole file  
13 relating to the suit against the Dedham Service Center?

14 A I don't recall that, sir.

15 Q He was, he stayed with you that night, October 28, I did  
16 not mean overnight, he was there trying to assist you and the  
17 police?

18 A I don't know if you would call it assisting. He was  
19 there.

20 Q Well, from what you could see, what was Mr. Pransky doing  
21 there that day?

22 A He had information pertaining to the names to the lawsuit  
23 against the Dedham Service Center.

24 Q And he was giving the police the information about the  
25 lawsuit against the Dedham Service Center, am I correct?

1 A I don't recall that, sir.

2 Q What do you recall him doing there?

3 A Pretty much sitting and listening.

4 Q Did he come over the next day?

5 A He might have, sir.

6 Q Did he come over the day after?

7 A I'm not too clear whether he did or not.

8 Q But at some point you and Mr. Pransky and some members  
9 the Boston Police redrove your route on, the route that you  
10 took on Sunday, isn't that fair to say?

11 A Yes, sir.

12 Q At any time in those three or four days after this bomb  
13 explosion, did you learn that you were a suspect in this case,  
14 sir?

15 A No, sir.

16 MR. SEGAL: I have no further questions.

17 THE COURT: Any redirect?

18 MR. KELLY: Briefly, your Honor.

19 Redirect Examination by Mr. Kelly

20 Q Mr. Shay, Mr. Segal, asked you some questions, sir, about  
21 gambling. Would you describe for us on those occasions when  
22 you do gamble, what types of activities would you engage in?

23 A Sometimes horse racing, dog racing, periodically maybe a  
24 card game, different types of card games and football cards,  
25 periodically.

1 Q Are you one of these people that goes to the dog track or  
2 horse track on a daily basis?

3 A No, sir.

4 Q How frequently would you say you go to the track? On an  
5 annual basis, how many times a year would you go, sir?

6 MR. SEGAL: Can we pick out the year?

7 MR. KELLY: As of 1991, for example.

8 Q Do you recall how many you may have gone to either horse  
9 track or the dog track in 1991?

10 A In the year of 1991?

11 Q Approximately, sir.

12 A Three.

13 Q And as of October of 1991, Mr. Shay, were you in debt to  
14 anyone as a result of any gambling activities?

15 A No, sir.

16 Q As of October 1991, had anyone ever threatened you or  
17 pressured you as a result of gambling activities or gambling  
18 debts?

19 A No, sir.

20 Q Have you ever had anybody threaten you as a result of  
21 gambling activities or gambling debts?

22 A No, sir.

23 Q Mr. Segal asked you some questions about some items in  
24 the photographs that were shown.

25 In the line of work that you're in, autobody work,

1     you from time to time get involved with work with paint; is  
2     that correct?

3     A     Yes, sir.

4     Q     Do you know the difference between glossy paint and flat  
5     paint?

6     A     Yes, sir.

7     Q     Looking at Defendant's Exhibit 23 which Mr. Segal showed  
8     you, that can of spray paint which is depicted in the  
9     photograph of the cab of that panel truck, what kind of paint  
10    is that, Mr. Shay? What kind of spray paint?

11    A     It appears it is glossy paint, sir.

12    Q     Do you presently have any recollection as to what you may  
13    have used that for? That you may have used it for?

14    A     I remember doing some work on Mr. Louis Rotman's car. On  
15    his car he has some type of a molding on the left rear. I'm  
16    not too sure it is side molding or could be part of the bumper  
17    which is kind of glossy, and I could have used this spray  
18    paint to, to spray that molding on his car.

19    Q     The -- just one last area, Mr. Shay.

20           This board you have been asked a number of questions  
21    about, do you remember what they call the color, do you see  
22    this darker color that's on here do you know what color it  
23    was. Do you have a recollection of the label, the description  
24    of that color?

25    A     It looks like what they call a dark blue metallic.

1 Q Dark blue metallic?

2 A Yes, it is.

3 Q And this picture that we've seen, Defendant's Exhibit 14,  
4 your memory is that this is a photograph of the same board  
5 before it was cut in this manner?

6 A Yes, sir.

7 Q And you said that it was used for some kind of a bumper  
8 end; is that what you said?

9 A Yes, sir.

10 Q And so, someone looking at that, are you looking at the  
11 kind of the profile, the side-view of the bumper, is that  
12 what's depicted here by the shape, Mr. Shay?

13 A No, it would be laying flat.

14 Q What is a bumper end for those that that aren't in this  
15 business?

16 A Well, under certain cars, there's a plastic or a rubber  
17 piece on the end of the bumper. It is like, almost like  
18 molding in a way.

19 Q It is the thing that goes around corner?

20 A On some cars.

21 Q Would it have been the corner piece on this car, do you  
22 have a memory?

23 A Yes, sir.

24 Q And finally, sir, there appears to be a second kind of  
25 paint on this board, Defendant's Exhibit 12, kind of a lighter

1 color?

2 A Yes, sir.

3 Q Do you remember what if anything you used that for?

4 A For prior to doing any refinishing work we would probably  
5 have to do some priming. That looks like a light gray  
6 prime. They're probably sprayed on that part first.

7 MR. KELLY: I have nothing further, your Honor.

8 THE COURT: Any recross?

9 MR. SEGAL: Briefly.

10 Recross-examination by Mr. Segal

11 Q Mr. Shay, in addition to going to the race track, I think  
12 you said you went to the dog track; is that right, sir?

13 A Yes, sir.

14 Q Was that Seabrook?

15 A Yes, sir.

16 Q What other dog tracks?

17 A Wonderland, Raynham.

18 Q Wonderland is right over here in Revere?

19 A Yes, sir.

20 Q And what, what horse tracks?

21 A Usually Suffolk Downs.

22 Q In 1991 and before did you bet on horses or dogs by  
23 telephone?

24 A No, sir.

25 Q Did you ever receive bets on football games by telephone,

1 sir?

2 A No, sir.

3 Q Isn't it true, Mr. Rotman's car was white, sir?

4 A Yes, sir.

5 MR. SEGAL: I have no further questions.

6 THE COURT: Thank you Mr. Shay, you are excused.

7 Who is next?

8 Q The United States calls Christopher Shapley.

9 (Pause.)

10 Christopher Shapley, sworn

11 Direct Examination by Mr. Kelly

12 THE CLERK: Please be seated and state your name for  
13 the record.

14 THE WITNESS: Christopher Guy Shapley,  
15 S H A P L E Y.

16 THE COURT: This witness is called as an expert?

17 MR. KELLY: Yes, your Honor.

18 THE COURT: In what field?

19 MR. KELLY: IN the field of automotive engineering,  
20 with a specialty in the field of vehicular movement.

21 THE COURT: Any objection to qualifications?

22 MR. LOPEZ: No, your Honor, I have just a couple of  
23 questions.

24 THE COURT: Do we have a C.V.?

25 MR. KELLY: We do, your Honor.

1 THE COURT: Did you make copies for the jury?

2 MR. KELLY: No, I did not, your Honor. I can take it  
3 through fairly quickly.

4 THE COURT: Do you want it marked?

5 MR. KELLY: If defense counsel does, I have no  
6 particular preference.

7 MR. LOPEZ: I don't see any need for it. It is  
8 rather short.

9 THE COURT: Okay.

10 Q Good morning.

11 For the benefit of the court reporter spell your last  
12 name for us, please.

13 THE COURT: I think he just did.

14 MR. KELLY: I'm sorry, I missed that.

15 Q Where do you reside, Dr. Shapley?

16 A I live Bedford, New Hampshire.

17 Q And direct your voice in the vicinity of the microphone.

18 Are you a United States citizen, sir?

19 A Yes, sir, I am.

20 Q What is your occupation?

21 A I make a living consulting as an automotive engineer.

22 Q For how long have you been so employed, Dr. Shapley?

23 A I've been doing this, working for myself, since 1979.

24 Before that I was an engineer, previously with Firestone, and  
25 before that with various other companies.

1 Q Briefly describe for us your educational background, sir?

2 A Yes, I was educated in England. I got my bachelor's  
3 degree in the course of what you would call a co-op program.  
4 I had a scholarship from the British Ministry of, Technology  
5 which involved spending some time in a research lab and some  
6 time in college. I got the B.S. degree in mechanical  
7 engineering.

8 After that I went to Ford briefly, who sent me to  
9 Cranfield on a short course, where I discovered that I liked  
10 the topic of vehicular dynamics. I applied for and received a  
11 scholarship, and went back to the Cranfield Institute of  
12 Technology, which is about 50 miles north off London, where I  
13 study vehicular engineering, automotive engineering, first for  
14 a masters degree, and then I continued and got a Ph.D. in the  
15 study of vehicular dynamics, once again at the Cranfield  
16 Institute of Technology.

17 Q Following your formal education, did you immediately  
18 begin work as a consulting engineering?

19 A No, the first thing I did was to stay on at Cranfield as  
20 a research officer working on some research contracts they had  
21 with the British government. They had money to study the  
22 behavior of various forms of passenger cars. There was a  
23 contract to study and a prototype bus. And I also got  
24 research funds for a novel form of suspension.

25 From there I went to California to Los Angeles to

1 work for a firm called Systems Technology who at the time were  
2 moving away from sponsored research in aerospace into more  
3 vehicles, in particularly vehicles together trailers. So they  
4 hired me to work on a contract they had been awarded to study  
5 the stability of cars or pickups pulling trailers like Air  
6 Streamer or boats. I stayed with them briefly.

7 And from there I went to the Firestone Tire and  
8 Rubber Company to their research lab in Akron, Ohio, and I  
9 stayed there as a research scientist studying the properties  
10 of tires and how they affect the control and the behavior of  
11 vehicles. I stayed there until 1979, when I went to work for  
12 myself, and I have worked for myself ever since.

13 Q Would you describe your experience as a consulting  
14 engineer since 1979, including some of the clients on matters  
15 that you have performed services on?

16 A Yes, essentially, I deal with people who are either  
17 involved in litigation or who are anticipating litigation. In  
18 my case, this includes not only people who are obviously make  
19 parts of cars or trucks, I worked with people like Goodyear,  
20 Firestone, who obviously make tires, but also Rockwell, TRW  
21 who make things like brakes, axles, steering gears. I've  
22 worked for most of the vehicle builders. I've worked for GM,  
23 Ford, British Leyman, Chrysler, Fiat. Quite a few.

24 I have also worked for most of the truck makers, mark  
25 International Harvester, Kenworth, Peterbilt, Eveco. I'm sure

1 there are some more.

2 I have also worked for people using these vehicles,  
3 people own cars that allegedly have had problems, people who  
4 run fleets of trucks, users. I've also been retained on  
5 behalf of people who have been hurt, people who were just  
6 standing there when the truck came down the hill and hit hem.

7 Essentially, I worked for almost everybody, every  
8 type of person, who gets involved in lawsuits arising out of  
9 the movement of vehicles, not only civil lawsuits, but also  
10 for the purposes of regulation and also criminal matters.

11 On occasion, I've been retained by the states, for  
12 example, of Pennsylvania, they try to resist the use of double  
13 trailers, you know, semi-trailer trucks, pulling a semi-trail;  
14 so did Connecticut. I was retained by the state governments  
15 to help with that.

16 I worked with public defender offices. In this case  
17 I'm working with the government. You know, I've worked with  
18 almost every class of person for most types of vehicles, not  
19 just cars and trucks, but almost anything that's on tires.  
20 For example, I've been retained by Boeing to look at the  
21 skidding behavior of large aircraft. I've worked with  
22 airlines involved in skidding accidents, you know,  
23 hydroplaning, failure to stop, essentially, on the part of  
24 aeroplanes, failure to stay under the control of dragsters,  
25 overturning, farm tractors.

1           If it's got pneumatic tires under it and something  
2       went wrong, then there is good chance over the last 14 years  
3       that I have seen most types of vehicles.

4       Q     Now, Dr. Shapley, are you a member of any professional  
5       societies?

6       A     Yes, I am. I'm a member of the Society of Automotive  
7       Engineers, the American Society of Mechanical Engineers, and  
8       the American Society of Testing of Materials.

9       Q     Have you published any articles in professional journals  
10      on the topic of automotive engineering, sir?

11      A     Yes, I have.

12      Q     And would you describe for the jury what this topic of  
13      automotive engineering consists of, in your experience?

14      A     Well, the part that I deal with is primarily movement,  
15      acceleration, braking, cornering, vibration. It is the  
16      response of the vehicle to the forces developed by usually the  
17      tires, not just how did the tires behave, what is the effect  
18      of differences in pavement, how is it affected by the  
19      application of the brakes, the effect of the suspension, and  
20      how does all this come together to move the vehicle, both  
21      along the road and, also, to cause it to bounce, for example.

22            So I've primarily worked with movement which shows up  
23      as, you know, control of vibration, et cetera.

24      Q     Over the past 14 years, doctor, have you testified in any  
25      state or federal court as an expert in the field of automotive

1 engineering or vehicular movement?

2 A Yes, I have.

3 Q Approximately how many, sir?

4 A About 50 times.

5 MR. KELLY: Your Honor, at this time the government  
6 would formally offer Dr. Shapley as an expert in the field  
7 automotive engineering with a specialty area in vehicular  
8 motion.

9 THE COURT: Did you want to ask questions on  
10 qualifications?

11 MR. LOPEZ: Yes, your Honor.

12 Thank you.

13 THE COURT: You will recall, members of a jury, in a  
14 situation where an expert is offered, the opposing party has  
15 an opportunity to also ask questions about the qualifications  
16 of the expert before we get into the substance of the  
17 testimony.

18 Briefly right?

19 MR. KELLY: Very briefly, your Honor.

20 Voir dire by Scott Lopez

21 Q Good morning, Dr. Shapley. My name is Scott Lopez, and I  
22 represent Alfred Trenkler.

23 Now, Mr. Shapley, can you tell me what percentage of  
24 the consulting work that you've done over the last 14 years  
25 involve work with tires?

1 A Almost every case that I've looked at, there's been a  
2 tire underneath the vehicle. The issue hasn't always been  
3 tires; sometimes it was brakes or steering or shock absorbers.

4 Q But, doctor, what percentage dealt with tires only?

5 A Tires only?

6 Q Yes.

7 A It would be very rare if it was tires only.

8 Q Now, doctor, what percentage of the consulting work that  
9 you have done in the last 14 years, required you to analyze  
10 the holding strength of a magnet?

11 A I think this may be the only occasion where the holding  
12 strength was provided by a magnet, although the holding  
13 strength of other object is quite a common issue.

14 Q But this is the first case involving the holding strength  
15 of a magnet; is that correct?

16 A I think it is the only time that what I've had to look at  
17 in terms of holding strength has come from a magnet. If there  
18 is another one, I can't remember it.

19 MR. LOPEZ: Thank you.

20 THE COURT: I find the witness qualified.

21 Again, that means that he may testify, but it is  
22 ultimately for you to decide whether you will give credence to  
23 his expert's opinions.

24 THE COURT: You may proceed.

25

Continued Direct Examination by Mr. Kelly

1  
2 Q Dr. Shapley, when were you first contacted to consult on  
3 this case, sir?

4 A It was in May of last year.

5 Q And by whom were you contacted, sir?

6 A You did.

7 Q Would you tell us, Dr. Shapely, what steps you initially  
8 took to acquaint yourself with the subject matter for which  
9 your expertise had been sought?

10 A Well, at the outset, I had a chance to view the vehicle,  
11 the driveway. I also had described to me in a general sense,  
12 the proportions or the best estimates of the proportions of  
13 the device and what it comprised of.

14 Q Were you provided with the account of any witnesses as  
15 relevant to the subject matter?

16 A Yes, I was also provided with the transcript of what I  
17 think is a grand jury hearing that had taken place into the  
18 matter, yes.

19 Q And would that have been the testimony of Mr. Thomas  
20 Shay, Sr.

21 A Yes, it would.

22 Q As to his discovery of some object in his driveway and  
23 the like?

24 A Oh, yes, you know, the description of the circumstances  
25 leading up to the explosion, yes.

1 Q Were you also provided with the chemist's report of  
2 forensic chemist, Cynthia Wallace?

3 A Yes. I had been -- sorry. I was provided with the  
4 analysis and the report, yes.

5 Q Now, after making your preliminary view of various  
6 matters, doctor, what expert contribution did you offer to  
7 provide in connection with this investigation, sir?

8 A Well, I suggested there were two things I could look into  
9 that might help, one being, essentially, given the magnets and  
10 the proportions of the device, you know, is it likely, is it  
11 possible that a device like this could remain attached to the  
12 underside of a car driven around Boston as Mr. Shay describes;  
13 and also, how come the device was dislodged in the driveway?  
14 I thought these were two issues that fell within the range  
15 that I could help you with.

16 Q Before I ask you, to proceed, doctor, if I can place  
17 certain items before you, starting with, let me place before  
18 you what has been marked as Government's Exhibit 4 for  
19 identification, which we have been referring to as the mock  
20 device; exhibit 13 A for identification, which we have called  
21 the exemplar button magnet; and Exhibit 13 B, which has been  
22 referred to as the exemplar circular magnet, or ring magnet.

23 Doctor, I would ask you to assume, for purposes of  
24 your testimony, that the exemplars, Exhibit 13 A and 13 B, are  
25 identical to the objects which they resemble on the mock

1 device, Exhibit number 4.

2 I would ask you, sir, to further assume that the  
3 exemplar button magnet, Exhibit 13 A, the smaller of the two  
4 magnets, is identical to the button magnets as were on the  
5 actual device recovered from the debris following the  
6 explosion on October 28th, 1991.

7 And finally, sir, I would ask you to assume, for the  
8 purposes of your testimony, that the exemplar ring magnet,  
9 Exhibit 13 B, is chemically identical to the ceramic ring  
10 magnets recovered from the actual bombing from the debris  
11 following the explosion, although that exemplar is  
12 fractionally smaller than the ceramic ring magnet involved on  
13 the actual device.

14 One additional item before you proceed, doctor, let  
15 me show you what has previously been introduced as  
16 Government's Exhibits 21 A, and ask you, sir, whether or not  
17 you recognize that photograph?

18 A Yes, I do.

19 Q And would you tell us your understanding of what it is?

20 A This is Mr. Shay, Sr.'s car.

21 Q And as part of your work in this case, did you have an  
22 opportunity to actually, physically, personally look at the  
23 car?

24 A Yes, I have.

25 Q Doctor Shapley, with these items before you, sir, let me

1 turn, first, to the first aspect of these two items that you  
2 offered to make some contribution on, namely, the likelihood  
3 that a device as configured may remain affixed to a car while  
4 it was driven around Boston.

5           Would you tell us, first, Dr. Shapley, how you began  
6 your analysis of this matter?

7     A     Yes, the first thing to do was to measure the holding  
8 power of the individual magnets, to see how much force you  
9 could expect them to exert on the underside of the vehicle.

10    Q     How did you go about doing that in this case?

11    A     What I did was, realizing the degree of force with which  
12 a magnet sticks to something depends not only on the magnet  
13 but the material it is being offered up against; for example,  
14 some things don't stick to magnets at all, you know, aluminum  
15 doesn't.

16           It turns out that I have a Pontiac 6000 of the same  
17 year of manufacture, which has the same metal underbody. GM  
18 is in the habit of selling multiple versions of the same car  
19 which are identical underneath.

20           So what I did was, starting with the large magnet, I  
21 offered it up to the underside of the car, because my car  
22 floor is made up of the same metal, of the same thickness, as  
23 Mr. Shay's car. And what I did was, I took the magnet, and I  
24 hung weights from the underside of the magnet, so that I know  
25 how much the magnet and the weights together weighed. And

1 then I put sheets of paper between the magnet and the car  
2 until magnet would no longer stick. And then I measure the  
3 thickness of the sheets of paper. And I vary the weight, and  
4 obviously got different thicknesses of piles of paper.

5 In this way I could measure not only how much force  
6 would the magnet would exert if it was touching the metal of  
7 the car but, also, as the magnet is moved away from the  
8 surface, how the separation affects the holding power.

9 And the reason that I was interested in this is that  
10 the underside of the car is not flat. The if you have a  
11 series of magnets which together form a flat surface, they  
12 can't all touch the underside of the car, because for a  
13 variety of reasons having to do with stiffness when they form  
14 what's known as the floor pan of the car, they put a large  
15 number of wrinkles and bumps in it. So it was important to  
16 know not only how well did the magnet hold when it was  
17 touching the metal, but how did the holding power diminish  
18 with separation from the metal.

19 So, with the weights attached and the sheets of paper  
20 I did the experiment for big magnet in an area that was  
21 reasonably flat, and certainly flat enough to allow one magnet  
22 to stick, and then I did the same thing with the button  
23 magnet. And from this, I was able to calculate and plot the  
24 holding power of the two different types of magnet of various  
25 air gaps between the magnet and the sheet metal of the car.

1 Q Do you have an understanding, doctor, as to how much the  
2 device in question, in this case a bomb, was estimated to  
3 weigh?

4 A Yes, I do.

5 Q And what was your understanding?

6 A It is my understanding it is about 6 1/2 pounds.

7 Q And by whom were you provided that data?

8 A I believe it is a Mr. Waskom.

9 Q And Dr. Shapley have you prepared a demonstrative exhibit  
10 to help you describe to the jury your findings and conclusions  
11 with respect to the magnetic strength of these two magnets?

12 A Yes, I have.

13 MR. KELLY: With the Court's permission. I'm.

14 Q I'm going to show you at this point, Dr. Shapley, what  
15 has been marked for identification as Exhibit No. 22.

16 Would you first explain to us what we're looking at,  
17 sir.

18 A Yes, this is that the graph I drew based on the  
19 measurements I made. There are two lines, the upper line  
20 representing the data that I got for the larger circular  
21 magnet, and the lower line representing the data I got for the  
22 button magnet.

23 What I'm trying to show on the graph is how much  
24 attraction the magnet has to the underside of the car and how  
25 this varies depending on the gap between the magnet and the

1 car.

2 I've measured the attraction in pounds of force.  
3 Zero gap represents the magnets directly touching the  
4 underbody of the car. For example, this magnet I found that  
5 if it was directly touching the metal, it took a force of  
6 slightly over 13 pounds to pull it away from the car. And,  
7 for example, if I inserted a 10th of an inch of paper between  
8 the magnet and the car, that force fell to seven pounds. And  
9 as the separation increases, the force goes down further  
10 still.

11 With the button magnet, I found that if you allowed  
12 the metal of the magnet to directly touch the car, it would  
13 take a force of about 3.5 pounds to pull it off. But if you  
14 put a 10th of an inch of airspace of paper between the magnet  
15 and the metal, that force fell to less than half a pound.

16 Looking at the graph, you can see two things, one is  
17 that, obviously, the large magnet is very much more powerful  
18 than the small one. But more importantly, the large magnet is  
19 not as sensitive to separation or air gap; it is not as  
20 sensitive as the small one. A one-tenth of an inch spacing on  
21 the large magnet approximately halves the holding force;  
22 whereas, for the small one, it reduces it from the 3 1/2 to a  
23 half a pound, which is reducing it to one seventh of its  
24 starting value.

25 On this graph, you can see the force required to

1 separate it, which, bear in mind, since this is the underside  
2 of the car, some of that force is also the weight of the  
3 magnet.

4 So you're clear, the 13 1/2 pound for this magnet  
5 meant if I took this magnet and some ballast, that the magnet  
6 and the ballast collectively weigh 13 1/2 pounds. At that  
7 point it would just stick to the car; and just touching it, it  
8 would fall off.

9 THE COURT: How does the air gap that you have  
10 calculated there, in terms of pieces of paper, correlate to  
11 what you had earlier suggested, that is, only a part of the  
12 magnet being stuck to metal and the other being out in the air  
13 because of the weight nature of the metal?

14 THE WITNESS: What I'm trying to do, your Honor, is  
15 to put myself in a position to say that if only part of the  
16 magnet can touch the car, and some of it must have an air gap,  
17 how does this affect the holding power?

18 THE COURT: Well, that's the question, if you, if you  
19 have the entire magnet touching metal --

20 THE WITNESS: Yes.

21 THE COURT: -- then you put paper between it, so that  
22 you have the entire magnet separated by a piece of paper, is  
23 that identical to having half the magnet or a portion of, you  
24 know, A relative portion of the magnet touching?

25 THE WITNESS: If the paper amounts to one-tenth of an

1     inch, then it is as if you had halved the power of the  
2     magnet.

3             THE COURT: I don't make myself clear.

4             If, for example, the magnet is attached like this to  
5     a flat surface --

6             THE WITNESS: That's one thing.

7             THE COURT: -- then you put a piece of paper between  
8     it and you get the gap.

9             THE WITNESS: Yes.

10            THE COURT: Assume for the moment it is attached like  
11     this, so that only half the magnet touches the metal.

12            THE WITNESS: That would be --

13            THE COURT: How does that correlate to the  
14     calculation you have there, based on of separating the  
15     distance of the magnet to -- from the metal.

16            THE WITNESS: It would be equivalent, your Honor. If  
17     the magnet was overhanging the edge of the metal so that the  
18     gap was quite large, if only half the magnet was in contact,  
19     because it was off to one side, that would be the same as  
20     being pushed down a tenth of an inch. Half the magnet --

21            THE COURT: Half the magnet is the equivalent to  
22     .1 inches there?

23            THE WITNESS: Yes.

24            THE COURT: How do we know that?

25            THE WITNESS: Well, if you take this, if I understand

1 your question, your Honor, if you take that magnet, and only a  
2 portion of it is actually on the metal, only half of the area,  
3 then you're only going to use half of the holding power of the  
4 magnet. That is true.

5 THE COURT: Okay.

6 THE WITNESS: From the measurement --

7 THE COURT: I guess that really was the question.  
8 When only a portion of the magnet touches metal, then do you  
9 -- does -- is the holding power reflected in the same  
10 proportion to the total that the amount that is touching?

11 THE WITNESS: For that style of magnet, you would  
12 expect, if only a fraction is touching the metal, you would  
13 get the same fraction of the holding power.

14 THE COURT: Okay.

15 Q Doctor, based on your testing as reflected in this chart,  
16 do you have an opinion, sir, concerning the likelihood that a  
17 device, as described of these two different types of magnets,  
18 the little button magnet and the ceramic ring magnets, would  
19 remain attached to the undercarriage of the 1986 Buick  
20 automobile while it was driven around metropolitan Boston for  
21 perhaps as much as a day?

22 A Yes, I have an opinion.

23 Q What is your opinion, sir?

24 A It is my opinion that it is more than enough magnet to  
25 hold it on. The collective strength of the magnets, the two

1 big ones potentially give you 27 pounds, the 12 small ones  
2 give you 42, which is 69 pounds. So in theory, you have ten  
3 times the grip that you have weight of box. Even if you  
4 reduce that by -- to one third, you still have three times the  
5 weight of the box, which gives you a substantial margin of  
6 safety for vibration and shock loads driving around, yes.

7 Q Now, when you conducted these tests to determine how much  
8 magnetic strength there was with these two magnets, what  
9 portion of the underside of a GM vehicle did you use for  
10 purposes of your testing?

11 A I used, there's a small relatively flat area under the  
12 driver, away from ribs. And I used a flat area upon which I  
13 could get the full face of the magnet to contact.

14 Q And was there any particular reason why you chose that  
15 section to do that testing, sir?

16 A I chose that section because it was one of few areas  
17 where I really could get the magnet a chance to show how much  
18 strength it had. It was also the approximate area where the  
19 magnet appears to be located at some time.

20 Q Doctor, I want to turn to the second aspect of your  
21 consultation, having to do with the driveway at Mr. Shay's  
22 residence and the prospect of this device may have become  
23 dislodged in the driveway by making contact with the surface.

24 First of all, doctor, would you describe to the jury  
25 what steps you took in beginning this analysis?

1     A     Yes, well, the first step was to get an accurate  
2     engineering survey made of the driveway. The cement ramps  
3     that the wheels went up and the height of the dirt in between  
4     them. And I arranged for further surveyors to produce an  
5     accurate measurement, starting out in the street and going up  
6     the driveway.

7             I also requested and received GM's data describing  
8     the proportions of the vehicle, the stiffness of the springs,  
9     and all that sort of thing, so that I could combine that  
10    information with the measurements of the driveway, so that I  
11    could calculate by simulation the clearance underneath the  
12    vehicle and the effect of going up a driveway at various  
13    speeds.

14    Q     What do you mean by that, to "calculate by simulation"?

15    A     Well, simulation is a form of calculation in which you  
16    try to, by means of equations, to produce by simulation the  
17    same physical process as in the real world. In this case, we  
18    have a long object, the car, that has springs, shock absorbers  
19    at both ends. And as it goes up and down the driveway, there  
20    is going to be some sort of bouncing action.

21             So what I'm trying to do is to calculate the effect  
22    of bouncing on the clearance on the underside of the car and  
23    to see how this varies with the speed that the car goes up the  
24    driveway. A simulation, as the name implies, is merely an  
25    attempt to simulate the physical process, in my case, by a

1 series of equations in the computer.

2 Q Dr. Shapley, after you had these steps taken, the survey,  
3 the vehicle specifications, the computer simulation, did you  
4 have a diagram or exhibit created to help you illustrate what  
5 you had found?

6 A Yes, I did.

7 MR. KELLY: With the Court's permission.

8 Your Honor, with the Court's permission I would like  
9 to ask Dr. Sharply, if he can step down, please.

10 THE COURT: As soon as the students have left the  
11 proceedings.

12 (Pause.)

13 THE COURT: I'm sorry to report, the students found  
14 it so interesting yesterday, they not only came back today,  
15 but they have promised to come back tomorrow.

16 MR. KELLY: With the Court's permission, if I can  
17 have Dr. Shapley stand down.

18 (Pause.)

19 THE COURT: I say I'm sorry, only because there is a  
20 certain interruption; on the other hand, I'm delighted that we  
21 could have the student come.

22 Q Dr. Shapley, I placed on the tripod before you what I  
23 have marked as identification as Exhibit No. 23.

24 Doctor, is this the demonstrative exhibit that you  
25 had prepared to reflect and describe some of your findings?

1 A Yes, sir, it is.

2 Q Would you tell the jury what we're looking at, please.

3 A In an engineering sense, this was is what is known --

4 THE COURT: Can you do it from the other side, so you  
5 speak sort of over in the direction of the court reporter, I  
6 think it makes easier for him.

7 Can all the jurors see it?

8 Okay.

9 A (Continuing) Technically, this is what is known as a  
10 cross-section of the driveway, starting at the curb.

11 If you imagine the -- looking at the driveway beside  
12 the house, and Exhibit 10 B is a photograph of it, you can see  
13 that there are two lines of cement and a strip of grass,  
14 starting at the sidewalk, running down to the edge the road.  
15 If you were to cut down into it, or dig a trench, and then  
16 look at sideways, all right, this is what it would look like.

17 This is the very edge of the road. The ground rises  
18 slightly as it crosses the sidewalk, which is this section  
19 here, then rises more steeply as we come up the ramp. There  
20 is then a slight dip, and then it is relatively level, which  
21 is this section here. This is a scale drawing, and the scales  
22 are indicated, of a slice down through the driveway and the  
23 terrain. And it's the average of the two cement paths that  
24 there are very small variations with the grass, with the dirt  
25 of the grass , but it is within a fraction of an inch of the

1 same height of the cement.

2 Q Doctor, based upon your work and your analysis of the  
3 driveway, as well as the specifications of the vehicle, do you  
4 have an opinion, sir, concerning whether and how this device,  
5 which is reflected in mock Exhibit Number 4, may have become  
6 dislodged, essentially intact, without being crushed in the  
7 driveway of 39 Eastbourne Street on October 28, 1991?

8 A Yes, I do.

9 Q And if you could, using your exhibit, describe for the  
10 jury, your opinion.

11 A This picture of a car is also prepared to scale based on  
12 the dimensions provided by General Motors. Of particular  
13 interest is the amount of space between the car and the  
14 ground. The sequence involving going up the driveway, is that  
15 initially the vehicle reverses up the driveway, and there is  
16 some testimony about noise, but nothing is noticed. Then it  
17 moves forward out of the driveway, testimony about noise, but  
18 this time something is left behind.

19 If you look at the space between the underside of the  
20 car and the ground, you can see that because of the shape of  
21 the driveway, it comes down, it is reduced, and then because  
22 of the dip it stays relatively constant as the car passes over  
23 the crest on the driveway.

24 The effect of this is that if there's something on  
25 the underside the car, that's between the wheels, it is going

1 to come down and contact the ground and slide over the  
2 underside of the car until the car has moved backwards far  
3 enough to, once again, lift the object off the ground and then  
4 continue the journey backwards.

5 Coming forward, the same general effect occurs in  
6 reverse. Once again, the object will come into contact with  
7 the ground, be swept backwards. Only this time, instead of  
8 being picked up as the car passed over it, it was left in the  
9 driveway. The underside of the car is not smooth, there is a  
10 series of bumps and ridges. And as you moved backwards -- in  
11 fact, the underbody of the car is cut away very steeply to  
12 provide clearance around the rear axle area.

13 So, having simulated this at a variety of different  
14 speeds, I find that the distance between the floor pan and the  
15 ground doesn't vary very much with speed. This is not a  
16 situation where you have to hit it at exactly the right speed  
17 to get the right clearance. It doesn't seem to vary very much  
18 if you crawl up the driveway or go up it in about four or five  
19 miles an hour. The clearance is reduced to about three  
20 inches, and it stays about three inches until the vehicle gets  
21 far enough back that lifts the friend end up again.

22 So, I'm of the opinion that the removal of the device  
23 from the underside of the car is due to the interaction of the  
24 shape the driveway and the shape of the car; and that in this  
25 case, the clearance was enough to cause the object to dig into

1 the dirt, but it was never -- the car was never so close to  
2 the driveway that it actually crushed the bomb on the  
3 underside of the car.

4 Q Mr. Shapley, you mentioned earlier that you had the  
5 opportunity to read the sworn grand jury testimony of Thomas  
6 Shay, Sr. Assume that Mr. Shay's account of what occurred on  
7 the Sunday, October 27th, 1991, in his driveway, meaning the  
8 sounds that he heard, how he moved the car up the driveway and  
9 back out again, et cetera, sir, do you have an opinion as to  
10 whether the physical evidence is consistent with Mr. Shay's  
11 account of what occurred that day?

12 A Yes. Certainly, the evidence in terms of the  
13 calculations based on the driveway and the car, that is  
14 consistent. And also, the appearance of the underside of the  
15 car is consistent.

16 Q Did you have an opportunity to examine the undercarriage  
17 of the vehicle?

18 A Yes, I did.

19 Q Using Exhibit 21 C, doctor, perhaps you can explain to  
20 the jury your opinion as to why you believe that the physical  
21 evidence is consistent with his account?

22 A Well, on the underside of the car, and I'd better explain  
23 where we are, the top -- it is already marked. This is the  
24 gas tank. This is the exhaust pipe down the middle of the  
25 car. This is the front the car. This is the driver's side.

1           You can see a succession of scrape marks which have  
2       scratched off the rustproofing compound. When these  
3       photographs were taken, shortly after the explosion, these  
4       marks have the appearance of being fresh, in the sense that  
5       the metal hasn't gone rusty. And if you look at the areas  
6       where the rustproofing compound is merely being rubbed it is  
7       still nice and clear. There are some marks in this photograph  
8       that are clearly fresh.

9           When I was able to examine the car sometime later,  
10      you can see, for example, this mark; and some of these others,  
11      you can identify them quite clearly. And when you got up  
12      close to them, you can see that these marks represent motion  
13      some one way and some the other.

14          And you can tell that, if you think about it, this  
15      material is essentially a tarry substance. And if you  
16      picture, taking your fingernail and gouging through the butter  
17      and lifting your finger up, you can tell which way you gouged  
18      it because the butter is all peaked up at the far end. You  
19      get the same general cause/effect in this stuff. So,  
20      depending on which one you look at, there's some evidence of  
21      scraping one way and some evidence of scraping the other way.  
22      And there's certainly evidence of scraping over an object that  
23      had, you know, sharp metal pieces attached it to.

24          So, what physical evidence there is, direct physical  
25      evidence, is consistent with Mr. Shay's Sr. testimony as is

1 the result of calculation.

2 Q One last photograph on this same topic area, let me show  
3 you, doctor, what has been marked as Exhibit 9 C.

4 This is a photograph that has been identified as  
5 being a picture looking down on the rear step or bumper of  
6 this panel truck in the driveway, depicting two magnets on  
7 that bumper.

8 Doctor, my question is, does the appearance, or is  
9 the appearance of those magnets, as you see them there in the  
10 photograph, consistent with their being involved in a  
11 situation, as you described here this morning, in a car coming  
12 over the driveway as you just described it to us?

13 A Yes, I believe it is. There are two things. One is, you  
14 can see that the magnets are substantially covered in paint,  
15 but there are areas where the paint has been scraped off.  
16 There are shiny patches, white patches. Sliding the magnets  
17 over the underside of the car, you know, is going, very  
18 likely, to scrape the paint off them in the same way as it is  
19 going to scrape the underside of the car. And also moving  
20 sideways, all right, the shearing action explains why they  
21 have come off. The removal of the magnets, all right, is more  
22 likely to be associated with knocking them sideways to break  
23 them off the plywood than a straight pull.

24 So, I think the presence of these two magnets  
25 separates it as they are from the device and separated before

1 the explosion, all right. The fact of their separation and  
2 their appearance are both consistent with the object having  
3 moved up and down along the underside of the car.

4 Q Doctor, I have two final questions, there has been  
5 testimony from a forensic chemist that her analysis indicated  
6 that some of the magnets has been glued to the box prior to  
7 this wooden box being spray painted and other magnets had been  
8 added to the box after the box had been spray painted.

9 Doctor, do you have an opinion as to what this would  
10 indicate?

11 A Yes, I do.

12 Q What is your opinion?

13 A Well, if you think about it, the fact that paint under  
14 the magnets indicates when the magnets were applied. If  
15 there's paint under -- okay, let -- the large magnets, this  
16 indicates that these magnets were applied after the magnets  
17 which have no paint under them. You think of yourself making  
18 it, you put on some magnets, you now paint everything.  
19 Right. Any magnets you put on after this, are going to have  
20 paint underneath them. And the variation, and whether or not  
21 there's paint under the magnets, indicates that the attachment  
22 of the magnets was done in stages and indicates a degree of,  
23 you know, trial and error in the design and manufacturer of  
24 the bomber.

25 It indicates that the first guess as to how to attach

1 it, it is my understanding there's paint under the big ones,  
2 when this was first made it had had a number of button magnets  
3 which because they are very sensitive to separation from the  
4 metal, are unlikely to reliably hold it on the underside of  
5 the car. The button magnets require you attach it to smooth  
6 metal plate because they only work when they touch the metal.

7 This obviously isn't going to work on the underside  
8 of a car because there isn't a large flat area big enough to  
9 stick the thing. These magnets are not only more powerful,  
10 but they are much more forgiving of the lumps and bumps on the  
11 underside the car. | So, this suggests to me that somebody made

12 this. The first guess was some button magnets, went out and  
13 tried it, wasn't happy with the results, stuck on some more  
14 magnets, and eventually after some trial and error ended up  
15 with the lay out we have here. J

16 If he had started with the large round ones, that  
17 would have done the job. I mean, as it is configured now,  
18 you'd be better off if you removed the button magnets because  
19 they merely add weight, contributing almost nothing to the  
20 reliable attraction of the bomb to the car.

21 MR. KELLY: Nothing further, your Honor.

22 THE COURT: Let us take morning recess, and then  
23 we'll hear the cross.

24 [Whereupon, the jury was excused.]

25 THE COURT: Court is in recess.

1 [Recess.]

2 THE COURT: I was told, Mr. Kelly, that you wished to  
3 be heard on the motion to offer Mr. Shay's statements through  
4 other witnesses.

5 MR. KELLY: And after, your Honor, Mr. Libby is  
6 prepared to address that.

7 THE COURT: Well, the problem is that defense counsel  
8 apparently did not get a copy of the memo that I received last  
9 night.

10 MR. KELLY: It was hand delivered to their office,  
11 your Honor, last night at about 5 o'clock. Mr. Libby and I  
12 made arrangements at the same moment, and we delivered a copy  
13 to chambers and sent it over to 210 Commercial Street.

14 MR. SEGAL: We didn't have it. It didn't come in.  
15 After five we lock the door out front. Sometimes there's  
16 nobody around there, and if they buzz and we don't here hear  
17 it. The point is we don't have it.

18 MR. KELLY: I have my copy.

19 THE COURT: Why do we need to deal with this issue,  
20 in any event, before we know whether Mr. Shay's going to  
21 testify?

22 MR. LIBBY: Well, your Honor, our first witness, in  
23 that respect, Miller Thomas, the homicide detective. He'll  
24 speak of his personal involvement at the scene, and he'll lead  
25 into his late night interview --

1           THE COURT: I read your memo. I understand what  
2           you're offering him for. The question is why do we need to  
3           deal with the question of Mr. Shay as a declarant, before we  
4           know, in fact, he's going to testify.

5           MR. LIBBY: Well, your Honor, it puts it in  
6           chronological sequence for the jury. We'd like to call  
7           Detective Thomas first and then our plan is to call Shay, Jr.  
8           and the remaining witnesses will be called in order.

9           THE COURT: Assume Shay, Jr. testifies, are you  
10          planning to call all the other people?

11          MR. LIBBY: Not necessarily.

12          THE COURT: What do you mean "not necessarily." Are  
13          you calling any of them?

14          MR. LIBBY: It depends. It depends on what Shay, Jr.  
15          is testifying to. If he testifies to those matters way out in  
16          our brief, there may be no need to call any of them. But if  
17          he declines to testify at all or testify in some way in  
18          contravention of those things, we certainly do reserve our  
19          rights to call those witnesses. We'd like to do it and  
20          understand, your Honor, it's clear that the defense theory  
21          here is to spread doubt amongst the variety of people as to  
22          who may be potentially culpable for this device: Senior,  
23          brother Arthur, Giamarco, Berry, what have you. It's key to  
24          the Government's case, your Honor, to put in context for the  
25          jury, what the Government knew and how it proceeded at the

1 precise time it proceeded. For that reason we would like to  
2 call Thomas before we get to Shay, Jr.. Perhaps the court  
3 could rule on the things involving Detective Thomas presently  
4 who would be our next witness, one; and two we have a separate  
5 motion, your Honor, as your Honor understands, to play the  
6 October 31 Trailways Press Conference for that very reason,  
7 again because it cuts through the very propriety --

8 THE COURT: What is it offered to show?

9 MR. LIBBY: What the Government knew and when it knew  
10 it with respect to when Shay, Jr. became a suspect in your  
11 mind. It's clear, your Honor, here that what is being  
12 contested is the accuracy and completeness of the Government's  
13 investigation. So to put before the jury in the proper  
14 context and certainly in chronological sequence, what the  
15 Government knew and when it knew it, and how it directed its  
16 efforts towards the investigation as to one half of this  
17 conspiracy is key to our case.

18 The defense theory is that it may be one, two, three,  
19 of these other folks out there in the world. We have to show  
20 what we knew and when we knew it or we are hamstrung in our  
21 efforts to show how proper, accurate, and completely in our  
22 investigation it was as it proceeded.

23 THE COURT: Mr. Segal.

24 MR. SEGAL: I'm at a loss to respond. I'd like to  
25 have a chance to have the memo look at it and then we could

1 have a discussion.

2 THE COURT: Do you have a copy? I mean at the moment  
3 what we're dealing with is one witness's testimony, and the  
4 substance of what they want is outlined on pages 3 and 4 as I  
5 understand it.

6 MR. SEGAL: Maybe I could look at it and see.

7 MR. LIBBY: Perhaps Mr. Segal can look at it while  
8 counsel is cross-examining.

9 THE COURT: We're not going to do that.

10 MR. LIBBY: I thought we were going to Detective  
11 Thomas.

12 THE COURT: I understand that. That's why I'm having  
13 this hearing now so we don't have to have the jury come in and  
14 come out again.

15 MR. SEGAL: Well, I don't want to take the Court's  
16 time now except to say I don't think you can isolate Detective  
17 Thomas from the other 16 pages. The issue is there with  
18 Thomas as it is everybody else. Our position is none of this  
19 person's statement should come, and I really don't have to  
20 read this whole thing, and I just have it out on that.

21 I don't know what to say other than I'd like the  
22 chance to read it, and then we could argue the whole issue  
23 because I don't see how Thomas differs from the other issue.  
24 I mean there are some subtle distinctions. I guess he's a  
25 detective versus an inmate, this or that, but --

1           THE COURT: I don't think that's the question. I  
2 guess the question I had is whether the specifics that he is  
3 being offered on as outlined in paragraphs 1, 2, and 3 on  
4 pages 3 and 4, whether you object to those particularly. You  
5 know, paragraph 2 has double hearsay in it. Here we have  
6 Mr. Thomas telling us what Shay, Jr. told him Pransky told  
7 Shay, Jr., and I don't understand, I mean it's double hearsay  
8 if it's being offered for the truth of it, and I have some  
9 difficulty understanding how it is relevant in this case to  
10 have this come in to show what the Government knew at what  
11 point in time. I have always understood that you were  
12 offering Shay's statements on the existence of a conspiracy.

13           MR. LIBBY: That's correct, your Honor, and it's  
14 coming in on that point. Specifically to respond to that  
15 Pransky conversation, the first part is as to Shay, Jr.'s  
16 state of mind as related that evening; the state of mind in  
17 the course of the conversation with the attorney as thereafter  
18 related to the detective. In other words, he's saying, he's  
19 bragging to the detective I was, my father's going to make a  
20 lot of money in this lawsuit. He's clearly very pleased about  
21 that. It's not offered for the truth of that. It's offered  
22 for Shay, Jr.'s understanding of that situation.

23           THE COURT: Well, I'm not going to force the  
24 defendant to argue off-the-cuff on this. This is a major  
25 issue in the case. If they didn't get the memo last night, I

1 don't see how I can make them read it while cross-examination  
2 is going on of another major witness of the government.

3 Let us, in any event, carry on with Mr. Shapley, and  
4 we'll see where we are and whether the Government can have  
5 another witness or start with Mr. Thomas on issues that are  
6 not in dispute. So can you bring the jury down. I mean I  
7 don't know what else to do.

8 THE COURT: Mr. Lopez, do you need the chalks for  
9 your cross-examination. If so, let's set them up now.

10 MR. LOPEZ: I don't believe so, your Honor.

11 THE COURT: Okay.

12 [Whereupon, the jury entered the courtroom.]

13 THE COURT: You may proceed.

14 MR. LOPEZ: Thank you, your Honor.

15 Q Good morning, Mr. Shapley. Mr. Shapley, when you did  
16 your estimates of the holding power of the larger circular  
17 magnet, did you reach the conclusion as to amount in pounds of  
18 holding power of that particular magnet?

19 A It's reflected in the graph.

20 Q Is that 13 and a half pounds?

21 A If it's touching the metal, yeah.

22 Q If it's touching the metal it's 13 and a half pounds.

23 And I think the last point that you made before the break was  
24 that the big round magnets were placed on the device after the  
25 small, the smaller magnets is that --

1 A After it was painted and some of the smaller magnets, to  
2 my understanding, was placed on before it was painted.

3 Q So it's your understanding that, and I think you  
4 described it in the process of experimentation, that the  
5 smaller magnets were placed on the device first, the device  
6 was then painted and then the larger magnets were placed after  
7 that?

8 A The fact that some are painted underneath and some aren't  
9 indicates, yes, paints were applied, magnets were applied,  
10 more magnets were applied, yes.

11 Q Now, the information that you received about the weight  
12 of the device was six and a half pounds; is that correct?

13 A Approximately, yes.

14 Q So would it be fair to say that one of the big brown  
15 magnets would have had sufficient holding power, that is it  
16 had a holding power of 13 and a half pounds to hold that  
17 device, if it was touching --

18 A If you picked the right spot and you were confident there  
19 wasn't going to be any vibration, one round one on its own, in  
20 an ideal setting would be sufficient, yes.

21 Q But in this situation, your opinion is that a person put  
22 smaller button magnets on, painted the device, and then put  
23 one or two of these larger magnets on?

24 A Whichever magnets are not painted underneath were applied  
25 after the button magnets were put on when it was painted.

1 Q I believe it was your testimony that it was your  
2 understanding that the larger brown magnets were put on after  
3 the device had been painted; isn't that correct?

4 A Yes, and also I believe, if I remember correctly, one of  
5 the two button magnets -- some of them are not painted  
6 underneath and some are painted underneath. So there were  
7 further button magnets added and also the large round magnets  
8 added.

9 Q But in any event, if the person who made this device had  
10 painted the device and put one round circular magnet on it,  
11 that would have been sufficient holding power for this device  
12 if properly placed; is that correct?

13 A If carefully placed, one, yes there wouldn't be much  
14 margin of safety, but it would do it.

15 Q It would do it. Thank you.

16 Now, Mr. Shapley, you offered an opinion concerning  
17 the device that is sitting on the desk there marked as Exhibit  
18 4 for identification, that that would have remained attached  
19 to the undercarriage of a 1986 Buick Century while the Century  
20 was driven around Metropolitan Boston for as much as a day; is  
21 that an accurate restatement of your opinion?

22 A That sounds like what I said, yes. I think so long as  
23 you simply drove it around without hitting any "big bumps,"  
24 it's probably not going to come off.

25 Q Now, you've also offered an opinion that if it was

1 attached to the undercarriage of the car, and I believe you  
2 showed where you believed it was attached, that it wouldn't  
3 necessarily fall off if it had a glancing blow on some dirt;  
4 is that correct?

5 A So long as the glancing blow just pushed it horizontally,  
6 it moved it to a new spot and stayed stuck there, yes.

7 Q Now, one of the assumptions that your opinion is based  
8 upon is that it hit a soft surface such as dirt; isn't that  
9 correct?

10 A Well, not necessarily soft but something that would  
11 engage it and cause it to slide. It doesn't have to be  
12 particularly soft, but not hard smooth Teflon covered,  
13 something so that when the object comes in contact with it, it  
14 doesn't slide smoothly over the top, but sort of digs and  
15 holds on to it. It doesn't have to be a soft surface though.

16 Q Would your opinion be affected any if instead of the  
17 device touching dirt, it touched concrete?

18 A Well, so long as the concrete was rough enough that it  
19 didn't slide over the surface, so long as you get the same  
20 effect which is that on touching the concrete, it's easier to  
21 slide on the car than it is to slide over the concrete. I  
22 don't think it made any difference.

23 Q Well, the point is, though, that concrete is a harder  
24 surface; isn't that correct?

25 A It's harder than dirt, yes.

1 Q And if the device contacted concrete, is it more likely  
2 or less likely that the box would be crushed than if it hit  
3 dirt?

4 A Oh, I don't think it would make any difference because  
5 the crushing of the box -- essentially, as the car passes over  
6 the ground, there's some distance between the car and the  
7 ground. The ground is cement or dirt. Suppose, to make the  
8 numbers nice and round, the object is three inches tall and we  
9 only have two inches of clearance. All right, the car is  
10 supported on springs. You can lift the car with a force of  
11 perhaps 150 pounds and cause it to go up an inch. It's not  
12 all of a sudden all of the car is resting on it. The  
13 situation is how much of the weight of the car is going to be  
14 shifted from the springs of the suspension to the structure of  
15 the box.

16 Q Did you make a determination as to how much the weight of  
17 the car was shifted to the box at the time of this glancing,  
18 yes or no?

19 A I don't have a figure for it, no.

20 Q Okay. Now, would you agree that another assumption that  
21 you made was the box was in fact that size and it was that  
22 size, isn't that one of the assumptions that went into your  
23 determination?

24 A Yeah, the --

25 Q In fact, if the box was one or two inches thicker, your

1 opinion would be affected by that; isn't that correct?

2 A I'm not sure that one inch would make much difference,  
3 but certainly, obviously, if the box was six inches thicker,  
4 then it wouldn't work the way I said. I'm not sure that an  
5 inch would make that much difference, but yes, the proportions  
6 of the box are a factor.

7 Q Well, I guess the question is if the shape of the box was  
8 changed, is it possible that the weight of the car would have  
9 crushed the box as it came down in the driveway?

10 A The thicker the box is, right, the more of the weight of  
11 the car it would have to carry. Suppose -- suppose we've got  
12 two inches of clearance and a three-inch box. If you go out  
13 to the parking lot, you can grab hold of your car and you can  
14 lift it about an inch with probably a force, you know, 150  
15 poundish. If you think I can stand on that box, without it  
16 breaking, right, then the box will raise the car an inch.  
17 Okay. And it's progressive. If the box is four inches thick  
18 and you've got two inches, then you need to use the numbers we  
19 were using before, a strength of 300 pounds. It needs to be a  
20 very large box before it has to bear the entire weight of the  
21 car.

22 Q Have you ever stood on that box?

23 A I haven't stood on that one, no.

24 Q Have you made any determination as to the amount of  
25 weight that a box with wood of that nature would take before

1 it is crushed?

2 A Well, only --

3 Q Have you ever, have you ever made that determination?

4 A I haven't actually measured the strength of the wooden  
5 structures. We could stand on it if you like.

6 Q No, that's quite all right. That's not the box, that's  
7 just a replica?

8 A If that's what the box looks like, there's no doubt in my  
9 mind I can stand on it.

10 Q The first time you were consulted in this manner was  
11 seven months after October of 1991; is that correct?

12 A That sounds right.

13 Q In May of 1992?

14 A Yeah.

15 Q And you were provided access to Mr. Shay's 1986 Buick?

16 A Yes.

17 Q But you didn't conduct your magnet test on the 1986  
18 Buick; is that correct?

19 A No, I used my 1986 Pontiac.

20 Q Now, before you conducted your test, did you speak with  
21 Mr. Shay?

22 A No, I didn't have any discussion with Mr. Shay at that  
23 time.

24 Q Did you take any measurements of the kind that you took  
25 with respect to the survey of the driver, did you conduct any,

1 did you take any measurements of the various locations that  
2 Mr. Shay went to on Sunday, October 27th as he drove around  
3 Metropolitan Boston before you reached your opinion as to the  
4 likelihood that the device would have remained attached to the  
5 undercarriage of his car?

6 A I didn't survey the route. I did ask if there was any  
7 evidence that he had hit anything sufficient to bottom out the  
8 suspension. My concern is, in order to get this thing off,  
9 you have to hit a bump big enough that instead of the wheels  
10 traveling against the spring, they hit the bump stop so long  
11 as the suspension --

12 MR. KELLY: Your Honor.

13 THE COURT: Let him finish the answer, please.

14 A So long as the suspension is within its normal range,  
15 i.e., you don't bottom it out as you might by driving over a  
16 railroad track of speed; I'm of the opinion so long as the  
17 suspension does not bottom out, you will not shake the box  
18 off. I did ask if there was any indication of any sort of  
19 major bump, railroad track, whatever in the course of his  
20 driving, and my understanding is there is no such evidence.

21 Q Who did you make that inquiry about?

22 A I asked Mr. Kelly if there was any evidence of that have.

23 Q And Mr. Kelly didn't tell you there was any evidence of  
24 that?

25 A To the best of my knowledge, there was no evidence of any

1 major obstruction in the course of his route.

2 Q But you didn't actually visit the locations that Mr. Shay  
3 went to on Sunday, October 27th, before you reached your  
4 opinion on the likelihood that the device would have remained  
5 attached to the undercarriage of the car because you had  
6 talked to Mr. Kelly; is that correct?

7 A Yes, it's my understanding that there is no bump  
8 sufficient to bottom the suspension out anywhere on this  
9 route.

10 Q Did you determine where Mr. Shay went on Sunday, October  
11 27th, before you reached your opinion, as to whether or not  
12 that device would have remained attached to the undercarriage  
13 of his car?

14 A I personally didn't search the route, but I had been  
15 advised that there was no evidence throughout the route,  
16 wherever it was, although the bump was sufficient to bottom  
17 the suspension out.

18 Q Did anyone tell you where Mr. Shay went on Sunday  
19 morning, October 27th?

20 THE COURT: It doesn't make any difference, did  
21 anyone go there? It's an irrelevant question. He said he  
22 didn't go anywhere, didn't examine the route. What difference  
23 does it make whether he knew what the route was or not.

24 Q Did anyone ask you to visit the locations that Mr. Shay  
25 went to on October 27th, 1987, to conduct a survey as you did

1 with respect to the driveway before you reached your opinion  
2 as to whether or not this device would have remained attached  
3 to the undercarriage of Mr. Shay's 1986 Buick before you  
4 rendered your opinion?

5 MR. KELLY: Object to the form of the compound  
6 question. In addition, I think he also misspoke. He said  
7 1987. I object on that ground as well.

8 THE COURT: It was a simple question.

9 Q Did anyone ask you to visit any of the locations and take  
10 measurements as you did with respect to the driveway of the  
11 locations that Mr. Shay visited on Sunday, October 27th,  
12 before reaching your opinion as to whether or not this device  
13 would have remained attached to the undercarriage of his car  
14 while he was driving around Boston?

15 A I was not asked --

16 THE COURT: The answer is no, I gather.

17 THE WITNESS: Okay. I wasn't asked to.

18 Q Sir, what do you charge an hour for your services?

19 A I'm charging 150.

20 Q Thank you very much.

21 THE COURT: Anything else, Mr. Kelly?

22 MR. KELLY: Just a couple of questions, your Honor.  
23  
24  
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Redirect Examination by Mr. Kelly

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Q Dr. Shapley, you were asked a couple of questions about whether or not single ring or circular magnets would have been sufficient to hold this device, and I think you told us that if the magnet was up flush it had holding power of 13 and a half pounds?

A Correct.

Q Did I understand you to say, sir, that that 13 and a half pounds needs to take into account the weight of the circular magnet itself?

A Obviously.

Q So, it's not 13 and a half pounds other than the magnet, that's part of 13 and a half pounds?

A Correct.

Q How much do one of those magnets weigh, do you know?

A I have a note somewhere. It's quite a bit, I don't know offhand perhaps a pound.

Q Now, your answer to Mr. Lopez's question whether one would be sufficient was only if you pick the right spot and there was no vibration, there would not be much margin for safety, would you tell us what you mean by that, sir?

A Yes, if the device weighs 6 and a half pounds and the holding force is 13 pounds, then the thing is stuck. It weighs 6 and a half you have a reserve of 6 and a half, which means you have a bump which produces an acceleration of the

1 car of 1 G you're separating it in the vehicle.

2 What you're looking at is how much holding power do  
3 you have left after you subtract the weight of the object. In  
4 that case you have a reserve ideally on the way to the  
5 object. So you have to be careful where you place it, and  
6 you're rather vulnerable to vibration.

7 Q The car rattled a little bit, one magnet, if nothing  
8 else, there's a good probability it will fall?

9 A It's likely to shuffle and eventually fall, yes.

10 Q And does that also assume the magnet, if you use the  
11 single magnet, you have a complete connection to a flat  
12 surface?

13 A You have to pick the spot, yes.

14 Q If you have one of those ridges or straighteners?

15 A Stiffening ribs, yes.

16 Q It would cause a little jiggle to cause it to fall?

17 A It would reduce the use of the magnet and cause it  
18 dropping off, yes.

19 MR. KELLY: I have nothing further, your Honor.

20 THE COURT: Anything else?

21 MR. LOPEZ: Just one question.

22

23

24

25

Recross Examination by Mr. Lopez

Q If there were two, that would have been sufficient, and a circular magnet would have been superfluous?

A I think it would have been better off without the button magnets.

Q But in this case, in your opinion, the smaller magnets were started with and then the person moved on to the bigger magnets; isn't that correct?

A Yes, the big magnets came after the little ones, yes.

MR. LOPEZ: Thank you.

THE COURT: Thank you, Mr. Shapley. You're excused.

Who is next?

MR. LIBBY: Could we be heard briefly, your Honor, at the side bar?

THE COURT: About what?

MR. LIBBY: About this witness situation.

THE COURT: You can stretch.

[Conference at the bench, as follows:

MR. LIBBY: Your Honor, the Government had planned to call Detective Thomas in the middle of his testimony, play that bus tape, finish him up, and then start Attorney Pransky. We didn't know precisely when we would get to Detective Thomas and how your Honor would rule, particularly with respect to the tape. He is out of the court here. He's coming in from probate as we speak; he's about 20 minutes

1 away.

2 Perhaps we could take the time necessary, for that  
3 reason, to deal with Detective Thomas's situation. If we had  
4 the Court's ruling specifically with respect to those matters,  
5 getting up to the bus station interview, perhaps we can get  
6 started with Detective Thomas who is present out in the  
7 hallway.

8 MR. SEGAL: Well, I think the problem is that in the  
9 early part of Detective Thomas, some of these issues come up  
10 in terms of this memo that we'd like some time to think about  
11 and respond to. Am I right, you want to bring in some  
12 statements --

13 MR. LIBBY: I think there are three or four that  
14 relate to the October 29th, your Honor. There's an 804(b)(3)  
15 issue. I don't know if it takes that much time really to  
16 understand the concept involved. It's either a declaration  
17 against penal interest without any Bruton difficulties, or it  
18 isn't. We've laid out very clearly here. None of these  
19 things make any reference to Trenkler. The precise  
20 circumstances that we had in the Shay trial, where Trenkler's  
21 statements inculcated himself alone. And they are clearly  
22 declarations against penal interest.

23 THE COURT: That's not totally the waiver of the  
24 confrontation clause issue.

25 MR. LIBBY: Your Honor, if it fits within that

1 exception, it's a firmly routed exception to the hearsay rule,  
2 Roberts and Wright, and later cases, your Honor. That  
3 satisfies the trustworthiness and the confrontation issue.

4 My reading of the cases, your Honor, is that it's  
5 clear that that satisfies the confrontation issue.

6 THE COURT: Does it satisfy the confrontation clause,  
7 in the context of the case, of a case where there is evidence  
8 of the lack of reliability of a witness?

9 MR. LIBBY: Well, your Honor, first of all, --

10 THE COURT: Does it?

11 MR. LIBBY: I beg your pardon, could you restate  
12 that?

13 THE COURT: The notion of the hearsay exceptions is  
14 that the testimony is inherently credible, inherently  
15 reliable, because of the circumstances in which it was given  
16 against penal interests. If you have a witness who is known  
17 to be a liar, is the confrontation clause satisfied even  
18 though it fits within a hearsay exception?

19 MR. LIBBY: The test used in the rule, your Honor, is  
20 the reasonable man standard: whether a reasonable man in those  
21 circumstances would know that it tended to subject him to  
22 criminal liability. So, one, that affects the nature of the  
23 test. And two, your Honor, known to be a liar, we had some  
24 testimony in the sentencing phase of the Shay, Jr. trial,  
25 where Dr. Kelly clearly indicated he could, in fact, tell the

1 jury; he knew how to tell the truth. Whether he lied or not  
2 is another matter entirely that cuts to the weight it cuts to  
3 the weight.

4 THE COURT: It cuts to the confrontation issue. The  
5 confrontation clause has to deal with reliability. That's  
6 what it deals with. It is a situation where there is no  
7 possibility of cross-examination, no possibility to test their  
8 own statement. And the confrontation clause says it,  
9 nevertheless, can come in when it's reliable. And there are  
10 certain circumstances where the confrontation clause says,  
11 yeah, it's probably reliable. But it has never been held to  
12 be coextensive with hearsay exceptions.

13 MR. KELLY: Your Honor, if I might--

14 THE COURT: I thought only one of you were --

15 MR. KELLY: This cuts across a number of witnesses,  
16 your Honor. For example, if you just take one of the  
17 witnesses that are proffered in the memo, Mr. Plant, the  
18 testimony in the first trial was that there were certain  
19 statements that were made by Mr. Shay to Mr. Plant which were,  
20 clearly, he was speaking to an entire room. Mr. Plant  
21 testified that he believed those statements to be largely  
22 fanciful.

23 There were other statements that were made, which  
24 were made in hushed tones, in a quiet setting, with a motion,  
25 which Mr. Plant testified, that he certainly understood to be

1 reliable. And in addition, the United States had offered  
2 evidence --

3 THE COURT: How can he tell us whether that's  
4 reliable or not?

5 MR. KELLY: What I'm suggesting to the Court is two  
6 things, that even Miss Gertner asked the question in the first  
7 trial about whether or not the hearer, in the place, Mr.  
8 Plant, understood those statements to be in kind and substance  
9 from the other statements. In addition, those statements were  
10 statements that the United States had offered, albeit  
11 independent evidence, such as the purchase at the Radio Shack  
12 and the like. So in other words, there was a distinction  
13 between Mr. Shay's statements made in a kind of a boasting,  
14 fanciful way, and certain other statements made to people in a  
15 different tone, with different motions, that were also subject  
16 to corroboration; and, therefore, I suggest to you wouldn't be  
17 reliable within the meaning of the hearsay rule.

18 THE COURT: The issue here is very different. I mean  
19 they were admitted because there were the defendant's  
20 statements. Here they're being offered against another  
21 defendant who has zero opportunity to cross-examine the  
22 declarant on the hypothesis that Shay won't testify, which  
23 what you are hypothesizing.

24 Let me just point out to you, the Government's  
25 witness, Dr. Kelly testified, as follows, on page 25, that is

1 Docket No. 387, the second day of the disposition here of  
2 Mr. Shay. He was asked whether he agreed with Dr. Phillip's  
3 testimony with respect to that condition, which I think has to  
4 do with the pseudologia.

5 "Answer: Well, Tom Shay does make up stories, and he  
6 does love to tell tales that he is the center of, and that  
7 attracts attention to himself. He is -- he admits it in his  
8 encounter with me. He said,, you know, if we were talking  
9 about mental illness, he said a crazy person would just go to  
10 the top of the building and jump off. I would go to the top  
11 of the building, summon the police and the media, and I would  
12 toy with them on the top of the building.

13 "And he goes off into this fantasy about it, and  
14 would make a bigger deal out of it, and that -- I don't have  
15 any problem with that. The term is not a diagnosis. It is  
16 the Latinization of someone who is bragger and a BS-er and a  
17 self-aggrandizing individual."

18 And he then goes on and ask is asked what that has to  
19 do with his capacity to premeditate or does it have to do with  
20 his capacity to premeditate.

21 "Answer: No. In fact, it can tend to indicate a  
22 pretty good capacity to do that because they have a thinking  
23 out of these tall tales, and that shows essentially the  
24 parallel ability to premeditate an action if that's what one  
25 wants to do in another instance."

1           Page 32 at line 14:

2           "Question: I will move on. Are you aware" -- this  
3 is on direct examination, Government's examination of its  
4 witness, "of another situation, particularly with respect to  
5 Shay, Jr.'s records reflecting a planning forethought,  
6 particularly in June of 1989, Doctor?

7           "Well, in the psychiatric records at Bridgewater, he  
8 was sent to Bridgewater having feigned suicidal ideation in  
9 the jail to get out of the jail, and he told that to the  
10 psychiatrist at Bridgewater.

11           "He also then demonstrated to the psychiatrist how  
12 he could behave as if he had a mental illness, which he said  
13 he was planning to do if he was found guilty of the offense.

14           "So both, he feined suicidal to get out of the jail  
15 and sent to Bridgewater to get the transfer, and also was  
16 talking about feigning mental illness if it would serve his  
17 purpose to get sent back to Bridgewater if found guilty.

18           "Question: Do you consider that scenario to be  
19 significant, Doctor?

20           "Answer: Yes. He shows, besides his other  
21 situation, he weighs the alternative, shall I stay in Dedham  
22 or should I go to Bridgewater. If I say I am suicidal, they  
23 will have to transfer me, and he does it. That's  
24 demonstration of a capacity to premeditate."

25           On page 71, at line 19, he gives an answer to a

1 question about in which he goes all over the place and can't  
2 keep on the same subject.

3 "He has a very rich fantasy life. He loves to talk  
4 about himself, and his ideas, and his plans, and past  
5 exploits. He did that even as a youngster. That is not the  
6 same as a thought disorder or thought disintegration. He  
7 wants to talk about what he wants to talk about.

8 "He wants to control the social situations. The  
9 examiner or the person having an encounter with him would say  
10 he is not staying on the subject, my subject most of the  
11 time. I know of no evidence that I can recall in those  
12 records in which he has loose associations in which he has a  
13 real thought disorder. He is distractible from time to time.  
14 He wants to do what he wants to do. It's hard to focus him on  
15 things, other than what he wants to focus on, that's true now  
16 and then."

17 On page 85, at line 12:

18 "He makes up stories, in my opinion. He is a  
19 bragger. He makes up these stories in which" -- it starts  
20 before that-- no.

21 "He makes up these stories in which he has had  
22 fantastic economic success with grand situations. He likes to  
23 talk, and he likes to hear himself talk, he likes to brag.  
24 So, and many of his stories are to me not credible, and many  
25 of them to other people going back to his adolescence are not

1 credible. How long he takes to think them up, it would depend  
2 on the individual situation."

3 On page 90, line 14:

4 "Question: And is it your view that Tom Shay lies  
5 for personal motive and gain?

6 "Answer: I think he does it for both.

7 "And is it your testimony that you are in a position  
8 to distinguish when he is doing it under one category versus  
9 when he is doing it under another.

10 "Answer: You would have to know the specific lie to  
11 do that, and usually, a psychiatrist is not in a position to  
12 know whether what any individual is saying about situation A  
13 is, in fact, correct. Because they were not there.

14 "And, in fact, his lying is such that in the  
15 Bridgewater records, did you review the fact that Dr. Nester,  
16 I believe it was, suggested that his lies are so pervasive  
17 that you can't even take a personal history from him and have  
18 any confidence that it is the truth. Did you read that?

19 "Answer: I believe I did, yes.

20 "Question: And was that in your experience as well?

21 "Answer: I took much of what he said with a grain of  
22 salt, yes."

23 This is a witness whose uncross-examinable statement,  
24 the government is offering. By its own evidence, this witness  
25 is absolutely and totally incredible.

1 MR. LIBBY: If I can be heard.

2 First of all, the topic before the house at  
3 sentencing, largely, was capacity to premeditate.  
4 Truthfulness, ability to tell the truth, is a subsidiary  
5 issue. And on that issue, and I don't think there is any  
6 question that Dr. Kelly said this kid knew the truth, could  
7 understand the truth, and was capable of telling that.

8 THE COURT: All of this stuff says that?

9 MR. LIBBY: He testified that he could tell the truth  
10 when he wanted to. This cuts to our argument, your Honor.  
11 The question here is declaration against penal interest. I  
12 don't think there was any question whether the kid was savvy  
13 enough, street smart enough, the evidence, showed, to  
14 understand what his interests were and where they lie,  
15 particular circumstances.

16 So, when he says something, and the standard being a  
17 reasonable man understanding that it would tend to subject him  
18 to criminal liability, he knew that, time and again. He  
19 demonstrated to the Court. The Court questioned his answer  
20 about coming into the greyhound terminal, and he said there  
21 were cops around. And you said: How could you tell?

22 We already had testimony that they were in uniform.

23 THE COURT: He gave the cockamamie answers about --

24 MR. LIBBY: Crown Victorias and the suits and so  
25 forth.

1           He instantly remedied his answers to meet your  
2       concern. He did it time and again with respect, for example,  
3       to denying Officer Bridgeforth's testimony about wishing to  
4       turn the hands of time back.

5           THE COURT: That's why he should be subject to  
6       cross-examination.

7           MR. LIBBY: Your Honor, if I may, if you apply the  
8       standard which the law says you must, under 804(b)(3), which  
9       is whether a reasonable man would understand that it tended to  
10      subject him to criminal liability. Clearly here, the evidence  
11      before the Court in the earlier trial is that he knows where  
12      his interests are, he knows what they consist of. When he  
13      says something along those lines, then, you give it that  
14      weight, that a reasonable man would understand, would tend to  
15      expose him. If you take a look at those proffered statements,  
16      let's just take the October 29th statements, if you would,  
17      before we get to the bus station --

18          THE COURT: Are we going to have much longer of this  
19      argument? If so, I'll excuse the jury, and there's no  
20      point --

21          MR. LIBBY: I think we should probably, your Honor,  
22      it's key to showing the conspiracy here.

23          THE COURT: Well, that, of course, is the other prong  
24      of the confrontation clause: the more crucial the evidence,  
25      and the less reliable, the less likely it's going to come in.

1           ...end of conference at the bench.]

2           THE COURT: Members of the jury, I'm afraid I have to  
3 engage in some further discussion with the lawyers about some  
4 legal question. I'm sorry that you've sat there all this  
5 time. I'll excuse you, so I can continue to carry on this  
6 discussion while you are comfortable upstairs with your coffee  
7 and whatever remains of your doughnuts.

8           [Whereupon, the jury left the courtroom.]

9           THE COURT: Please be seated. Mr. Libby, I'll hear  
10 you.

11          MR. LIBBY: Thank you, your Honor. Understanding  
12 that this may be mooted by Shay, Jr.'s testimony, your Honor.

13          THE COURT: Why don't we carry on.

14          MR. LIBBY: We have no reasonable expectation that  
15 he's going to testify and give answers to questions that cover  
16 these various things. We're proceeding on the notion that we  
17 want to get in front of the jury chronologically the evidence  
18 that we believe is relevant to establish Count 1 of the  
19 conspiracy.

20          With respect to, perhaps, your Honor, if we could  
21 just direct your attention to these three things, these three  
22 proffered statements that Detective Thomas is expected to  
23 testify regarding the interview with Shay, Jr. on the early  
24 morning hours on the 29th of October, thereafter, your Honor,  
25 as we've indicated we would expect to play the Trailways Bus

1 Station tape which would roughly be 45 minutes, it may take us  
2 to the end of the day --

3 THE COURT: I don't think how that tape can come in.  
4 I absolutely do not see how that tape can come in.

5 MR. LIBBY: Your Honor, again, we have a two-person  
6 conspiracy charged here. We have one of those two  
7 coconspirators who is giving a press conference, two or three  
8 days after the event in Boston. At this time this is the  
9 first time -- by this time the Court recalls, the Boston  
10 police had got information about his particular background,  
11 institutionalizations, and so forth, they went to some extent  
12 to videotape this conference. We have Detectives Harris and  
13 Murray on the scene to witness this and to approach Shay, Jr.  
14 after.

15 Your Honor, as I indicate, the defense theory here is  
16 to point the finger in various other areas other than  
17 Mr. Trenkler obviously. We have to show, in sequence and as  
18 these things were happening, the investigation took an  
19 accurate tact. We made decisions, investigative decisions  
20 based on the information that was coming into the  
21 investigators side of the case. We've heard references to  
22 things in the garage, a book shelf, things in Shay, Jr.'s,  
23 things in the Rolling Wrench garage, anywhere and everywhere  
24 with Mr. Trenkler. For the jury to understand the context of  
25 the significance of this information, it's quite clear, and to

1 be fair to them to understand what the investigators knew at  
2 this time, as of the press conference, we have the information  
3 as to those things to which Shay, Jr. spoke diverting  
4 attention away from himself and to a Mr.-- I can't remember --  
5 I believe it was Pace, those things are important, your Honor,  
6 to place in context and in time and place, what the  
7 investigators knew. It then has further significance, three  
8 or four days later, your Honor, when there was a connection  
9 made between Shay, Jr.'s notebook and the entry in the  
10 notebook of Mr. Trenkler's name and beeper number.

11 It is, at that time, your Honor, that the full focus  
12 of the investigation switched over to Mr. Trenkler. Without  
13 that press conference, your Honor, and putting in context as  
14 to his, what he's saying there, what the police knew from the  
15 31st, the following day, the day after that, and then leading  
16 up to discovery of the connection between the '86, Quincy  
17 police report --

18 THE COURT: Why do we need to listen to the press  
19 conference? Why can't Mr. Thomas tell us that Mr. Shay gave  
20 the press conference and as a result of that they did such and  
21 such. I don't understand why you have to put Mr. Shay's  
22 uncorroborated obviously bragging statements into the records.

23 MR. LIBBY: He's one of the two coconspirators. It  
24 shows that he's attempting to deflect attention away from  
25 himself and on to others, which is precisely is what

1 Mr. Trenkler's theory is here. We've argued Shay, Shay, Sr.,  
2 Berry and Giamarco, which the jury hasn't heard of yet. It's  
3 an incomplete context.

4 THE COURT: As I understand the law, it is that the  
5 confrontation clause is not co-extensive with any hearsay  
6 exception and in that certainly as a general rule, a hearsay  
7 exception is an indication of the reliability of the  
8 statement, a statement against penal interests. Obviously,  
9 the idea is that a person wouldn't say I did something wrong  
10 if in fact I didn't do something wrong.

11 The fact of the matter is that we have evidence in  
12 the Shay case from the Government that Mr. Shay precisely and  
13 repeatedly did just that. He brags about things. He calls  
14 attention to himself. He does it time and time and time  
15 again, and that is what Dr. Kelly told us. He's a chronic  
16 liar. That's what he said. And under those circumstances,  
17 whatever may be the general rule about reliability of a  
18 statement against penal interests, sort of loses all  
19 reliability, the case is interpreting also say that the more  
20 crucial the evidence is that the Government wants to put into  
21 evidence against, by a declarant, an unavailable declarant,  
22 the more vigilant the Court has to be and the more difficult  
23 it becomes for the Government. If it were just something that  
24 corroborated something else, it would be one thing but by your  
25 Honor your own statement it is highly crucial evidence. It is

1 the evidence on the issue of conspiracy.

2 MR. LIBBY: Respectfully, your Honor, if I might  
3 propose this: First of all, finding the reasonable man  
4 standard, as the rule incorporates, one.

5 And two, taking the case of Sealy --

6 THE COURT: Can you take a reasonable woman?

7 MR. LIBBY: Take that too, a reasonable person. And  
8 secondly, looking to Sealy to indicate that -- as we drop in  
9 our footnote here -- that it's not for the Court to assess the  
10 credibility of the in court declarant as to what was said,  
11 that's for the jury to do that.

12 THE COURT: I'm not doing that. I will accept that  
13 certainly Mr. Thomas will tell the truth, as he understands it  
14 as he heard it that night. I have some doubts as to Mr. Evans  
15 who is selling his testimony from day 1, but --

16 MR. LIBBY: Ultimately what the Court is saying,  
17 everything that Shay, Jr. said to anyone at any time in the  
18 course of all the evidence in the first case, investigators is  
19 absolutely false and that is absolutely --

20 THE COURT: I'm not saying that. I am saying that I  
21 am not in a position, given the Government's own expert's  
22 testimony: That the guy rely for any purpose and any reason  
23 whatsoever, both because he doesn't know the difference  
24 between lying and not lying, and he does it in order to get an  
25 object accomplished; namely, to get out of jail and into

1     Bridgewater.

2             MR. LIBBY: Your Honor, first, with respect to the  
3     difference between truth and lies, I think Dr. Kelly's  
4     testimony on that was absolutely clear. He certainly did  
5     understand what the truth was, and was capable of telling the  
6     truth. I think the record is absolutely clear on that. If we  
7     were to look at each of these three --

8             THE COURT: That means he purposely lies every time  
9     he lies and, then we certainly don't know whether he's telling  
10    the truth or not with one statement or another.

11            MR. LIBBY: He drew a distinction between mental  
12    disease and the fact that disease is not an issue like  
13    psychosis or what have you. He had no organic problem, no  
14    retardation or anything like that. Call him a common  
15    braggart. He knew how to tell the truth. When he didn't want  
16    to tell the truth, he chose not to. He could very easily  
17    lie. I understand that.

18            THE COURT: He wouldn't give the doctor the right  
19    history, for heavens sake.

20            MR. LIBBY: I understand that, your Honor. That does  
21    not mean one can take that leap and say virtually everything  
22    and anything he said to anybody at any time in the course of  
23    this investigation had no grain of truth.

24            For our purposes here, if I could direct the Court's  
25    attention to page 3, the proffered statements, just take them

1 one been by one. With respect to his statement to Detective  
2 Thomas O'Malley, his head dropped, his voice lowered. He  
3 said, Have you ever been to a boy's school? Do you know what  
4 they're like? Maybe things would be different if I hadn't  
5 gone to them. Is there any question to the truth underlying  
6 those statements? Absolutely. The record is clear he was  
7 warehoused from the age of 4 or 5 on. There's absolutely no  
8 problem with the reliability of that statement under  
9 804(b)(3), none at all. It cuts directly to his motive which  
10 is Count 1 of our case. That's one.

11 Two, with respect to his restating, Shay, Jr.'s  
12 restating Attorney Pransky's visit where he's showing him the  
13 car, the discussion with Attorney Pransky about being able to  
14 afford the fancy car, and how, if the Court recalls Detective  
15 Thomas testified previously how he showed his great pleasure  
16 and his father's expectant windfall. Clearly, your Honor,  
17 absolutely no question as to his reliability of that scenario  
18 happening either. And it clearly cuts to his state of mind,  
19 nonhearsay purpose, Shay, Jr.'s expectation, whether this is  
20 an accurate understanding, whether his understanding was in  
21 effect accurate as to Attorney Pransky's expectation of what  
22 his father-in-law is, it is not of the moment. What is of the  
23 moment is Shay, Jr.'s understanding, perfectly reliable on  
24 point 2.

25 Point 3, your Honor, the matter about talking about

1 remote control, radio control that evening without having been  
2 prompted in the first instance, that doesn't even speak to  
3 reliability. That just simply, Detective Thomas restating,  
4 one, that Shay, Jr. spoke about remote control, and two, none  
5 of the detectives present spoke about the first. This is the  
6 evening following the explosion. So, all of the Court's  
7 concern about these matters, your Honor, I think are  
8 satisfactorily addressed.

9 THE COURT: Mr. Segal.

10 MR. SEGAL: May it please the Court, Mr. Kelly and  
11 Mr. Libby both argued. I wonder if we can argue. We haven't  
12 had much time. I'll try to keep it brief. My point is  
13 simple. Putting in these statements violates the  
14 confrontation clause. Secondly, the statements Mr. Libby is  
15 talking about --

16 THE COURT: What about the argument the statements  
17 that are here are not inherently unreliable.

18 MR. SEGAL: The only way they would come in is as a  
19 declaration of his penal interest.

20 THE COURT: Well, no they could come in for  
21 Mr. Shay's state of mind, and I'm not sure why his state of  
22 mind is relevant in this case.

23 MR. SEGAL: I assumed they were coming in as a  
24 declaration against penal interest.

25 THE COURT: No. 3 clearly would be.

1           MR. SEGAL: And I say it doesn't fit the definition,  
2 a reasonable person. I think we all agree this man is highly  
3 reasonable, knowing it would subject him to criminal  
4 liability. How anybody could say somebody talking about  
5 remote control cars in one context would knowingly subject  
6 somebody who is hardly a reasonable person to criminal  
7 liability, I think is a stretch that goes from here to  
8 Cambridge. So that doesn't come in, I suspect. And the other  
9 two statements are clearly not against penal interest, and  
10 what his state of mind has to do with anything with regard to  
11 my client in this case I fail to see and I would like Mr.  
12 Lopez, if I could, to have a shot at it too.

13           MR. LOPEZ: Well, your Honor --

14           THE COURT: Mr. Lopez really doesn't have anything to  
15 add.

16           MR. LOPEZ: Just as you stated, your Honor, with  
17 respect to the cross-examination. We -- the Government is  
18 making some statements here about what they suspect these  
19 statements are intended to go to. We will not have the  
20 opportunity to ask Mr. Shay. These are the statements that  
21 they're going to use to show a conspiracy in this particular  
22 case, and we won't have the opportunity to ask Mr. Shay about  
23 it. The jury is going to be sitting there with these  
24 statements for days and days, and we don't know whether or not  
25 Mr. Shay is going to testify. Under these circumstances, your

1 Honor, which you adequately pointed out, the confrontation  
2 clause requires that these matters be excluded completely.

3 THE COURT: What about the press conference?

4 MR. SEGAL: Well, your Honor --

5 MR. LOPEZ: Well, your Honor --

6 MR. SEGAL: Well, that's the same thing, I assume  
7 it's coming in under declaration of penal interest. I don't  
8 see how it fits, one, he's a reasonable person. More  
9 importantly, how he could believe that making those statements  
10 he was subjecting himself to criminal liability. That's a  
11 huge leap when you look at these statements in the press  
12 conference to how that subjects him to criminal liability. I  
13 submit it doesn't fit within 804, the penal interests  
14 exception. I don't know what other exception they're going to  
15 try to use. It's after the conspiracy as is the Thomas so you  
16 can't bring it in under Petrozziello.

17 THE COURT: It's not being offered under that.

18 MR. SEGAL: It's not an admission. If you can get an  
19 admission out of that mishmash out of that press conference  
20 when he blames Ralph Pace and somebody else, I just don't see  
21 it. There's no exception. It can come in under, it is  
22 unreliable and it denies us confrontation, and I submit it  
23 should be completely out.

24 THE COURT: Anything else?

25 MR. KELLY: Yes, your Honor. I realize the Court

1 prefers us to speak to a single voice. This is an issue that  
2 cuts across a lot of what we've prepared for your Honor. Just  
3 a couple of points, your Honor. The United States is willing  
4 to be reasonable and perhaps withdraw the L D I, I mean the  
5 bus station press conference if it aids this matter. But  
6 there are a couple of points that we'd like the Court to be  
7 aware of. One, Attorney Gertner has already advised us of a  
8 strong likelihood that she is going to advise Mr. Shay to  
9 violate the Court's order and take a contempt. So we're not  
10 just throwing this out.

11 THE COURT: I understand that. I am aware of that.

12 MR. KELLY: There is a strong likelihood that he will  
13 say nothing other than his name. We're hoping that that's not  
14 the case, but that seems proper. The other thing, your Honor,  
15 is that many of these statements are not, do not in any manner  
16 incriminate Mr. Trenkler. They don't even refer to him.  
17 Let's just take the statement to Mr. Evans in the jail. How  
18 much time can I get for murder -- there isn't even the  
19 slightest suggestion.

20 THE COURT: The objection isn't Bruten. The  
21 objection is the inability to cross-examine Mr. Shay himself  
22 about the statement that he made. What did you mean when you  
23 said that the -- you don't know about the boy's school?

24 MR. KELLY: If I understand the essence of the  
25 Court's concern is subjective reliability. Beyond the

1 reasonable person's standard it's reliability. Beyond what  
2 Mr. Libby has already pointed out about how some of these  
3 Miller Thomas statements are reliable, your Honor, in the  
4 first trial for example, the jury must have necessarily found  
5 certain statements by Mr. Shay to be reliable.

6 I would submit that certain of those statements that  
7 I've previously referred to at the side bar by Mr. Plant, made  
8 in these harsh tones in the corner with a lot of emotion, et  
9 cetera, certain statements on the WLVI videotape which they  
10 have a chance to hear and see their demeanor while speaking.

11 THE COURT: But they can't be cross-examined.

12 MR. KELLY: The point is reliability. If the jury  
13 didn't find certain of those statements to be reliable, they  
14 couldn't possibly convict the gentleman. What I'm  
15 suggesting --

16 THE COURT: That doesn't mean that they could be used  
17 against Mr. Trenkler without the ability of Mr. Trenkler to  
18 cross-examine Mr. Shay.

19 MR. KELLY: It's exactly -- it's exactly the  
20 situation we found ourselves in the first trial. If you  
21 recall the first trial --

22 THE COURT: Yes, but the witness, by a defendant  
23 hanging himself, can always be used against that defendant  
24 whether it hangs him whether he can cross-examine him, because  
25 he made it --

1           MR. KELLY: Your Honor, what I'm referring to in the  
2 first trial, there was testimony by Special agent Leahy that  
3 in the driveway of January 31st, 1992 on 7 White Lawn Avenue,  
4 Defendant Al Trenkler made certain statements had to do with  
5 his knowledge of blasting caps and dynamite and things of that  
6 nature. Mr. Trenkler wasn't in the courtroom. Mr. Trenkler  
7 wasn't available for cross-examination purposes by Mr. Shay.  
8 Those statements came in under the 804(b)(3) exception as  
9 statements against Mr. Trenkler's penal interest. He was an  
10 unavailable declarant, not incriminating Mr. Shay but offered  
11 on the -- relevant to the question of conspiracy.

12           We have in some of these statements, what we're  
13 talking about, the flip side of that --

14           THE COURT: I understand that. Let me just be very  
15 clear. If we did not have the question of Mr. Shay's own  
16 reliability from the Government's own expert, we wouldn't have  
17 this argument. It is -- I would normally simply decide this  
18 on the basis of an exception to the hearsay rule or the fact  
19 that the hearsay rule doesn't apply at all. But in this case,  
20 we have a very special case where we have a declarant not  
21 available for cross-examination who according to the  
22 Government's own expert is a braggart and a liar. And under  
23 those circumstances, it seems to me there has to be something  
24 more than what is normally regarded as the inherent  
25 reliability of the hearsay exception.

1           MR. KELLY: And in response to that you read a  
2 passage to Dr. Kelly.

3           THE COURT: I read several.

4           MR. KELLY: And several of those I noted were  
5 cross-examination by Ms. Gertner.

6           THE COURT: And many were direct.

7           MR. KELLY: And the one I am referring to here, your  
8 Honor, he was asked a question whether he or a doctor could  
9 tell whether a specific statement was alive. His answer was  
10 no. He couldn't do that because we need to know what other  
11 facts in evidence there was in investigation. That is the  
12 point I'm trying to make. Your Honor, there are statements  
13 and there are statements that we propose to offer that do not  
14 incriminate Mr. Trenkler which are reliable because they  
15 either are corroborated by independent forms of evidence such  
16 as the ones that Mr. Libby has alluded to, or have already  
17 been deemed to be reliable by a jury in the first trial.  
18 We're not talking about every statement that a fellow has ever  
19 made. We're talking about those statements--

20           THE COURT: How can I know what the jury means to be  
21 reliable in the first trial.

22           MR. KELLY: He couldn't possibly find the gentleman  
23 guilty of conspiracy if he didn't accept either the testimony  
24 of Mr. Plant or the WLVI videotape. If you picked those two  
25 things up, there would not have been sufficient evidence to

1 find Mr. Shay guilty of conspiracy in trial No. 1.

2 It necessarily follows that they found those  
3 statements out of his own mouth to be reliable. I'm only  
4 suggesting to the Court that the government is not proposing  
5 to offer every statement that this guy has ever made. We're  
6 trying to offer those statements which we believe were made  
7 with a certain degree of emotion that can be corroborated by  
8 independent circumstances and are consistent with which we  
9 understand to be the facts of the case. Those are the  
10 statements, those are the reliable statements we're proposing  
11 to offer, your Honor, and I want to say one other thing.

12 Reasonably relying upon, not only our reading of the  
13 law in the First Circuit but also the ruling in this very case  
14 as severed, we made certain illusions in our opening to  
15 statements of Mr. Shay. Now, we were fairly surgical in doing  
16 so, but we specifically made reference to two that I recall.  
17 One is the statements following Mr. Shay's arrest by Agent  
18 Leahy, where Mr. Shay made the remark, I'm not the one who  
19 built it, I'm not the violent one, something to that effect.

20 We also made some specific reference to Mr. Shay's  
21 statements on the WLVI videotape about the Radio Shack  
22 purchase. The United States was being cautious and acting  
23 reasonably, but if this ruling is as you have suggested your  
24 concerns, frankly, your Honor, we have now made remarks in  
25 opening for which the Government's denied the ability to offer

1 evidence which it reasonably believed would be available.

2 THE COURT: The Government did that at its peril.  
3 There was motion not to have those statements made, and we  
4 talked about it before the Government made them. So that one,  
5 I'm afraid that's the Government's problem and not the Court's  
6 problem.

7 MR. SEGAL: And after they were made, I moved for a  
8 mistrial also, your Honor.

9 MR. KELLY: I'm pointing out what we can do with the  
10 Court, that we have this situation. I mean we were  
11 selective. We acted with caution and with reason, and based  
12 on the ruling of this court in the first trial, frankly, your  
13 Honor.

14 THE COURT: Anything else?

15 MR. KELLY: No, your Honor.

16 THE COURT: Is there any reason why we can't start  
17 with Mr. Thomas and get to wherever we are and perhaps then  
18 recess or --

19 MR. LIBBY: Well, if your Honor please, perhaps  
20 continuing the process, the Court may be inclined to rule on  
21 those first things I talked about, we can go on and very  
22 quickly look at the remaining six things and get him on down  
23 and done.

24 THE COURT: What six things?

25 MR. LIBBY: The remaining six proffered statements

1 from the October 31 interview of homicide immediately  
2 following the Trailways conference.

3 THE COURT: I'm sorry, I didn't realize Thomas had  
4 the rest of them too.

5 MR. LIBBY: There are two sets. There are three  
6 remarks on the 29th and six remarks on the 31st, your Honor.  
7 You've already heard the Government on the remarks of, three  
8 remarks of the 29th. We say that it's the Court's concern  
9 about reliability with the remaining six comments are all  
10 satisfied on the face of these, if we just touch on them one  
11 at a time. First, with respect to No. 1, the press had killed  
12 him at the bus station at the reference.

13 THE COURT: What's the relevance of that?

14 MR. LIBBY: That's precisely why at the conference  
15 he's deflecting attention elsewhere he comes in and tells the  
16 investigators at the start of the case, they killed me, they  
17 didn't believe me, they didn't believe my cockamamie story  
18 essentially deflecting attention elsewhere.

19 THE COURT: What you're doing right now is precisely  
20 what the problem is. You put three different interpretations  
21 on that statement. The press killed me. If he were available  
22 for cross-examination, there might be ten others and the  
23 defendant might even now disagree with the particular  
24 interpretations as to what you are putting them.

25 MR. LIBBY: Your Honor, that cuts to weight as

1       opposed to admissibility. The admissibility is whether a  
2       reasonable person would understand that this would tend to  
3       subject him to liability.

4               THE COURT: How does it subject him to criminal  
5       liability that the press killed him?

6               MR. LIBBY: Well, your Honor, that here he is, the  
7       son of the man and whose driveway the bomb exploded, comes  
8       back to town, he calls ahead, all these seasoned reporters are  
9       hitting him with questions, where he's talking about a Mr.  
10      Pace, where he's talking about various other things which he  
11      believe will turn half of the investigation elsewhere and he  
12      admits to these folks that -- the homicide detectives -- they  
13      killed, the press killed at the Trailways conference, No. 2,  
14      your Honor --

15              THE COURT: That suggests that he's guilty of the  
16      bombing?

17              MR. LIBBY: No, it suggested that it's going to draw  
18      attention to him as a potential suspect now. That's what is  
19      coalescing here because up to this time, your Honor, Detective  
20      Thomas will testify on the evening of the 29th, he was not a  
21      suspect, he's simply the father's son who wants to get in and  
22      talk to these detectives. He's the fellow that crossed the  
23      police line, walked to E-5, and got a ride into homicide to  
24      talk to these folks. He wasn't considered a suspect. On the  
25      evening of the 31st, he goes to great lengths to have

1 detectives meet him at the Trailways when he comes in. He's  
2 becoming a suspect at this time. He gives this 45-minute  
3 conference. He goes back to homicide and he says they killed  
4 me. By making that comment, he's placing himself, now, within  
5 the focus of the investigation.

6 The jury would understand that. They saw these  
7 things in sequence, not Arthur Shay, not Berry and Giamarco.  
8 We'll suggest to the jury ultimately, but to Shay, Jr., the  
9 picture is beginning to form around him. Secondly, they ask  
10 him about the comments about the investigation and he starts  
11 talking about he's making videotapes of the TV reports. He's  
12 keeping newspaper clippings. Mr. Bonnano corroborated all  
13 that, perfectly reliable, your Honor. Your Honor is concerned  
14 about reliability.

15 THE COURT: Who is Bonnano?

16 MR. LIBBY: He's the fellow down in Dartmouth,  
17 Southeastern Massachusetts. He stayed there a couple of days,  
18 in fact Bonnano --

19 THE COURT: The friend, not the inmate.

20 MR. LIBBY: That's right. He had the black tape  
21 holding up the newspaper clippings and so forth. He was  
22 staying inside all day watching TV making videos.

23 THE COURT: You can certainly tell him about that.  
24 He can tell us what he observed.

25 MR. LIBBY: Certainly, your Honor. In terms of

1 reliability that's been corroborated, your Honor. Thirdly,  
2 denying having told Officer Bridgeforth two nights before,  
3 having him say turn the clock back, that's a clear indication  
4 of understanding where his interest lies and denying it.  
5 Precisely the same thing he demonstrated to the Court when you  
6 stepped on his answer about I thought they weren't in uniform,  
7 and he says, I could smell the cop or something like that. I  
8 saw the Crown Vics outside. Perfectly reliable. Didn't want  
9 to see his father until it was over. A statement of his state  
10 of mind, your Honor.

11           There's no question as to reliability. Reliability  
12 is not an issue with respect to his uttering that statement.  
13 It cuts to his relationship with his father which, of course,  
14 is the motive here, on that side of the conspiracy. We won't  
15 mind, dual motives, Shay, Jr.'s motives, Mr. Trenkler's  
16 motives. We have to get across to the jury the context of  
17 Shay, Jr.'s motivation here as a coconspirator of Count 1  
18 conspiracy. No. 5, having to deny the remote control remarks  
19 in the Herald two days before, clearly understands where his  
20 interests lies.

21           THE COURT: What's the statement that's being offered  
22 here?

23           MR. LIBBY: He in No. 5, your Honor, he was asked,  
24 you made some question, you made some comment to the herald,  
25 he gave an impromptu press conference out of the Falls

1 condominium out on the morning of the 29th. He made some  
2 comments to the Herald and others about -- they asked my  
3 father about remote control--

4 THE COURT: How does that evidence come in?

5 MR. LIBBY: Well, your Honor, I believe in this  
6 context, I believe in the first trial we had the actual Herald  
7 article, the morning of the 30th, talking about the 29th--

8 THE COURT: How does it come in? To establish a  
9 denial, you have to establish what he is denying, how does  
10 what his denying come in?

11 MR. LIBBY: Well, your Honor, in the context of it,  
12 it shows, it shows his state of mind, the denial. It shows if  
13 you --

14 THE COURT: The denial of what? Give me the question  
15 and answer how this comes in.

16 MR. LIBBY: The question is whether he had, there was  
17 remarks in the paper about you're saying that my father had a  
18 question about remote control.

19 THE COURT: Mr. Thomas tells us there were articles  
20 in the paper about this.

21 MR. LIBBY: That is the question to Junior, okay.

22 THE COURT: The question to Junior is what?

23 MR. LIBBY: There was an article in the Herald, yes,  
24 this being on the 31st, that you said outside the Quincy condo  
25 that your father had a question about remote control. Now,

1 understand the significance here that there had been no  
2 dissemination to the public as to the remote control feature.

3 THE COURT: So first of all, Mr. Thomas puts it in  
4 the hearsay newspaper.

5 MR. SEGAL: Over my objection.

6 THE COURT: You see the problem, you see the immense  
7 problems here.

8 MR. LIBBY: I understand the totem pole nature of  
9 this, your Honor, but in the answer, the answer subsumes the  
10 predicate to it is a state-of-mind matter where he denies  
11 something.

12 THE COURT: You're putting in more than that. I mean  
13 you're putting in the hearsay. Now, you're putting in the  
14 newspaper too.

15 MR. LIBBY: Let's take a look at that a moment, your  
16 Honor.

17 THE COURT: How can you do it without that?

18 MR. LIBBY: Let's take that for a moment and go to  
19 the last one. The diagram of the remote control radio  
20 transmitter. That's something he did. He just simply did  
21 that at the tail end of that hour long --

22 THE COURT: Was that offered for the first trial?

23 THE COURT: That was in, absolutely, not a question  
24 of the reliability. With the exception of the Court's  
25 concerns about totem pole No. 5, all of this, there are none

1 of the concerns -- for example, if Shay, Jr. was to say  
2 something.

3 THE COURT: And this is being offered on what issue?  
4 Assume for the moment that the witness can testify that he  
5 observed Mr. Shay, Jr. drawing this diagram, this is the  
6 diagram. On what issue is it relevant in this case?

7 MR. LIBBY: What issue?

8 THE COURT: Yes.

9 MR. LIBBY: Largely, his membership in the count 1 is  
10 strictly the consistence and makeup of the count 1 conspiracy  
11 as we charged.

12 THE COURT: This diagram is like the diagram that you  
13 had in the chart?

14 MR. LIBBY: Exactly, the two wheels, and so forth.

15 THE COURT: I don't remember the diagram.

16 MR. LIBBY: It shows his familiarity with remote  
17 control generally, which obviously goes to the memo. So with  
18 the exception of --

19 THE COURT: Mr. Segal, he can tell us, can he not,  
20 that Mr. Shay did something, right, that he drew something,  
21 although the drawing itself is an out-of-court statement,  
22 isn't it?

23 MR. SEGAL: It's applied assertions is hearsay.

24 THE COURT: However, there is no lack of reliability  
25 there, is there? I mean the statement is the drawing itself.

1           MR. SEGAL: They're using the drawing as a  
2 declaration against penal interest. That's the only way it  
3 comes in. I say, unless Mr. Shay drew it when he was as a  
4 reasonable man, when he talked about that, knew that that was  
5 subjecting himself to criminal liability, and that's the way  
6 they're trying to bring it in, it shouldn't come in.

7           MR. LIBBY: It's also 801(c), his state of mind,  
8 understanding, whether this accurately reflects it or not. It  
9 shows his familiarity.

10          THE COURT: I have less problem with the drawing than  
11 I do with other stuff.

12          MR. SEGAL: I think that the state of mind is  
13 irrelevant.

14          THE COURT: No, I think not.

15          MR. SEGAL: But the rest of these things are clearly  
16 do not fit within declaration against penal interest. The  
17 rest --

18          THE COURT: No, but in fairness to the Government, it  
19 isn't offering all of them as declarations against penal  
20 interests. Some of them is offering simply to show a state of  
21 mind. For example, that he didn't want to see his father  
22 until this was over is not a state of mind against penal  
23 interest as much as it is simply his state of mind as of that  
24 point in time. Then the question is how relevant --

25          MR. SEGAL: How relevant --

1           THE COURT: Well, it may have some relevance on the  
2 issue of motive. So that one I would have less difficulty  
3 with than any number of the others that the Government says or  
4 statements against penal interest.

5           MR. SEGAL: That would go to Mr. Shay, Jr.'s fault,  
6 not my client's fault.

7           THE COURT: I understand, but it is a conspiracy, and  
8 thus the motive of the coconspirator is a part of the  
9 existence of the conspiracy issue.

10          MR. SEGAL: Even though the statement was made after  
11 the conspiracy ended. They're not trying to say it's a  
12 Petrozziello statement.

13          THE COURT: No, they're not. It would not come in  
14 under Petrozziello. I don't believe, at least from the first  
15 trial that there was a single coconspirator statement offered  
16 nor accepted, because there weren't any; and I suspect that's  
17 true here too, so we don't have to worry about Petrozziello.

18          MR. SEGAL: Well, we might, because I think the  
19 Pransky statements, not these, I think Mr. Pransky is going to  
20 come on, and they're going to try to put in statements from  
21 Mr. Shay, Jr. To Mr. Pransky himself.

22          MR. KELLY: Not so.

23          THE COURT: I don't believe so, because any of the  
24 Pransky statements predated any conspiracy if there was one.

25          MR. KELLY: We offered under 801(c).

1           THE COURT: Yes, they didn't come in as coconspirator  
2 statements. I have the additional difficulty in not knowing  
3 what the exact question and answer is. I think I can  
4 confidently say, that is number 4, the second half, He didn't  
5 want to see father until this is over, I think that is a  
6 statement offered for his state of mind, I think I would allow  
7 the drawing, although it is in a sense an out-of-court  
8 statement, but it too goes to what he knew, and thus a state  
9 of mind and perhaps not hearsay if it's being offered for that  
10 to the extent that it's being offered against penal interest.  
11 I think under all the circumstances it very well may be, and  
12 even Mr. Shay must have realized that he's not that  
13 unreasonable.

14           I don't really understand the press had killed him,  
15 statement as having much to do with this case to the extent  
16 that it does. It's subject to so many interpretations that I  
17 don't I don't know. The interest in the Roslindale  
18 explosion. I mean so much of this, particularly to the extent  
19 that it relates to the press conference, is precisely the  
20 statements that Dr. Kelly told us or the kind of thing that  
21 this guy will say, draw attention to himself will have no  
22 indicia of reliability whatsoever, that he just lies in order  
23 to draw attention to himself, and that's what the press  
24 conference was.

25           MR. LIBBY: Actually, your Honor, our argument would

1 be to the contrary that he was trying to deflect attention by  
2 that time, naming these other folks, Ralph Pace, motivation,  
3 owing some people money that kind of thing.

4 THE COURT: He said that, he was obviously drawing  
5 attention to himself. Nobody in his position in his right  
6 mind would call a press conference.

7 MR. SEGAL: That is why it's chocolate and vanilla,  
8 and that's why we should have an opportunity to cross-examine  
9 him, because Mr. Libby and I can sit here and come up with ten  
10 other reasons why he said these, and there's only one person  
11 who could tell us under oath subject to cross-examination, and  
12 he won't be with us.

13 THE COURT: Let me take a recess.

14 (Recess.)

15 THE COURT: Mr. Segal wants to add something on the  
16 diagram which is item 6 of the series 2 of the Miller Thomas.

17 MR. SEGAL: Right. Your Honor, the police report of  
18 Detectives O'Malley, Thomas and Fogerty, the interview with  
19 Mr. Shay, Jr. that night, page 5, page 4 states, Shay stated  
20 that the items on the table in the next room were remote  
21 control for a car and that he had a similar one when he was a  
22 kid, when he was a kid for his remote car. Shay then drew a  
23 diagram of a remote control device and explained how it  
24 worked. And then at the first trial, Officer Fogarty  
25 testified, I think it's day 11, page 14, in response to a

1 question from Ms. Gertner. The question is: You believe the  
2 remote control device that was in the other room was similar  
3 to this except having two little doodads. It had a wheel; is  
4 that right? Officer Fogarty: The device on the table was  
5 laying flat. Mr. Shay was sitting at a chair at a table. He  
6 looked over. He saw the remote control. He saw some other  
7 stuff that was there. He saw it was a remote control device  
8 for a model car that he had one like that similar in the  
9 past. He then drew a diagram of that there and he explained  
10 how it worked.

11 I submit to you in the context of this testimony, to  
12 admit this diagram which, whatever Mr. Libby says, he says it  
13 doesn't come in for the truth of the matter. I say they're  
14 trying to bring it in as a confession, basically, and applied  
15 assertions as hearsay. You cannot do that based on the  
16 context of this discussion on that day, where he sees the  
17 diagram down on the table and he says, you know, I have one  
18 similar and draws it.

19 I don't see how under any theory this comes in for a  
20 non-hearsay purpose. It comes in strictly for the truth of  
21 the matter, that you know, they're going to say that this  
22 diagram is similar --

23 THE COURT: They're offering it for the truth as a  
24 declaration against the interests.

25 MR. SEGAL: I think Mr. Libby said just the opposite.

1 MR. LIBBY: Both purposes.

2 MR. SEGAL: There is a non-hearsay purpose.

3 MR. LIBBY: There is a non-hearsay purpose. It  
4 states, this, of course, if your Honor recalls, is through  
5 that sliding glass door and materials on that table and some  
6 distance away and purporting to draw his recollection as to  
7 how these transmitters were made out.

8 MR. SEGAL: I submit it's clearly not a declaration  
9 against penal interests. A kid sits there and draws a diagram  
10 similar to the one down the hall, and he says, well, I have  
11 one of these as a kid. How does he know that's going to  
12 subject him at that time to criminal liability, and it  
13 shouldn't come in under either basis that Mr. Libby asked for.

14 THE COURT: All right. Here's where I am. And I'm  
15 doing this by the first series of Miller Thomas, the first  
16 item about how things would be different if I hadn't gone to  
17 the schools. I think that is evidence of a state of mind, and  
18 I don't have the same problems about reliability when we're  
19 talking about state of mind offered for the state of mind  
20 because the state of mind is what it is. And the question of  
21 reliability then is simply whether the witness is accurately  
22 recalling, and, of course, the witness is subject to  
23 cross-examination. So that statement comes in. The second  
24 statement is offered neither for state of mind. Nor does it  
25 fit in the exception. It does not come in. The third issue

1 about radio control, remote control which is part of what Mr.  
2 Segal has just alluded to, I can't rule on that, because  
3 whether this comes in or not depends entirely on the context,  
4 how the question arose, what was asked, I don't know that, or  
5 what will be asked. I don't have the transcript before me.  
6 That one I will be unable to rule on.

7 Series 2 which is the next bunch, question 1, that  
8 the press had killed them, I don't see what possible exception  
9 that comes in on or that it has anything to do with relevant  
10 state of mind. That is out. The second one, I believe, is  
11 state-of-mind evidence. I would admit it on that issue.

12 The third statement is exculpatory, not inculpatory,  
13 and I don't see how it comes in as against penal interest when  
14 it is in fact exculpatory. That is the witness is now denying  
15 that he made an inculpatory statement, so I don't see how it  
16 could be against penal interests to deny, to make a statement  
17 that says that may be inculpatory. Fourth, that he didn't  
18 want to see his father which clearly goes to state of mind and  
19 comes in. The fifth one is again exculpatory. He denies that  
20 he made a statement that it was -- he denies that he made it  
21 in any kind of a deliberate way. It is not against penal  
22 interest to the extent that it is exculpatory. And No. 6 is  
23 like No. 3 in series 1, it depends on the context as Mr. Segal  
24 pointed out, and I don't know what the context is until the  
25 witness testifies. So that's where I am. One comes in of

1 series 1: 1 is in, 2 is out, 3 is in. Of series 2: 1 is  
2 out, 2 is in, 3 is out, 4 is in, 5 is out and 6 depends on  
3 context.

4 MR. KELLY: Thank you, your Honor. Your Honor, given  
5 the hour, I was going to suggest the following. That we  
6 perhaps bring the jury down and let them go. The United  
7 States would propose to call Thomas Shay, Jr. first thing  
8 tomorrow.

9 I believe we may need 15 minutes outside the presence  
10 of the jury to explore just how that's going to proceed if at  
11 all. I believe that's Mr. Segal's position as well. And then  
12 we would call Mr. Shay, and I think after Mr. Shay, decide  
13 what Mr. Shay is going to do, we will know a whole lot better  
14 how these other issues are going to be forward.

15 THE COURT: Let me be very, very clear about  
16 Mr. Shay, Jr. If he does testify, it seems to me that  
17 cross-examination can deal with the issues of reliability that  
18 we talked about earlier. That is to the extent that the  
19 defendant is thinking about interposing an objection to his  
20 testimony based on the statements I made earlier of Dr.  
21 Kelly. I think that your ability to cross-examine, assuming  
22 he testifies, will be able to take care of that. So I will  
23 not prevent him from testifying on the grounds that he's  
24 inherently unreliable. However, to the extent that he does  
25 not, we will continue to have the problem that we have

1 confronted today. We confronted -- we don't confront him,  
2 maybe.

3 MR. SEGAL: I agree with Mr. Kelly's way to proceed.  
4 I suggest, though, if he doesn't testify, your Honor might  
5 consider a short voir dire to get the content of those  
6 statements --

7 THE COURT: I don't know why he has to do that. The  
8 witness has testified once before. We need to have the  
9 transcript. I haven't had an opportunity to fish it out. If  
10 the Government can fish it out and mark the passages, then it  
11 may very well be that that's the way to deal with it.

12 Do you understand the ruling in general? And it may  
13 be that what you want to do is to review the transcript of his  
14 testimony and then go over and decide what you can or cannot  
15 ask and mark it for identification so that the issue can go to  
16 the Court of Appeals to the extent that it has to.

17 All right, let's bring the jury down.

18 [Whereupon, the jury entered the courtroom.]

19 THE COURT: Are we going to need the sentencing  
20 transcript.

21 MR. SEGAL: I don't have a copy. Could I make a  
22 copy?

23 MR. KELLY: I can make a copy for  
24 Mr. Segal.

25 THE COURT: The reporter doesn't like that.

1 MR. KELLY: I take that back then.

2 MR. SEGAL: Well, your Honor, he's on daily copy in  
3 this case, your Honor, so --

4 THE COURT: But this isn't this case, this is the  
5 other case.

6 MR. SEGAL: But it's the same reporter, I take it.

7 THE COURT: No. A different reporter did this.

8 THE COURT: I'll keep it here for the time being.  
9 They don't need it for the moment.

10 [Whereupon, the jury entered the courtroom.]

11 THE COURT: Members of the jury, I'm sorry that I  
12 kept you waiting as long as I did. It is a very difficult  
13 issue that we have to deal with. I think we have resolved  
14 it. However, tomorrow morning, don't come until 9:30, I think  
15 is a more reasonable estimate, because we need to do some  
16 additional work in a related matter, and there's no point in  
17 your hanging around while we do that. So we will start  
18 promptly at 9, but we will start with you not until 9:30, so  
19 if you would kindly show up at that point rather than at 9,  
20 and have an extra half-hour's sleep, that's fine.

21 You are now excused until 9:30 tomorrow morning.  
22 Please leave your notebooks, and again I remind you not to  
23 talk about the case, not to wonder what it is that we've been  
24 doing, understand that it is designed to advance the trial,  
25 and we will proceed with all deliberate speed tomorrow.

1 Thank you.

2 [Whereupon, the jury left the courtroom.]

3 THE COURT: Court is in recess. We will start at 9.  
4 I guess I will need to leave it to the marshals to devise --  
5 it just occurred to me after we did this -- to devise a way of  
6 bringing Mr. Trenkler since the jury may be wandering around.

7 May I ask counsel if in fact we go on with this  
8 exercise, that maybe rather than giving me the statements,  
9 you've done it with respect to evidence, is this the  
10 attachment, for example, of Mr. Evans transcript, is that what  
11 I am to deal with?

12 MR. LIBBY: Those portions of the relevant questions  
13 and answers, your Honor, are all contained in the tabs.

14 THE COURT: So, you will have yours of the remaining  
15 witnesses if Mr. Shay doesn't testify, and we will need to go  
16 through the same exercise with respect to them, and here we  
17 have it in the context of specific questions and answers which  
18 makes it somewhat easier than the generality of Thomas.

19 MR. SEGAL: I take it the Government will also --  
20 since we don't want to put it in the other statements -- they  
21 will have the same for other witnesses that's what you're  
22 saying.

23 THE COURT: It's all here, as I understand it.

24 MR. LIBBY: This is it.

25 THE COURT: Except for the videotape.

1 MR. LIBBY: The videotape transcript is also tab D.

2 MR. SEGAL: The universe I guess is in this document,  
3 right.

4 MR. LIBBY: That's right, all the tabs.

5 THE COURT: Except Thomas is not here.

6 MR. LIBBY: That's correct, and Leahy, your Honor, is  
7 just that simple one statement which is taken verbatim from  
8 the transcript and it appears in the motion itself, so it  
9 doesn't deserve a separate tab.

10 MR. SEGAL: But we don't have Fogerty.

11 MR. LIBBY: We'll try to collapse Detective Fogerty  
12 and Thomas...

13 THE COURT: All right. See you tomorrow.

14 [Whereupon the jury trial adjourned at 12:58 to be  
15 reconvened, Wednesday, November 2, 1993.]

16

17 **CERTIFICATE**

18 We certify that the foregoing is a correct  
19 transcription of our computer-aided stenographic notes of the  
20 proceedings in the above-entitled matter.

21

22

23

24

25

\_\_\_\_\_  
James E. McLaughlin

\_\_\_\_\_  
Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Voir Dire</u>
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Thomas Leroy Shay, resumed					
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(by Mr. Segal)	2			42	
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(by Mr. Kelly)		38			
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Christopher Shapley, sworn					
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(by Mr. Kelly)	43/51			87	
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(by Mr. Lopez)		49			89
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(No exhibits marked or entered in evidence.)

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

10 Eighth Day of Trial

13 APPEARANCES:

14 For the Government:

15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

18 For the Defendant:

19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
210 Commercial Street, Boston, MA. 02109.

22 Courtroom 3  
23 Federal Courthouse  
24 Boston, Massachusetts

November 3, 1993

25 Computer-Aided Transcription

P R O C E E D I N G S

THE COURT: Mr. Shay, would you come directly into the witness box, please, after you have been unhitched.

(Pause.)

THE COURT: Mr. Shay, as I understand it, the government wishes to call you as witness in the case against Mr. Trenkler.

Your lawyer has filed a motion to quash that subpoena. That is, to have me order that you may not be called as a witness on a variety of legal grounds, I've overruled your lawyer's motion. The government has also filed an application for immunity. That is, you have a right not to testify so long as your testimony could be used against you in any criminal proceeding; do you understand that?

THE WITNESS: Yes, your Honor.

THE COURT: I have signed an immunity order, and what that means is you no longer have the right to refuse to testify because your testimony could be used against you, because now it cannot be used against you.

Do you understand that much?

THE WITNESS: Yes, your Honor.

THE COURT: That is, no matter what happens hereafter, if any other jurisdiction or the federal government were to charge you again with respect to any offenses arising out of this series of events or anything else that you might

1 admit in the course of testifying, whatever you say is forever  
2 forbidden from being used against you,.

3 Do you understand that?

4 THE WITNESS: No, I do not.

5 MS. BARON-EVANS: Your Honor, may I confer?

6 (Pause.)

7 THE WITNESS: Yes, I understand.

8 THE COURT: Are you sure you understand it?

9 You don't want me to explain it to you again?

10 THE WITNESS: No.

11 THE COURT: Since it is now the case that no  
12 jurisdiction can use against you anything you might say, you  
13 no longer have any reason why you can refuse to testify.

14 Do you understand that?

15 You can no longer refuse on the grounds that you  
16 might incriminate yourself.

17 Do you understand?

18 You can no longer refuse to testify because whatever  
19 you might say could be used against you in some other  
20 proceeding, some mythical proceeding that may or may not take  
21 place.

22 Assume for the moment you were to testify and you  
23 were to admit, let's just assume that you smoked marijuana  
24 yesterday, the government, no government can use that  
25 testimony against you in any proceeding arising -- that says

1     you smoked marijuana and that is illegal.

2             Ms. Gertner disagrees; however, that's the case.

3             THE COURT: Do you understand that if you were to  
4     admit that you committed a crime if you were to testify, then  
5     the government may not in any proceeding in which it charges  
6     you with that crime, use what you said about that offense; do  
7     you understand that much?

8             THE WITNESS: Yes.

9             THE COURT: If you do testify, then, the only risk  
10    you run is that if you do not tell the truth and you know that  
11    you are not telling the truth, the government may charge you  
12    with perjury; do you understand that?

13            THE WITNESS: I understand that but on earlier dates  
14    if I lied, then it is going to veto anything if I tell the  
15    truth now, it is going to make me look like a liar anyway, so.

16            Do you understand?

17            THE COURT: But that is no risk to you. The risk  
18    risk to you is that the government may say: Well, you were  
19    telling the truth earlier, and you're lying now; and  
20    therefore, we will charge you with perjury.

21            THE WITNESS: That's what I'm saying.

22            THE COURT: That is a risk that you run.

23            MS. BARON-EVANS: Your Honor, may I be heard? He can  
24    also be prosecuted for earlier false statements, according to  
25    the Immunity Statute.

1 THE COURT: That's true.

2 MR. KELLY: I don't think that is true. There are no  
3 earlier sworn statements.

4 THE COURT: Well, that's true. He didn't, he didn't  
5 swear.

6 To the extent that you made statements earlier under  
7 oath, the government may charge you with perjury if it decides  
8 that you were not telling truth then.

9 MS. BARON-EVANS: Your Honor, I believe that he has  
10 given statements in the context of proffered statements and  
11 retractions, several of them, and those are statements in the  
12 context of an investigation, and I believe that he could be  
13 prosecuted.

14 THE COURT: For obstruction of justice?

15 MS. BARON-EVANS: For obstruction of justice or for  
16 giving a false statement; and in fact, that was a term of the  
17 proffer agreement.

18 THE COURT: I don't know about that. I mean, I have  
19 no knowledge of what the proffer agreement was, or anything of  
20 that --

21 MR. KELLY: Your Honor, the United States' clear  
22 understanding is that the immunity order of this Court  
23 protects him from any prior statements. In other words, so  
24 long as he does not testify untruthfully, once sworn before  
25 this judge and before this Court, he is not subject to the

1 prosecution for the earlier statements. That is our position  
2 with respect to this order, that he is not prosecutable by the  
3 United States for these prior statements. However, should he  
4 speak untruthfully, once sworn, today or in this proceeding,  
5 he would be subjecting himself to possible prosecution of  
6 perjury.

7 THE COURT: Is that in the nature of a promise by the  
8 government?

9 MR. KELLY: If you want to determine it that way for  
10 the record, your Honor, I will make it such.

11 MS. BARON-EVANS: Your Honor, that would still be  
12 inadequate because the perjury -- Tom Shay would still be  
13 subject to a perjury prosecution, unless he follows the script  
14 that the government wants him to follow. He's given  
15 conflicting statements on every issue in this case. For every  
16 statement yes, there is a statement no.

17 THE COURT: Well, but it is a correct statement of  
18 the law, that Mr. Shay is subject to a perjury prosecution  
19 with respect to any statements he make today. That is, if the  
20 government decides that he is not telling the truth, once he  
21 has been sworn, then, the government may charge him with  
22 perjury.

23 To the extent that the government says: Well, you're  
24 saying something different today from what you said before;  
25 and therefore, you are not telling the truth today, he runs

1 that risk. He does not run a risk, in light of the  
2 stipulation by the government, of being charged with having  
3 made false statements on an earlier occasion.

4 Correct?

5 MR. KELLY: That's correct, your Honor.

6 THE COURT: That's the government's stipulation on  
7 the record.

8 MR. KELLY: That's correct. Just so the record is  
9 clear, Ms. Baron-Evans makes reference to some script. There  
10 is no script, and we have not talked to Mr. Shay. We simply  
11 wish to ask questions and hear his truthful answers.

12 THE COURT: Well, do you understand the risk you  
13 run? The risk is, the only risk is that the government may  
14 decide that once you have taken the oath and you do testify,  
15 that you haven't told the truth, and it will then -- it may  
16 then charge you with perjury with respect to what you said  
17 today.

18 Do you understand that? That's the risk you run.

19 THE WITNESS: I understand.

20 Do you wish to talk with him?

21 (Pause.)

22 THE COURT: Can I explain one other thing to  
23 Mr. Shay, that risk, that the government may charge you with  
24 perjury, is not a risk that permits you to decline to answer.

25 Do you understand that?

1           That is, it is assumed that you will tell the truth.  
2           And you may not refuse to answer because you're afraid that  
3           the government will charge you with perjury.

4           Do you understand that?

5           Talk to Ms. Baron-Evans and then let her explain.

6           (Pause.)

7           THE COURT: I need to explain one other thing to you,  
8           and that is, now that you have been ordered to testify, that  
9           is, now that you can no longer refuse to testify, and I will,  
10          therefore, order you to testify, if you decline to testify, I  
11          will have no choice but to hold you in contempt of Court.  
12          Because once you violate a court order, that's what you are,  
13          you are in contempt of Court.

14          Now, do you wish to add anything?

15          MS. BARON-EVANS: Yes, your Honor, I believe that Tom  
16          Shay has just and substantial reasons to refuse to testify,  
17          and that is his belief, too. If he were to refuse to testify  
18          it wouldn't be out of any disrespect to the Court. It is  
19          because he's in an untenable position. Even if the  
20          government's psychiatrist has conceded that his statements are  
21          unreliable, given his --

22          MR. KELLY: I would object to legal argument. Can we  
23          make inquiry of Mr. Shay? I don't think this is the time for  
24          legal argument.

25          THE COURT: Mr. Shay, will you testify or not?

1           THE WITNESS: Your Honor, I have to refuse on advice  
2 of counsel.

3           THE COURT: That's where we are.

4           MR. KELLY: Your Honor, can we swear the witness,  
5 he's not been sworn. And just so the record is clear, have  
6 you make the advice and get his acknowledgement under oath  
7 that it is his decision, after having been advised by the  
8 Court, accordingly, that he's refusing the face of the Court's  
9 lawful order to testify.

10          THE COURT: I don't understand why we need him under  
11 oath for that.

12          MR. KELLY: Well, just so the record is clear, your  
13 Honor.

14          THE COURT: I mean, I purposely didn't swear him  
15 because there is nothing he has to tell me under oath until he  
16 testifies. I don't understand why I need to swear him for  
17 that. I understand that he has stated that he refuses to  
18 testify on the advice of counsel.

19               [Conference at the bench, as follows:

20          THE COURT: Is there no way you can work this out?  
21 He's afraid of being charged with perjury.

22          MR. KELLY: For anything he says today.

23          THE COURT: Yes. The issue is given conflicting  
24 statements all over the place, that's the question. And I  
25 don't know, the government has previously indicated that it

1 doesn't wish to give any kind of assurances; I understand  
2 that. But I don't know what, if anything, can be worked out  
3 with Mr. Shay. He clearly is afraid of being charged with  
4 perjury. That's what he's telling us.

5 MR. KELLY: If his fear is based upon statements he  
6 has made in the past, we have stated on record, and will state  
7 again, the United States will not prosecute this gentleman for  
8 anything that he has said in the past that may prove to be  
9 untruthful.

10 THE COURT: That's not what he's saying. What he's  
11 saying is because he has said it was dark in the past, and he  
12 may now say it was light, he thinks that because it is  
13 different from the past, you will believe the past and you  
14 will now charge him with perjury for saying under oath.  
15 That's his fear.

16 MR. KELLY: If he's charged with perjury, he clearly  
17 has the rights that any defendant has, the right to defend  
18 himself.

19 THE COURT: But, you know, he says, he says he would  
20 rather take the contempt than run the risk of, yet, another  
21 prosecution. And he's also a saying, as I understand the  
22 papers, given the government's severe dissatisfaction with the  
23 sentence he received in the main charge, he is afraid that the  
24 government will want to pile it on by using perjury. That's  
25 his fear.

1           MR. KELLY: I don't think, in all due respect, I  
2 don't think it can be worked out. I mean, I think that we're  
3 trying to treat him as we would any defendant in this same  
4 context.

5           I would just ask the Court, if I would just make sure  
6 the witness has seen the actual order of the Court,  
7 acknowledges it, have it noted for the record. And if it is  
8 his continued view that he refuses to testify, in the face of  
9 the Court's order, then we would ask the Court to find him in  
10 contempt and schedule it for hearing, perhaps at the  
11 conclusion of this trial.

12          THE COURT: Why do I have to do that? I'll just hold  
13 him in contempt right now for failing to testify, and his  
14 contempt will then end at the end of the trial.

15          MR. KELLY: That', I'm sure that's the government's  
16 view of the law, your Honor. As I understand it, the Court  
17 has certain options if a finding of contempt follows under  
18 Rule 42.

19          THE COURT: Are you suggesting criminal contempt for  
20 a recalcitrant witness?

21          MS. BARON-EVANS: Criminal contempt is only  
22 appropriate if it amounts to obstruction of justice. That's  
23 clearly not his purpose.

24          THE COURT: He's a recalcitrant witness; it is a  
25 civil contempt issue.

1 MR. KELLY: Your Honor --

2 MS. BARON-EVANS: He is unlike the typical defendant  
3 who has not given conflicting statements all over the place  
4 and does not have his particular mental problems that bear  
5 directly on his ability to relate things.

6 MR. KELLY: Well, your Honor, we have looked at the  
7 law on this, and I have a grave difference with counsel as to  
8 the applicability of criminal contempt. I think it absolutely  
9 does apply in this context. We have looked at a number of  
10 cases which say, essentially, the Court has two options  
11 available to it when a witness, in the face of an immunity  
12 order, refuses to testify as a trial witness. Either the  
13 Court can summarily -- find him in contempt summarily, and  
14 sentence up to six months; or it can schedule a hearing at  
15 some later time when he has an opportunity to prepare his  
16 defense and have counsel, at which time he can take up the  
17 matter of disposition.

18 THE COURT: On civil contempt, I can only sentence  
19 him for the duration OF the proceeding.

20 MR. KELLY: This is a clear instance where criminal  
21 contempt is applicable, where, in view of the immunity order,  
22 a witness knowingly decides that he is going to violate the  
23 order.

24 THE COURT: How is it any different from a grand jury  
25 witness?

1 MR. KELLY: In the grand jury witness --

2 THE COURT: Gets an immunity order and refuses to  
3 testify, and it's held pending the conclusion of the grand  
4 jury's term.

5 MR. KELLY: Your Honor, I did not bring the cases  
6 with me. What I would ask, at a minimum, since we looked at  
7 this extensively, is to have the opportunity to prepare and  
8 file for the Court, perhaps by tomorrow, a memorandum  
9 outlining for Court that, in fact, criminal contempt under  
10 Rule 42 is appropriate here, and under 18 U.S. Code,  
11 Section 401. So I, what I would ask your Honor is that after  
12 the after the Court enters a finding of contempt, we simply  
13 schedule another hearing early next week and discuss the  
14 matter of whether it is civil or criminal.

15 THE COURT: If it is criminal, how can I do it just  
16 by finding it now?

17 MS. BARON-EVANS: May I be heard.

18 Under Rule 42(a), there is, some summary criminal  
19 contempt which only should apply in the case that a witness's  
20 refusal amounts to obstruction of justice, which this does  
21 not. He has just and substantial reasons not to testify.

22 THE COURT: But that may not. But that doesn't say  
23 that it's not an obstruction of justice. The government is  
24 having some serious problems in the case. And to the extent  
25 he doesn't testify, the government may not have a witness to

1 testify on these issues. That's the problem.

2 MS. BARON-EVANS: Any testimony Tom Shay could give  
3 couldn't be reliable, anyway.

4 THE COURT: That's a separate issue, and he's subject  
5 to cross-examination. The problem is that the government  
6 can't have cross-examination of statements through other  
7 witnesses; that's the difficulty.

8 MR. KELLY: The cases are clear, refusal of a witness  
9 to testify at trial, in the face of an order, is, in fact,  
10 obstruction of justice. Clearly, under the rule 42(a), and we  
11 have a whole litany of cases --

12 THE COURT: There can be an indictment for  
13 obstruction of justice for refusing to testify?

14 MR. KELLY: No, because the Statute 401(3)  
15 specifically exempts contempts committed in the presence of  
16 the Court from being an indictable offense. The only options  
17 available are 42(a), summary contempt, criminal, up to six  
18 months, or summary -- criminal contempt where disposition is  
19 deferred.

20 THE COURT: Why is this any different from the grand  
21 jury witness?

22 MR. KELLY: Well, your Honor, again, I would say like  
23 to be able to, I'm speaking without having the authorities  
24 before me, and I really don't want to talk out of turn. There  
25 is a distinction here. The cases are very clear that this is

1 a classic instance where Rule 42 applies with criminal  
2 contempt.

3 ~~THE COURT~~: I would just ask the Court, a way to  
4 handle it is to give the government an opportunity to inform  
5 the Court of our position, is to enter the finding. If the  
6 Court's uncomfortable with making a finding, because it has to  
7 determine whether it's civil or criminal, then I will ask we  
8 continue the matter entirely. On the other hand, since we  
9 believe firmly that it is criminal contempt, we would ask you  
10 make the finding and then conduct another hearing on this  
11 matter early next week, in the afternoon perhaps.

12 MS. BARON-EVANS: Civil contempt is appropriate  
13 here. Whether it is civil or criminal it is going to  
14 continue. Tom Shay is not disrupting the proceeding or shown  
15 disrespect to the Court. He has just reasons for refusing. I  
16 think that the government's desire to put this off for a  
17 hearing and to tack on extra time, shows what it is up to in  
18 this situation. Once he refuses to testify, they are not  
19 going to get his testimony, anyway, except under possibly  
20 civil contempt, because the civil contempt is imposed to  
21 coerce the witness to change his mind. He'll get six extra  
22 months tacked on to his sentence. The purpose of this --

23 THE COURT: The purpose of it is to get him to  
24 testify. They want him to testify which is why they are  
25 threatening him.

THE COURT

MS. GERTNER: I think there is a range of options.

The degree to the which the proceedings are disrupted and the degree to which he's acting in bad faith, that pushes this to the criminal side, as opposed to civil side. I think -- I need to decide this in a deliberate way. If I decide that it is civil contempt, it seems to me that we need to agree that the civil contempt starts today.

MS. GERTNER: Yes.

THE COURT: So that whatever additional time he serves would start today, if it were a civil contempt. On the other hand, I think the government is entitled to try to persuade me that it is something else. So, we will have a hearing on some other day --

Mr. Shay wants to talk to his counsel.

[Pause.]

THE COURT: Any change?

MS. GERTNER: No.

THE COURT: Do you have the copy of the immunity order?

MR. KELLY: Yes, I do.

THE COURT: Can you show it to Mr. Shay, please.

Mr. Shay, Ms. Gertner is showing you the immunity order that, that I had previously signed. It is the document that says you may not be prosecuted for anything you say, except for perjury. Please have a look at it, read it, and

1 then we will proceed.

2 (Pause.)

3 THE COURT: Have you read the order?

4 THE WITNESS: Yes, I did, your Honor.

5 THE COURT: Do you understand it?

6 THE WITNESS: Yes, I do.

7 THE COURT: Are you prepared to testify?

8 THE WITNESS: No, I'm not.

9 THE COURT: In that case, I will hold you in  
10 contempt. I will not now decide whether it is civil or  
11 criminal contempt. We will have a hearing on that, in due  
12 course, after everybody has a chance to tell me what the law  
13 is, and you are now excused.

14 This may be filed. Thank you.

15 We will take a recess.

16 Five minutes, I take it all the jurors are here, and  
17 then we'll proceed.

18 [Recess.]

19 THE COURT: What do we need to do beyond what we did  
20 yesterday?

21 MR. LIBBY: Respectfully, your Honor, there are a  
22 couple of issues with respect to Miller Thomas, part one,  
23 statements where you mentioned that you didn't have the  
24 context, you were unable to pass --

25 THE COURT: Right, only one, item three in your memo.

1           MR. LIBBY: Well, I believe that was -- perhaps I'm  
2 mistaken, your Honor, but with respect Attorney Pransky  
3 showing --

4           THE COURT: I ruled that out.

5           MR. LIBBY: Well, your Honor, you addressed the  
6 804(b)(3) aspect of that --

7           THE COURT: Look, every time I make a ruling on  
8 grounds advanced by government, then government then says:  
9 Oh, but think about it in another way. And it comes back to  
10 me with yet something else.

11          MR. LIBBY: I apologize, your Honor. And I try to do  
12 that not at all.

13          THE COURT: Well, it happened every time. You know,  
14 I make a ruling, and then you come with the cases and ask me  
15 to reconsider. It is unfair to do that. First of all, it  
16 make me look like a chump; and, secondly, it cause a whole  
17 lots of extra work. Think of it all in the beginning, and let  
18 me consider it in its entirety.

19          MR. LIBBY: I apologize. Your Honor, and I  
20 understand the Court's concern on that. I have absolutely no  
21 intention of prolonging this exercise any longer than is  
22 absolutely necessary. On Friday, this respect, to outline the  
23 particular subject matter --

24          THE COURT: Is it not correct that the government is  
25 offering these out-of-court statements on one or two

1 theories: one is that they go to state of mind; and the other  
2 is that they are again penal interest?

3 MR. LIBBY: Correct.

4 THE COURT: None other.

5 MR. LIBBY: That's correct.

6 THE COURT: So, the question is which if any do they  
7 fit. Now, some of them I have already let in, on the grounds  
8 that they are, that they are state-of-mind questions and  
9 answers. Now, on -- with respect to Pransky, I have ruled it  
10 out because I regarded it as being neither state of mind  
11 relevant to this issue nor against penal interest.

12 Now, what do you want me to reconsider?

13 MR. LIBBY: Your Honor only to point out, I don't  
14 know that we had discussed it at any length, with respect to  
15 the state-of-mind point, regarding Shay, Jr.'s, appreciation  
16 and expectation of his father coming into a windfall. That  
17 was the sole argument raised there.

18 I believe counsel is raising, and seeks to be heard,  
19 on the remote control issue.

20 THE COURT: Well, that issue was one that I hadn't  
21 ruled on because I told you I didn't know the context.

22 MR. LIBBY: I have the context before your Honor now  
23 with the transcript. And in fact, counsel --

24 THE COURT: Well, the transcript you gave me is  
25 partly Miller and partly Fogerty.

1 MR. LIBBY: Let me explain --

2 THE COURT: And Fogerty was never before me before.

3 MR. LIBBY: Your Honor, we are trying to do with one  
4 witness what we did with two witnesses the last time. We  
5 called Detective Thomas as to the October 29 homicide  
6 statements, and then we called Billy Fogerty for the 31st  
7 statements. I'm trying to collapse that, as I believe I  
8 flagged for the Court yesterday, Miller Thomas who was present  
9 for both, so that we don't have to call two witnesses. That  
10 is why you see transcripts from both. But it will be  
11 Detective Thomas alone who will speak to those things.

12 You have the context in which that evidence came in  
13 in the Shay trial, with respect to remote control. It  
14 relevant only because it indicates that defendant's, this  
15 coconspirator's understanding of remote control, the fact of  
16 remote control.

17 I understand that their counsel --

18 THE COURT: The fact that he played with a remote  
19 control submarine in North Carolina or South Carolina when he  
20 was a child, has to do with this explosion?

21 MR. LIBBY: On the early morning hours of the 29th,  
22 14 hours after the explosion, sitting with homicide detectives  
23 in South Boston, and he raises the notion of remote control.  
24 We believe that we're entitled to this, that he understands  
25 the notion of remote control and he brings it up, in the first

1 instance. And it is together with his bringing up, very hours  
2 later, outside the condo in Quincy to the Herald reporter,  
3 talking about how his father had been queried by the police  
4 about remote controls. This is twice in about an eight- or  
5 ten-hour period. Those are things that we're simply trying to  
6 point out.

7 THE COURT: I don't understand about the Herald.  
8 What I'm looking at new is page 9-127.

9 MR. LIBBY: That's right. If you will look --

10 THE COURT: Which has to do with submarine as a  
11 child.

12 MR. LIBBY: And the remote control feature, your  
13 Honor. If you look at page 4 of the governments brief, you'll  
14 also see on item number 5, the reference to the questioning on  
15 the 31st about how he claimed that his father, on evening of  
16 the bombing, had been questioned by the police about remote  
17 control.

18 THE COURT: Item number 5 is what I told you I  
19 regarded an exculpatory, not an inculpatory statement.

20 MR. LIBBY: We didn't have a chance to be heard on  
21 that point that your Honor had raised. We believe it is  
22 blatantly false exculpatory, and for that reason it has  
23 significance in the context. He raised remote control twice,  
24 at homicide on the 29th, hours later, to the news reporters;  
25 he comes back two days later, and says it was a lucky guess.

1 None of this information was public. The key, the distinctive  
2 issue about this explosive device is that it was remote  
3 control, it was radio controlled. And here's the defendant  
4 making two separate references to it in a space of hours after  
5 the explosion.

6 THE COURT: But how do those references come in?

7 MR. LIBBY: State of mind, your Honor.

8 THE COURT: But who is testifying about those two  
9 references?

10 MR. LIBBY: First, Detective -- well, Detective  
11 Thomas as to both. He was present when both were made.

12 THE COURT: To the press?

13 MR. LIBBY: Well, your Honor, with respect to the  
14 press, it is just like, for example, a police investigative  
15 technique, where they say, as I believe the testimony was in  
16 the first case: Your father is coming over here. Now, that  
17 wasn't true. It came out that it wasn't true. That was --

18 THE COURT: I'm sorry, I lost you. Who made that  
19 statement to whom?

20 MR. LIBBY: I believe Detective Fogerty, or perhaps  
21 it was Thomas. And I asked him: Was it true? And he said  
22 no, the father wasn't coming over; they simply wanted to see  
23 what reaction they would get from Shay, Jr. The very same  
24 idea. Here, this was a good faith basis, in this case; there  
25 were, in fact, comments in the Herald about him saying that my

1 father had been questioned about remote control. None of that  
2 was public at the time.

3 THE COURT: But there is at the moment no evidence  
4 that he said anything to the Herald. So, what you're offering  
5 is a question to Mr. Shay --

6 MR. LIBBY: Right.

7 THE COURT: Saying what?

8 MR. LIBBY: Saying we see that you made some comments  
9 to the paper yesterday, actually, the day before, about remote  
10 control. First he denies it. They asked him again, he says  
11 it is lucky guess.

12 THE COURT: How is that against self-interest?

13 MR. LIBBY: It is a state of mind, your Honor. It is  
14 consciousness of guilt. He understands that he slipped. The  
15 morning after the explosion, he's talking to the newspapers  
16 about remote control, and we don't even have that information.

17 THE COURT: You're offering the remote control  
18 statements on state of mind, not against penal interest?

19 MR. LIBBY: As to the comments on the 31st, your  
20 Honor, yes, both. In fact, they fit under both. Here he is  
21 telling the homicide detectives, on the evening of the 31st,  
22 first, he denies: I didn't say anything about remote  
23 control. And then, they question him about it again.

24 THE COURT: How is it state of mind? How does it  
25 come in on -- how is his state of mind about that relevant to

1 this case?

2 MR. LIBBY: Consciousness of guilt, your Honor.

3 THE COURT: What?

4 MR. LIBBY: Consciousness of guilt, your Honor. He  
5 knows that he slipped. He knows he shouldn't have said  
6 something to the paper about my father being questioned about  
7 remote control. There was no evidence that the father had  
8 been questioned about remote control. And now, he's knows he  
9 slipped.

10 THE COURT: What he's saying is he didn't say it.  
11 There is no evidence before this jury that he said anything to  
12 the press.

13 MR. LIBBY: Your Honor, if you take the two  
14 statements together, in context, first, he denies it, and then  
15 he says it is a lucky guess, that's all you need to draw  
16 significance from it. It provides it's own context.

17 THE COURT: But the underlying statement is not  
18 before the jury. There is nothing before this jury that he  
19 ever said anything to the press. So, his denial or  
20 explanation is entirely exculpatory.

21 MR. LIBBY: Your Honor, I think, you can do it  
22 without reference, you can do it without admitting the Herald  
23 article itself, and that's because, in consequence, in  
24 sequence, rather, first, he denies having made the statement,  
25 then he admits he made the statement but says it was a lucky

1 guess. On its face, it shows consciousness of guilt: I  
2 slipped up, I should have, I should have denied it. I'll  
3 provide another reason: It was just a guess.

4 THE COURT: I, I truly do not, I do not understand  
5 that to be the law.

6 I truly do not understand that to be consciousness of  
7 guilt. It is simply a denial that he ever said anything, or  
8 explanation --

9 MR. LIBBY: Your Honor, I think, what's going on, and  
10 we would argue this as a thought process, first, he denies it;  
11 then he says: Gee, they have that newspaper. How can I deny  
12 when I gave the press conference to six people with cameras,  
13 and so forth.

14 THE COURT: But you are offering this to show that he  
15 in fact said something.

16 MR. LIBBY: We're offering it to show his -- how he  
17 responds in sequence to questions about something that wasn't  
18 public. He knows that he can't deny it because there are six  
19 reporters and film and newspaper clippings, all speaking about  
20 this.

21 THE COURT: But they are not in evidence. They are  
22 not in evidence.

23 MR. LIBBY: If I may, your Honor, just briefly, your  
24 Honor, I think, with respect to the first -- well, we would  
25 simply ask the Court to reconsider on both of those, for the

1 reasons stated.

2 And understanding, finally, your Honor, that we  
3 talked only about Detective Thomas as the Government's next  
4 witness. Beyond Detective Thomas will come Robert Evans.

5 THE COURT: Let's talk about Thomas because I,  
6 frankly, am not clear what you're offering through Thomas of  
7 what Thomas and Fogerty said on the issue that was your item 3  
8 and the diagram, that is, item 3 of the first series and the  
9 diagram. I mean, what was read to me yesterday of that  
10 exchange really doesn't put it in the context of the  
11 explosion. It puts it in the context of toys.

12 MR. LIBBY: That is the notion --

13 THE COURT: The diagram. So, I'm not sure. Refer me  
14 to the portion of the transcript that we're talking about  
15 here.

16 MR. LIBBY: We're talking about, I believe, it is in  
17 10 --

18 THE COURT: 9-131, is that where you're talking?

19 MR. LIBBY: I believe the first reference to remote  
20 control is in 9-130, 131.

21 With respect to -- I don't think there is any  
22 transcript reference here, your Honor, I'm sorry.

23 With respect to the diagram, I believe the Court  
24 ruled on the diagram.

25 THE COURT: No, I didn't. I said it was a matter of

1 context. I specifically did not rule it out or in because I  
2 didn't know in what context the discussion had arisen.

3 MR. LIBBY: The context was, I believe the transcript  
4 wilt bear this out --

5 THE COURT: Where is the transcript?

6 MR. LOPEZ: I attached the relevant transcripts to  
7 the motion in opposition to these two items which I filed  
8 today.

9 THE COURT: Which exhibit?

10 MR. LOPEZ: It would be Exhibit A. The first mention  
11 of the remote control submarine was on page --

12 THE COURT: The exhibit numbers are over the page, so  
13 I don't know what page it is.

14 MR. LOPEZ: It is Exhibit A.

15 THE COURT: But what page is the transcript?

16 MR. LOPEZ: 9-127, your Honor. Lines 9 through 21.

17 THE COURT: The government isn't offering that.

18 MR. LOPEZ: Your Honor, that's exactly what they are  
19 referring to in paragraph 3 of their brief, which yesterday  
20 they said was against penal interest, and today they are  
21 saying is state-of-mind argument.

22 Your Honor, clearly, the context in which these  
23 statements were uttered had absolutely nothing to do with the  
24 1991 bombing. He was referring to a submarine, a remote  
25 control submarine, that he claimed he played with as a youth.

1           THE COURT: Then he goes on to the Dedham Service  
2 Center.

3           MR. LOPEZ: He was talking about it in the context of  
4 the Dedham Service Center. It wasn't in response to a  
5 question about 1991. It had -- there was absolutely no -- not  
6 only was there no context, your Honor, but Officer Miller,  
7 Detective Miller, even said when, in report 1, which is now  
8 destroyed, he mentioned it, and in report two he took it out,  
9 he saw no significance to the fact that he played with the  
10 remote control submarine when he was a child. Now, how that  
11 context gets manipulated to somehow become relevant to 1991 is  
12 beyond me.

13           But, your Honor, clearly it had nothing to do with  
14 1991. It didn't express any -- it is no evidence of what his  
15 state of mind was in 1991. It refers only to an incident  
16 which occurred sometime in the past, we have no idea when.  
17 And, in fact --

18           THE COURT: Let me hear from Mr. Libby.

19           MR. LOPEZ: Thank you, your Honor.

20           MR. LIBBY: Your Honor, he wasn't a suspect on the  
21 29th when he made that statement about remote control. We're  
22 offering it in the context of a statement then, and drawn  
23 later, to show his familiarity at that point in time, close to  
24 time to the explosion, with the concept of remote control, and  
25 having actually handled one of these devices sufficient to

1 draw accurate picture. So, Detective Miller Thomas will come  
2 in and say that, in the first instance, within hours of the  
3 explosion, he raised, he simply raised the notion of remote  
4 control. It doesn't matter in what context. It establishes  
5 his appreciation for the concept. Two days later --

6 THE COURT: This is being offered as against penal  
7 interest?

8 MR. LIBBY: Both penal interest and state of mind,  
9 your Honor. And on the 31st, he --

10 THE COURT: It certainly is not against penal  
11 interest.

12 MR. LIBBY: Well --

13 THE COURT: Not given the context in which he made  
14 the statement about the remote control.

15 MR. LIBBY: Then, your Honor, we would argue that so  
16 for as the context is concerned, where he makes the statement  
17 on the 29th, he follows it up two nights later, as is laid out  
18 in Exhibit F in the defendant's brief, which carries the  
19 transcript references, Detective Fogerty, I believe 10-90 and  
20 91, where Shay, Jr. looks through the plate glass window of  
21 conference room and notices, generally, some remote control  
22 receiver/transmitter, and so forth; I believe it is in  
23 profile. He said it was on end table and it was on its side.  
24 And then he was asked to draw his understanding of what a  
25 remote control transmitter looked like. And that's what we

1 see over here, I believe. We have one of the exhibits we used  
2 in the first trial.

3 That's the purpose, your Honor, to show his  
4 familiarity at that point in time with remote control  
5 generally and transmitters, specifically, his State of mind.

6 THE COURT: As I see it from the yellow markings on  
7 this, the only remote control thing you are offering is the  
8 one that has to do with the submarine. That's the only yellow  
9 marking on remote control in this transcript that you gave  
10 me.

11 MR. LIBBY: Well, your Honor, I make reference to the  
12 Defendant's Exhibit --

13 THE COURT: It is the same transcript.

14 MR. LIBBY: I don't know that I sent --

15 MR. LOPEZ: I marked it in yellow.

16 THE COURT: You did, but it is the same, it is the  
17 reference to remote control, and neither of them has anything  
18 to do with the drawing.

19 MR. LIBBY: But, your Honor, as I believe --

20 MR. LOPEZ: Your Honor, Exhibit F refers to the  
21 drawing which your Honor, as you probably recall from the Shay  
22 case, in the Shay trial, the Boston homicide detectives --

23 THE COURT: That's not part of the government's.  
24 Maybe the government isn't offering it. It's not part of the  
25 government's submission.

1 MR. LOPEZ: Well, the reference that they made was  
2 something you excluded yesterday, your Honor. They didn't  
3 provide any transcripts with respect to a diagram.

4 MR. KELLY: It wasn't excluded.

5 THE COURT: No, it was not excluded yesterday. The  
6 diagram because the diagram, too, depended on context. But  
7 the government hasn't given me the context, so I don't know  
8 what I'm supposed to do with that.

9 MR. LIBBY: Your Honor, I believe the context is  
10 provided in Exhibit F of their submission. Regardless of the  
11 source, the context, your Honor, the theory, the government's  
12 theory is clear: Is this coconspirator's appreciation and  
13 understanding of remote control generally and, specifically,  
14 how a transmitter looks, which is what he did at the  
15 detective's request, on the evening of the --

16 THE COURT: Tell me what the argument is going to  
17 be. Assume this evidence comes in, how does the government  
18 argue this evidence to the jury? What is it going to say?

19 MR. LIBBY: Respectfully, it is of an entire piece,  
20 and it has to do with remote control generally.

21 THE COURT: What's the argument?

22 MR. LIBBY: His understanding of the concept, his  
23 familiarity with what one -- not everybody has ever used one  
24 of these things. I never used one until my kids started  
25 buying these things.

1 THE COURT: What's the argument?

2 MR. LIBBY: And secondly, that he, in the hours  
3 following this explosion, before it was public knowledge, was  
4 discussing remote control with homicide detectives. I mean,  
5 it is uncanny, that he raised it the evening of the 29th, and  
6 then two days later when he understood understand the  
7 significance now, and then tried to back off from it. That's  
8 what we got. At the first trial, your Honor, we absolutely  
9 argued the significance of that.

10 THE COURT: What is the argument now?

11 MR. LIBBY: Well, if your Honor is going to exclude  
12 the reference to --

13 THE COURT: I'm asking, in aid of a decision,  
14 Mr. Libby, assume the evidence is in. What do you tell jury  
15 about it?

16 MR. LIBBY: We tell the jury that he understood the  
17 remote control feature of this device before, in the  
18 construction phase --

19 THE COURT: That, I think, is inappropriate, because  
20 it wasn't brought in, in connection with this device; it was  
21 brought in, in connection with a submarine when he was a  
22 child.

23 MR. LIBBY: Respectfully, your Honor, it shows his  
24 understanding.

25 THE COURT: But that's not the argument you're

1 making, you see. You are making the next link. You're saying  
2 because he said something about remote control when he was a  
3 child with a submarine; therefore, he knew he is making a  
4 reference to the remote control of this device. That's just  
5 what you now told me, and that is improper argument based on  
6 evidence that you have given me.

7 MR. LIBBY: It is not simply childhood reference,  
8 your Honor, it is.

9 THE COURT: Where else is it? I ask you for it, all  
10 I have is the submarine.

11 MR. LIBBY: Drawing on that evening --

12 THE COURT: But that was also given in the context of  
13 something that was already there, and he was invited to do it.

14 MR. LIBBY: No, your Honor, it was pointed out. It  
15 was not directly in front of him. He was not asked to draw a  
16 transmitter that was placed in front of him. It was across  
17 the conference room, through plate glass window, on its side;  
18 and for that, for that reason, it would have been a useless  
19 exercise, otherwise, had the detective asked him: Please draw  
20 this transmitter. Draw some picture of the transmitter as  
21 understand it, and this is that we did.

22 Your Honor, we have two transmitters that were used  
23 before the jury here that are very similar to this.

24 THE COURT: The testimony is that Mr. Shay recognized  
25 the device that was sitting there, on the other side of the

1 glass door. And he said, that he had a similar device for a  
2 remote control car when he was a child. And when he asked if  
3 he knew how it operated, he then drew a diagram. So, what he  
4 drew a diagram of is the remote control device for the car  
5 when he was a child.

6 MR. LIBBY: Your Honor.

7 THE COURT: That is what this says.

8 MR. SEGAL: 10-91.

9 THE COURT: That's what this says.

10 I mean, if the argument were simply that he had some  
11 understanding from the time that he was a child that there was  
12 such a thing as remote control devices having to do with  
13 submarines and cars, that would be one thing. But to  
14 translate that into an argument that he therefore understood  
15 the remote control device involved in this bomb and that he  
16 therefore had something to do with this bomb, it is skipping.  
17 The argument is skipping an essential connection which is  
18 isn't there. And as against this defendant who wasn't part of  
19 this conversation, it is an impossibility.

20 MR. LIBBY: Your Honor, we would stand on our  
21 argument.

22 THE COURT: It is out.

23 All right. I have told you what was in, what is out,  
24 let us now proceed with the jury.

25 MR. LIBBY: Your Honor the government would call

1 Detective Miller Thomas.

2 MR. LOPEZ: Might I ask that Officer Thomas be made  
3 aware that there will be no mention of the remote control  
4 during his testimony so we don't have an inadvertent question?

5 MR. LIBBY: I'll lead him through that portion.

6 [Whereupon, the jury entered the courtroom.]

7 THE COURT: Good morning, please be seated.

8 THE CLERK: Do you solemnly swear or affirm that the  
9 testimony that you are about to give will be the truth, the  
10 whole truth, and nothing but the truth.

11 THE WITNESS: I do ma'am.

12 THE CLERK: Please be seated and state your name.

13 THE WITNESS: My name is Miller Thomas, M I L L E R,  
14 Thomas, T H O M A S.

15 THE COURT: You may proceed.

16 MR. LIBBY: Thank you, your Honor.

17 Miller Thomas, sworn

18 Direct Examination by Mr. Libby

19 Q Good morning, detective.

20 A Good morning, sir.

21 Q What do you do for a living?

22 A I'm a Boston Police detective, assigned to the Homicide  
23 Unit of the Boston Police Department.

24 Q How long have been a detective?

25 A Five years, sir.

1 Q Where is the Homicide Unit located, sir?

2 A It is located at No. 273 D Street in South Boston.

3 Q Will you tell us, briefly, how many detectives comprise  
4 the Homicide Unit?

5 A The Homicide Unit consists of seven squads. Each squad  
6 is based on three men, a sergeant and two detectives. The  
7 squads are evenly divided between nights and days. The odd  
8 numbered squads are the day squads; the even numbered squads  
9 are the night squads. Our hours start at 8:30 in the morning  
10 to 5 p.m., and the evening guys start at 5:30 p.m. and work to  
11 1 a.m.

12 Q And what have your hours been for the last several years,  
13 sir?

14 A From 8:30 a.m. to 5 p.m. sir.

15 Q How long have you been a police officer?

16 A 15 years, sir.

17 Q Can you tell us, briefly, where you have been stationed  
18 in that time?

19 A I've primarily been stationed in Area B, which consists  
20 of Roxbury, Dorchester and Mattapan.

21 Q And what is the essence of your duties and  
22 responsibilities, sir, as a homicide detective?

23 A As a Boston Police Homicide detective, we go to all  
24 unexplained deaths; traumatic incidents involving motor  
25 vehicles; injuries, in terms of gun shots, accident or

1 otherwise; we go to any murders or severe shooting incidents,  
2 and we go to any places in the confines of the City of  
3 Boston.

4 Q Could you pull the microphone closer to you, detective.

5 THE COURT: I'm sorry, I had it turned off.

6 Q Now, detective, how many homicide investigations have you  
7 personally been involved in, sir?

8 A Approximately 70 sir.

9 Q And directing your attention back to the fall of 1991,  
10 did you have a partner or partners?

11 A That's correct, sir.

12 Q Who were those individuals?

13 A Detective Peter O'Malley, who is retired, and Detective  
14 William Fogerty, who has since been promoted.

15 Q So, he's no longer in the Homicide Unit with you?

16 A That's correct, sir.

17 Q Now, directing your attention back to October of 1991,  
18 specifically, the 28th of October, Monday, detective, do you  
19 recall where you were what you were doing?

20 A Yes, sir.

21 Q All right. Do you recall being notified of an explosion  
22 in Roslindale?

23 A That's correct, sir.

24 Q Where were you when you were notified? How were you  
25 notified?

1 A We were notified via beeper. We made a call into what is  
2 called our operations division, and we obtained information  
3 from them relative to an accident that had taken place at  
4 39 Eastbourne Street in the Roslindale section of Boston.

5 Q Where were you when you received that information?

6 A At the Suffolk Superior Courthouse.

7 Q Who were you with?

8 A Detective William Fogerty.

9 Q What did you do in response to that, having received that  
10 information?

11 A We immediately proceeded to that location.

12 Q About what time did you get there, sir?

13 A Approximately 12:15 I think, sir.

14 Q Had you been in that area before?

15 A Yes, sir.

16 MR. LIBBY: If I may, your Honor, approach?

17 THE COURT: Yes.

18 Q Let me show you Government's Exhibit 1, detective, and  
19 ask if you recognize this?

20 A Yes, sir, that's Eastbourne Street.

21 Q And as you arrived, will you tell the Court and jury,  
22 please, generally, a description of what saw in the vicinity  
23 of 39 Eastbourne Street?

24 A Immediately in the vicinity of the 39 Eastbourne Street,  
25 approximately in the building next door, which is

1 35 Eastbourne Street, there was a -- starting from this area,  
2 there was a series of police cars going down to the other side  
3 of Eastbourne Street. There had been established a police  
4 line, which is a yellow tape that had marked this area off as  
5 part of a crime scene.

6 [Spectators entering the courtroom.]

7 THE COURT: Mr. Thomas, hold on just a minute. We  
8 need to settle down, and then we'll continue.

9 Are there more coming?

10 MR. LIBBY: I think that's it, your Honor.

11 THE MARSHAL: A couple more are coming, your Honor.

12 THE COURT: You may proceed.

13 A This area was cordoned off as a police line type of  
14 situation, with yellow tape that said police line. There was  
15 members of the press here who had their cameras and were  
16 filming in this area.

17 Q Now, how long that day or into the evening, did you  
18 remain at the scene, detective?

19 A Until after dark. Probably about 7 o'clock, we left that  
20 area.

21 Q And during that time, sir, did you see any perimeter  
22 police presence posted?

23 A Yes.

24 Q Will you describe that for us, please?

25 A What happened is that the area here, the crime scene

1 area, was extended back to the end of the street, and that  
2 whole street was -- Eastbourne Street, by the way, is a  
3 one-way street. And at the end is a dead end, and it goes  
4 down a staircase to another street. We set up a perimeter  
5 area where we had a policeman here at this dead end, and we  
6 had a policeman over on this street which was called Havana  
7 Street. And we had police officers that were stationed here.  
8 And we had police officers who were stationed here for the  
9 night for an overnight session. And we also had a mobile  
10 lighting unit that came in that illuminated the front and the  
11 side and the rear yard of 39 Eastbourne Street.

12 And we also set up what's called a mobile command  
13 post which is a mobile home type of vehicle, and there was  
14 two police officers who were stationed in that overnight.

15 Q Thank you.

16 Now, you arrived, I believe you testified, with  
17 Detective Fogerty?

18 A That's correct.

19 Q And did you meet up with any of your other colleagues on  
20 the scene?

21 A Yes, sir.

22 Q Who was that?

23 A Detective O'Malley.

24 Q Any other law enforcement on the scene on your arrival?

25 A Sergeant Creavin and Police Officer Kraft.

1 Q You understood those officers to be whom, sir?

2 A Sergeant Creavin was what's called a patrol supervisor  
3 for that division that day.

4 Q You understood those officers had been present at the  
5 scene at the time of the explosion?

6 A I understood that Officer Kraft had responded along with  
7 Sergeant Creavin to an initial incident.

8 Q Did you see any presence of the Boston bomb squad at the  
9 time of your arrival?

10 A Yes, sir.

11 Q Describe that, please.

12 A A couple of members of the Boston bomb squad arrived at  
13 the scene, and they conducted an investigation there.

14 Q We'll get to that in a minute.

15 Now, you met up with Detectives Fogerty and O'Malley?

16 A I met up with O'Malley. Fogerty was with me.

17 Q And what did you do after you arrived on the scene  
18 together, if anything?

19 A We had a brief conversation with Sergeant Creavin.

20 Q And after that what did you do?

21 A Proceeded inside number 39 Eastbourne Street.

22 Q You went to the door?

23 A That's correct.

24 Q Knocked on the door?

25 A Yes, sir.

1 Q Someone came to the door?

2 A A man who identified himself as being Thomas Shay, Sr.

3 Q Describe that gentleman for us, please.

4 A Mr. Shay is about 40, 50 years old, is a white male,  
5 about 190 pounds.

6 Q Now, would you describe to the Court and jury, please,  
7 did you have a conversation following that?

8 A Yes, sir, I did.

9 Q Did he let you in the house?

10 A That's correct.

11 Q Where did you go?

12 A We went to the dining room area.

13 Q Was anyone else present besides the four that you just  
14 named?

15 A No, sir.

16 Q You had a conversation?

17 A Yes, sir.

18 Q About how long?

19 A Initially, for about half hour or so.

20 Q Right there in the living room?

21 A In the dining room, sir.

22 Q Sorry. In the dining room.

23 Will you describe for us, please, the substance of  
24 that conversation at that time?

25 A We were trying to ascertain from Mr. Shay how he had come

1 about making the police call to the police relative to the  
2 device that he had found. We were getting background based on  
3 that incident at that time.

4 Q Did he describe to you how it was, his events of the day  
5 before?

6 A Yes.

7 Q What did he tell you, if you recall?

8 A He told us that he normally drives a vehicle that was  
9 parked in front of the house at the time. And he put it out  
10 to the front of the house.

11 Q Did you see that vehicle on your arrival?

12 A Yes.

13 Q Let me show you what's been marked Government's Exhibit  
14 21 A, and ask if you recognize that?

15 A That's the vehicle in the direction it was pointing at  
16 that day.

17 Q At the location it was parked on your arrival, sir?

18 A Yes.

19 Q And what did he tell you specifically, if you recall,  
20 about the events of the prior today?

21 A That the person he stays in the house with, Mary  
22 Flanagan, normally parks in the driveway in the house. The  
23 day or the day before when he arrived Mary Flanagan was parked  
24 on the street and his normal parking space in. He then backed  
25 his car up into the driveway. The driveway has a slight rise;

1 it is about probably about two or three feet. As he was going  
2 up the driveway he heard what he described as a scraping sound  
3 from the bottom of the car, specifically saying the driver's  
4 side of the car.

5 He then put his car up in the driveway, got out of  
6 his car, he walked to the front of it, looked underneath the  
7 car, didn't see anything and didn't notice any damage any  
8 place. He then went into the house.

9 He told me that subsequently, that same day, Mary  
10 Flanagan moved her car from the front of the house, because  
11 she was going some place. He then moved his car out of the  
12 driveway to his normal parking space, he then hears the same  
13 sound, parks his car in front of the house. He looks  
14 underneath his car again. He looks back to the driveway, and  
15 he notices what he described as being a black object, a box.

16 Q Did he give you any further description at that time  
17 about the configuration of the box?

18 A Yes.

19 Q What did he say?

20 A He said that the black box appeared to be the size of  
21 what he described as a Russell Stover's box, which is a  
22 chocolate box. And there was one atop of the China cabinet in  
23 his dining room. And he reached up and pulled the box down.  
24 And the box was approximately one inch thick, 10 to 12 inches  
25 long and about 6 inches wide. And he turned it around in

1 different directions and he said it is about like this, this  
2 size.

3 Q Did he make any comment about seeing anything on the  
4 surface?

5 A Yes.

6 Q On the box?

7 MR. LOPEZ: Objection, your Honor.

8 THE COURT: He may have the question. You may  
9 proceed.

10 A Yes. He stated that the box had what he described as  
11 circular magnets attached to it. And that he had subsequently  
12 removed two of them.

13 Q Did he give you any indication to what material he  
14 believed the box was made of?

15 THE COURT: Are you asking what Mr. Shay said to  
16 him?

17 MR. LIBBY: That's right.

18 THE COURT: Mr. Shay, Sr.?

19 MR. LIBBY: That's correct.

20 THE COURT: For what purpose is this being offered,  
21 particularly where Mr. Shay has already told us all the stuff  
22 that he observed himself?

23 MR. LIBBY: Well, your Honor, for the very same  
24 purpose we offered other evidence with respect to the  
25 investigators, process of the investigation, how it unfolded.

1 It has already been challenged before. We expect it to be  
2 continually challenged throughout.

3 MR. LOPEZ: Your Honor --

4 THE COURT: You're offering it to show what the  
5 investigators did and not what Mr. Shay said.

6 MR. LIBBY: How Mr. Shay described the events to  
7 these investigators at the time of the initial report on the  
8 scene.

9 THE COURT: But you're offering for the purpose of  
10 showing the jury the nature of the investigation?

11 MR. LIBBY: Correct.

12 THE COURT: The reasons why the investigators did  
13 what they did?

14 MR. LIBBY: Precisely.

15 THE COURT: I guess it is admissible for their state  
16 of mind.

17 MR. LIBBY: Precisely that reason.

18 MR. LOPEZ: I believe Mr. Libby was indicating that  
19 he was attempting to corroborate what Mr. Shay, Sr. had said.

20 THE COURT: No.

21 MR. LIBBY: I said no such thing, your Honor.

22 THE COURT: No, he didn't say that.

23 MR. LOPEZ: All right. It is still hearsay, and we  
24 object on that basis. And we would like to have a continuing  
25 objection to what Shay, Sr. --

1           THE COURT: You have the continuing objection. It is  
2 overruled. This evidence is in, not to show the truth of what  
3 Mr. Shay said -- for that you have to take his own statements  
4 about what he observed -- but simply to show what the  
5 investigators heard and what investigative steps they took as  
6 a result, that is, what they knew, what they received, and  
7 therefore what investigative steps they took.

8           You may proceed.

9           MR. LIBBY: Thank you, your Honor.

10          Q     Now, you say this conversation lasted approximately a  
11 half an hour?

12          A     That's correct.

13          Q     Is it common for homicide detectives to take notes during  
14 these conversations?

15          A     Yes.

16          Q     All three of you take notes during that conversation?

17          A     No, sir.

18          Q     Did anyone?

19          A     I think Detective Fogerty was taking notes.

20          Q     What further did Shay, Sr. tell you about an object?

21          A     That he, when he initially found the object in his  
22 driveway, he picked it up, noticed that there was a mound of  
23 dirt that had been disturbed by it. And he said that after he  
24 examined it, he threw it to the front of the house, near the  
25 front porch, and then went inside, back inside of his house.

1 Q Did he indicate whether he came out, did anything  
2 further?

3 A Yes.

4 Q What did he say?

5 A He stated that later on that evening, when he was  
6 watching football, and he walked back out, picked the object  
7 up, went in back the house. In between, there's a step van  
8 that was in his driveway and a motor vehicle which is a  
9 Pontiac GTO, he placed it in between those two vehicles.

10 Q At any time, detective, during this half hour  
11 conversation, did the conversation turn to Shay Sr.'s  
12 background?

13 A Slightly, yes, sir.

14 Q What did he say? What did he tell you?

15 A We wanted to know what is it that he did for a living.  
16 He stated he was an autobody repairman by trade.

17 We wanted to know whether he had any enemies, and he  
18 stated that he did not.

19 Q Did you understand who lived at the house with him?

20 A Yes.

21 Q And who is that?

22 A A female by the name of Mary Flanagan, who he said was  
23 his girlfriend, and a young child.

24 Q Now, at the conclusion of this first half hour visit with  
25 Shay, Sr., did you go anywhere with him?

1 A Yes.

2 Q Where did you go?

3 A Outside of the house into the driveway area.

4 Q The four of you, the three homicide detectives and  
5 Shay, Sr.

6 A That's correct.

7 Q When you got there, what did you do?

8 A We wanted Mr. Shay to try to demonstrate to us exactly  
9 what had happened.

10 MR. LIBBY: If I may, your Honor.

11 Let me show you Government's Exhibit 10 B, detective,  
12 and ask if you recognize what is depicted there?

13 A Yes, sir.

14 Q What is that?

15 A That's the driveway of 39 Eastbourne Street with the two  
16 cement paths.

17 Q Now, briefly, describe, using this photograph, would you  
18 explain to the Court and jury what you did with Shay, Sr. now  
19 in the driveway at that time?

20 A I had him show me in this area where the clump dirt was  
21 that, that he had hit, that the vehicle, and the object had  
22 fallen off.

23 Q Did he do that?

24 A He pointed to this area about here.

25 Q What did you see when he pointed to that to area?

1 A There was a clump of dirt that had been disturbed there.

2 Q All right. We see on the photograph some red or orange  
3 paint, was it in that condition at the time that he pointed it  
4 out to you?

5 A No, it was marked by somebody from the unit.

6 Q After he points to that spot on the crest of the  
7 driveway, what did he do?

8 A He then showed the area over here, which is underneath  
9 the porch, where he had said that he threw the object before,  
10 removing it, and placing it in the rear of this step van which  
11 is depicted here.

12 Q And then what?

13 A He wanted to go in the back to show us exactly where he  
14 placed the object. And we wouldn't let him because we were  
15 afraid of losing any evidence in the rear of the vehicle.

16 Q Now, how long did you have that conversation with Shay,  
17 Sr. out in the driveway?

18 A It was probably lasted about five or ten minutes, sir.

19 Q And then where did Shay, Sr. go?

20 A He we went back inside with the Detective O'Malley and  
21 Detective Fogerty.

22 Q Did you go back in inside?

23 A No, sir.

24 Q What did you do?

25 A I met with members of the bomb squad, and we were helping

1 coordinate and moving back the police line that we had  
2 established. We pushed it back to the end of the street. We  
3 also examined Mr. Shay's vehicle out front. We were  
4 apprehensive as to whether or not there was another device  
5 that may have been there. We were very concerned about that,  
6 and the members of that bomb squad examined it.

7 Q How did they examine it?

8 A They first looked underneath the vehicle, crawling  
9 underneath. And then we subsequently had a two truck lift the  
10 vehicle up, so they could get a very good view underneath the  
11 vehicle.

12 Q Did you stay out on the street witnessing this?

13 A Yes.

14 Q Approximately how long?

15 A It lasted approximately a half hour, 45 minutes.

16 Q Now, at some point that afternoon, detective, did you  
17 come to learn as to whether any other law enforcement  
18 resources were being directed to the scene?

19 A Yes.

20 Q What was that, please?

21 A Members of the ATF had arrived at the scene, and also  
22 other additional members of the Boston Police Department, some  
23 members of the State Police Department had arrived.

24 Q Now, at some point during that day, did the members of  
25 the Boston bomb squad indicate that they were ceasing their

1 particular activity on the scene?

2 A Yes.

3 Q What was the reason for that, to your understanding?

4 A After a conversation with an ATF supervisor, he advised  
5 us and the captain who was at the scene, Captain McNally, that  
6 they could get what's called a National Response Team to come  
7 to this area to process the scene. It was agreed upon that it  
8 would be best if they could process it because we didn't have  
9 the expertise to do what we thought would be an adequate job  
10 in processing the scene. So, we shut down. No physical  
11 evidence was taken by anybody from the Boston Police  
12 Department.

13 Q Now, did you have a further conversation that day or  
14 early evening, detective, with Shay, Sr.?

15 A Yes.

16 Q Where did that take place?

17 A Inside the house.

18 Q And again, who was present?

19 A At that time, Captain McNally was present, Detective  
20 Fogerty was present, Detective O'Malley, myself, Mary  
21 Flanagan, and Mr. Shay, Sr.

22 Q During this conversation, do you recall, generally  
23 speaking, the substance of the discussion?

24 A Yes.

25 Q What was that?

1 A We went further into the background, in terms of any  
2 business deals Mr. Shay had. There was also a discussion with  
3 Shay relative to a search of his house. And the captain had  
4 drew up a form that he had Mr. Shay sign and Ms. Flanagan  
5 sign, giving us permission to search.

6 Q Let me show you 58.

7 MR. KELLY: New to the list, 57 and 58.

8 THE CLERK: Have we had 57, yet?

9 MR. KELLY: No.

10 MR. LIBBY: At this point, your Honor, we're dealing  
11 with 58.

12 Q I ask if you recognize what's been marked Government's  
13 Exhibit 58?

14 A Yes, sir.

15 Q What do you recognize it to be?

16 A It's the consent form that was signed off by Thomas Shay  
17 and, also, Captain McNally.

18 Q Were you present when Mr. Shay, Sr. signed that consent  
19 form?

20 A Yes.

21 Q Were you present that day during the conduct of the  
22 search, detective?

23 A Yes.

24 Q Did you see who conducted that search?

25 A There was a member of the Boston Police bomb squad, and I

1 think a member of the ATF.

2 Q And how long did -- would you tell us, generally, where  
3 the search went? How it started, where it went?

4 A They started with the kitchen area, went to the back of  
5 the house, down into the basement, and up through and into the  
6 second floor. And I understand that they were in the attic  
7 area.

8 Q Did you assist in the conduct of the search, detective?

9 A No, sir.

10 Q Any particular reason why not?

11 A I wouldn't know what I'm looking for, sir.

12 Q Now, at some point, was Shay, Sr. joined by anyone else  
13 other than Mary Flanagan?

14 A Yes.

15 Q Who was that?

16 A His attorney.

17 Q His name, please?

18 A Alan Pransky.

19 Q Do you know about what time Mr. Pransky appeared on the  
20 scene?

21 A Maybe around 6, 6:30, some place in that area.

22 Q Did Attorney Pransky bring anything with him?

23 A Yes.

24 Q What was that?

25 A He brought a number of documents involving a civil suit,

1 where Mr. Shay was the victim of an incident that took place.

2 Q Before Attorney Pransky arrived on the scene, had you had  
3 any discussion with Shay, Sr. about that lawsuit?

4 A Yes.

5 Q I'm sorry, you already mentioned that lawsuit to the jury  
6 today? Or that conversation with Shay, Sr. about the lawsuit?

7 A No, sir, I did not.

8 Q Now, before Attorney Pransky arrives on the scene, you  
9 had a conversation with Shay, Sr. about the lawsuit. What  
10 basically did he tell you about the lawsuit?

11 A That he had sustained a loss of hearing and that he had  
12 developed a nervous condition, and it was relative to an  
13 explosion that had taken place at the garage where he rents  
14 space at. The garage was in Dedham on the West Roxbury  
15 border. The explosion was, I guess, where a 50 gallon drum  
16 had been blown up.

17 Q What was used, what did he tell you was used to explode  
18 the drum?

19 A I think he described it as being fireworks or some type  
20 of fireworks, sir.

21 Q Did he give you the names of the individuals or the  
22 defendants in that lawsuit?

23 A Yes.

24 Q What were those, please?

25 A Mr. Giamarco and Mr. Berry.

1 Q And he told you that they were, what, in relation to the  
2 garage, please?

3 A They were the owners of the property, sir.

4 Q Now, in the course of that evening, with Attorney Pransky  
5 and Shay, Sr., were questions directed to Shay, Sr. throughout  
6 that evening?

7 A Yes.

8 Q Were you present for that?

9 A Yes.

10 Q Will you describe Shay Senior's demeanor during the  
11 questioning of that?

12 A It was pretty much the same throughout the time that he  
13 talked with Mr. Shay. He was not, shaking but he was shaken;  
14 he was visibly shaken. I remember him, and when we talked to  
15 him, he kept inquiring as to the condition of the police  
16 officer. He kept saying: How is the poor policeman? He  
17 seemed a little saddened by what had happened.

18 Q Recalling back, where were you standing or seated during  
19 this conversation with Shay, Sr. with the attorney present?

20 A There's a table in the dining room. We were at the  
21 table, up from the table, around that table area.

22 Q You were all basically seated around the table area,  
23 standing around the table area?

24 A Yes.

25 Q And Mr. Shay, Sr. is being questioned by various

1 investigators?

2 A Yes.

3 Q Did Mr. Shay, Sr. at any time refuse to answer any  
4 questions?

5 A No, sir.

6 Q Did he appear to be hesitant in any respect?

7 A No, sir.

8 Q What time did you leave the crime scene, detective, that  
9 evening?

10 A I'd say probably around 7, 7:30, some place in that  
11 area.

12 Q And who -- did you go with anyone?

13 A Yes.

14 Q Who did you go with?

15 A Detective Fogerty.

16 Q Where did you go?

17 A We went to the area police station, which is E-5, which  
18 is in West Roxbury.

19 Q What took place there?

20 A There was a general debriefing and a sort of strategy  
21 session between Mr. Palaza from the ATF, Captain McNally, the  
22 area commander, and members of the Boston Police bomb squad.

23 Q When you say "strategy session," what essentially was the  
24 message that was put out to law enforcement at that time?

25 A That the ATF would be the primary investigators, in terms

1 of the crime scene; that the Boston Police would be  
2 responsible for canvassing of the area, background  
3 information, relative to any incidents that had taken place in  
4 that area, any instance that had been reported in Boston  
5 relative to any type of explosive devices. That type of  
6 thing.

7 Q As you left the crime scene at that hour, detective, was  
8 the crime scene secured essentially as you described it to  
9 jury?

10 A Yes.

11 Q The lights were working at that time?

12 A Everything was up and running.

13 Q How long did that briefing take place and how long did it  
14 last at E-5?

15 A Approximately half an hour, 45 minutes.

16 Q Where did you go following that?

17 A After stopping for dinner, we went on to our office at  
18 South Boston.

19 Q How long did you stay at your office?

20 A Approximately an hour and a half, two hours. Sir.

21 Q So, this puts us roughly about what time?

22 A About 11 clock.

23 Q And you leave homicide; is that right?

24 A That's correct.

25 Q At some point later that evening, early the next morning

1 hours, detective, were you paged?

2 A That's correct.

3 Q What was the message on the page, please?

4 A We called in to our operations division. And there was a  
5 conversation with the person at the other end of the phone  
6 relative to returning back to our offices at D Street.

7 Q And did you and that?

8 A Yes.

9 Q And when you returned to your office, what did you learn  
10 the purpose of your returning was?

11 A To meet the son of, of Tom Shay, Sr., which is Tom Shay,  
12 Jr.; and, also, there was a policeman who was with him, an  
13 Officer Bridgeforth.

14 Q And was that individual that you understood to be the son  
15 of Shay, Sr., present at your Homicide Unit on your arrival?

16 A Yes.

17 Q Can you give us a physical description of him, please?

18 A He was about 6'3", 6'5", about 170 pounds,.

19 Q And Officer Bridgeforth, what was your understanding as  
20 to his role, please?

21 A His role was simply to provide transportation.

22 MR. LIBBY: May I approach, your Honor.

23 Q Let me show you what's been marked Government's Exhibit  
24 55, Detective, and ask you if you would, please, with the  
25 six-window photospread, identify for us, the individual known

1 to you or introduced to you as the son of Shay, Sr., Thomas A.  
2 Shay, or, as we have been calling him, Shay, Jr.?

3 A In this photospread, the photographs numbered 1 to 6, and  
4 Mr. Shay is number 4.

5 MR. LIBBY: May the record reflect Detective Thomas  
6 has correctly identified Thomas Shay?

7 THE COURT: If you say so.

8 MR. LIBBY: For the record, it is number 4.

9 THE COURT: It is agreed that it is number four, so  
10 it may be published to the jury, and the document is in  
11 evidence as what?

12 MR. LIBBY: This is 55 your Honor.

13 Q Detective Thomas, showing you Government's Exhibit 54, do  
14 you recognize that?

15 A Yes.

16 Q What do you recognize this to be?

17 A That's a photograph of Thomas Shay, Jr.

18 Q An enlargement of the photograph?

19 A Yes.

20 MR. LIBBY: If I may, your Honor.

21 THE CLERK: I have -- did you say that was 54?

22 MR. LIBBY: 54.

23 THE CLERK: I have 54 as the intersection of Beach  
24 and Eastbourne.

25 MR. SEGAL: 54 is Beach and Eastbourne Streets.

1 MR. KELLY: I thought that was 53.

2 THE CLERK: I have that listed as 54, marked in  
3 evidence.

4 MR. KELLY: Eastbourne Street is 53. Probably my  
5 mistake, I apologize.

6 THE CLERK: 54 is an enlargement of the Shay, Jr.  
7 photograph.

8 THE CLERK: The photospread, 55.

9 [Government's Exhibits 54 and 55 entered in  
10 evidence.]

11 Q Now, would you describe for us, please, the physical  
12 layout of where you were in the Homicide Unit that evening?

13 A The offices of the homicide unit are located on the  
14 second floor of that building. The building is an  
15 L-building. And the area that we went to talk to Mr. Shay at  
16 is a conference room at the tall end of the L.

17 Q And you met with Shay, Jr., Thomas Shay, Jr.?

18 A Yes.

19 Q How long did you speak with him?

20 A About 35 minutes.

21 Q Who was present during that conversation?

22 A Detective O'Malley and myself.

23 Q At that time was Shay, Jr. a suspect in the  
24 investigation?

25 A No, sir.

1           MR. LIBBY: Your Honor, if made lead at this point,  
2 briefly.

3           THE COURT: Yes.

4       Q     Did there come a time in the course of that conversation,  
5 detective, where you discussed, generally, Shay, Jr.'s,  
6 upbringing?

7       A     Yes, sir.

8       Q     Did he at that time make any mention to you about having  
9 attended in his early youth, having attended what he termed  
10 "boys' schools"?

11      A     Yes, sir.

12      Q     Now, focusing specifically about what he said about boys'  
13 schools, would you tell the Court and jury what he said about  
14 boys' schools?

15           MR. LOPEZ: For the record, I just want to object.

16           THE COURT: Your objection is noted and overruled.  
17 You may tell us.

18      A     Mr. Shay stated to us, to the Detective O'Malley and I,  
19 that maybe things would have been different had he, had he not  
20 gone to boys' schools. As he did this, his head lowered and  
21 his voice trailed off.

22      Q     Before he said that, did he say, directing his  
23 conversation to you, detective, did he say: Have you ever  
24 been to a boys; school? Do you know what they were like?

25           Is that -- did he preface his comments by saying

1     that?

2     A     Yes, sir, he did.

3     Q     And then his voice trailed off and his head lowered?

4     A     Yes, sir.

5     Q     About what time did, did you close the conversation with  
6     Shay, Jr. that evening, detective?

7     A     I'd say maybe 1:30, or something like that.

8     Q     How did he leave the Homicide Unit?

9     A     Officer Bridgeforth was the police officer that had given  
10    Mr. Shay a ride there, was instructed to return Mr. Shay to  
11    whatever address he wanted to go to.

12    Q     The following day, detective, did you once again appear  
13    at 39 Eastbourne?

14    A     Yes, sir.

15    Q     Would you tell us generally what you were doing there?

16    A     That day was consisted of coordinating various aspects of  
17    the searches that were going to take place.

18    Q     You were accompanied by Detective Fogerty?

19    A     Yes.

20    Q     Was Detective O'Malley present with you?

21    A     Yes.

22    Q     Let me show you what's marked been as Government's  
23    Exhibit 57, Detective, and ask if you recognize that  
24    document?

25    A     Yes.

1 Q What is it?

2 A It is a consent search of the areas around 39 Eastbourne  
3 Street, specifically, the roof, exterior walls, and the  
4 apparatus around the building.

5 Q That is signed by whom, sir?

6 A Mary A. Flanagan.

7 Q And were you present when she signed that document?

8 A Yes.

9 Q Do you understand Mary Flanagan to be the owner of these  
10 premises?

11 A That's correct.

12 MR. LIBBY: If I may publish this, your Honor.

13 THE COURT: Yes.

14 Q I don't believe 57 or 58 is in evidence.

15 THE COURT: We marked it in evidence already.

16 MR. LIBBY: Thank you.

17 Q Did you have further discussion with Shay, Sr. that day,  
18 please?

19 A Yes.

20 Q What did that deal with, generally?

21 A We were looking into more background in terms of persons  
22 that he may have had any other incidents with, looking into  
23 the family background.

24 Q Did he any comments about Shay, Jr.?

25 A Yes.

1 Q What did he inform you and the other detectives about  
2 Shay, Jr., please?

3 MR. LOPEZ: Objection.

4 THE COURT: What Shay, Sr. said about Shay, Jr.?

5 MR. LIBBY: That's right.

6 THE COURT: How is that admissible?

7 MR. LIBBY: Your Honor, I believe.

8 THE COURT: I don't know what we're talking about.

9 MR. LIBBY: May we be heard?

10 THE COURT: Yes.

11 [Conference at the bench, as follows:

12 THE COURT: What do you expect him to say?

13 MR. LIBBY: I understand the Court's concern. At  
14 this time, it was made known to the investigators there was a  
15 strained relationship between father and son. The son had  
16 been sent to these various --

17 THE COURT: Why is that admissible through this  
18 witness?

19 MR. LIBBY: Because at this point, it shows the  
20 investigators beginning to focus on the son as a potential  
21 suspect here, leading up to and culminating on the evening of  
22 the 4th of November, when the investigators put together the  
23 1986 Quincy bombing report and Trenkler's name in Junior's  
24 notebook.

25 MR. LOPEZ: Your Honor, I don't understand why he

1 can't just ask: Did you have a conversation with Shay? As a  
2 result of that conversation, did you do anything?

3 I don't see why we have to put --

4 THE COURT: Because it is a conspiracy and because  
5 they need to put Shay, Jr. into the picture. I will allow it  
6 as to background.

7 MR. LOPEZ: My objection.

8 ...end of conference at the bench.]

9 THE COURT: Members of the jury, this testimony as  
10 anything else that the witness tells us Mr. Shay, Sr. told him  
11 is admissible only again for the understanding of the  
12 investigators, and for you to understand then what it is that  
13 they did as a result.

14 You may proceed.

15 MR. LIBBY: For those purposes, I'll just lead the  
16 witness.

17 THE COURT: Yes.

18 THE COURT: Let me explain what counsel means by  
19 that. Normally, when counsel conduct what you now understand  
20 to be the direct examination, they are not allowed to what we  
21 call "lead the witness." That is, a leading question is one  
22 that suggests the answer. I can ask you for example, what did  
23 you have for dinner tonight, last night? Or I can say, Now,  
24 didn't you have fish for dinner last night? The second is a  
25 leading question. And as I say, normally during the direct

1 examination, counsel are not to lead because the theory is  
2 that you should hear from the witness the witness's own  
3 testimony and the witness's own observations, recollection,  
4 and so on.

5           There are times, however, when -- well, there are  
6 exceptions to the rule, this is one of those exceptions, and  
7 therefore, counsel will lead and the other side won't object.

8           You may proceed.

9       Q     During this conversation, Detective, you discussed  
10 generally Shay, Sr.'s background, and various job locations  
11 and so forth?

12      A     Yes, sir.

13      Q     And you also broached the topic of his son, correct?

14      A     That's correct, sir.

15      Q     And that involved essentially the fact that there was  
16 stained relations between the father and son at that time,  
17 correct?

18      A     That is also correct.

19      Q     And Shay, Sr. also made known to you at that time, that  
20 Shay, Jr., had for many years growing up, been placed in for  
21 lack of a better word, homes, social care facilities, correct?

22      A     That's correct, sir.

23      Q     And he also disclosed to you at that time, that Shay,  
24 Sr., that his son was a homosexual, true?

25      A     Yes, sir.

1 Q Now, he also mentioned, Shay, Sr. also mentioned to you  
2 that his recent contact with his son involved the son showing  
3 up essentially out of nowhere, and tagging along for a trip to  
4 the race track?

5 A That is also correct.

6 Q All right. And when they returned from the race track,  
7 on that evening in question, they parted their ways; is that  
8 right?

9 A That's correct.

10 Q Now, did Shay, Sr. discuss with the investigators that,  
11 on that occasion, any prior reports he had made to local  
12 police, of any kind?

13 A Yes.

14 Q What were those, please?

15 A He had reported a person who had allegedly been following  
16 him in a vehicle. And also, he had reported that, an incident  
17 where a person had dumped what he described as being a large  
18 amount of garbage in his driveway.

19 Q Now, at this point -- strike that.

20 By this time, Detective, had Shay, Sr. indicated to  
21 you the fact that he had for sometime been at least  
22 intermittently working out of the Rolling Wrench garage?

23 A Yes.

24 Q Had you by this time visited Rolling Wrench garage in  
25 South Boston?

1 A I hadn't. I think somebody else went by there, sir.

2 Q At this point, sir, now, you left Shay, Sr. about what  
3 time on the 29th, Tuesday the 29th?

4 A The area we left, probably 8, 9, 10 clock, something like  
5 that. We finally pulled out of there.

6 Q And by the time you left sir, did the investigators  
7 assigned to the matter consider Shay, Sr. to be a suspect?

8 A Very much so.

9 Q Did the investigators consider the Berry and Giamarco  
10 from the Dedham Service Center to be suspects?

11 A Yes, sir.

12 Q Did the investigators consider the son to be a suspect?

13 A Not really.

14 Q Did you have further contact with Shay, Jr. the next day  
15 or two?

16 A Yes.

17 Q And when was the next time that you laid eyes on Shay,  
18 Jr. following the early morning hours on the 29th of October,  
19 that is, the Tuesday morning interview you had with Tom at  
20 homicide, when did you next see him?

21 A At the Trailways Bus Station in Boston, sir.

22 Q And what was your understanding as to Shay, Jr.'s, --  
23 strike that.

24 Why were you at the Trailways Bus Station that  
25 evening.

1 MR. LOPEZ: Objection.

2 THE COURT: He may tell us that.

3 Q Why were you there?

4 A It was my understanding and information that we had  
5 received that Mr. Shay, Jr. was going to be there, having a  
6 press conference.

7 Q Were you alone?

8 A No, sir.

9 Q Approximately how many investigators were present on the  
10 scene?

11 A Approximately six, total of six, yes.

12 Q Anyone in uniform?

13 A No, sir.

14 Q Now, did there come a time, Detective, where you saw  
15 Shay, Jr. again at the Homicide Unit?

16 A Yes.

17 Q It was later that evening?

18 A That's correct.

19 Q And how did he get to the Homicide Unit?

20 A He was transported there, by members of the Homicide  
21 Unit.

22 Q Is it your understanding, was Shay, Jr. in custody at  
23 that time?

24 A No, sir, he was not.

25 Q And about what time that evening did Shay, Jr. visit at

1 the Homicide Unit, the same conference room?

2 A Yes.

3 Q About what time?

4 A Maybe 7, 8 clock.

5 Q Okay. And about how much time, all told, did Shay, Jr.  
6 visit with you at the Homicide Unit that evening?

7 A About an hour, sir.

8 MR. LIBBY: If may a moment to make sure.

9 (Pause.)

10 MR. LIBBY: If I may approach the side bar.

11 THE COURT: Why don't we take the morning recess now,  
12 and then we can talk about it.

13 [Whereupon, the jury was excused.]

14 THE COURT: Please be seated.

15 Mr. Thomas, you may be excused if you wish or you may  
16 remain.

17 THE COURT: What's the problem?

18 MR. LIBBY: Your Honor, it is only the question came  
19 up, and I don't know that either counsel specifically made  
20 reference to the fact of his arrest on outstanding warrants  
21 unrelated to this investigation.

22 THE COURT: Is there objection to that?

23 MR. LIBBY: I simply want to flag it for the Court in  
24 the event --

25 THE COURT: Even if it is, the objection it is

1 overruled. We'll take the recess.

2 MR. KELLY: How long so we're not late. Sorry, we've  
3 been late a couple of times.

4 THE COURT: 15 minutes.

5 [Recess.]

6 THE COURT: Before you go, the jurors want to know  
7 whether they have Veteran's Day off.

8 When is Veteran's day?

9 MR. LIBBY: November 11th, Thursday.

10 THE COURT: It is a holiday? Then they have veterans  
11 day off.

12 MR. LOPEZ: Instead of us objecting while the jury is  
13 here, I just want to note for the record that we have a  
14 continuing objection to any statements of Shay, Jr., including  
15 the one that Officer Thomas is about to relate.

16 THE COURT: Yes.

17 MR. LOPEZ: Thank you.

18 THE COURT: To the extent that I have overruled the  
19 objection, I adhere to the ruling.

20 [Whereupon, the jury entered the courtroom.]

21 THE COURT: You may proceed.

22 MR. LIBBY: Thank you, your Honor.

23 Q Picking up where we left off, following Shay, Jr.'s  
24 meeting with the media at the bus station on the evening of  
25 31st, you visited with him at the homicide unit?

1 A That's correct.

2 Q The same conference room?

3 A That is also correct.

4 Q It was who?

5 A It was Detective O'Malley, Detective Fogerty and there  
6 was one other detective who was here.

7 Q You visited with him for approximately how long?

8 A About an hour.

9 Q You were all seated around a table together?

10 A Yes.

11 MR. LIBBY: If I may at this time lead, your Honor.

12 THE COURT: Yes.

13 Q At some point in this conversation did the conversation  
14 turn to Shay, Jr.'s continuing interest in the explosion the  
15 prior Monday?

16 A Yes.

17 Q And in fact, he advised you that he had been making  
18 videotapes, various news reports?

19 A That's correct.

20 Q And had been flipping articles from the newspaper  
21 relating to the explosion from the Boston papers; is that  
22 right?

23 A That's also correct.

24 Q And he told you that he was doing that because,  
25 particularly with respect to the videotapes, because he wanted

1 to go to the scene of the background and see if he could  
2 recognize anybody?

3 A Yes, sir.

4 Q And that's because you believe he would be capable of  
5 identifying someone on the basis that the culprit would return  
6 to the scene of the crime?

7 A That's correct, sir.

8 Q Now, at some point during this visit on the evening of  
9 the 31st, Detective Thomas, one of the investigators also told  
10 Shay, Jr. that his father had been contacted, correct?

11 A That's correct.

12 Q And then in fact, his father was coming over right then  
13 and there to see him; is that right?

14 A That's correct.

15 Q Was that true?

16 A Yes.

17 Q It was true that the father was on route?

18 A It was true that the investigator told him that.

19 Q Was it in fact true that Shay, Sr. was coming over to  
20 visit?

21 A No, sir. He was not.

22 Q Was that a common police investigative technique in that  
23 context?

24 A In that context, yes, sir.

25 Q Because at that time you understood that there had been

1       strained relations between the father and the son?

2       A     Yes, sir.

3       Q     And Shay, Sr. had told you before, correct?

4       A     Yes, sir.

5       Q     And Shay, Sr., or rather Shay, Jr. at that time told you  
6       that he had no wish to see his father until this was over,  
7       correct?

8       A     That's correct.

9       Q     And then the conversation ensued for another 10 or 15  
10      minutes, true?

11      A     Yes.

12      Q     And at that time one of the investigators again  
13      instigated to Shay, Jr. that his father was coming over to see  
14      him, right?

15      A     Yes, sir.

16      Q     And at that time immediately on learning that, Shay, Jr.  
17      asked if he could leave, true?

18      A     That's correct.

19      Q     Did he leave?

20      A     No, sir, he did not.

21      Q     And yet a third time some 15 or 20 minutes later, the  
22      topic of the father coming to visit him --

23      A     That's correct.

24      Q     And Shay, Jr. indicated to him at that time, again, that  
25      he had no wish to see his father, true?

1 A That's correct.

2 Q And he again asked if he could leave, true?

3 A That's correct.

4 Q What did he then do?

5 A He got up and left.

6 Q What did the detective around the table do at that time,  
7 Detective?

8 A Listened to his footsteps as he walked down the hallway.  
9 It's a long L-shaped hallway, and it was inherent in our mind  
10 that he was leaving, that he was going to in fact leave the  
11 building.

12 Q What if anything did you do?

13 A I placed him under arrest.

14 Q And you went out and followed him down the hallway?

15 A Yes.

16 Q And you, in fact, placed him under arrest on an  
17 outstanding matter that had nothing to do with the explosion  
18 of the previous Monday, correct?

19 A That is also correct.

20 Q He brought you back into the conference room?

21 A Yes, sir.

22 Q And at that time, Detective, one of you padded him down  
23 and frisked him?

24 A Yes.

25 Q Answered to that arrest?

1 A That's correct.

2 Q And he had with him at that time a traveling bag,  
3 correct?

4 A Yes, sir.

5 Q So a little canvas bag?

6 A Yes, sir.

7 Q And one of your number made a search of that bag incident  
8 to the arrest as well?

9 A That's also correct.

10 MR. LIBBY: May I approach the witness, your Honor.

11 Q Let me show you what's been marked Government's Exhibit  
12 31, Detective, and I would take a moment, please, and ask you  
13 if you would recognize that?

14 A Yes, sir.

15 Q What do you recognize it to be?

16 A A xeroxed copy of an address book that was in the  
17 possession of Mr. Thomas Shay, Jr.

18 Q Was that photocopy made that evening?

19 A Yes, sir.

20 Q And where did the original go?

21 A Back to Mr. Shay.

22 Q Does Exhibit 32 fairly and accurately depict the address  
23 book that was in Shay, Jr.'s possession that evening,  
24 Detective?

25 A That's correct.

1 MR. LIBBY: I'd offer Exhibit 32 in evidence.

2 THE COURT: No objection.

3 MR. SEGAL: No objection.

4 THE COURT: I've forgotten what the number is.

5 MR. LIBBY: 32

6 THE COURT: 32 in evidence.

7 [Government's Exhibit 32 entered into evidence.]

8 Q He was in custody?

9 A Yes, sir.

10 Q And he left the homicide unit in the presence of law  
11 officers; is that right?

12 A That's correct.

13 Q Now, that was the last time you saw him that evening,  
14 Detective; is that right?

15 A That's correct.

16 Q Did you have any further occasion to visit 39 Eastbourne  
17 Street, the premises?

18 A Yes, sir.

19 Q When did you next visit?

20 A That we went there on Sunday, the third of November.

21 Q And who was we?

22 A Detective Fogerty and Detective O'Malley.

23 Q What did you do on that occasion, please?

24 A On that occasion we arranged with Mr. Shay, Sr. for a  
25 re-enactment if you would, and re-enactment was consisting of

1 fashioning the device we had put together underneath his  
2 vehicle, and we would videotape the route as he relayed to  
3 us. One of our persons driving his vehicle was Detective  
4 O'Malley who drove. I did the videotaping and Detective  
5 Fogerty was driving our vehicle which was following Mr. Shay's  
6 vehicle, going over the route that he said he had taken that  
7 previous Sunday.

8 Q Did Shay, Sr. cooperate with you during this effort?

9 A Yes, sir.

10 Q And how much further time did you spend back -- you went  
11 on the route; is that correct?

12 A That's correct.

13 Q Did you return to 39 Eastbourne Street?

14 A Yes.

15 Q How much longer did you stay on the scene at that time?

16 A Until darkness came down, it was around 5:30 when we  
17 finally left. We were videotaping his vehicle going up and  
18 down the driveway.

19 Q Was he cooperating with you at that time?

20 A Yes, sir, fully.

21 Q Continually, continuing to ask you questions?

22 A Yes, sir.

23 Q In the mind of the investigators, Detective, at that  
24 time, was Shay, Sr. still a suspect in the explosion?

25 A Yes, sir, very much so.

1 Q Thank you, Detective. I have nothing further.

2 THE COURT: Mr. Lopez, you may cross-examine.

3 MR. LOPEZ: Thank you, your Honor.

4 Cross-examination by Mr. Lopez

5 Q Good morning, Officer Thomas?

6 A Good morning, sir.

7 Q My name is Scott Lopez, and I'm representing Alfred  
8 Trenkler in this matter.

9 Now, Detective Thomas when you first spoke to Thomas  
10 Shay, Sr., it was on October the 28th?

11 A Yes, sir.

12 Q And when you spoke to him, he described to you as he was  
13 describing what he did with his car the day before. He  
14 described hearing a scraping sound?

15 A Yes, sir.

16 Q That's what he told you, a scraping sound?

17 A Yes, sir.

18 Q And he told you that he heard this scraping sound both  
19 when he pulled his car into the driveway, and he pulled his  
20 car out of the driveway?

21 A Back, well, it's the same thing. He backed this car in  
22 and he drove his car out. So, it depends on how you say it.

23 Q And he also told you that later that evening while he was  
24 watching football, that's when he went outside and obtained  
25 this object or moved this object; is that --

1 A That's correct.

2 Q You're certain it was later in the evening?

3 A No, I mean if it's daylight hours he's still moving it.

4 Q All right. But he said to you he moved it that evening;  
5 is that correct?

6 A Yeah, later that day, 5:30, something like that, that  
7 evening.

8 Q All right. Now, he then told you that when, before  
9 moving later that evening, he had moved it one other time,  
10 when he first found it?

11 A When he first found it, he moved it from the position  
12 where it was in the driveway and he told him he had thrown it  
13 against the house here, the porch.

14 Q You specifically remember him saying that he threw it  
15 against the house?

16 A It's my memory that the words were, "he threw it," sir.

17 Q And later on when you were speaking to him, he stated to  
18 you that he did not have any enemies; isn't that correct?

19 A That's correct.

20 Q Now, at some point, Mr. Shay, Sr. signed a consent form  
21 which I believe has been marked as Exhibit No. 54 -- 58?

22 A 58, sir.

23 Q Which was shown to you by Mr. Hurley?

24 A That's correct, sir.

25 Q Was Attorney Pransky present at the time he signed that

1 consent form?

2 A I believe so, sir.

3 Q And was it your understanding that Attorney Pransky was  
4 there on Mr. Shay, Sr.'s behalf?

5 A Not as counsel, more so as a friend and a person who was  
6 coming there helping the investigators as it was to get as  
7 much background as we could.

8 Q But Attorney Pransky did review the search form before  
9 Thomas Shay, Sr. signed it; isn't that correct?

10 A I believe so, I think so.

11 Q Now, I think you stated earlier that the initial search  
12 that was done, you did not -- of Shay, Sr.'s house and Mary  
13 Flanagan's house, you did not participate in; is that correct?

14 A That's correct, sir.

15 Q I believe you testified, correct me if I am wrong, you  
16 didn't know what to look for, is that --

17 A Unless it was marked -- I have no expertise in that area  
18 at all, sir.

19 Q But at some point you did go to the Rolling Wrench  
20 garage; is that correct?

21 A Yes, sir.

22 Q And you did conduct a brief search of the Rolling Wrench  
23 garage yourself, sir?

24 A Yes, sir.

25 Q Did you personally seize any items when you conducted

1 your search of the Rolling Wrench garage?

2 A No, sir.

3 MR. LOPEZ: Thank you, officer.

4 MR. LIBBY: I have nothing, your Honor.

5 THE COURT: Thank you, Mr. Thomas, you're excused.

6 Who is next?

7 MR. KELLY: The United States calls Wayne Armbrister.

8 THE CLERK: Please be seated, and state your name.

9 THE WITNESS: Wayne Armbrister.

10 THE COURT: Could you spell your last name, please.

11 THE WITNESS: A R M B R I S T E R.

12 THE COURT: Thank you.

13 Wayne Armbrister, sworn

14 Direct Examination by Mr. Kelly

15 Q Mr. Armbrister, where do you reside, sir?

16 A 760 Commonwealth Avenue.

17 Q How old a person, are you?

18 A Twenty-seven.

19 Q Are you employed, Mr. Armbrister?

20 A Yes, I am.

21 Q Would you tell us how you are employed, sir?

22 A I'm employed at Radio Shack at 197 Mass. Ave. in Boston.

23 Q How long have you worked for Radio Shack, Mr. Armbrister?

24 A About three years.

25 Q You say you work at 197 Mass. Ave. Boston, would you tell

1 us where that store is located in relation to what is known as  
2 the Christian Science Church?

3 A It's directly across the street.

4 Q Are you able to see the church looking out the store  
5 window?

6 A Yes, I am.

7 Q Mr. Armbrister, I want to direct your attention to the  
8 date of October 18th, 1991?

9 A Yes, sir.

10 Q What hours did you work that day?

11 A Approximately 9 to 6.

12 Q Mr. Armbrister, I want to show you what has been marked  
13 for identification as Exhibit No. 33, and ask you if you  
14 recognize that item, sir?

15 A Yes, I do.

16 Q Would you tell us what it is, please?

17 A It's a sales slip.

18 Q From Radio Shack?

19 A Yes, it is.

20 MR. KELLY: Your Honor, at this time, I believe we  
21 would like to offer without objection Exhibit 33.

22 MR. SEGAL: Maybe he can just lay the foundation as  
23 to how he can identify this particular slip, and there won't  
24 be a --

25 MR. KELLY: I'll ask a couple of questions.

1 Q Does your name appear on the slip?

2 A Yes, it does.

3 Q Whereabouts?

4 A At the top right-hand corner.

5 Q What does that indicate, your Honor?

6 A That I was the salesman.

7 MR. KELLY: I'd offer 33 in evidence.

8 MR. SEGAL: No objection.

9 [Government's Exhibit 33 entered into evidence.]

10 Q One quick question, Mr. Armbrister. Let me show you what  
11 has been previously marked as Government Exhibit 33 A, and ask  
12 you, sir, is this item which I'm showing you an enlargement of  
13 the item before you, Government Exhibit 33?

14 A Yes, it is.

15 MR. KELLY: The United States would offer  
16 Government's Exhibit 33 A.

17 MR. SEGAL: No objection.

18 Q Mr. Armbrister, what type of day was the transaction that  
19 was reflected on that receipt take place?

20 A It took place at 2:36 p.m.

21 Q And would you describe the general layout of the store,  
22 the Radio Shack store there on Mass. Ave. in Boston?

23 A Yeah, at the time as soon as you walk out of the door,  
24 there were computers to the right-hand side, and as you walked  
25 straight directly ahead, there were like wires, cable

1 connection wires, to the right-hand, the back part of the  
2 store, electronic devices.

3 Q As a person walks through the front door of that store,  
4 just as they entered the doorway, to which direction are known  
5 as the cash registers --

6 A They're off to the left.

7 Q To the left?

8 A Right.

9 Q And the goods that you might shop for are basically all  
10 throughout the store, straight ahead to the right and coming  
11 behind you, correct?

12 A Correct.

13 Q Now, Mr. Armbrister, do you have a memory of the  
14 transaction that is reflected on that receipt, Exhibit No. 33,  
15 before you?

16 A Yes, I do.

17 Q How busy was the store on that date, October 18th, about  
18 2:30 in the afternoon, Mr. Armbrister?

19 A It had about five or six customers in the store.

20 Q Can you tell us, sir, was it a week day or a weekend?

21 A A week day.

22 Q Would you describe, Mr. Armbrister, what you recall  
23 happening as it relates to the transaction from the earliest  
24 moment you can recall, sir?

25 A Okay. I recall a customer walking in the store, went

1 directly to the back of the store, and after about five  
2 minutes or so, I walked over to him, and asked him if he  
3 needed any help. He told me he was all set so I went back.

4 MR. SEGAL: Your Honor, I just object to what the  
5 customer told Mr. Armbrister, what anybody saw, as to what he  
6 was told.

7 MR. KELLY: He's answered so I'll just continue. I  
8 understand the objection.

9 MR. SEGAL: I'll just base my --

10 Q Mr. Armbrister, when you went over to offer your  
11 assistance to this customer, what if anything did the customer  
12 have in his hands?

13 A He had about a quarter of a sheet of paper.

14 Q When you say a quarter sheet of paper, what do you mean  
15 by that, sir?

16 A Like, for instance if this were a sheet of paper, about  
17 that much cut off the top portion.

18 Q When you say a quarter sheet of paper are you taking a  
19 standard size piece of paper?

20 A Right, ripping it up.

21 Q It would be a quarter of these sizes of paper?

22 A Right.

23 Q Were you able to see as you approached that customer were  
24 you able to see what was on the piece of paper?

25 A Yeah, there was pen writing on the paper.

1 Q Were you able to read it or not?

2 A No, I was not.

3 Q When that person entered the store, was there anyone with  
4 that person that you observed?

5 A No.

6 Q Now, after you offered your assistance to the customer,  
7 what happened next, sir?

8 A The customer said he was all set, so I went back to the  
9 POS which is my computers and I was standing with a fellow  
10 employee.

11 Q And did you make further observations of the customer  
12 while you were standing at the cash register?

13 A Yes, I did.

14 Q What did you observe him do, if anything?

15 A He was walking around with these lists and picking items  
16 up.

17 Q And how long did it take before the customer actually  
18 came over to where you were located at the register?

19 A About 15 minutes.

20 Q And when the customer arrived at the register tell us  
21 what happened, sir?

22 A Well, I asked him for the last four digits to his  
23 telephone number.

24 MR. SEGAL: I'm going to object, simply what if  
25 anything the customer said. I don't mind what he saw.

1 MR. KELLY: I can't hear Mr. Segal.

2 MR. SEGAL: My objection is simply I'm going to  
3 anticipate he's going to say something of what the customer  
4 now said. My objection would be anything the customer told us  
5 to him.

6 MR. KELLY: Your Honor --

7 THE COURT: I will allow it.

8 Q Continue, sir, the customer you, asked the last four  
9 digits, tell us what happened?

10 A After he was asked for the last four digits and his  
11 telephone number. He in turn said 5100. So at the time I  
12 automatically punched it in. I said the last four digits to  
13 your phone number. So, he goes that's it. I go, can I have  
14 your street address, and he spelled out S A H Y, J Y T,  
15 afterwards, I said is that it? That's it. I was like the  
16 hell with it.

17 Q When you are waiting on a customer, such as on this  
18 occasion, sir, when you are asking questions and the customer  
19 is giving you responses, are you simultaneously tapping in or  
20 attempting to tap in that information to your system?

21 A Yes, I am.

22 Q And on this particular occasion you were trying to input  
23 information as being provided to you by the customer?

24 A Yes, I was.

25 Q Can you describe to us, sir, the customer's demeanor

1 during the course of this transaction?

2 A He was fidgety, in a rush.

3 Q By the way, Mr. Armbrister, how are your typing skills on  
4 these computers?

5 A Pretty good.

6 Q And in the course of your work for Radio Shack, inputting  
7 this information from customers, do you ever make mistakes?

8 A Yes, I do.

9 Q Are you able to tell us Mr. Armbrister, whether or not  
10 you could possibly have made a mistake in reporting the  
11 information on this particular transaction?

12 MR. SEGAL: I object to "possibilities," your Honor.

13 THE COURT: The objection is sustained. The  
14 objection as to "possibilities" is sustained.

15 Q From time to time you make mistakes, Mr. Armbrister?

16 A Yes, I do.

17 Q You hit the wrong keys?

18 A True.

19 Q Mr. Armbrister, the customer that you were waiting on in  
20 this particular occasion on October 18th, 1991, had you seen  
21 that customer inside that store on occasions other than  
22 October 18th, 1991?

23 A Yes, I have.

24 Q Approximately how many times?

25 A Probably about two or three times.

1 Q During what time frame, sir?

2 A Approximately around the same time.

3 Q Was the customer white or black?

4 A White.

5 Q How tall are you, Mr. Armbrister?

6 A 6, 2.

7 Q How tall was this customer?

8 A He had to be like 6, 5 or 6, 6.

9 Q Mr. Armbrister, I want to ask you some questions about  
10 the receipt itself, and with the Court's permission, for the  
11 benefit of the Court and counsel, so they could just follow  
12 along with me briefly, I would like to distribute copies of  
13 this Exhibit 33, if possible?

14 THE COURT: Yes. May I see counsel for just one  
15 moment?

16 [Conference at the bench, as follows:

17 THE COURT: I assume that any suppression ruling in  
18 the Shay case doesn't apply here, right?

19 MR. KELLY: That's my understanding. And further,  
20 your Honor --

21 THE COURT: Because Mr. Trenkler has no standing to  
22 object to any improper suppression, any improper  
23 identification.

24 MR. KELLY: I have one thing to say, your Honor. And  
25 further, it was the United States' understanding, based on the

1 openings of Mr. Segal, that he would -- he is not contesting  
2 this transaction on October 18th, and that it likely involved  
3 Thomas Shay, which is why the Government believed they had a  
4 good faith basis to put those questions. I'm not going to ask  
5 any further questions along that line.

6 THE COURT: Along what line, as to who the person  
7 was?

8 MR. KELLY: Showing photographs and things of the  
9 like.

10 THE COURT: Well, I only raise it because I think, I  
11 think it's the law, that there's no standing by Mr. Trenkler  
12 to object to any improper identification of Mr. Shay.

13 MR. KELLY: I think that's correct, your Honor.

14 THE COURT: To the extent that the whole thing was  
15 improper --

16 MR. SEGAL: It's a moot issue, your Honor, so I don't  
17 have to respond.

18 MR. KELLY: You mean, I may ask one additional  
19 question --

20 MR. SEGAL: Well, I thought, since it was based on --  
21 I don't have the ruling in front of me -- there's a  
22 constitutional ruling, that I didn't need direct standing. If  
23 it was a bad identification, it was a bad identification.

24 MR. KELLY: I thought that Mr. Segal wasn't  
25 contesting this, in any event.

1           MR. SEGAL: I don't want -- I'm not willingly -- I'm  
2 not happy about an identification of Mr. Shay in this case.

3           MR. KELLY: I'll leave it alone as it is.

4           ... end conference at the bench.]

5       Q     Mr. Armbrister, you have before you Exhibit 33, the  
6 receipt, sir?

7       A     Yes, I do.

8       Q     I want to have you kind of take us down through it, if  
9 you would, starting at the top, sir. I believe you've already  
10 told us that the initials in the upper left-hand corner, DRA  
11 are your initials?

12      A     Yes, they are.

13      Q     And that indicates what, sir?

14      A     That I was the salesman.

15      Q     In the middle of the top it says 197 Mass. Ave. Boston  
16 with a telephone number, is it fair to say that was the  
17 particular location of the store?

18      A     Yes, it is.

19      Q     Moving further across, sir, there's a reference below  
20 that line there, 10-18-91. It says 02 dot dot 36 P. What  
21 does that refer to?

22      A     That's the date and time.

23      Q     October 18th, at 2:36 p.m.

24      A     Yes, it is.

25      Q     Below that 2:36 p.m., it says ID colon 3780, have I read

1     that correctly?

2     A     Yes, you did.

3     Q     What does that indicate, sir?

4     A     It indicates the last four digits of the customer's,  
5     supposedly the customer's telephone number.

6     Q     Then the other lines I think are self-evident where it  
7     says names, street, et cetera -- by the way, when you tap in  
8     information, does the reference Boston, Mass come up  
9     automatically on your machine in Radio Shack?

10    A     Yes, it does.

11    Q     Moving down below, kind of a shaded line in the middle of  
12    the page, sir, there's a list of six items, what are those,  
13    generally. Are those the things somebody buys?

14    A     Well, items use, they're electronic devices.

15    Q     Let's start with the top one on the list, what is the  
16    first item in your list, Mr. Armbrister?

17    A     Okay. It's catalog No. 270-391. It's a battery holder.

18    Q     We'll show you what's been introduced previously as  
19    Exhibit 36 A. Is that the same battery holder that's located  
20    on the receipt, Mr. Armbrister?

21    A     Yes, it is.

22           MR. SEGAL: The same type.

23    Q     The same type?

24           MR. SEGAL: Not the exact one, the equivalent number.

25    Q     And the next item on the list, sir?

1 A It's 275-602, which is a toggle switch.

2 Q Let me show you what has been marked as Exhibit 36 B, can  
3 you tell me whether that is the same type of item that's  
4 indicated on the receipt?

5 A Yes, it is the same type.

6 Q And the third item, sir?

7 A It's catalog No. 272-1133 which is little lamps.

8 Q Showing you Government's Exhibit 36 C, is that a replica  
9 of the item indicated?

10 A Same type.

11 Q Item No. 4, please?

12 A Okay. Catalog No. 272-356 which is a lamp holder.

13 Q I'll show you Government Exhibit 36 D, is that the same  
14 type of lamp holder?

15 A Yes, it is.

16 Q And the fifth item, sir?

17 A It's catalog No. 270-220, which is a project box.

18 Q Showing you Government Exhibit 36 E, Mr. Armbrister,  
19 could you tell us what that is?

20 A A small project box.

21 Q Is it the same as the item listed on here?

22 A Yes, it is.

23 Q Finally, sir, the last item on the list?

24 A 270-223 which is a bigger size project box.

25 Q I'll show you Government's Exhibit 36 F, is that the same

1 type of project box as is indicated on the receipt?

2 A Same type.

3 Q And how much was the customer on this transaction charged  
4 for those components on the table before you, sir?

5 A \$9.91.

6 Q And how much money was tendered over to pay for that?

7 A \$20.

8 Q And are you able to tell that was a \$20, four five's or  
9 the like?

10 A A 20.

11 Q Can't tell from the receipt?

12 A I can tell, it was cash under \$20. I can't tell from the  
13 price, it looks like a \$20 bill.

14 Q And finally, the last item there is "change due" that's  
15 the amount you would have returned to the customer?

16 A Yes, it is.

17 Q And finally, do you know what that last, that bottom line  
18 it says control copy 090615, do you know what that indicates?

19 A Just below the number of the receipt.

20 Q Mr. Armbrister, one last area, sir. On an earlier  
21 occasion, you described another person who you had observed  
22 inside the Radio Shack store on Mass. Ave. in the same --  
23 excuse me, in the fall of 1991; do you recall that, sir?

24 A Yes, I do.

25 Q Do you see that person, this other person that you

1 previously described as being in the store in the courtroom  
2 here today?

3 A Yes, I do.

4 Q Would you point him out for us, please?

5 A In the front row, second person in.

6 Q And approximately how many times do you recall seeing  
7 that individual inside the Radio Shack store in the fall of  
8 1991?

9 A Probably about two or three times.

10 MR. KELLY: Your Honor, if I could just note for the  
11 record that the witness has identified the defendant,  
12 Mr. Trenkler.

13 THE COURT: Yes.

14 MR. SEGAL: No objection.

15 Q Mr. Armbrister, directing your attention to February of  
16 1992 or roughly three or four months after the transaction you  
17 had been talking about, do you recall being visited by some  
18 federal agents at or about that time, sir?

19 A Yes.

20 Q Mr. Armbrister, let me show you what has been marked as  
21 Exhibit 34, it's not clear to me whether it's in evidence. In  
22 evidence is Exhibit No. 34. Do you recognize that,  
23 Mr. Armbrister?

24 A Yes, I do.

25 Q That is what is known as a photo spread, sir, do you

1 understand that?

2 A Yes, I do.

3 Q Do you recall being shown that item by some federal  
4 agents back in February of 1992?

5 A Yes, it looks like the same one.

6 Q And what were you asked to do with that photo spread by  
7 the agents?

8 A See if I recognize anyone.

9 Q And did you look at the photo spread?

10 A Yes, I did.

11 Q Did you recognize anyone?

12 A Yes, I did.

13 Q Which of the photographs, if any, on that item looked  
14 familiar to you, sir?

15 A First of all, the second page off to the right.

16 Q Second photograph right-hand side?

17 A Right-hand side.

18 Q And why did that person look familiar to you,  
19 Mr. Armbrister?

20 A Because I'm making a crack about his receding hairline to  
21 a fellow employee.

22 Q And approximately how many times do you recall seeing  
23 that person in the store in the fall of 1991?

24 A '91, two or three times.

25 MR. KELLY: Your Honor, for the record, the second

1 photograph on the right-hand side of the second page is a  
2 photograph of Alfred Trenkler, the defendant. And I would ask  
3 if I could publish this, and I have nothing further, your  
4 Honor.

5 THE COURT: You may publish it, and you may  
6 cross-examine, Mr. Segal.

7 Cross-examination by Mr. Segal

8 Q Good morning, Mr. Armbrister. My name is Terry Segal. I  
9 represent Alfred Trenkler. I shouldn't be too long, but let  
10 me ask you this. I think you said going back to October 18th,  
11 1991, that the customer who came in the store that day, this  
12 tall fellow who was about 6, 5, went to the back of the store  
13 and looked, it was about five minutes before he came up to the  
14 counter to see you; is that right?

15 A I didn't say five minutes, I said 15 minutes.

16 Q Let me start again. At some point I think you told us he  
17 came up and asked us for some help?

18 A I didn't say that.

19 Q You came up and asked him did he need some help?

20 A He didn't come up, I went to him.

21 Q At that point you went to him, sir, hadn't he been in the  
22 store about five minutes?

23 A Yes, he had.

24 Q All right. Then you asked him, you want some help, am I  
25 right?

1 A Right.

2 Q He declined to help, and he went out with his list going  
3 through the store, am I right?

4 A Yes, he did.

5 Q And it was another 15 minutes before he came back to the  
6 counter with a number of items; is that right?

7 A Right.

8 Q And how long did he take at the counter, or how long did  
9 the transaction take at the counter when he came to the  
10 counter and purchased the items?

11 A About four minutes.

12 Q And then the slip that we've seen that says 2:36 that's  
13 about the end of the transaction?

14 A True.

15 Q And then he left the store?

16 A Right.

17 Q Now, you said that my client Mr. Trenkler you'd seen in  
18 the store also in that fall; is that correct?

19 A Yes, I did.

20 Q It's also fair to say that you never saw Mr. Trenkler in  
21 the store at the same time you saw this tall fellow who came  
22 in the store?

23 A True.

24 Q What?

25 A Right.

1 MR. SEGAL: I have nothing further.

2 THE COURT: Mr. Kelly, anything else.

3 MR. KELLY: Nothing else.

4 THE COURT: Thank you, Mr. Armbrister. You are  
5 excused. Who is next?

6 MR. LIBBY: Your Honor, counsel would call Mr. Robert  
7 Evans.

8 THE COURT: May I see counsel, please.

9 [Conference at the bench, as follows:

10 MR. SEGAL: I think it's page 5, your Honor.

11 THE COURT: Yes, one of the problems I have is the  
12 transcript is attached to Exhibit B to the Government's motion  
13 doesn't include the introductory portion to the questions on  
14 page 11-143.

15 MR. SEGAL: I think I have the transcript completed  
16 together.

17 THE COURT: Don't go away. It seems to me that  
18 wanting to know about the charge for murder is really sort of  
19 state-of-mind evidence, isn't it?

20 MR. LIBBY: It's all for --

21 THE COURT: Similar --

22 MR. LIBBY: I'm sorry.

23 THE COURT: Go ahead.

24 MR. LIBBY: This is a flaw throughout the brief.  
25 It's simply an 804(b)(3), but not to presumptively exclude any

1 permissible grounds.

2 THE COURT: Perhaps I should find out from the  
3 Government what the basis of its proffer is.

4 MR. LIBBY: The 804(b)(3), it's clear under Bagley  
5 and Sealy that even a comment of a cell mate can't reflect  
6 potential jeopardy here. Declaration against penal interest.

7 THE COURT: Bagley and Sealy, is Bagley the bank  
8 robbery?

9 MR. LIBBY: Sealy is the Second Circuit case which  
10 cites Bagley, and Bagley is the heroin cell mate situation.  
11 It's clear here. He's raising for the first time evidence  
12 with the guy in the next cell with Chris Henry, who he had  
13 both testify. We're only having Evans testify here. He wants  
14 to know what the story is with murder. He tells him, it's a  
15 life charge, no parole, that's what brings in I can't do that.

16 I've got to get out of here. I'm taking off. This is all  
17 in sequence, your Honor. These are clear state of mind and  
18 declaration against penal interest under 804(b)(3). They both  
19 show consciousness of guilt. This is the morning of the 1st  
20 of November. This is in connection with the arrest on the  
21 default.

22 THE COURT: Okay. Now, how about 3. Is not every  
23 statement by alleged statement by Mr. Shay that he didn't do  
24 it himself, but somebody else helped him, the Bruton  
25 statement?

1 MR. SEGAL: Yes.

2 MR. LIBBY: No, because it doesn't -- it does not  
3 inculcate this defendant directly.

4 THE COURT: That's exactly what the Government wants  
5 to do with it.

6 MR. SEGAL: It's two-person.

7 THE COURT: Hold it.

8 MR. LIBBY: It's precisely as your Honor had  
9 indicated bridged the rationale in the Shay case with respect  
10 to Trenkler's comment. It's offered against him, but there's  
11 no Bruten problem because it's, in effect, sanitized.

12 THE COURT: There's no Trenkler statement in the  
13 first trial that said anything about Mr. Shay.

14 MR. LIBBY: Precisely, and nor is this. This does  
15 not say Al Trenkler.

16 THE COURT: One of the things that I must confess,  
17 I'm not clear about, see, Bruten makes a reference to a  
18 confession that he had an accomplice whom he would not name.

19 MR. LIBBY: If your Honor, please, I've had this  
20 conversation with Mr. Kelly, and he handled this portion of  
21 the colloquy. I think he's in the hall.

22 (Pause.)

23 THE COURT: Can I talk to counsel, please.

24 The question I have, with respect to the third  
25 statement of the four offered by Mr. Evans, in which there is

1 a statement that Mr. Shay could not have made this bomb by  
2 himself, that he to have somebody, someone else make it,  
3 whether that is in Bruten, where at least one of the  
4 confessions in Bruten appears to have been a confession in  
5 which he didn't name, in which Evans, that another Evans in  
6 the Bruten case, didn't name the accomplice. And yet, as I  
7 read the opinion, it was held to be in violation of the  
8 confrontation clause.

9 I mean, it's a problem that reoccurs, also, with the  
10 whole series of the statements that we're offering. So, it  
11 seems to me, we have to consider that. Well, it seems to me  
12 that in a situation where you have a two-person conspiracy,  
13 where the Government's theory is that these are the only two  
14 people who did it, when the Government is offering statements  
15 of one of them that he had an accomplice, that necessarily  
16 what the Government is saying is that the accomplice is the  
17 defendant on trial; and therefore, we have a statement of the  
18 co-defendant implicating the co-defendant.

19 MR. SEGAL: I agree.

20 THE COURT: I knew you would agree, but I want to  
21 hear from the Government because I'm not sure I'm right about  
22 that.

23 MR. SEGAL: You are.

24 MR. LOPEZ: You are.

25 MR. KELLY: I don't believe that is correct, your

1 Honor, on a couple of points. I mean, my understanding of  
2 Bruten -- and we've had these cases, they come up all the  
3 time. I don't have the authority with me, which we can get,  
4 in terms of redaction, your Honor, my understanding is that so  
5 long as you redact either or both the name of the defendant  
6 currently on trial and/or any other descriptive information by  
7 which you would inferentially conclude it was that defendant  
8 on trial, you have obviated the Bruten problem. There are  
9 cases --

10 THE COURT: In a two-person conspiracy?

11 MR. KELLY: I mean, we obviously have a theory that  
12 the other person was Mr. Trenkler. They obviously --

13 THE COURT: Either it is not relevant, having  
14 anything to do with this case, or it is relevant because he's  
15 talking about this guy.

16 MR. KELLY: No, it's relevant because we have to show  
17 Mr. Shay's involvement in this conspiracy.

18 THE COURT: Well, but for that you don't have to have  
19 evidence that somebody else was involved, too.

20 MR. KELLY: In this case, we do, your Honor, because  
21 you have effectively a totem pole motive. For example, you  
22 have the initial motive by Mr. Shay, Jr. Of course, it's the  
23 Government's theory of prosecution, and the charge in  
24 indictment, that Mr. Shay solicited and recruited Mr. Trenkler  
25 who perhaps had different motives than Mr. Shay; but

1 Mr. Shay's motives, Mr. Shay's involvement is really critical  
2 and relevant.

3 THE COURT: I don't quarrel with that. And to the  
4 extent, for example, in the Marinella interview, he says: I  
5 went out and bought the toggle switch, I think that's probably  
6 admissible evidence. But to the extent that he says: I  
7 wasn't the only one involved, there was another person, I have  
8 Bruten problems with that, in a situation where only two  
9 people, where the Government's theory is, there are only two  
10 people because that necessarily means the co-defendant who  
11 can't cross-examine --

12 MR. KELLY: That's giving the Government the benefit  
13 of the doubt that we're being able to make that giant gap.

14 THE COURT: That's precisely the gap you're going to  
15 make. That's the argument you're going to make.

16 MR. KELLY: There's nothing on the statements, in  
17 their face, that point in the direction. He says: I couldn't  
18 make the bomb --

19 THE COURT: That's why I raised the question  
20 initially. In Bruten itself, I gather there were two  
21 confessions -- I'll look up the appeals court case. One of  
22 the two didn't name the accomplice; and yet, that confession  
23 seems to have been ruled out in Bruten itself. That seems to  
24 me to be precisely the case here, whenever there is a  
25 reference to somebody else.

1           With respect to evidence, it seems to me that  
2 statements numbers 1, 2 and 4, the state of mind, he's talking  
3 about what he is thinking about. There may possibly also be  
4 against penal interest; but they are, they very clearly  
5 reflect his own state of mind at that point in time.

6           MR. SEGAL: My point on that is what's the relevance  
7 of his state of mind at that point?

8           THE COURT: Mr. Shay's state of mind --

9           MR. SEGAL: This is after the conspiracy ended?

10          THE COURT: It is after the conspiracy is ended.

11          MR. SEGAL: And he's been arrested on an outstanding  
12 warrant.

13          THE COURT: Right, but to the extent that we are  
14 talking here about a two-person crime, this state of mind of  
15 one of the two people is relevant in the trial of the second.  
16 So, it seems to me that, that Mr. Shay's state of mind is  
17 relevant; and therefore -- and, also, I believe as to that  
18 there is an indicia of reliability in those statements. So,  
19 1, 2 and 4 fit within that. I have problems with 3, for the  
20 reasons I just mentioned, because I think it's Bruton.

21          MR. SEGAL: Could I go back on 4?

22          MR. KELLY: Without waiving our right to bring you  
23 some law by morning. There is another witness in which this  
24 issue comes up again. We will avoid 3. We will only talk  
25 about 1, 2.

1 THE COURT: It comes up very much with Marinella.

2 MR. KELLY: And Mr. Plant as well.

3 THE COURT: And Mr. Plant as well. There it comes up  
4 particularly.

5 MR. SEGAL: Just one word on No. 4. I would submit  
6 that No. 4 is different than 1 and 2. You could put a lot of  
7 different interpretation on that statement.

8 THE COURT: That's true, but it is admissible as his  
9 own state of mind. I'll allow it.

10 MR. KELLY: Your Honor, while we're here. Our other  
11 witness, Mr. Pransky, has some scheduling problems. We  
12 believe him to be en route. It's possible that with direct  
13 and cross, we might be at quarter of one.

14 THE COURT: We'll worry about it when he gets here.  
15 ... end of conference at the bench.]

16 THE COURT: Can you call Mr. Evans in, please.  
17 Who is examining the witness?

18 MR. LIBBY: I will, your Honor.

19 Robert Evans, sworn

20 Direct Examination by Mr. Libby

21 Q Good afternoon, Mr. Evans.

22 A Good afternoon.

23 Q How old are you, sir?

24 A Twenty-six.

25 Q What's your home address?

1 A 75 Union Street, Randolph, Mass.

2 Q And who resides there, please?

3 A Me, my wife and two children.

4 Q Do you reside there right now?

5 A No.

6 Q Where are you presently residing?

7 A Old Colony Correctional Institute.

8 Q Where's that?

9 A Bridgewater.

10 Q And on what conviction are you presently serving at Old  
11 Colony, please?

12 A Breaking and entering.

13 Q Were you incarcerated in October of 1991, Mr. Evans?

14 A Yes, I was.

15 Q And it's not the first time you've been incarcerated, is  
16 it?

17 A No, it's not.

18 Q Will you tell the Court and jury, please, for what  
19 offenses, convictions you were serving time?

20 A Breaking and entering charges.

21 MR. LIBBY: Your Honor, I don't know if the  
22 microphones are on.

23 THE COURT: It's on.

24 Q Would you speak up please.

25 A Breaking and entering charges.

1 Q Is that true that within the past ten years all of those  
2 offenses have taken place?

3 A Yes, sir.

4 Q Do you presently use drugs?

5 A No, sir.

6 Q Have you in the past abused drugs?

7 A Yes.

8 Q What kind of drugs, please?

9 A Cocaine.

10 Q Over what period of time were you abusing cocaine?

11 A Off and on from 1985 to 1991.

12 Q Is there any relationship between your use of cocaine and  
13 your breaking and entering convictions?

14 A Yes, there is.

15 Q And what is that?

16 A Smoking cocaine leads me to breaking and entering.

17 Q How frequently were you using cocaine?

18 A Daily.

19 Q Would you tell us, please, about the size of your daily  
20 habit?

21 A A thousand dollars a day.

22 Q So you broke into homes to steal things to support that  
23 habit; is that right?

24 A Yes, sir.

25 Q Now, I believe you testified that you're not using

1 cocaine now or any other time; is that right?

2 A No, sir.

3 Q When did you stop using drugs?

4 A September 1991.

5 Q Have you remained sober since?

6 A Yes.

7 Q And was that brought about in any way by your involvement  
8 in a drug rehabilitation program?

9 A Yes, it was.

10 THE COURT: There's no reason for why you're leading  
11 the witness at the moment.

12 MR. SEGAL: I don't --

13 THE COURT: But he doesn't object, so go right  
14 ahead.

15 Q Mr. Evans, does your prior addiction to cocaine in any  
16 way affect your ability today to recall matters in the past?

17 A No.

18 Q Does it in any way impair your ability to testify before  
19 the members of the jury?

20 A No.

21 Q Now, in October of 1991, Mr. Evans, where were you  
22 incarcerated?

23 A Dedham House of Correction.

24 Q It was on a breaking and entering charge?

25 A Yes.

1 Q Were you reading the newspapers watching the TV at that  
2 time?

3 A Yes, I was.

4 Q Do you read the newspapers?

5 A Yes, sir, I do.

6 Q Now, directing your attention specifically to the first  
7 of December 1991, Mr. Evans, I believe a Friday, do you recall  
8 where you were that day?

9 A Yes.

10 Q You were at the Dedham House of Corrections, right?

11 A Right.

12 Q Were you brought anywhere else?

13 A Yes, I went to court that day, Quincy District Court.

14 Q The purpose of that visit was what?

15 A For hearing on my breaking and entering.

16 Q Now, as you went to court that day, were you aware  
17 generally of an explosion in Roslindale the prior Monday, the  
18 28th of October?

19 A Yes, I was.

20 Q And how did you become aware of that?

21 A Through the newspaper and news on the TV.

22 Q Now, when you were brought to the Quincy District Court,  
23 where initially were you brought, Mr. Evans?

24 A Downstairs to the lockup cells.

25 Q Would you describe to us please how that lockup is set

1 up?

2 A There are four cells, they're side by side. The cells  
3 are, each cell's divided by a concrete wall.

4 Q So you could see out to the corridor?

5 A You could see out.

6 Q So you can't see to the next cell?

7 A Right.

8 Q Were you alone in your cell?

9 A No, I wasn't.

10 Q How many other people were with you?

11 A One other person.

12 Q Do you recall any time that morning hearing someone's  
13 name being called out in the vicinity of the lockup?

14 A Yes, I do.

15 Q Who was calling the name out, please?

16 A The Court officer.

17 Q And what was the name?

18 A Thomas Shay.

19 Q Now, when you heard the name Thomas Shay, did that have  
20 any meaning to you, any familiarity?

21 A Yes.

22 Q And what was your source of familiarity with the name  
23 Thomas Shay?

24 A His name was better than the newspaper due to the  
25 investigation and bombing.

1 Q Now, did you hear that name did you have an understanding  
2 as to where Thomas Shay was located?

3 A Yes, he was in the cell next to him.

4 Q How did you know that?

5 A The court officer came in and checking names off with  
6 me. He said his name.

7 Q After you understood that Mr. Shay was in the next cell,  
8 did you have a conversation with him?

9 A Yes, I did.

10 Q How long -- all told, that day, did you stay in the  
11 lockup?

12 A Approximately from 9 o'clock in the morning until 3, 3:30  
13 in the afternoon.

14 Q And Mr. Shay?

15 A The same time.

16 Q All right. Now, throughout that period of time how much  
17 time on and off did you spend speaking with Shay, Jr.?

18 A Throughout the course of the day other than meeting him  
19 up to the Court, probably four hours.

20 Q Well, did you go together?

21 A No.

22 Q And on that you saw the individual whose name you heard  
23 first, Thomas Shay leave the lockup area?

24 A Yes, I did.

25 Q And would you describe how it was that he left the lockup

1 area?

2 A He was called up by the Court officer to go upstairs and  
3 face up to his arraignment.

4 Q Did you have an opportunity to see Shay, Jr.?

5 A Yes, I did.

6 Q Where was he when you saw him?

7 A In front of my cell.

8 Q How far away was it?

9 A Three, four feet.

10 Q How long of an opportunity did you have to look at him?

11 A 30 seconds.

12 Q Would you describe for us his physical appearance, how  
13 tall, how much he weighed?

14 A 6, 4, 6, 5, 170, brown hair.

15 MR. LIBBY: If I may approach, your Honor.

16 Q I show you what's been marked as Government's Exhibit 55,  
17 Mr. Evans, a six-picture photo spread and ask you if you can  
18 identify the individual whom you understood to be Thomas Shay,  
19 Jr. that morning on November, 1991?

20 A No. 4.

21 MR. LIBBY: Your Honor, may the record indicate that  
22 Mr. Evans has correctly pointed out Thomas Shay, Jr.

23 THE COURT: Yes.

24 MR. LIBBY: And Government's Exhibit 54, do you  
25 recognize what's depicted there?

1 A Yes.

2 Q What is that?

3 A A picture of Thomas Shay.

4 Q An enlargement?

5 A Yes.

6 Q Now, how long was Shay, Jr. out of the cell?

7 A 20 minutes to a half-hour.

8 Q You saw him on his return?

9 A Yes.

10 Q And on his return, you continued to have a conversation  
11 with him?

12 A Yes, I did.

13 Q At some point Mr. Evans, did Mr. Thomas Shay, Jr. have a  
14 question for you?

15 A Yes.

16 Q And that question had something to do with penalty in  
17 Massachusetts for something?

18 A Yes, he asked me --

19 Q Hang on a second. Please continue.

20 A He asked me how much time he would receive for a murder  
21 charge in Massachusetts.

22 Q And he understood at this time that he had been in the  
23 system for a while, right?

24 A Yes.

25 THE COURT: How can he tell us what Mr. Shay

1 understood?

2 MR. LIBBY: Strike that.

3 Q Did you have discussion on whether you were a newcomer  
4 for Massachusetts, in the system?

5 A No, he knew I had been in jail before.

6 Q He asked you this question?

7 A Yes.

8 Q What did you tell him?

9 A I told him that for the first degree murder charge in  
10 Massachusetts, life without parole, that after 25 years, he  
11 could petition the Governor for a pardon; second degree murder  
12 charge, it's 15 years before he was at the parole board.

13 Q And after you advised Shay, Jr. of that, did he have a  
14 response for you?

15 A Yes.

16 Q What did he say?

17 A He said that he couldn't do that time, that he would kill  
18 himself.

19 Q At any point thereafter, did the conversation turn to  
20 bail?

21 A Yes.

22 Q What, if anything, did he say about bail?

23 A He said if you can make bail, you can flee.

24 Q Did he use the word "flee"?

25 A Flee or take off.

1 Q Now, at some point, Mr. Evans, did Shay, Jr. discuss his  
2 relationship with his father?

3 A Yes, he did.

4 Q What did he indicate about --

5 A That his father had disowned him five years previous to  
6 the day me and him were talking.

7 Q Now, did he have any discussion with you about the topic  
8 of bail and his father?

9 A Yes.

10 Q What was that conversation, please?

11 A I believe I asked him if his father would bail him out  
12 and he said to me, what are you crazy after what happened.

13 Q Now, after this conversation had taken place in the  
14 lockup area, Mr. Evans, you thereafter returned to the Dedham  
15 House of Corrections?

16 A Yes, sir.

17 MR. LIBBY: Just a moment, please, your Honor.

18 Q Now, after you had this conversation with Shay, Jr., did  
19 you go back to the Dedham House of Correction?

20 A Yes.

21 Q Did you do anything with respect to the, to the  
22 conversation you just had earlier that day with Shay, Jr. when  
23 you got back to the Dedham House of Correction?

24 A Yes, I told him a few inmates at the house of correction,  
25 what me and Mr. Shay had discussed.

1 Q And following that, were you visited at all?

2 A Yes, by three Boston homicide detectives.

3 Q Now, before you were visited by these detectives,  
4 Mr. Evans, did you take any steps or make any effort in  
5 writing down your conversation with Shay, Jr.?

6 A Yes, I did.

7 Q If I may, your Honor --

8 If I may, your Honor, show the witness what's been  
9 marked Government's Exhibit 59 at this point for  
10 identification and ask if you recognize that?

11 A Yes.

12 Q What do you recognize that be?

13 A That's the letter I wrote to my wife about the  
14 conversation that me and Mr. Shay had.

15 Q And to your knowledge, Mr. Evans, did your wife get the  
16 note?

17 A Yes, she did.

18 Q And thereafter, to your knowledge, did law enforcement  
19 come into possession of the note?

20 A Yes, he did.

21 Q Now, do you have -- you knew, Mr. Evans, having been  
22 involved in the state criminal justice system for some time  
23 that this information had some value, potential value to it,  
24 correct?

25 A Yes, it did.

1 Q All right. And following your visit, or in connection  
2 with the visit by the Boston homicide detective, I apologize,  
3 did I ask you who they were; do you recall who they were?

4 A Detective O'Malley, Fogerty, I forget the third.

5 Q Would you describe the third gentleman for us, please?

6 A A black individual, smokes cigars.

7 Q Size of Shay?

8 A Big guy.

9 Q And he interviewed you that night, true?

10 A Yes.

11 Q Now, at that time, Mr. Evans, did any of those detectives  
12 offer anything of value?

13 A No, they didn't.

14 Q Did anyone in law enforcement at that time, Mr. Evans,  
15 offer you any promises or rewards or any kind of insurances of  
16 any kind in exchange for your cooperation?

17 A No, they didn't.

18 Q Now, you testified, have you not, Mr. Evans before a  
19 federal grand jury in this matter; is that right?

20 A Yes, sir.

21 Q And shortly thereafter you were sentenced, correct?

22 A Yes, I was.

23 Q On your breaking and entering convictions?

24 A Yes.

25 Q Those are a number of breaking and entering charges; is

1     that right?

2     A     Yes.

3     Q     They were wrapped together?

4     A     Yes.

5     Q     At the time of your sentencing, Mr. Evans, did anyone  
6     from law enforcement state or federal appear at your  
7     sentencing on your behalf?

8     A     No, they haven't.

9     Q     Did anybody write any letters to your knowledge to the  
10    sentencing court at that time?

11    A     No, they didn't.

12    Q     Did anybody, law enforcement, state or federal, make a  
13    phone call or in any way make any contact with probation or a  
14    sentencing court on your behalf of that time?

15    A     No.

16    Q     Now, you also testified in an earlier criminal proceeding  
17    arising out of the explosion, correct?

18    A     No, sir.

19    Q     Following that testimony, did anyone from law enforcement  
20    provide you anything of value, give you any kind of reward?

21    A     No.

22    Q     Prior to your appearing and testifying in Federal Court,  
23    Mr. Evans, had anybody offered you, anyone from law  
24    enforcement state or federal offer you anything of value in  
25    exchange for your testimony?

1 A No, sir.

2 Q Referring to your sentence, the sentence you actually  
3 received approximately a month following your appearance to  
4 the federal grand jury, Mr. Evans, would you tell us, please,  
5 what your sentence consists of?

6 A 12 to 15 years.

7 Q What's your parole date?

8 A 1995.

9 Q And your release date?

10 A 1999.

11 Q Now, having testified in the first federal trial,  
12 Mr. Evans, are you aware -- strike that. Did that fact when  
13 you came in and testified create any difficulties?

14 A Yes, it did.

15 MR. SEGAL: I object, I'm not sure of the relevance  
16 of that.

17 THE COURT: Well, it goes to the issue of  
18 credibility. I'll allow it. You may proceed.

19 MR. LIBBY: Thank you, your Honor.

20 Q Does it create any difficulties for you?

21 A Yes, it did.

22 Q Now, how big are you, Mr. Evans?

23 A 6, 5.

24 Q And how much do you weigh?

25 A 230, 235.

1 Q Do you play any sports?

2 A Yes, sir.

3 Q What sports?

4 A Amature boxer and football player.

5 Q Do you know how to take care of yourself?

6 A Yes.

7 Q Notwithstanding that, Mr. Evans, would you describe for  
8 the Court and jury, please, the difficulties, since your  
9 testimony that you find yourself encountering in the system?

10 MR. SEGAL: I don't object on the relevance grounds,  
11 your Honor.

12 THE COURT: The objection is overruled. You may tell  
13 us.

14 A I've been in numerous sights over my testifying against  
15 Mr. Shay. I appeared in the newspaper and the newspaper  
16 circulates in prison.

17 Q You're not the only one who reads newspapers?

18 A It didn't go over too well since then. There's been  
19 numerous altercations. Presently right now I'm locked in a  
20 segregation unit due to that fact.

21 Q And each of these altercations, Mr. Evans, are begun by  
22 another inmate?

23 A Yes.

24 Q And you understood that directly related to your earlier  
25 testimony in this case?

1 A Yes.

2 Q Have you since, has your sentence been reduced in any  
3 way?

4 A No.

5 Q Any offer or promise or reduction of your sentencing with  
6 your grand jury testimony your first trial testimony or your  
7 testimony here today?

8 A No, sir.

9 Q Have you had conversations with law enforcement with  
10 respect to your present housing situation?

11 A Yes, I have.

12 Q And that relate to concerns about your present security;  
13 is that right?

14 A Yes, sir.

15 Q Beyond your housing situation, Mr. Evans, have there been  
16 any promises, awards or assurances of any kind made to you by  
17 anyone in law enforcement with respect to your appearance here  
18 today?

19 A No, sir.

20 MR. LIBBY: I have nothing further, your Honor.

21 Thank you.

22 THE COURT: Mr. Segal.

23

24

25

Cross-examination by Mr. Segal

Q Good afternoon, Mr. Evans. My name is Terry Segal. I represent Mr. Trenkler. You've never met Mr. Trenkler; is that fair to say?

A No, sir.

Q When you learned this information from Mr. Shay on that day, I think it was November 1991, you knew that was very significant information, am I right?

A Yes, sir.

Q And when you communicated it to people, you indicated you wanted a pardon for all your crimes and be released on bail in return for testifying; is that right?

A Yes, sir.

Q Because you knew you had received some very significant information?

A Yes, sir.

Q And you wanted to use it to try to help yourself; is that fair to say?

A Yes, sir.

MR. SEGAL: Thank you very much. I have no further questions.

THE COURT: Anything else?

MR. LIBBY: Nothing, your Honor.

THE COURT: Thank you, Mr. Evans, you're excused.

MR. LIBBY: We'll check on the next witness, as we

1 indicated to the Court at the side bar.

2 MR. KELLY: If we could just have a moment, your  
3 Honor.

4 (Pause.)

5 [Conference at the bench, as follows:

6 MR. KELLY: Your Honor, our next witness is Attorney  
7 Alan Pransky. He is driving himself into the courthouse, and  
8 he could arrive in the next couple of minutes. I don't know  
9 if the Court wants to wait or wants to terminate for the day  
10 and resume in the morning.

11 THE COURT: You don't have anybody else?

12 MR. KELLY: Well, he was our next witness. He had a  
13 scheduling problem, your Honor, this morning.

14 THE COURT: Can we start with somebody else and  
15 interrupt when he gets here?

16 MR. KELLY: Let me ask Mr. Libby a question.

17 (Pause.)

18 THE COURT: Can we start with another?

19 MR. KELLY: I don't believe so, and Mr. Segal's  
20 preference is that we not.

21 THE COURT: How long is Pransky going to take?

22 MR. KELLY: I believe he is going to be about 30 to  
23 40 minutes on direct.

24 THE COURT: We can't finish with him today, anyway.  
25 What happens with the scheduling problem tomorrow?

1 MR. KELLY: He's available tomorrow.

2 Has he arrived?

3 MR. LIBBY: Mr. Pransky is coming. He'll be here in  
4 two to three minutes, your Honor. We just got a call.

5 MR. KELLY: How long was his direct, was the  
6 question?

7 MR. LIBBY: I think, given our situation, it will be  
8 15, 20 minutes.

9 MR. KELLY: Oh, we'll finish the direct.

10 THE COURT: Do you have long on cross?

11 What's he going to tell us? Are we getting into the  
12 Shay statements?

13 MR. LIBBY: Quincy Shore Drive, what he said. Just  
14 simply the information that he imparted to Junior, and then  
15 his involvement with Shay, Sr. at the scene the evening of the  
16 investigation.

17 THE COURT: What is the point of all that?

18 MR. LIBBY: Your Honor, it's clear --

19 THE COURT: I understand your suggestion about the  
20 investigators' strategy. You're confusing the issue in all  
21 respects.

22 MR. LIBBY: We wouldn't do it, in the first instance,  
23 unless we see ourselves having to defend ourselves on the  
24 challenge, that we weren't there doing our job, covering the  
25 bases.

1 THE COURT: Why do you have to worry about that, for  
2 heavens sake?

3 MR. LIBBY: He's already flagged. He's going to go  
4 after senior, Berry, Giamarco, all these people: Why aren't  
5 the investigators looking at these other people? Why  
6 haven't --

7 THE COURT: Because they have such strong evidence  
8 against this guy.

9 MR. LIBBY: We don't get it until the 4th of  
10 November, your Honor.

11 THE COURT: So what?

12 MR. LIBBY: This is the stuff that happens before  
13 that.

14 THE COURT: I don't understand the strategy of the  
15 Government. I mean, obviously, the Government knows more  
16 about this than I do. But it seems to me, if you're  
17 convincing the jury: They're throwing sand at you guys,  
18 right. Admittedly, we didn't know in the beginning. But once  
19 we focused, we focused, and this is where we are, and these  
20 are the guys who did it. I don't understand why you have to  
21 go on and on and on. It's confusing, frankly.

22 MR. LIBBY: I'll try to minimize.

23 THE COURT: I'm just suggesting to you my reaction  
24 and looking at the jury's reaction.

25 MR. LIBBY: Your Honor, it's totally derivative of

1 the defense theory which you saw in the first case.

2 THE COURT: Let me tell the jury, so we can hopefully  
3 get him on and off. That's it, right?

4 MR. SEGAL: The only point is, I'm unclear whether  
5 you're going to ask Mr. Pransky about any statements of Shay,  
6 Jr.?

7 MR. LIBBY: No, he's not going to testify as to what  
8 Shay, Jr. said.

9 THE COURT: All right.

10 ... end of conference at the bench.]

11 THE COURT: Members of the jury, the next witness is  
12 on route, he is on route, his car is parking and he will be  
13 here in one or two or three minutes, so I think we'll just  
14 wait.

15 (Pause.)

16 MR. LIBBY: Your Honor, the United States calls  
17 Attorney Alan Pransky.

18 THE CLERK: Please be seated, and state your name.

19 THE WITNESS: My name is Alan Pransky.

20 THE COURT: A L A N?

21 THE WITNESS: Yes.

22 THE COURT: You may proceed.

23 P R A N S K --

24 THE WITNESS: Y.

25

Alan Pransky, Sworn

Direct Examination by Mr. Libby

1 Q Where do you reside?

2 A I live in Needham.

3 Q You're a practicing attorney?

4 A Yes.

5 Q Since when?

6 A 1978.

7 Q Where do you practice?

8 A In Dedham.

9 Q What's the name of your firm?

10 A DeVito, Pransky, and Stavros P A.

11 Q How long have you practiced there?

12 A About five years.

13 Q What's the nature of that practice, please?

14 A It's a general practice, we have civil, criminal  
15 litigation, domestic relations, real estate.

16 Q You're subpoenaed to appear here today?

17 A Yes, I was.

18 Q Where were your law practices in relation to the Dedham  
19 Service Center, please?

20 A Approximately across the street.

21 Q You're familiar, sir, with an individual by the name of  
22 Thomas L. Shay, that is Shay, Sr.?

23 A Yes.

1 Q When did you first come to know Shay, Sr.?

2 A 1989.

3 Q And that is in what context, please?

4 A He came to me to represent a matter.

5 Q And what was that matter?

6 A A lawsuit against Dedham Service Center, and it related  
7 to entities.

8 Q Did you come to ultimately represent him in that lawsuit?

9 A Yes, I did.

10 Q And without disclosing what he told you, what you told  
11 him in that context, you discussed the general nature of the  
12 incident giving rise to the lawsuit?

13 A In 1987, I believe there was an explosion at the Dedham  
14 Service Center which was caused by someone putting a quarter  
15 stick of dynamite in the barrel.

16 Q And your understanding is Shay, Sr. was located where at  
17 that time?

18 A He was in the basement level which is one level down from  
19 where the explosion occurred, in the garage that was rented at  
20 the time.

21 Q And your understanding as to the effect it had on Shay,  
22 Sr., please?

23 A He was injured by the concussive force of the explosion.

24 Q And you appeared in the lawsuit, filed that lawsuit on  
25 his behalf?

1 A Yes, I did.

2 Q In what court?

3 A Suffolk Superior Court.

4 Q When was that commenced?

5 A I believe it was 1990.

6 Q Who are the defendants, please?

7 A Bergiam Realty, Bergiam Inc., Jeffrey Berry and Anthony  
8 Giamarco.

9 Q And with reference to Bergiam, it was Dedham Service  
10 Center?

11 A The Dedham Service Center was run by a corporation by  
12 Bergiam, Inc., the real estate trust was owned by Bergiam  
13 Realty Trust.

14 Q Who were the plaintiffs on that case?

15 A Thomas Shay, Sr. I believe it was his daughter Crysten  
16 Flanagan.

17 Q Have you ever been Thomas Shay, Jr.'s attorney?

18 A Never.

19 Q Now, Mr. Pransky, at some point, when you commenced this  
20 lawsuit, you found it necessary to secure Shay, Jr.'s  
21 deposition?

22 A Yes.

23 Q And after some efforts in that regard, did you ultimately  
24 succeed in doing that?

25 A Yes, we did.

1 Q And to your knowledge, when was he deposed?

2 A September 13th, 1991.

3 Q And who else was deposed on that date, sir?

4 A I was.

5 Q And that was because you had -- strike that. At that  
6 time did you continue to be counsel of record on the lawsuit?

7 A On September 13th, I was. I had filed a motion to  
8 withdraw, because I was going to be a witness in a lawsuit,  
9 and my withdrawing attorney was a condition upon my giving a  
10 deposition, so the judge had already ruled that I would cease  
11 to be attorney of record after I gave the deposition.

12 Q Now, notwithstanding the fact that you're no longer an  
13 attorney of record, did you stay involved in the lawsuit in  
14 some respect?

15 A Yes, I did.

16 Q How was that?

17 A I continued to assist the attorney of record and I  
18 continued to represent Thomas Shay, Sr.

19 Q Now, the morning that you're deposed, was it the same  
20 time that Shay, Jr. was deposed?

21 A He was deposed in the morning, I was deposed after lunch.

22 Q Now, do you know how Shay, Jr. got to the place of  
23 deposition?

24 A I drove him.

25 Q Where did the deposition take place?

1 A In Charlestown, the offices of Gallagher and Gallagher in  
2 Constitution Plaza.

3 Q And a deposition is nothing more than attorneys and a  
4 court reporter in a conference room?

5 A Asking questions as if a trial, yes, but there's no  
6 judge.

7 Q Who is deposed first?

8 A Tom Shay, Jr.

9 Q And you're deposed, is that right?

10 A Yes.

11 Q And then the two of you leave?

12 A We left. I drove him home.

13 Q Where did you drive him to?

14 A To his mother's condominium in Quincy.

15 Q What time did you leave Gallagher and Gallagher, please?

16 A Around four o'clock.

17 Q Who else was present in the vehicle?

18 A No one else, just the two of us.

19 Q And can you tell us, please, how you made your way back,  
20 the route that you followed?

21 A We came down the Southeast Expressway at some point in  
22 Dorchester, he started to give me directions of how to get to  
23 his mother's house so we could avoid the traffic.

24 Q And where ultimately, what route did you take?

25 A We went off the Southeast Expressway, we ended up along

1 the water in Quincy, I'm not exactly sure the name of the  
2 road. It might be Quincy Shore Drive.

3 MR. LIBBY: If I may lead at this point, your Honor?

4 Q At some point in that drive, did the conversation turn  
5 towards the nature of the lawsuit, that is if Shay, Sr. were  
6 not to live throughout the duration of the lawsuit?

7 A Yes.

8 Q And during that ride did you explain anything to Shay,  
9 Jr. with respect to the legal procedures that would be  
10 followed if Shay, Sr. were not to live throughout the pendency  
11 of the lawsuit?

12 A Yes, I did.

13 MS. SHARTON: Objection, your Honor.

14 THE COURT: He's already answered the question.

15 Q What did you tell him about that?

16 MS. SHARTON: Objection.

17 THE COURT: The objection is overruled.

18 A I told him if his father had died, the lawsuit would  
19 continue despite the death. The father's deposition had  
20 already been taken, and in theory we no longer needed to  
21 proceed with the lawsuit.

22 Q Did you discuss the concept with Shay, Jr. of an estate?

23 A Yes, I did.

24 Q What did you tell him about that?

25 A I told him that in the event his father died, the lawsuit

1 would become the property of his father's estate, and his  
2 estate would belong to whoever his heirs are under the  
3 estate. If he specified his fathers, if he had no will, his  
4 heirs would be his four children.

5 Q Now, having explained that to Shay, Jr. and the two of  
6 you were alone in the car, right?

7 A Yes.

8 Q Did the conversation then turn towards your view as to  
9 what the case was worth?

10 A Yes.

11 Q What did you tell Shay, Jr. about that, if anything?

12 A I refused to tell him what the case was worth.

13 Q Did you say anything about insurance coverage to Shay,  
14 Jr. at that time?

15 A Yes, I did.

16 Q What did you say?

17 A I told him that there was insurance, we had uncovered  
18 insurance policies that could provide coverage for this.  
19 There are two policies. The numbers were either a 100,000  
20 policy or 200 policy or a \$300,000 policy or \$100,000 policy.  
21 I'm not certain whether the total is 300,000 or 400,000, but I  
22 did discuss those two policies with --

23 Q One of those two figures either total is \$300,000 or  
24 400,000?

25 A Yes.

1 Q Now, at this point in the conversation there was some  
2 substantial pause, a break in the discussion?

3 A Yes.

4 Q And immediately following that pause, did the  
5 conversation turn to, did your conversation with Shay, Jr.  
6 turn towards the father's will?

7 A It turned to the subject of whether the father had a  
8 will, yes.

9 Q What did you say to Shay, Jr. about that?

10 A I told him that if I knew that the father had a will,  
11 that would be within the attorney-client privilege and I could  
12 not tell him if the father had a will.

13 Q Did the conversation thereafter turn to how you believe  
14 the case would end up?

15 A Well, earlier, when we were talking about the value of  
16 the case we had discussed --

17 THE COURT: Only tell us what you said, please.

18 A I'm sorry, I had told him that, I believed it would be a  
19 recovery without stating the amount. I told him that I would  
20 not be involved in the case unless I thought that it was the  
21 case that would lead to a recovery.

22 Q You said that earlier in the conversation, right?

23 A That was at the stage where I refused to tell him the  
24 value of the case.

25 Q Then later on the subject came up again?

1 A No, it was just at that one point.

2 Q You indicated that you believed whether by settlement or  
3 by trial, the matter would actually ultimately prevail?

4 A Yes, I told him that, about the time that -- about the  
5 time that I told him about the, that I could not tell him  
6 about a will. I did tell him that I believed that the case  
7 would either go to trial or be settled in advance of trial by  
8 agreement of the two sides.

9 Q And either way you told Shay, Jr. that you believe  
10 ultimately there would be a recovery?

11 A I did.

12 Q All right. Now, very briefly, Mr. Pransky, you became  
13 notified of the explosion in Roslindale sometime in the  
14 afternoon of Monday the 28th?

15 A Yes.

16 Q And you appeared at the premises of 39 Eastbourne that  
17 day?

18 A Yes.

19 MS. SHARTON: Objection.

20 THE COURT: What's the objection?

21 MS. SHARTON: At this point, it's a leading question,  
22 your Honor.

23 MR. LIBBY: I'll refrain from doing that, your Honor,  
24 it's simply in view of the time.

25 THE COURT: Well, I mean if you get into the subject,

1 she's going to cross-examine. On the other hand you may  
2 decide not to get into the subject.

3 MR. LIBBY: Thank you, I understand that too.

4 Q You were there that day?

5 A Yes, I was.

6 Q What did you bring with you?

7 A I brought my entire case file of the civil litigation,  
8 the Dedham Service Center case.

9 Q Were you discussing the matter with the investigators on  
10 site?

11 A Yes, I did.

12 Q How long did you stay there?

13 A About three and a half hours.

14 Q Did you have an opportunity to see the investigators  
15 question Shay, Sr.?

16 A Yes, I did.

17 Q Would you describe how you respond to the questioning on  
18 that evening?

19 MS. SHARTON: Objection.

20 Q Just generally how his demeanor was, how?

21 THE COURT: You may tell us his demeanor. I thought  
22 we had already gotten that.

23 A His demeanor was he was very upset.

24 Q Was he cooperative?

25 A Very cooperative. He answered every question asked.

1 Q Did you have occasion to appear at the premises the  
2 following day?

3 A Yes, I did.

4 Q Roughly how long between what period of time were you  
5 there?

6 A That was also at night. I would say it was maybe 6:30 to  
7 about 9:30, 6:30 to 8:30, thereabouts.

8 Q Were investigators present?

9 A Yes.

10 Q Or questioning of Shay, Sr. in your presence?

11 A Yes.

12 Q Would you describe how he responded to that question  
13 please, generally?

14 A He answered every question.

15 Q The same question with respect to the following day,  
16 Wednesday?

17 A I was there on Wednesday.

18 Q Investigators again question Shay, Sr.

19 A Yes.

20 Q How to respond to the questioning?

21 A He answered every question.

22 Q Now, on Thursday, the 31st, Halloween night?

23 A Yes.

24 Q You're again at the premises?

25 A I arrived at the premises around midnight so it might

1 actually have been the first, but, yes, that evening.

2 Q Did you offer to come to the premises?

3 A No. I was called at home at quarter past 11, and I was  
4 asked to go there.

5 Q And when you got there, did you at any time see Shay, Sr.  
6 take the telephone call?

7 A Yes, I did.

8 Q Is it your understanding as to whom we spoke with on the  
9 telephone?

10 THE COURT: You may answer that yes or no, but no  
11 more than that.

12 A Yes.

13 Q How did you -- what was the -- strike that. How did you  
14 come to the understanding of who the party on the other line  
15 was?

16 MS. SHARTON: Objection.

17 THE COURT: I don't know how he can tell us who it  
18 was, so I don't know why we're proceeding with it.

19 MR. LIBBY: I'll move on.

20 Q How long did you stay there that evening, Mr. Pransky?

21 A About two and a half hours.

22 Q Did you hear Shay, Sr. speaking into the telephone?

23 A Yes, I did.

24 Q Would you tell us, please, how long he was on the  
25 telephone?

1 A About three minutes.

2 Q What was he saying?

3 MS. SHARTON: Objection.

4 THE COURT: Objection sustained.

5 Q As you left 39 Eastbourne that evening, Mr. Pransky, did  
6 you speak with anyone?

7 A Yes, I did.

8 Q With whom did you speak?

9 A Officers of the Boston homicide squad.

10 Q What did you tell him on that occasion?

11 MS. SHARTON: Objection.

12 MR. LIBBY: This is the investigators now, your  
13 Honor.

14 THE COURT: I know, but I frankly am not sure where  
15 we're going. Is this the way of getting that conversation  
16 into evidence.

17 MR. LIBBY: No, it is not, your Honor. I'm not  
18 asking him to restate the telephone conversation was, but --

19 THE COURT: What's the relevance of this?

20 MR. LIBBY: This has to do with what then came to the  
21 attention of the investigators on that hour on the evening of  
22 the 31st of November, now, with respect to the tact of the  
23 investigation.

24 MS. SHARTON: I think we can get that from the  
25 investigators, your Honor.

1 MR. LIBBY: Actually, no, your Honor, it has to do  
2 with --

3 THE COURT: Does it have to do with this conversation  
4 with Mr. Shay, Jr.

5 MR. LIBBY: Yes.

6 THE COURT: He may tell us that.

7 MR. LIBBY: Thank you, your Honor.

8 THE COURT: You may tell us what you told them you  
9 had told Mr. Shay, Jr., but you cannot tell us if you  
10 mentioned what Shay, Jr. may have said to you.

11 A I asked them if they could get me a cup of coffee and  
12 they took me down to the station where I told them about my  
13 conversation on the 13th when I was driving Shay, Jr. home  
14 from the deposition.

15 Q And at that time you considered that conversation in  
16 context --

17 THE COURT: This consideration of that is irrelevant  
18 in this case.

19 MR. LIBBY: I have nothing further, your Honor.

20 THE COURT: Ms. Sharton, you can cross-examine.  
21 Hopefully within ten minutes you can be completed.

22 MS. SHARTON: I'll do my best.  
23  
24  
25

Cross-examination by Ms. Sharton

Q Good afternoon, Mr. Pransky. My name is Brenda Sharton. I represent Mr. Trenkler. You have had an attorney client relationship with Shay, Sr. since 1989?

A Yes.

Q And you represented him in the Dedham Service Center lawsuit?

A Yes.

Q And also in a second lawsuit regarding the Dedham Service Center incident?

A Yes, the small claims --

Q And you told us that the Dedham Service Center lawsuit was about someone putting a quarter stick of dynamite in a barrel and exploding it near Shay, Sr.?

A Yes.

Q Okay. Now, you made the allegation in the complaint that Jeffrey Berry; is that what you told us, did this?

A In the complaint, it was stated that Jeffrey Berry was the one who actually put the firecracker in the barrel.

Q Okay. And the lawsuit was against Berry and Giamarco and their real estate corporation that held the garage; is that right?

A Yes.

Q Now, Mr. Pransky, you've been an attorney since 1978, is that right?

1 A Yes.

2 Q And it's your practice to keep a client informed about  
3 the status of the case; is that right?

4 A Yes.

5 Q And in fact you have a duty to do that?

6 A Yes.

7 Q You copy a client on all the correspondence in the  
8 lawsuit?

9 A My office routinely sends copies of all correspondence  
10 both in and out of the office to the client.

11 Q All the papers filed in court go with the client?

12 A Anything I receive in the mail is routinely sent to the  
13 client or I think mailed out routinely to the client.

14 Q In the two years you represented Shay, Sr. you did just  
15 that, isn't that right?

16 A Yes.

17 Q And you kept him up-to-date regularly about the suit?

18 A Whenever mail went in or out copies were sent in.

19 Q And Mr. Shay, Sr. was very interested in the outcome of  
20 the suit, wouldn't you say?

21 A I think that would be the attorney-client privilege.

22 Q Would you tell the jury, please, what the attorney-client  
23 privilege is, I don't think we got into that?

24 A The attorney-client privilege is that any private  
25 communications or confidences or secrets of a client that are

1       communicated to an attorney cannot be revealed without the  
2       client's permission.

3       Q     All right. Now, during the two years that you  
4       represented Shay, Sr. you were negotiating with the  
5       defendants, the Berry Giamarco, their insurance company?

6       A     No, the insurance company was not interested in  
7       negotiating during that period.

8       Q     In fact, they weren't responding; they weren't interested  
9       in settling the case, is that fair to say?

10      A     They weren't interested in litigating the case.

11      Q     And by October of 1991, you would say that the insurance  
12      company had refused to negotiate?

13      A     They were not negotiating at that time.

14      Q     And by October of 1991, the Dedham Service Center lawsuit  
15      was getting very active, wouldn't you say?

16      A     I don't know what "very active" means.

17      Q     Well, there were a number of defendants, doctors and  
18      other defendant experts who had filed affidavits with the  
19      court; is that right?

20      A     Not in October, prior to that time affidavits had been  
21      filed.

22      Q     Sometime prior to October, Shay, Jr.'s deposition had  
23      been taken?

24      A     September 13.

25      Q     And your deposition had been taken, you told us?

1 A September 13th.

2 Q And the psychologist who Shay, Sr. had been seeing had  
3 his deposition taken on October 23rd, is that right?

4 A The doctor had been deposed; I'm not certain of the day.

5 Q And indeed, the deposition of Shay, Sr.'s hearing doctor,  
6 the guy that was going to testify about his hearing loss was  
7 scheduled for October 28th, 1991?

8 A It was taken on that day, yes.

9 Q And finally Shay, Sr. had been deposed once already by  
10 the fall of 1991?

11 A Yes.

12 Q And at that point in October of 1991 you knew pretty much  
13 what this Dedham Service Center lawsuit?

14 A Yes.

15 Q And the defendants were claiming that Shay, Sr. was  
16 essentially faking these injuries?

17 A Yes.

18 Q Now, sir, wouldn't you say that if Shay, Sr. had some  
19 proof that Berry and Giamarco were trying to hurt him again  
20 that would certainly help the lawsuit negotiation?

21 A No.

22 Q That lawsuit hinged on Shay, Sr.'s credibility, didn't  
23 it?

24 A I think that's going into the attorney-work-product  
25 privilege.

1 Q I'll move on. Sir, Shay, Jr. himself was a witness to  
2 this 1987 explosion, wasn't he?

3 A Yes, he was.

4 Q And in fact, you had told him at one point that he,  
5 himself, could be a plaintiff in this lawsuit; is that right?

6 A Yes.

7 Q And he wasn't a plaintiff, was he?

8 A No.

9 Q And you testified -- I don't know if you told us this --  
10 that Shay, Jr. had been scheduled for a deposition a number of  
11 times, is that right, before he finally showed up?

12 A He had been scheduled for a deposition sometime earlier  
13 than that. That had been cancelled. There had been attempts  
14 at scheduling his deposition again, but it never actually got  
15 scheduled until the 13th of September.

16 Q You had told Shay, Jr. at some point that it was  
17 important for his father's lawsuit for the deposition to be  
18 taken; isn't that right?

19 A I believe so.

20 Q He was one of the witnesses?

21 A Yes.

22 Q And in fact to get him to this deposition, you physically  
23 went and picked him up --

24 A Yes.

25 Q -- to go over there himself, right?

1 A Yes.

2 Q And you did that in order to make sure that he would come  
3 in the deposition, isn't that true?

4 A I did that because he said he had no other way of  
5 transporting himself to the deposition.

6 Q Now, sir, you told us there was 3- or 400,000 insurance  
7 available for the defendants?

8 A Yes.

9 Q That's just the insurance that you uncovered that the  
10 defendant has; isn't that right?

11 A Yes.

12 Q It has nothing to do with the lawsuit?

13 A That's correct.

14 Q In fact, this lawsuit was definitely worth quite a bit  
15 less than that?

16 A I'm not sure what you mean by that.

17 Q Well, the lawsuit certainly didn't settle for 3- or  
18 400,000 dollars, is that right?

19 A The terms of the Superior Court, I cannot comment on that  
20 without a direction of the judge.

21 THE COURT: The judge had already directed, and I  
22 understand from the other judge that he gave no such  
23 direction.

24 (Laughter.)

25 THE COURT: That's what you get from connubial

1 federalists.

2 THE WITNESS: I understand, your Honor, there is a  
3 document that indicates that we need a judge's permission  
4 before we comment on that.

5 MS. SHARTON: It was overruled by a higher authority.

6 Q Mr. Pransky, you heard about the explosion in  
7 approximately 3:45 or four o'clock on October 28th?

8 A Yes.

9 Q You heard about this on the radio?

10 A Yes.

11 Q Now, the first thing you did, sir, was you grabbed the  
12 Dedham Service Center file and you hot footed over to Shay,  
13 Sr.'s house, right?

14 A No.

15 Q You grabbed the Dedham Service Center file?

16 A Yes.

17 Q And you were over at Shay, Sr.'s house by about 6  
18 o'clock?

19 A Yes.

20 Q Did he ask you to come over there, he called you up and  
21 told you to come over; isn't that right?

22 A No.

23 Q You went on your own, you just heard about the explosion,  
24 you grabbed the file and you went over there?

25 A No.

1 Q Now, you thought, you grabbed, your first thought, sir,  
2 one of your first thoughts is these two incidents must be  
3 connected; isn't that true?

4 A No.

5 Q You didn't think they would be connected at all?

6 A My first thought was to find out if Tom was all right,  
7 and find out what happened.

8 Q And to find he was okay, you took the Dedham Service  
9 Center file and find --

10 A I was asked to do that.

11 Q Now, when you got there, I'm talking about Shay, Sr.'s  
12 house on October 28th, the police were there; is that right?

13 A Yes.

14 Q And in fact, sir, you spoke with them at length about  
15 this Dedham Service Center lawsuit?

16 A Yes.

17 Q And you told him all about it, this prior explosion in  
18 1987, correct?

19 A I answered all their questions, yes.

20 Q And you showed him parts of your file, understanding you  
21 showed him the parts that weren't covered by the  
22 attorney-client privilege?

23 A Yes.

24 Q And you, you showed them copies of the depositions from  
25 different witnesses?

1 A Yes.

2 Q And you showed them photographs of the Dedham Service  
3 Center premises?

4 A Yes.

5 Q Now, when you got to, I think you told us on, during your  
6 direct testimony that you were still representing Mr. Shay,  
7 Sr. in October of 1991; is that right?

8 A We still have an attorney-client privilege. I was no  
9 longer the attorney of record.

10 Q You considered it of your client, though; is that right?

11 A Yes.

12 Q And you considered yourself an advisor with respect to  
13 this 1991 something, an advisor to Mr. Shay, Sr.

14 A When I arrived there or later in the evening.

15 Q Well, sometime by the 28th, you considered yourself, by  
16 the evening of the 28th, you considered yourself an advisor?

17 A By the end of the evening, I was representing him in  
18 regard to that matter, yes.

19 Q And you understood he was a suspect?

20 A Yes.

21 THE COURT: Are you about done?

22 MS. SHARTON: About ten minutes I would say.

23 THE COURT: I'm afraid we'll have to suspend until 9  
24 o'clock tomorrow morning.

25 Members of the jury, we will resume at 9 o'clock

1 tomorrow. We will not be delayed in our proceedings tomorrow,  
2 and I will remind you of the usual admonition. Leave your  
3 notebooks on your chair and we will collect those.

4 [Whereupon, the jury left the courtroom.]

5 THE COURT: Do I understand that I am to get more  
6 authorities of various of these issues?

7 MR. LIBBY: Yes, your Honor. Hopefully this  
8 afternoon if not by the first thing tomorrow morning.

9 THE COURT: All right.

10 [Whereupon the jury trial adjourned at 1 o'clock to  
11 be reconvened on November 4th, 1993 at 9 a.m.]  
12

13 **CERTIFICATE**

14 We certify that the foregoing is a correct  
15 transcription of our computer-aided stenographic notes of the  
16 proceedings in the above-entitled matter.

17 \_\_\_\_\_ James E. McLaughlin  
18

19 \_\_\_\_\_  
20 Laura K. S. Walker  
21

22

23

24

25

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Miller Thomas, sworn (by Mr. Libby)	36			
(by Mr. Lopez)		81		
Wayne Armbrister, sworn (by Mr. Kelly)	84			
(by Mr. Segal)		100		
Robert Evans, sworn (by Mr. Libby)	109			
(by Mr. Segal)		126		
Alan Pransky, sworn (by Mr. Libby)	131			
(by Ms. Sharton)		145		

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
54,55	(See Clerk's Notes.)		62

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CR 92-10369-Z

ZOBEL, D. J.

UNITED STATES OF AMERICA

v.

ALFRED TRENKLER

Ninth Day of Trial

APPEARANCES:

For the Government:

Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

For the Defendant:

Terry Philip Segal, Esq., Scott Lopez, Esq.,  
and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
210 Commercial Street, Boston, MA. 02109.

Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

November 4, 1993

Computer-Aided Transcription

P R O C E E D I N G S

THE COURT: Please be seated.

I received the Government's additional submission and cases last night. I assume that the defendants looked under the door and got their copy.

MR. SEGAL: We did get it last night. We have something to submit. We're just making copies on the machine of a couple of key cases because our machine was down this morning. We'll have them in two minutes, your Honor.

THE COURT: Well, I've looked at the Government's cases, and I don't think that they stand for the proposition for which the Government is offering them.

Let me review where I think we are.

The Government has offered a series of statements by Mr. Shay against Mr. Trenkler to the extent that those statements implicate only Mr. Shay and are admissible either because they are not hearsay or because they fit within an exception to the hearsay rule. I have admitted them, and I will continue to admit them.

To the extent that those statements implicate Mr. Trenkler by name, for example, Mr. Plant mentioned Mr. Trenkler at some point, the Government concedes that they are not admissible against Mr. Trenkler, under Bruton.

To the extent that those statements implicate another

1 unnamed person, the Government offers them, citing Richardson  
2 and Marsh, and a series of Second Circuit series cases;  
3 however, those cases as I read them do not stand for the  
4 proposition that one defendant's confession may be admitted  
5 against the co-defendant. Indeed, Richardson holds only  
6 that --

7 Hold them for just a moment, please.

8 -- that in a joint trial, the confession in that  
9 case of Mr. Williams could be offered against Mr. Williams  
10 with appropriate limiting instructions telling the jury not to  
11 use them against Ms. Marsh. It does not hold that  
12 Mr. Williams' confession could be used against Ms. Marsh. It  
13 just doesn't hold that. Had Mr. Shay and Mr. Trenkler been  
14 tried together, Richardson would require the admission of  
15 Mr. Shay's statement in that joint trial, properly redacted  
16 and subject to limiting instructions. We would then have the  
17 Alverado case in the Second Circuit. However, the defendants  
18 here were tried separately because the Government agreed with  
19 defense counsel's motion for severance. Separate trials were  
20 not the choice of the Court, nor were they ordered by the  
21 Court. There was a motion, and the Government agreed there  
22 should be separate trials.

23 So what we now have is the Government, in the case of  
24 Mr. Trenkler, offering against Mr. Trenkler Mr. Shay's  
25 confession, and none of the cases that the Government has

1 given me allow that. So that's where we are.

2 MR. KELLY: Well, your Honor, if I could just make  
3 some inquiries. I mean, none of these cases, as I read these  
4 cases that I've provided to the Court, rule out what the  
5 Government is proposing.

6 THE COURT: They're all joint trials. Every one of  
7 those cases you cited are cases in which two defendants were  
8 tried together, and the confession of one was offered against  
9 the confessor and subject to limiting instructions. That is  
10 not what the Government is trying to do here. It is trying to  
11 offer the statements of the confessor against the  
12 co-defendant. And you cite me one case that you gave in which  
13 the confession was admitted against the co-defendant. There  
14 isn't one.

15 MR. KELLY: Your Honor, we are offering these  
16 statements as relevant to the Count 1 conspiracy.

17 THE COURT: It doesn't matter. You are offering a  
18 statement by one defendant against the other defendant, and  
19 that is simply not what Richardson says has been done.  
20 Indeed, I don't remember whether it was Richardson or  
21 Williams, there is reference to the fact that the prosecution  
22 admonished the jury that they could use the confession only  
23 against the confessor and not against the co-defendant.

24 MR. KELLY: Your Honor, we had precisely the reverse  
25 of this situation in the first of the two severed trials. In

1 the first of the two severed trials --

2 THE COURT: You did not in that trial offer a  
3 statement by Mr. Trenkler that said Mr. Shay did it. What you  
4 are now offering is statements by Mr. Shay that somebody else  
5 did something. And that is precisely what Bruton doesn't  
6 allow, and it is not allowed by Richardson and Marsh. With  
7 all respect, the fatal mistake here is not to try the  
8 defendants together.

9 MR. KELLY: Well, I don't know if I agree with that  
10 statement, your Honor.

11 THE COURT: Well --

12 MR. KELLY: There's a series of problems here. Let  
13 me confer with Mr. Libby.

14 THE COURT: Well, I mean, you know, look at the  
15 cases. I do believe -- I have read them. I do believe that  
16 my analysis is correct. There isn't one that says that  
17 Mr. Shay's statements implicating Mr. Trenkler, whether by  
18 name or otherwise, can be used against Mr. Trenkler, not a one  
19 says that.

20 Can we finish with Mr. Pransky?

21 MR. KELLY: Yes, your Honor. Your Honor, there's  
22 another matter I wanted to raise to the Court. Just a  
23 second.

24 THE COURT: The jury is right outside.

25 MR. KELLY: Oh, they're right outside?

1 THE COURT: They're right outside.

2 MR. KELLY: Can we take a break? There is a matter  
3 or two that I wanted to raise with the Court but I won't do it  
4 until a later time.

5 THE COURT: Why don't we finish with Mr. Pransky and  
6 then he can go.

7 So if you would bring the jury in, please.

8 Then if you need to confer, we will have a recess.

9 [Whereupon, the jury entered the courtroom.]

10 THE COURT: Good morning. Please be seated.

11 Mr. Pransky, would you please return to the stand.

12 Alan Pransky, resumed

13 Continued Cross-examination by Ms. Sharton

14 THE COURT: Mr. Pransky, you are still under oath.  
15 Do you understand?

16 THE WITNESS: Yes, I do.

17 THE COURT: Ms. Sharton, you may proceed.

18 MS. SHARTON: Thank you.

19 Q Good morning, Mr. Pransky.

20 On the evening of October 28, 1991 you arrived at the  
21 Shay Sr.'s house about 6 p.m.?

22 A Yes.

23 Q And sometime after you arrived at the house, you told the  
24 homicide detectives about the '87 incident?

25 A Yes.

1 Q And you told them about -- you told the police that this  
2 Berry -- one of the defendants in your lawsuit; right?

3 A Yes.

4 Q You told the police that Berry had experience with  
5 explosives; didn't you?

6 A I don't believe that that was related to the police at  
7 that time. But at some point I did tell the police the  
8 information that he had experience with explosives.

9 Q You talked to the police on the night of October 28th for  
10 approximately a half an hour to 45 minutes?

11 A About the Dedham Service Center case, yes.

12 Q And then you stayed at Shay, Sr.'s house the rest of the  
13 evening; is that right?

14 A About three, three and a half hours.

15 Q Now, Mr. Pransky, you went back to Shay, Sr.'s house on  
16 Tuesday, October 29th; isn't that right?

17 A Yes.

18 Q And the police interviewed Shay, Sr. further?

19 A Yes.

20 Q And, sir, you had concerns on October 28th, 29th, and  
21 30th, that Shay, Sr. was, in fact, a suspect in this case?

22 A It was clear at that point he was a potential suspect,  
23 yes.

24 Q And you were present during all of the interviews of  
25 Shay, Sr. by the police; isn't that right?

1 A As far as I know, yes.

2 Q And, in fact, at some point, sir, during the week of  
3 October 28th, you even took a ride in an automobile to retrace  
4 Shay, Sr.'s steps on October 27th?

5 A Not that week, but it was a Sunday morning. I believe it  
6 was the second Sunday after the explosion. We took a ride,  
7 yes.

8 Q And who was present during that car ride?

9 A Tom Shay, myself, there were two police officers in the  
10 car that I was in, and there was another car following, and  
11 there were at least two police officers in there. There may  
12 have been more.

13 Q Sir, you were representing Shay, Sr. with regard to, you  
14 know, these interviews with police, wouldn't you say?

15 A Yes.

16 Q And you told us that you represented Shay, Sr. in at  
17 least two actions related to the Dedham Service Center?

18 A Yes.

19 Q And I think you --

20 THE COURT: Could we not have just a repetition of  
21 the direct, please.

22 Q Sir, you were careful when you spoke to the police not to  
23 violate any attorney-client privilege with respect to Shay,  
24 Sr.?

25 A I don't believe that I violated any attorney-client

1 privilege.

2 Q And you certainly couldn't tell the police anything that  
3 Shay, Sr. told you in the context of legal advice?

4 A Could you restate the question?

5 Q You couldn't tell the police things that were covered by  
6 the attorney-client privilege?

7 A Unless I had permission, I could not.

8 Q And you never represented Shay, Jr. at the time; is that  
9 right?

10 A No, I never did.

11 Q So it's fair to say, sir, that we're dealing with the  
12 police, you had problems talking about Shay, Sr., but you  
13 didn't have any problems talking about Shay, Jr.?

14 A If there was a subject that went into the attorney-client  
15 privilege in regards to Shay, Sr., the police could have  
16 requested Shay, Sr. waive that.

17 Q Sir, my question was you had problems talking to the  
18 police about Shay, Sr., but you didn't have problems talking  
19 to the police about Shay, Jr.?

20 A I don't think problem is the appropriate word. I was  
21 bound by the attorney-client privilege with Shay, Sr. I had no  
22 such prohibition with regard to Shay, Jr.

23 Q Do you remember testifying in a prior proceeding in July  
24 of this year?

25 A Yes.

1 Q And you were asked a question, "So in your testimony" --  
2 this is page 16-10 -- "So in your testimony in your dealings  
3 with the police and here, you had problems talking only about  
4 Shay, Sr., but no problems talking about Shay, Jr.; is that  
5 fair to say?"

6 And you answered: "That's fair."

7 Do you remember saying that?

8 A I don't remember those exact words. That may be out of  
9 context. It could have been what I said.

10 Q Mr. Pransky, I've shown you a copy of the transcript from  
11 that proceeding and ask that you read it to yourself.

12 A I've read it.

13 Q Did I read this -- I'll read the question and answer and  
14 ask you if I've read it correctly?

15 A You read it correctly.

16 Q Sir, you were at Shay, Sr.'s house on the evening of  
17 Monday, October 28th for a few hours to testify?

18 A Yes.

19 Q And the police -- the homicide detectives were there  
20 investigating?

21 A Yes.

22 Q And, sir, you were assisting in the investigation to the  
23 extent that you were providing what information you had about  
24 the Dedham Service Center; isn't that right?

25 A Yes.

1 Q And you were there again on Tuesday night; is that right?

2 A Yes.

3 Q How long were you there on Tuesday night?

4 A Two to three hours.

5 Q And, sir, homicide detectives were there Tuesday night as  
6 well; is that right?

7 A Yes.

8 Q And on Wednesday night you were there for how long?

9 A Probably two or three hours.

10 Q And, again, there were police personnel and detectives on  
11 the scene?

12 A Yes.

13 Q And then you were there again Thursday night; is that  
14 right?

15 A Yes.

16 Q I think you said you got there about midnight, you were  
17 there for two to three hours?

18 A I was there from midnight to 2:30.

19 Q Now, sir, you wanted to assist the homicide detectives in  
20 any way that you could; isn't that fair to say?

21 A I wanted to assist the homicide detectives within my  
22 legal bounds.

23 Q You knew this was a serious crime; is that right?

24 A Yes.

25 Q And you are an experienced attorney; is that right?

1 A Yes.

2 Q And, in fact, I think you told us that you even practiced  
3 some criminal law?

4 A Yes.

5 Q And, sir, during the week of October 28th, you racked  
6 your brain, didn't you, to come up with whatever information  
7 you could that might assist the police in solving this crime?

8 A I cooperated with the police within the bounds that I  
9 could. I don't know what you mean by racking my brain.

10 Q Well, within the bounds of what you could repeat I'm  
11 saying. You wanted to provide whatever information you  
12 possibly could to assist the detectives?

13 A Whatever they felt they needed.

14 Q So if they didn't ask you, you didn't tell them; is that  
15 --

16 A If they did not ask and it did not occur to me that it  
17 was relevant, it was not offered at that time.

18 Q And, sir, in fact, it didn't occur to you during the  
19 three hours that you were there on Monday, October 28th, to  
20 tell any of the detectives about the conversation that you had  
21 with Shay, Jr. in September in the car; is that right?

22 A That's correct.

23 Q And it didn't occur to you on Tuesday, October 29th,  
24 during the three hours or so with the homicide detectives to  
25 tell them then; isn't that right?

1 A That's correct.

2 Q And it didn't occur to you on Wednesday night?

3 A That's correct.

4 Q And it didn't occur to you until, in fact, the end of the  
5 time period that you were there on Thursday?

6 A No, it occurred to me in the middle but I chose not to  
7 say anything until--

8 Q That's not what my question was.

9 A It occurred to me then.

10 Q And that's because, sir, your understanding -- strike  
11 that.

12 Your understanding of the conversation with Shay, Jr.  
13 was simply that he was concerned about his father?

14 A That was my opinion at the time.

15 Q Sir, you knew -- strike that.

16 You withdrew as counsel in the Dedham Service Center  
17 suit in September of 1991?

18 A It became effective September 13th, 1991.

19 Q And Mr. Berry, one of the defendants, had made -- he was  
20 one of the people that put the dynamite in the barrel;  
21 correct?

22 A Yes.

23 Q And, in fact, sir, he had made some certain statements to  
24 you; is that right?

25 A Yes.

1 Q And then he was later deposed and made contradictory  
2 statements; isn't that right?

3 A Yes.

4 Q So you had to become a witness in the case?

5 A Yes.

6 Q And that's why you withdrew?

7 A Yes.

8 Q Because Berry had changed his story?

9 A Yes.

10 Q Sir, during his deposition in September of 1991, your  
11 client, Shay, Sr. said that he was almost killed by the  
12 explosion at Dedham Service Center; didn't he?

13 A I don't believe my client was deposed in September of  
14 1991.

15 Q I'm sorry. When your client was deposed, didn't he say  
16 that he was almost killed by an explosion at the Dedham  
17 Service Center?

18 A He may have --

19 THE COURT: What is this being offered for, to  
20 impeach Mr. Shay, Sr.?

21 MS. SHARTON: No, your Honor.

22 THE COURT: Okay.

23 Q Sir, one final question.

24 Sir, Shay, Sr. Also said that the Dedham Service  
25 Center incident had been a premeditated violent act against

1 him; isn't that right?

2 A Yes.

3 MS. SHARTON: Nothing further.

4 MR. KELLY: Nothing, your Honor.

5 THE COURT: Mr. Pransky, you're excused.

6 MR. KELLY: Your Honor, I think we need to see the  
7 Court at the side bar.

8 THE COURT: I'll see you. You may stretch.

9 [conference at the bench, as follows:

10 MR. KELLY: Your Honor, first of all, on two  
11 housekeeping matters. This morning as I was entering the  
12 building, I bumped into one of the jurors. It's the juror --  
13 let me make sure I know who it is.

14 It's the juror, the last alternate No. 4. I also  
15 heard a voice say how are you this morning, and he looked up  
16 and said how are you this morning, and we went our separate  
17 ways.

18 THE COURT: I assume it's sufficiently innocuous, I  
19 need not make inquiry; correct?

20 MR. KELLY: The second thing I have to report is  
21 yesterday morning members of the Hurley family rode up with  
22 another juror. They're not sure which juror. And they just  
23 said hello, how are you this morning, and went their separate  
24 ways. And I just wanted to bring both of those matters to the  
25 Court's attention.

1           THE COURT: I think that's right and I don't think we  
2 need to do anything about it. Mr. Segal nods in agreement and  
3 the record can so reflect.

4           MR. SEGAL: I do, your Honor.

5           MR. LIBBY: Your Honor, if I can be heard briefly on  
6 the Bruton matters so the record is clear here.

7           What the Government is proposing, as the Court knows,  
8 is to admit evidence from witnesses which cuts solely to the  
9 existence of a conspiracy and replacing any names and so forth  
10 with an indefinite pronoun, with the other person, the other  
11 individual. We believe that that's proper to do so even in a  
12 severed case, your Honor. That's by reference to Williams  
13 here, the Second Circuit 1991 case.

14           Williams, in fact, was a joint trial. One of the  
15 issues, one of the claims was a 371 conspiracy. One of the  
16 co-defendant's admissions was allowed, confession was allowed,  
17 and the reference to an existence of another individual was  
18 redacted with an --

19           THE COURT: It was only against the defendant whose  
20 confession it was.

21           MR. LIBBY: I'm not sure that that's clear from the  
22 face of the case, your Honor. In fact, I believe the limiting  
23 instruction had to do with the very concern about Bruton.  
24 That was that the jury was not permitted to take from that  
25 evidence and conclude on the face of the evidence alone that

1 it made any reference to any other particular individual.

2 What I'm suggesting is that for the very same  
3 rationale that the limiting instruction was given in Williams,  
4 assume a limiting instruction can be given here effectively.  
5 Otherwise--

6 THE COURT: I'm going to tell the jury that they  
7 can't use it against this defendant after I admitted it?

8 MR. LIBBY: If your Honor please, we have to show,  
9 the first element in our 371 conspiracy that a conspiracy  
10 existed; this evidence cuts to that.

11 The limiting instruction here, as in Williams, now,  
12 understand in Williams we have one co-defendant's confession,  
13 not just one confession inculcating himself, but further  
14 evidence, statement cutting towards the existence of another  
15 individual.

16 THE COURT: We had a co-defendant who also confessed.

17 MR. LIBBY: And I believe that the limiting  
18 instruction in that case, your Honor, wasn't simply that it  
19 could only be directed towards the confessor co-defendant, but  
20 also it is certainly relevant to the existence of the  
21 conspiracy. And we would argue in this case the confrontation  
22 clause, the Bruton issues are satisfied with a similar  
23 instruction that it's admissible as to the existence of the  
24 conspiracy but in no way can be used to identify that the jury  
25 on its the face or on the face of the statement that's

1 Richardson Williams' concern, to point out any particular  
2 individual. That's going to come through other evidence, your  
3 Honor, by other forensic evidence and so forth which the jury  
4 can link up.

5 THE COURT: My ruling is not based on relevance. I  
6 have no doubt that it is relevant. But if you look at  
7 Richardson at page 200, quote, during his closing argument the  
8 prosecutor admonished the jury not to use Williams' confession  
9 against the respondent. That's the law in these cases.

10 MR. LIBBY: Williams is way beyond that, your Honor.

11 THE COURT: Williams is relying on footnote 2 allowed  
12 -- in Richardson they didn't mention anything about any  
13 co-defendant. In Williams they allowed mention of an unnamed  
14 co-defendant.

15 MR. LIBBY: That's right.

16 THE COURT: There were are two limiting instructions  
17 saying use it only against the guy who said so.

18 MR. LIBBY: Well, I don't know that that -- your  
19 Honor, I'm looking at Williams and I can't see that that's  
20 specifically laid out, that precise limiting instruction is  
21 laid out.

22 It seems to me, your Honor, Mr. Kelly and I, that the  
23 rationale underlying the limiting instruction applies equally  
24 here, that is, the concern is that if the jury can't look to  
25 that bit of evidence and point out a particular person. Okay,

1     that's the concern.

2             THE COURT:  No, that's not the concern.  I mean, the  
3     concern -- that's part of the concern but it's not the entire  
4     concern.

5             MR. LIBBY:  And it's not being offered for that.  
6     It's being offered for the existence of a conspiracy.

7             THE COURT:  I understand that but against this  
8     defendant.

9             MR. LIBBY:  Exactly.  And that brings us back to the  
10    Shay trial where your Honor understood the difference between  
11    offered against somebody and implicating somebody.  And that's  
12    where the protection of Williams comes in.

13            THE COURT:  There was no evidence offered in the Shay  
14    trial that by -- in which Mr. Trenkler said I was involved  
15    with somebody else.

16            MR. LIBBY:  I agree.

17            THE COURT:  Nothing.

18            MR. LIBBY:  I agree.

19            THE COURT:  And that's precisely what you're  
20    offering.  The Shay trial is wholly in opposite to this as  
21    well.

22            MR. LIBBY:  Well, what I'm suggesting, your Honor, is  
23    that the protection is afforded under Williams --

24            THE COURT:  Indeed, to the extent that I wouldn't  
25    allow the 1986 bombing in the Shay trial, it was somewhat of

1 the same concern.

2 MR. LIBBY: Well, we argued otherwise, your Honor.  
3 Pacerella it says you cut to the existence of the conspiracy  
4 as well.

5 And the Court's concern here is Bruton and  
6 confrontation, that's the same rationale that applies in  
7 Williams here applies equally here. The limiting instruction  
8 can be you cannot accept this evidence to prove anything about  
9 this particular defendant. We have to first show that  
10 Mr. Shay was involved with someone else.

11 THE COURT: According to Williams, as noted,  
12 Richardson stated that where linkage to other evidence is  
13 necessary to connect the defendant to the crime described in a  
14 co-defendant's confession, the likelihood that a jury will  
15 disregard such a limiting instruction is less than in the case  
16 such as Bruton where the defendant's confession directly and  
17 expressly implicated the defendant.

18 They talk about limiting instructions there.

19 MR. LIBBY: They do. In fact, that supports our  
20 position, your Honor. What this is saying is --

21 THE COURT: What's the limiting instruction? You say  
22 use it against Shay only on trial.

23 MR. LIBBY: No, use it for the purpose solely to the  
24 existence of the conspiracy.

25 THE COURT: It's being offered against the defendant.

1           MR. LIBBY: It's being offered against this defendant  
2 to show the existence of the conspiracy. The evidence as to  
3 linking that particular defendant to the conspiracy comes  
4 elsewhere.

5           THE COURT: There are two questions here. One of  
6 them is relevance and I have no doubt that it is relevant.

7           MR. LIBBY: Right.

8           THE COURT: The other question is admissibility under  
9 Bruton, Richardson and Marsh and all the cases that follow.  
10 And I do not understand that the fact that it is relevant to  
11 prove a conspiracy gets you over the hump under Richardson.

12           MR. LIBBY: Well, you talk about -- the Court's  
13 concern as I understand it is we have a severed trial here as  
14 opposed to the joint trials here. It's my understanding that  
15 Williams --

16           THE COURT: I mention that only because I do not want  
17 to be put in the position of being the dirty bird and cause  
18 this case to misfire because it is not the Court's doing if  
19 that happens.

20           MR. LIBBY: Absolutely clear, no argument on that.

21           But in the Williams joint case, what I'm suggesting,  
22 your Honor, and just as you read here, there's less concern  
23 about the jury disregarding.

24           We have in a joint case, the evidence is being  
25 offered against, we would suggest, the confessor co-defendant

1 and the redaction and the indefinite pronoun and so forth,  
2 both as to his guilt and the existence of the conspiracy  
3 because it's a 371 case. It does double duty in that case.

4 THE COURT: It wasn't offered against Williams. It  
5 was McKinsey's confession offered against McKinsey. And  
6 Williams confession was offered against Williams.

7 MR. LIBBY: Well, I'm not sure -- there's no  
8 reference as to the exact language of the limiting  
9 instruction, your Honor.

10 THE COURT: That's certainly true. And looking at  
11 the case, relying upon Richardson and Marsh, that's exactly  
12 what happened.

13 MR. LIBBY: But it seems to me, your Honor --

14 MR. KELLY: We're offering the statements of Shay  
15 against Shay, the same way we offered his statements that have  
16 come in through Mr. Evans.

17 THE COURT: I'm sorry?

18 MR. KELLY: We are offering those statements  
19 literally against Shay.

20 THE COURT: Shay isn't on trial.

21 MR. KELLY: But we have to demonstrate that he was  
22 involved in this criminal conduct.

23 THE COURT: I understand that, but he isn't on trial,  
24 so there is nothing to offer against him. He isn't the  
25 defendant.

1           MR. KELLY: But the point of the limiting instruction  
2 is the instruction should be something to the effect, look,  
3 ladies and gentlemen, this is being offered only on the  
4 question of Mr. Shay's involvement. You are to draw --

5           THE COURT: But against this defendant.

6           MR. KELLY: No, because the instruction is you are to  
7 draw no inference whatsoever to any other person, specifically  
8 this defendant, there is no other purpose.

9           THE COURT: What is it for?

10          MR. LIBBY: It's the existence of Mr. Shay  
11 involvement with Trenkler.

12          THE COURT: But it's against Trenkler.

13          MR. KELLY: It's being offered to show that Mr. Shay  
14 did not act -- he acted with another person.

15          THE COURT: But it's being offered against the  
16 defendant on trial who cannot cross-examine the alleged  
17 coconspirator.

18          MR. KELLY: It's the one Mr. Libby was trying to  
19 point out. There's a difference between offered against and  
20 implicating. It in no manner implicates this defendant.

21          THE COURT: It does.

22          MR. LIBBY: Your Honor, on its face, we are prepared  
23 to show, your Honor, every one of these statements on its face  
24 purports with Williams. It does not point the finger on its  
25 face to any particular person at all in context, yes, but

1     that's what Williams permits.

2             THE COURT: Permits it in the joint trial.

3             MR. LIBBY: Well, we disagree, your Honor, because we  
4     have to show, the existence of the conspiracy.

5             THE COURT: Now, one of these cases was a separate  
6     trial in which one co-defendant's confession was offered  
7     against another co-defendant.

8             MR. LIBBY: And the concern here, the problem here is  
9     that there isn't recitation verbatim of what the limiting  
10    instruction was. We say that you comport with Williams,  
11    Richardson instruction. If you give the limiting instruction  
12    to the jury, that the evidence simply cuts to the existence of  
13    the conspiracy, nothing else.

14            THE COURT: That's against this defendant who cannot  
15    cross-examine on the co-defendant's statements.

16            MR. LIBBY: I understand that, your Honor. That's  
17    what Williams says. So long as you redact it and leave the  
18    indefinite pronoun, it doesn't point the finger at him.

19            THE COURT: I'm sorry. I don't read it the way you  
20    do. I'm sorry, I don't. I don't believe that these cases  
21    stand for the proposition for which you put them. I tell you,  
22    I was unaware of Richardson and Marsh until you brought it to  
23    my attention.

24            Were we now on trial with both defendants, I have no  
25    question that under Richardson and Marsh these statements

1 would be admissible with an instruction to the jury to use  
2 them only against Mr. Shay and not against Mr. Trenkler even  
3 though the jury might very well do just that. But in a  
4 separate trial where you're offering the statements of  
5 Mr. Shay against Mr. Trenkler, relevant though they may be,  
6 they are simply not admissible because the limiting  
7 instruction that you're asking for would simply say use them  
8 only on one issue in the case but not against one defendant,  
9 which is what this called for.

10 MR. LIBBY: May I just make one last stab at this,  
11 your Honor. I understand the way your Honor is inclined.

12 In the Williams case, the evidence was not just  
13 simply the confession, I was involved; but there was a second  
14 piece of information, somebody else was involved. And they  
15 redacted it so as to indicate somebody else was involved. The  
16 evidence was clearly admissible only as against him.

17 The other evidence somebody else was involved had to  
18 cut to the 371 -- had to cut to the conspiracy count. And  
19 that's where the limiting instruction came in. Your Honor,  
20 the same scenario holds true in a severed case as to that  
21 piece of information, that piece of evidence. There's two  
22 pieces that come in, one against me and one if there's  
23 somebody else involved. The rationale absolutely applies  
24 equally in a separate case. It has to. That other piece of  
25 evidence has to cut to the 371 and the limiting instruction in

1 a joint case has equally applicability in the severed case,  
2 your Honor, respectively, under Williams.

3 THE COURT: I don't read it that way.

4 Who is the next witness?

5 MR. KELLY: Let me suggest the terms of procedure.  
6 We will defer on this WLVI videotape case that is.

7 THE COURT: I think there are parts of it admissible,  
8 there are parts that are without question admissible in this  
9 case as well.

10 MR. KELLY: We may want to see it outside the  
11 presence of the jury so we don't have a problem before we  
12 actually use it. What I was going to suggest is the  
13 following: I would call Mr. Plant. I would ask the Court for  
14 leeway in leading him so I can maintain within the Court's  
15 ruling, as I understand it, and I do understand it.

16 THE COURT: And there is a lot by Mr. Plant that says  
17 by Mr. Shay that he did this, and I would allow that.

18 MR. KELLY: Right. And I would call other witnesses  
19 and we would avoid this issue.

20 If we are able to find a case which is a severed  
21 situation, your Honor --

22 THE COURT: By all means, I'm happy to reconsider. I  
23 just simply do not read these cases as permitting what you are  
24 suggesting may be done.

25 MR. KELLY: Thank you, your Honor.

1 MR. SEGAL: Just one point on Mr. Plant so I don't  
2 have to keep getting up and objecting.

3 THE COURT: Your objection is noted to anything that  
4 Mr. Shay says that implicates only himself. And Mr. Plant  
5 will tell us nothing about Mr. Shay having a-- saying somebody  
6 working with somebody else.

7 MR. SEGAL: The objection is basically it's not  
8 against penal interests and it's unreliable and he's a  
9 fruitcake.

10 THE COURT: I will admit --

11 MR. SEGAL: But I don't have to get up every time?

12 THE COURT: No.

13 ... End of conference at the bench.]

14 MR. KELLY: Your Honor, the United States calls Larry  
15 Plant.

16 THE COURT: Is he here?

17 MR. KELLY: Yes, your Honor. He's outside the door.

18 Lawrence Plant, sworn

19 THE CLERK: Please be seated and state your name.

20 THE WITNESS: Lawrence Plant.

21 Direct Examination by Mr. Kelly

22 Q Pull the microphone forward and speak into it.

23 Would you state your name again and spell your last  
24 name for us, sir?

25 A Lawrence Plant, P L A N T.

1 Q And what city or town do you reside in?

2 A I come from Quincy and live in Attleboro.

3 Q And how old a person are you, sir?

4 THE COURT: Excuse me, one second.

5 (Pause.)

6 Q How old a person are you, Mr. Plant?

7 A 38 years old.

8 Q And how far did you go in school, sir?

9 A I have a general equivalency diploma from high school.

10 Q Is that what's known as a GED?

11 A Yes.

12 Q Did you ever serve in the military, Mr. Plant?

13 A Yes, I did.

14 Q What branch, sir?

15 A United States Air Force.

16 Q And during what time frame?

17 A 1972 to 1973.

18 Q Do you recall where you were stationed, please?

19 A I was stationed in various locations of the United States  
20 and went to Taiwan for a short time.

21 Q Are you married or single, Mr. Plant?

22 A I'm currently married.

23 Q Do you have any children?

24 A One daughter.

25 Q How old is your daughter?

1 A She's 16.

2 Q Mr. Plant, I want to spend a couple of minutes talking  
3 about your involvement with the criminal justice system.

4 Are you incarcerated at the present time, Mr. Plant?

5 A No, I'm not.

6 Q Would you describe your present residential situation,  
7 please?

8 A I live in what is known as a sober house in Attleboro  
9 which is a house full of men that are recovering addicts and  
10 alcoholics who have been in recovery for a while living on  
11 their own.

12 Q Now, is it fair to say that you were paroled to this  
13 facility after serving some time in prison?

14 A I was sent as an inmate to a facility called North  
15 Cottage down in Norton, Mass. as an inmate. And while an  
16 inmate there, I was given parole, granted parole. I finished  
17 up my time. I finished up my rehabilitation time there last  
18 week which is a six-month commitment on my part. And I  
19 graduated that facility and moved on my own to where I am  
20 today.

21 Q When were you first incarcerated for having committed a  
22 crime, Mr. Plant?

23 A In March of 1992.

24 Q And what offense were you convicted of at that time, sir?

25 A At that time it was larceny by check.

1 Q And that particular offense of larceny by check had  
2 occurred at an early time, approximately 1988; is that  
3 correct?

4 A Yes.

5 Q What prison term were you given by the Court for that  
6 violation, sir?

7 A For that one I was given three months at the house of  
8 correction.

9 Q And were you released thereafter after March of '92?

10 A Yes, I was. I served the full three months and was  
11 released.

12 Q And after you were released did you run into further  
13 difficulties with the law, Mr. Plant?

14 A Yes, I did. I was arrested subsequently in the fall for  
15 ordering false prescriptions.

16 Q Would you describe for us, Mr. Plant, the underlying  
17 circumstances of this offense of uttering false prescriptions?

18 A As a drug addict, I thought it would be easier for me and  
19 less costly for me to alter prescriptions to get the drugs I  
20 needed. At the time I was an active heroin addict and the  
21 drug I used was opium. And I could get that from pharmacies  
22 in the form of Percocet and Dilautid and so on so I would  
23 alter doctor's prescriptions and go to pharmacies and get the  
24 drugs.

25 Q These are what are known as false scripts?

1 A Yes.

2 Q And when were you sentenced for these false scripts or  
3 uttering false scripts and charges, Mr. Plant?

4 A I was actually sentenced-- the first sentence was  
5 December 3rd, 1992.

6 Q And what sentence were you given for these violations,  
7 Mr. Plant?

8 A 15 months in the house of correction.

9 Q Now, just to briefly review your criminal history, sir,  
10 as you've already told us, you had a charge of larceny by  
11 check which dates back to May of 1988; correct?

12 A Yes, sir.

13 Q And then in March of 1992 you were charged with credit  
14 card misuse; is that fair?

15 A Yes.

16 Q And what did that involve, sir?

17 A That involved -- I had a credit card I, applied for a  
18 credit card knowing that I couldn't pay for it and I obtained  
19 it and I used it and subsequently never paid for it and was  
20 charged for misuse.

21 Q And then in August you were charged with these uttering  
22 of false prescription charges?

23 A Yes.

24 Q And then you had some additional uttering of false  
25 prescription charges in October of 1992; is that correct?

1 A Yes. The dates are becoming to become a little bit  
2 sketchy for me because time is passing, but from August  
3 through the time I was in jail actually I was being charged  
4 with further prescription charges. Because of the nature of  
5 the crime, once they found out I was doing it, they can go to  
6 various pharmacies and see others I had done and come and  
7 charge me with it.

8 Q But they wrapped together a number of your charges when  
9 you were sentenced?

10 A Yes, they did.

11 Q In giving this 15-month term?

12 A Yes, they did.

13 Q Now, Mr. Plant, had you ever been charged or convicted of  
14 any crimes of violence, sir?

15 A No, none.

16 Q Have you ever been charged or convicted with any crimes  
17 more serious than the crimes that you just described for us?

18 A No, I haven't.

19 Q And I think, as you've already told us, Mr. Plant, you  
20 have a drug or an alcohol problem that in some manner  
21 contributes to your problems with the law?

22 A I would say it was my problem with the law.

23 Q And how long have you had this drug problem, Mr. Plant?

24 A All of my adult life, most of my adolescence.

25 Q And what drug or drugs have you been addicted to, sir?

1 A I've done almost every drug there is, but the one that  
2 I'm -- the drug of choice became opium in the form of heroin.

3 Q How at all did your military service effect your drug  
4 problems?

5 A Well, back in the early '70s in the military drugs were  
6 very tolerant. And where I was stationed they were widely  
7 used. And the short time that I was overseas, that was where  
8 my drug addiction really took off. I wouldn't say I began it  
9 there because but I really found it easy to do there. And I  
10 continued obviously when I got home.

11 Q You were stationed in Thailand?

12 A Yes.

13 Q Have you ever been employed, Mr. Plant?

14 A Yes, I have.

15 Q What kind of work have you done?

16 A When I was younger I did construction work, and  
17 eventually I moved into the garment industry, in the uniform  
18 end of the garment industry. And I had a fairly successful  
19 career for some time as a designer in the uniform industry. I  
20 would make up the outfits for hotels and resorts around the  
21 country.

22 Q How long have you been involved in that field, sir?

23 A Since 1978 I believe, initially up until 1990 when my  
24 addiction really stopped that.

25 Q Two other final questions on the drug addiction.

1           Have you gone through any drug treatment or  
2           rehabilitation for your problem, Mr. Plant?

3           A     Yes, I have.

4           Q     Could you describe it briefly for us?

5           A     Well, when I was in jail, I applied for and was granted  
6           the substance abuse module which I spent -- I'm not sure, your  
7           Honor -- I think about four and a half, five months in there,  
8           which I graduated. After that I was sent to their prerelease  
9           center and I waited a bed at the North Cottage program down in  
10          Norton, Massachusetts. It's a highly respected drug and  
11          alcohol rehabilitation program with people with a chronic  
12          addiction.

13                 I went there and I went through their intensive  
14          treatment program which lasted almost 90 days. When I was  
15          done with that, I went through the halfway house which lasted  
16          the remainder of the six months. And now I voluntarily have  
17          gone, instead of just taking off on to the street myself, I'd  
18          rather be in a sober environment so I've gone to a sober house  
19          from there.

20          Q     And how, Mr. Plant, have you used your past drug  
21          addiction problems to educate others?

22          A     When I initially got sober in jail, I decided that aside  
23          from this that I wanted to do something, at least to feel  
24          better about the things that I had done. And the only thing I  
25          really had to offer was my experience. And the Corrections

1 Department got me involved in their Dare Program. I would go  
2 around the high schools and junior high schools and meetings  
3 and I would speak to the children. And since leaving  
4 Corrections, obviously I can't be involved with that any  
5 longer; but I now go around to detox centers and I speak on a  
6 more anonymous basis but I speak to the people coming in.

7 Q Mr. Plant, I want to direct your attention to mid October  
8 of 1992, and ask you, sir, if you could tell us where you were  
9 at that time?

10 A Plymouth House of Correction.

11 Q And why were you at the Plymouth House of Correction?

12 A I was awaiting trial on the arrest for uttering false  
13 prescriptions.

14 Q While you were at the Plymouth House of Correction in  
15 October 1992, did you meet a person by the name of Thomas  
16 Shay, Jr.?

17 A Yes, I did.

18 Q And over what period of time were you and this Mr. Thomas  
19 Shay, Jr. located together at the same facility?

20 A Totally about two weeks.

21 Q Would you describe for us, sir, the nature and frequency  
22 of your contact with Mr. Thomas Shay, Jr. over that two-week  
23 period?

24 A Initially when I was in the orientation unit, it was  
25 extensive, at first. He sort of took to me and he would come

1 over and talk to me. After we were out in the jail section, I  
2 was over in this section here and he was actually in another  
3 cell backing up to me. And I didn't see that much of him  
4 except in passing.

5 Q Had you ever met this individual prior to this occasion?

6 A No, I hadn't.

7 MR. KELLY: With the Court's permission, may I  
8 approach the witness?

9 THE COURT: Yes.

10 Q I want to show you what has been marked, sir, as --

11 THE COURT: Don't go out that door. It will only  
12 lead to a black hole.

13 Sorry. Go ahead.

14 Q I show you, sir, what has been marked as Government's  
15 Exhibit 55, which is a photo display, Mr. Plant. I would like  
16 to ask you if you would take a look at that photo display and  
17 tell me whether you recognize any of the persons depicted?

18 A It says Tommy.

19 Q And what photograph number is Thomas Shay, Jr.?

20 A 4.

21 MR. KELLY: Your Honor, for the record, may it  
22 indicate that Mr. Plant has correctly identified Mr. Thomas  
23 Shay, Jr.?

24 THE COURT: Yes.

25 Q Now, Mr. Plant, directing your attention to the first

1 time that you had contact with Mr. Shay at the Plymouth House  
2 of Correction, would you tell us where inside the institution  
3 you were?

4 A The orientation unit. It's a unit for people who are  
5 just coming into the unit -- that are coming into the prison,  
6 excuse me, and for other people that are being housed  
7 separately from the prison.

8 Q Describe this location for us, please.

9 A It's a room about as wide as this room and it holds about  
10 16 beds. And it is just one room. The toilet and the shower  
11 and the beds are there and there's a garden side of the unit  
12 where, we never leave there.

13 Q And how many residents are inside that room at any given  
14 time?

15 A Anywhere from 10 to 20. At the time I was it is usually  
16 always full.

17 Q Mr. Plant, describe for us, if you will, your initial  
18 contact and conversation with Mr. Shay at that location.

19 A He came over -- I was not feeling well when I first got  
20 to jail emotionally and physically. And I was just keeping to  
21 myself. I was laying on my bed and he came over and sat next  
22 bed. And he introduced himself as Boomer. And I had no idea  
23 who that was or what that meant and all I knew was just the  
24 way he was talking and I didn't really want to either. And  
25 then he persisted and he said, Don't you know who I am? And I

1     said, No, I don't, and I don't want to. And he said, But I'm  
2     the one who killed the Boston cop.

3             And at that point it started to click as to who he  
4     might be even though it didn't really click. And I just sort  
5     of started to listen rather than trying to push him away.

6     Q     At any point in this initial conversation did he tell you  
7     his name?

8     A     Yes, he did. At some point initially he said, I'm Shay,  
9     don't you know who I am? He kept doing that, because he was a  
10    little upset with me that I didn't know who he was. When he  
11    figured out that I didn't, then he kept going to the point  
12    where he told me his name and he told me what he had done and  
13    so on.

14    Q     Now, following this initial contact, Mr. Plant, did you  
15    have subsequent conversations to Mr. Shay?

16    A     Yes, I did.

17    Q     And was it a series of conversations put together or was  
18    it like a running, evolving conversation?

19    A     It was a series of conversations that were more or less  
20    obviously the same topic. It just seemed to stop and start up  
21    again.

22    Q     Over what period of time?

23    A     A few days in there and then once or twice out in the  
24    actual jail.

25    Q     Now, was anyone else present during this continuing

1 conversation on this one topic other than you and Mr. Shay?

2 A No.

3 THE COURT: May I see counsel for just a moment,  
4 please.

5 [conference at the bench, as follows:

6 THE COURT: I'm looking at the transcript of the  
7 earlier trial. And there's this reference to, he's talking  
8 about how Shay said they did it.

9 MR. KELLY: I'm going to walk him through all this.

10 THE COURT: I don't know if you shouldn't tell him.

11 MR. KELLY: I'm going to take a moment.

12 THE COURT: No, by all means.

13 ... end of conference at the bench.]

14 (Pause.)

15 Q Now, what was the topic area that was focused on between  
16 you and Mr. Shay, just the topic area over these period of  
17 days as you've described?

18 A It was -- there were a couple of different ones as to why  
19 he did what he did, how he did what he did.

20 Q And during the discussion, the conversation on this topic  
21 or the kind of subtopics, would you describe Mr. Shay's  
22 demeanor, his tone, his expression? Do you understand my  
23 question?

24 A Yes, I do.

25 When he was talking to me about specific things that

1     were, what I consider to be important to him, he would talk to  
2     me very quietly, very emotionally and very truthfully. I  
3     mean, he was talking about things that were obviously not  
4     real. He would be excited. He would tend to want the other  
5     people in the unit then to hear that, and he would talk out  
6     loud so that they could hear that.

7     Q     But when he was having this conversation when it was just  
8     the two of you, were you off in some part of this orientation  
9     unit, were you outside the hearing of others?

10    A     Yes, we were. I was -- these always took place pretty  
11    much with me laying in my bed because I was sick. I was just  
12    coming off the street and I didn't get out of that bed for a  
13    number of days. And he would come over and the bed would come  
14    up against the wall, the pillow right up against the wall and  
15    the bed sticking out and he would sit up against the wall  
16    right at the head of the bed. And it was very quiet there.

17    Q     Some of this conversation was in hushed tones is it fair  
18    to say?

19    A     Yes.

20           MR. KELLY: With your Honor's permission, if I could  
21    lead the witness, please?

22           THE COURT: Yes.

23           MR. SEGAL: Your honor, can I make a motion as to the  
24    words "very truthfully," that's a conclusion for another body.

25           THE COURT: No, I will allow it to stand. You may

1 proceed.

2 Q Mr. Plant, I'm going to ask you some questions. If I  
3 state anything that's incorrect, you can stop me and let me  
4 know and I might want to talk to you privately, sir.

5 But is it fair to say, sir, that over the course of  
6 these few days where you had this running conversation that  
7 Mr. Shay told you various things about the Roslindale bombing  
8 that had occurred on October 28th, 1991?

9 A Yes, it is.

10 Q Among the things he told you was that he told you that he  
11 was involved; did he not?

12 A Yes, he did.

13 Q He began this conversation by telling you about how you  
14 could protect yourself in the prison population, how you could  
15 build a bomb, and he gave you an example of how you could take  
16 a light bulb and put either some bleach or some gasoline into  
17 the light bulb and then screw it and then wait for something  
18 to happen?

19 A Yes.

20 Q That was in the initial stages of the conversation,  
21 correct?

22 A Yes, it was.

23 Q He then went into a lengthy discussion about his  
24 childhood; did he not?

25 A Yes, he did.

1 Q Describe for us what he told you about his upbringing,  
2 his childhood, please.

3 A It was full of abuse. He said that he was shipped from  
4 one home to another, foster homes, care centers, and DSS was  
5 in his life and the Baird Center, his father amongst others,  
6 psychologists, priests. Pretty much everybody charged with  
7 his care abused him at one point or another.

8 Q And in the course of these discussions, did Mr. Shay  
9 relate to you his feelings towards or his relationship with  
10 his father?

11 A He had a definite hate for his father. And in his  
12 conversations with me he wanted to go get even with his  
13 father.

14 Q Did he make any statements about that relationship being  
15 an abusive relationship?

16 A Yes, he did.

17 Q Now, as this conversation unfolded, Mr. Plant, Mr. Shay  
18 further told you that in desiring to get even with his father,  
19 he was involved in the building of a bomb?

20 A Yes.

21 Q That that bomb was brought to his father's house and  
22 placed underneath a car using magnets so that it would stay in  
23 the car?

24 A Yes.

25 Q And that the bomb was designed to work so that it would

1 be initiated by some type of a radio frequency?

2 A That's correct.

3 Q He told you that somehow this initiation may have had  
4 something to do with the radio in his father's car?

5 A Yes.

6 Q But he told you that something happened, that when the  
7 car was being put into the driveway, the device fell to the  
8 ground, that his father noticed the device, picked it up and  
9 then eventually called the police?

10 A Yes.

11 Q Do you remember that part of the conversation?

12 A Yes. I don't remember how he said it fell off the car.  
13 He said at some point it fell off the back of the car.

14 Q And he told you that when the police officers came to the  
15 driveway that the bomb blew up killing the one officer and  
16 maiming the second and he mentioned that it was possible that  
17 the initiation of the bomb may have been due to one of the  
18 patrol officers on the scene using a shoulder radio of some  
19 kind; do you remember that conversation, sir?

20 A Yes.

21 Q When he talked to you, sir, about the injuries -- the  
22 death of the one bomb one squad officer and the injuries to  
23 the other, can you describe his demeanor at that point in the  
24 conversation, Mr. Shay's demeanor?

25 A He got in an angry and excited way. He acted as though

1 it was their own fault, that they did it. He described in  
2 detail how he felt about the injured officer. He didn't talk  
3 a whole lot about the dead officer, except to say that the  
4 dead officer, it was his own fault.

5 Q Did he elaborate on what he meant by it was his own fault  
6 or that it was the officer's own fault? Do you have any  
7 recollection on that?

8 A I don't recall.

9 Q He went on to tell you that his reasons for this activity  
10 was that he wanted to get even with his father?

11 A Yes, sir.

12 Q He told you that it was his passion to get even with his  
13 father and that he had this intention of getting even with his  
14 father that dated back to a time when he was in a facility  
15 known as the Baird Center?

16 A Exactly. He had always wanted to. He promised himself  
17 he would.

18 Q And he further told that you there was certain monetary  
19 considerations involved; did he not, Mr. Plant?

20 A That there was some sort of life insurance policy worth  
21 approximately somewhere around half a million dollars.

22 Q You remember that figure?

23 A Yes, the best I can recall. It was a long time ago.

24 Q He talked about the discarded or the disposal of certain  
25 materials that were used in the construction of this device;

1 correct?

2 A Yes, he did.

3 Q And he told you that some of these materials had been  
4 placed in some type of a bag and dumped into the ocean or into  
5 the water in some fashion?

6 A Three miles out, yes.

7 Q Now, at the time of these conversations or, in fact,  
8 prior to the beginning of these conversations, series of  
9 conversations, did you have any independent personal knowledge  
10 of the facts or circumstances of the bombing that had taken  
11 place in Roslindale in October of 1991?

12 A No, I didn't. Aside from initially when it happened, and  
13 I didn't even remember any of that, I probably heard about it  
14 on television but that would have been the last of it.

15 Q Had you been following this matter in the newspapers or  
16 on the television news?

17 A No. The condition I was in, I wasn't reading the  
18 newspapers during that period of time.

19 Q What you learned in October of 1992 about the facts and  
20 circumstances that we've just been discussing you learned from  
21 Thomas Shay, Jr.?

22 A Yes, I did.

23 Q Now, after receiving this information from Mr. Shay as  
24 we've just recounted, sir, what did you decide to do,  
25 Mr. Plant?

1 A I decided to contact the police.

2 Q And how soon after these series of conversations did you,  
3 in fact, contact the police?

4 A Well, I called initially right afterwards; and they came,  
5 I believe, the best I can recall around a week later.

6 Q And did you contact some specific person that you knew?

7 A The state police. Actually it was the guy who arrested  
8 me that I contacted.

9 Q What was his name, if you recall?

10 A Walter DeMore from the State Police.

11 Q Can you spell the last name? Did you say DeMore?

12 A Yes, D-E-M-O-R-E.

13 Q And what was your reason for passing this information  
14 that you had learned in the jail on to the police, Mr. Plant?

15 MR. SEGAL: Objection.

16 THE COURT: I'll allow that. You may tell us.

17 Q About passing the information on, Mr. Plant?

18 A I wanted to do something right. I didn't like what he  
19 had told me. I thought it was really sick. I thought what he  
20 had done was sick. And at that point in my life I was trying  
21 to make some decisions as to what I was going to do with my  
22 own life. Just because I was in jail didn't mean that I  
23 didn't have a responsibility to do what I was supposed to do  
24 for society so I did it. I didn't ask for anything and I  
25 never received anything for it.

1 Q Mr. Plant, do you have any friends who are police  
2 officers?

3 A Yes, I do.

4 Q How did this fact effect your reaction as to what  
5 Mr. Shay had told you?

6 A I kept thinking about my friend Bill. My best friend is  
7 a retired police officer. And I kept thinking that, he was  
8 telling me these stories and he would be actually excited  
9 about how he hurt this person. I would think about how this  
10 person, this other person was dead. And I would think about  
11 Bill. And I would think about his son Bill and his  
12 granddaughter and I would think about when we were together.

13 And I said, you know, if I'm going to sit here and  
14 I'm going to put up with this, then I deserve to stay here.  
15 And if I don't do something about it, then I'd feel a whole  
16 lot less of a man than I should be.

17 Q What, if any, promises, rewards or inducements did you  
18 receive from the State Police for initially coming forward and  
19 imparting this information to them?

20 A Nothing.

21 Q Did you receive any promises, rewards or inducements from  
22 the United States Government for coming forward with this  
23 information?

24 A No, I haven't, because while incarcerated I obviously  
25 didn't want anybody else to know that I had done this because

1 if they had, my own personal safety would have been at risk.  
2 So I kept it to myself. And over the period of the next few  
3 months, when I could have used it, I went to court and  
4 received more sentences for my drug addiction and never told  
5 anybody.

6 Q Did you ever ask anybody from the State Police or the  
7 United States Government to go to court on your behalf or  
8 write letters on your behalf?

9 A No, I haven't. I actually -- I went longer as an  
10 incarcerated inmate than I needed to. My parole date was June  
11 13th and I wasn't paroled until July. I didn't find it  
12 necessary to tell them about what had happened.

13 Q Were you promised anything, sir, for being here and  
14 testifying today?

15 A No, I haven't.

16 MR. KELLY: Nothing further, your Honor.

17 THE COURT: You may cross-examine

18 Cross-examination by Mr. Segal

19 Q Good morning, Mr. Plant. My name is Terry Segal. I  
20 represent Mr. Trenkler.

21 A Good morning.

22 Q At the time you were over there at Plymouth, you were  
23 serving I think a 15-month sentence?

24 A Yes. I was being held as a pretrial detainee when I was  
25 at Plymouth. I wasn't given my Plymouth sentence until after

1 I was given a Norfolk County sentence.

2 Q That Plymouth sentence was about 15 months?

3 A Yes, it was.

4 Q Now, when Mr. Shay was over there in that unit with you,  
5 didn't he talk about tanks and planes he bought? Do you  
6 recall that?

7 A Yes, he talked about that he could buy tanks and planes;  
8 but they were general conversations.

9 Q Let me ask you this: Didn't he talk about that he had  
10 the ability to acquire a tank or an F-16 fighter jet?

11 A When he was going around the unit, he would say these in  
12 public, yes, he would.

13 Q That he had the capability to acquire a tank?

14 A That was the distinguishing between when he was talking  
15 --

16 Q Well, let me ask you. While he was there, you recall him  
17 saying he had the ability to get an F-16 fighter plane?

18 A Yes.

19 Q Didn't he brag about being able to acquire any amount of  
20 arms necessary or he could acquire an unlimited amount of  
21 arms?

22 A No, not that I recall.

23 Q Didn't he tell you, Mr. Plant, that he knew how to build  
24 a bomb?

25 A Yes, he did.

1 MR. SEGAL: Thank you, sir. I have no further  
2 questions.

3 MR. KELLY: Just one.

4 Redirect Examination by Mr. Kelly

5 Q Mr., Plant, can you describe for us, sir, the difference  
6 between when Mr. Shay was talking about planes or tanks from  
7 when he was talking about the Roslindale bombing as we just  
8 described here?

9 A It is very simple. When we were talking about the plane  
10 or the tank, he was standing in front of the whole unit almost  
11 entertaining everybody. But when he was talking to me about  
12 the bomb, he would be sitting there and talking very quietly.  
13 He'd almost have tears in his eyes because it appeared to me  
14 during that whole conversation, the conversation about his  
15 father and the abuse he took from his father, and he was very  
16 detailed about the abuse he took. In my own opinion there was  
17 no way he was lying about that, but even he knew that  
18 everybody thought was lying about --

19 MR. SEGAL: Objection.

20 THE COURT: The jury will disregard the witness's  
21 opinion.

22 THE WITNESS: I'm sorry.

23 THE COURT: That's all right.

24 Q You understood there, however, to be a difference in the  
25 demeanor, expression, emotion between the two circumstances

1 when he was talking about planes and tanks than when he was  
2 talking about the topics involving the Roslindale bombing?

3 A Yes, sir.

4 MR. KELLY: No further questions.

5 THE COURT: Thank you -- oh, you have more questions?

6 MR. SEGAL: One question, yes.

7 THE COURT: Go ahead.

8 Recross Examination by Mr. Segal

9 Q When he talked about knowing how to build a bomb, Mr.  
10 Plant, was that in that private conversation with you, sir?

11 A Yes, it was.

12 MR. SEGAL: Thank you.

13 THE COURT: Thank you. You are excused.

14 Who is next?

15 MR. KELLY: I want to check to see who is outside,  
16 your Honor.

17 (Pause.)

18 MR. KELLY: Your Honor, the United States calls John  
19 Cates.

20

21

22

23

24

25

1                                    John Cates, sworn

2                    THE CLERK: Please be seated and state your name.

3                    THE WITNESS: My name is John Cates.

4                                    Direct Examination by Mr. Kelly

5                    THE COURT: You may proceed.

6                    MR. KELLY: Thank you, your Honor.

7            Q        Would you spell that last name for us, please, Mr. Cates?

8            A        Yes, it's C-A-T-E-S.

9                    THE COURT: Mr. Cates, you will either need to move  
10 up a bit to the microphone or speak up.

11                   MR. KELLY: Your Honor, with the Court's permission  
12 if necessary, Rule 611(c).

13                   THE COURT: Yes.

14                   MR. KELLY: Thank you.

15                   THE COURT: But we're not there yet, are we?

16            Q        Where do you reside, Mr. Cates?

17                   THE COURT: That, members of the jury, is one of the  
18 exceptions to the don't-lead rule?

19            A        I live at 48 Hamstead Road in Jamaica Plain.

20            Q        How old are you, Mr. Cates?

21            A        I'm 31.

22            Q        Are you employed at the present time?

23            A        No, I'm not working presently.

24            Q        When did you last work, sir?

25            A        July, I believe.

1 Q What were you doing at that time, sir?

2 A Landscaping.

3 Q Mr. Cates, do you know an Alfred Trenkler?

4 A Yes, I do.

5 Q How long have you known him?

6 A I met Alfred in September of 1990.

7 Q And would you describe the circumstances under which you  
8 first met Mr. Trenkler, please?

9 A Yes, we met on the street in Boston.

10 Q And could you be more descriptive than that?

11 A In Boston.

12 Q Whereabouts in Boston, sir?

13 A Around Boston Street.

14 Q Was there a specific location?

15 A Around the Ramrod.

16 THE COURT: Around what? I'm sorry?

17 A The Ramrod nightclub.

18 Q The name of the nightclub is the Ramrod.

19 Would you describe your current relationship, if any,  
20 with Alfred Trenkler, please?

21 A We're friends.

22 Q Do you see Mr. Alfred Trenkler as you know, who is a  
23 friend of yours in the courtroom here this morning?

24 A Yes, I do.

25 Q Would you point him out, please?

1 A He's the gentleman sitting at the table here, second in.

2 Q Second in.

3 MR. KELLY: Your Honor, may the record indicate that  
4 he's correctly identified the defendant.

5 THE COURT: Yes.

6 Q Now, did there come a time, Mr. Cates, when you and the  
7 defendant were roommates?

8 A Yes.

9 Q And during what period of time did the two of you live  
10 together?

11 A I would say from October of 19- -- October of 1990 until  
12 December of -- until his arrest.

13 Q December of 1992, sir?

14 A Yes.

15 Q So roughly two years, give or take a couple of months?

16 A Exactly.

17 Q And where were you living at that time?

18 A I was living in North Quincy, 133 Atlantic Street.

19 Q During the entire two-year period?

20 A Yes.

21 Q And what was your relationship with the defendant during  
22 the summer and fall of 1991 as opposed to today?

23 A We were friends.

24 Q Same relationship, it hasn't changed?

25 A No.

1 Q Now, when did the defendant first move in with you?

2 Would that have been in the month of October 1990?

3 A Yes. To the best of my recollection, yes.

4 Q And did he live continuously with you throughout that  
5 entire two-year and a couple-of-month period of time?

6 A Yes, he did.

7 Q Were there periods of time when he was not living in that  
8 apartment at 133 Atlantic Street in Quincy?

9 A No.

10 Q Didn't you previously tell us that there was one instance  
11 where you had a friend in from Las Vegas for two to three  
12 weeks and Mr. Trenkler had to go elsewhere?

13 A I did say that, yes.

14 Q Is that not the case?

15 A I was mistaken at the time.

16 Q Now, Mr. Trenkler, the defendant, had other locations  
17 that he either resided at or stored personal belongings at  
18 during the time that he was living with you as a roommate  
19 October '90 to December of '92; correct?

20 A Yes.

21 Q And where were those other locations to your knowledge,  
22 sir?

23 A Up until December he had a residence at Atell, a company  
24 that he worked for in South Boston.

25 Q And had you ever been to this location called Atell?

1 A Yes.

2 Q And describe what he had there, please?

3 A He had a small bedroom there on the premises of the  
4 company Atell, shower facilities, microwave oven.

5 Q And do you know what business Atell was in, Mr. Cates?

6 A Yes, a radio communications company.

7 Q Did he have any other locations that he could reside at  
8 or store personal belongings at during this same two-year time  
9 frame?

10 A Yeah, that would have been at his parents' house in  
11 Milton.

12 Q And do you know the address there?

13 A 7 White Lawn Ave.

14 Q And have you been to that location, Mr. Cates?

15 A Yes.

16 Q Mr. Cates, I want to show you two photographs, 49 A and  
17 49 B, 49 A being the one closest to me and 49 B being the one  
18 at the garage that appears.

19 Do you recognize what is depicted in these  
20 photographs, sir?

21 A Yes, I do.

22 Q What is that?

23 A That's the home of Mr. and Mrs. Wallace.

24 Q Now, is this the home at 7 White Lawn Ave. that you just  
25 described?

1 A Yes, it is.

2 Q And what, if any, type of apartment room or otherwise did  
3 you understand Mr. Trenkler to have at this location during  
4 that same two-year period that he resided with you?

5 A I understood him to actually use the garage. There was a  
6 bedroom that he used. I guess he grew up there in the house.

7 Q Did he store some personal belongings inside the house to  
8 your knowledge?

9 A No.

10 Q Did he have a bedroom at the house where he could go and  
11 stay, to your knowledge?

12 A I would think so, yes.

13 Q All right.

14 MR. KELLY: The United States offers Exhibits 49 A,  
15 49 B.

16 THE COURT: No objection, they may be marked.

17 [Government's Exhibits 49A, 49B entered into  
18 evidence.]

19 Q Mr. Cates, what is your sexual orientation, sir?

20 A I'm homosexual.

21 Q And have you had an intimate relationship with the  
22 defendant Alfred Trenkler?

23 A Yes, I have.

24 Q Over what period of time, sir?

25 A From September of 1990 onward.

1 Q And you have previously described this relationship in  
2 sworn testimony as an open relationship; have you not?

3 A Yes, I have.

4 Q And would you tell us what that means, please?

5 A That means that two parties in an open relationship would  
6 have license to see other people.

7 Q It's nonexclusive?

8 A Yes.

9 Q One party could see other people, the other people could  
10 similarly see other people?

11 A If they so desire.

12 Q And they wouldn't necessarily have to keep the other  
13 informed of what they were doing?

14 A Not necessarily, no.

15 Q Is that your relationship with this defendant?

16 A Yes, it was.

17 Q Now, during the time that the defendant resided with you  
18 at 133 Atlantic Street, was he authorized to bring other  
19 guests, friends, whatever, back to the apartment at 133  
20 Atlantic Street to spend an evening?

21 A Not if I weren't home, no.

22 Q And if you were home, would you allow him to bring people  
23 to the apartment to stay the evening while you were there?

24 A Yes.

25 Q You authorized him to do that?

1 A Yes.

2 Q And how many occasions over the two-year period do you  
3 recall where he brought back male guests to spend the evening?

4 A None other than a casual friend of the two of us. We  
5 didn't do that at any time.

6 Q So it never happened?

7 A No.

8 Q So if Mr. Trenkler, the defendant, in this open  
9 relationship decided to have some type of an involvement with  
10 another person, he wouldn't do it at your apartment at 133  
11 Atlantic Street, or at least he didn't between October of '90  
12 and December of 1992?

13 A No, he did not.

14 Q Now, what line of work is the defendant in to your  
15 knowledge, sir?

16 A Microwave communications.

17 Q And what is his occupation or field, if you know?

18 A I understand him to be an electrical engineer.

19 Q And do you know where he went to school for that,  
20 Mr. Cates?

21 A Wentworth.

22 Q Wentworth Institute?

23 A That's my understanding, yes.

24 Q And how old a person is the defendant, Mr. Cates?

25 A He's 34.

1 Q Again, can you speak into the microphone, Mr. Cates?

2 A 34, I believe.

3 Q How long to your knowledge has the defendant been  
4 involved in the field of electrical engineering?

5 A Well, I understand that he went into that field from out  
6 of high school.

7 Q And at the time that he was living with you as a  
8 roommate, did he have a business?

9 A Yes, he did.

10 Q And what was the name of his business?

11 A That was called ARCOM.

12 Q And how would you spell that?

13 A I believe it would be A R C O M M.

14 Q Where was that business located?

15 A That was in Weymouth.

16 Q Have you ever been to that business?

17 A Yes.

18 Q Mr. Cates, I want to show you first a photograph which  
19 has been marked Government's Exhibit 56 A. Do you recognize  
20 that picture?

21 A Yes, I do.

22 Q Speak into the microphone.

23 A Yes, I do.

24 Q Would you tell us what it is, please, what's depicted?

25 A That's a depiction of the first ARCOM office or the ARCOM

1 office.

2 Q And where is the store front of the ARCOM business in  
3 this photograph?

4 A It's to the left where the orange lettering is.

5 Q Those three windows with the door?

6 A Right.

7 Q Okay. And showing you Government Exhibit 56 B, do you  
8 recognize that photograph?

9 A Yes.

10 Q What is that, sir?

11 A That would be the inside of the office.

12 Q Okay. Do you remember it as having more furniture or  
13 other items than as depicted here or is that how you recall  
14 it?

15 A That's pretty much how I recall it.

16 MR. KELLY: United States offers 56 A and 56 B.

17 MR. SEGAL: No objection.

18 THE COURT: They may be marked.

19 **[Government's Exhibits 56A, 56B entered into**  
20 **evidence.]**

21 Q Did the defendant have a business partner in this  
22 enterprise known as ARCOM?

23 A Yes, he did.

24 Q What was his partner's name, if you know?

25 A His partner's name was Richard Brown.

1 Q Now, in the fall of 1991 the defendant was not bringing  
2 in substantial income from this business ARCOM; was he, sir?

3 A I don't know.

4 Q You were his roommate for this period of time in  
5 September and October of 1991; were you not?

6 A Yes.

7 Q You have some familiarity with personal finances and his  
8 financial condition?

9 A Not a great deal. Not a great deal, no.

10 Q Based on first-hand observation, you would know, for  
11 example, the kinds of things that he would spend money on,  
12 whether it was clothing or material goods, things like that?

13 A Most of the money that he spent was to keep his business  
14 going.

15 Q Well, just tell us, sir, what was your impression in  
16 September and October of 1991 as to how well Mr. Trenkler's  
17 business appeared to be going?

18 A It appeared to be going well.

19 Q Sir, do you recall testifying on an earlier occasion  
20 under oath on February 6th of 1992 and being asked some  
21 questions about Mr. Trenkler's income?

22 A Not exactly, no.

23 Q Do you recall being asked some questions about the  
24 payment of rent and household expenses for the location there  
25 at 133 Atlantic Street?

1 A Yes, I recall it.

2 Q And then being asked some questions about how and to what  
3 extent the defendant contributed to the payment of rent or  
4 other household expenses?

5 MR. SEGAL: I object on impeachment grounds. If this  
6 is impeachment, there should be a direct question, your Honor,  
7 not general recollection.

8 MR. KELLY: I'm asking if he can recall his  
9 testifying on the general subject matter, first.

10 THE COURT: He may ask that.

11 A I'm sorry. What was the question?

12 Q Do you recall being asked some questions about the  
13 payment of rent and other household expenses?

14 A Yes, I do.

15 Q And do you recall telling us on that occasion under oath  
16 that you pay the rent and utilities and household expenses and  
17 receive no contribution from Mr. Trenkler?

18 MR. SEGAL: Objection, that's hearsay. I think he  
19 has to read the question and answer, your Honor.

20 THE COURT: I suppose we can have a direct question  
21 as to whether he did or he didn't without reference to the  
22 earlier testimony.

23 MR. KELLY: Let's do that right now then.

24 Q Let's begin by first talking about your financial  
25 situation for a minute.

1                   How were you employed in September and October of  
2   1991, Mr. Cates?

3   A     I worked for, I believe it was Fleet Bank.

4   Q     Did you work for the Fleet Bank for the entire calendar  
5   year of 1991?

6   A     Yes.

7   Q     And what was your annual salary in 1991, sir? Give us  
8   your gross salary for Fleet Bank.

9   A     It was somewhere in the range of 20,000, 22, 23 K a year.

10   Q     22 to 23,000 a year. And that's a gross salary?

11   A     Yes.

12   Q     Did you have any other means of income in the calendar  
13   year 1990, 1991?

14   A     Yes, I did.

15   Q     What was that?

16   A     I was working as a landscaper for a company called A.  
17   Shapiro which probably brought another \$3,000 to my gross.

18   Q     Okay. So we're up about 25, 26,000 for the calendar year  
19   1991?

20   A     To my best estimate, yes.

21   Q     Okay. Any other means of income in that calendar year  
22   1991?

23   A     No.

24   Q     And these means of income would be reflected on your tax  
25   returns?

1 A They should be, yes.

2 Q Did you have any other significant investments?

3 A No.

4 Q Did you own an automobile?

5 A No.

6 Q Did you own any expensive material goods, such as stereo,  
7 refrigerator, such as that?

8 A No.

9 Q Did you own an expensive wardrobe?

10 MR. SEGAL: Object on relevance, your Honor.

11 MR. KELLY: Your Honor, I'm getting to that.

12 Q Describe the apartment that you shared with the defendant  
13 at 133 Atlantic Street in Quincy, Mr. Cates.

14 A A basic studio apartment.

15 Q And how large was it, sir?

16 A The exact dimensions I don't actually know, small. I  
17 would call it small, studio apartment.

18 Q And can you give us the rough dimensions?

19 A Maybe 12 by 30.

20 Q And did you say this is a basement apartment?

21 A Yes, I did.

22 Q And showing you Exhibit 46 A, was it in the basement of  
23 this house which is depicted in Exhibit 46 A?

24 A Yes, it was.

25 Q And how would you enter the basement apartment that you

1 lived at?

2 A There's a rear door at the back of the house.

3 Q And what part of the house are we looking at in this  
4 picture, Mr. Cates?

5 A We're looking at the right side of the house.

6 Q Is this the front over here (indicating)?

7 A Yes.

8 Q Okay. Would you kind of go down this driveway or was  
9 there another way to get to the back of the house?

10 A It was between the truck and the fence through the gate  
11 and to the back-door.

12 Q And this is the front of the house over here and the back  
13 is around that side (indicating)?

14 A Exactly.

15 Q And this is a picture of the back of the house in Exhibit  
16 46 B once you come around the corner after you walk down the  
17 driveway, you see this doorway; correct?

18 A Right.

19 Q And this is the doorway you would use to enter the  
20 basement apartment?

21 A Yes, it is.

22 Q And after you would go through that doorway, showing you  
23 Exhibit 46 C, you would walk down this concrete stairway;  
24 correct?

25 A Actually, I believe the stairs are wooden.

1 Q Well, there is concrete on the walls, wood on the stairs?

2 A Yeah.

3 Q You'd go through the door and down around this corner  
4 into a basement apartment?

5 A Correct.

6 Q And the basement apartment looked like this, Exhibits 46  
7 E and 46 F. We'll take them one at a time.

8 This is a depiction from one end taking a shot into  
9 the apartment as you recall it?

10 A Yes.

11 Q This looks like it's going the opposite direction from  
12 back, shooting back up the other side of the apartment;  
13 correct?

14 A Yes.

15 Q And so this studio apartment had what looks like a little  
16 kitchenette area on the left, on the back corner?

17 A Right.

18 Q And is this a bathroom here?

19 A Yes, it is.

20 Q A little bathroom in the back, but other than that it was  
21 all contained in one room?

22 A Yes.

23 Q And when you gave us the dimensions 10 by 30, you're  
24 talking 10 across this way, this way, and 30 would be the long  
25 distance included by these two pictures?

1       A     I think it's a 12 by 30. It would be 12 across and 30  
2       the long way.

3               MR. KELLY: Okay. Your Honor, the United States  
4       would offer 46 in its entirety.

5               THE COURT: All right.

6               MR. SEGAL: No objection.

7               THE CLERK: Is there a 46 D?

8               MR. KELLY: There's a 46 D. I forgot. I'm sorry.

9               **[Government's Exhibit 46A - D entered into evidence.]**

10      Q     After you come down the concrete, the pathway, to get  
11     into the apartment, you have to go through this door  
12     (indicating); is that right?

13      A     Yeah.

14      Q     So the concrete stairs brings you around the corner. You  
15     get into like a little area and then you go through this door  
16     and you're into the studio apartment?

17      A     Correct.

18               THE COURT: Let's take a moment to stretch. And  
19     we'll mark that one also.

20               (Pause.)

21               THE COURT: All set. Let us proceed.

22      Q     Mr. Cates, we've acquainted ourselves with the apartment,  
23     now, sir, to where we wanted to get to.

24               How much was the monthly rent that you paid for this  
25     basement apartment?

1 A I paid \$340 a month.

2 Q And that was in the calendar year 1991?

3 A Yes.

4 Q Did that rent figure change in any material way over the  
5 two and a half, two years and two months that Mr. Trenkler  
6 resided with you, sir?

7 A No.

8 Q And who paid that \$340 a month?

9 A I paid \$340 a month.

10 Q You paid it all the time?

11 A Yes, I did.

12 Q Okay. Did the defendant contribute in any manner to the  
13 payment of the monthly rent?

14 A It wasn't required. No, he did not.

15 Q The answer is no?

16 A Yes.

17 Q Did you have a telephone at that apartment?

18 A Yes, I did.

19 Q And who paid for that?

20 A That was my telephone.

21 Q Okay. The defendant didn't help pay for the telephone?

22 A No.

23 Q And did you have other utilities?

24 A No.

25 Q Water or electricity or anything like that?

1 A No, I did not.

2 Q That came with the 340?

3 A Yes, it did.

4 Q And what about the furniture that's depicted in the  
5 photographs, did you own that? Like the couches there that  
6 are depicted in the photographs, is that yours?

7 A Yes.

8 Q Were there any furniture items, chairs, desks, things  
9 like that that were the property of the defendant?

10 A Not to my recollection, no.

11 Q Now, let's go back to my question.

12 Do you recall on February 6th, 1992 when you were  
13 under oath, I asked you the following question:

14 MR. SEGAL: Particular page?

15 MR. KELLY: 12.

16 Q So you can follow, Mr. Cates, from here to here, lines 9  
17 through 12.

18 "Question: And why is it you have opted to pay the  
19 rent and not charged him for some fair share?

20 "Answer: He really hasn't been the position. He's  
21 been earning income but not a great deal."

22 Have I read that correctly, sir?

23 A You have read it correctly, yes.

24 Q And was that your sworn testimony on February 6th, 1992?

25 A Yes, it was.

1 Q While Mr. Cates was -- while Mr. Trenkler, the defendant,  
2 was still living with you?

3 A Yes.

4 Q So, is it not a fair statement, sir, that to your  
5 knowledge the defendant was not earning a great deal of income  
6 back at the time frame that we're talking about here in late  
7 1991 and early 1992?

8 A From what I understand now there were --

9 Q That's not my question. My question is, was he earning  
10 to your knowledge a great deal of income in late 1991 or early  
11 1992; yes or no?

12 A No.

13 Q Now, we had begun this by talking about your  
14 understanding of Mr. Trenkler's business and expertise.

15 You are aware, Mr. Cates, that in his line of work as  
16 an electrical engineer and working for this company, ARCOM,  
17 that Mr. Trenkler the defendant is experienced in microwaves,  
18 for example?

19 A Yes, I would assume so.

20 Q Well, I don't want you to assume. Did you know that to  
21 be the case?

22 A Did I know that to be the case that he was experienced in  
23 microwave communications?

24 Q Yes?

25 A Yes.

1 Q Okay. You knew him to be familiar with satellite  
2 communications?

3 A Yes.

4 Q With remote control?

5 A No. I would assume that he would be familiar with remote  
6 control.

7 Q I don't want you to assume anything, Mr. Cates. I  
8 haven't asked you a question, sir.

9 Do you recall testifying in this matter at an earlier  
10 proceeding back in July of 1993?

11 A Yes, I do.

12 Q Page 7, volume 13. You were asked a series of questions  
13 here.

14 "Question: Line 16 through line 22, And as an  
15 electrical engineer, Mr. Cates, Mr. Trenkler is experienced in  
16 things like microwaves; is he not?

17 "He is." That was the answer.

18 "Question: He's experienced in satellite  
19 communications?

20 "Answer: Yes, that's correct.

21 "Question: He's experienced in remote control?

22 "Answer: Yes."

23 Now, you answered yes to that question some five or  
24 six months ago; didn't you, Mr. Cates?

25 A Yes, I did.

1 Q Now, have you ever visited any of the defendant's job  
2 sites where he performs his services as an electrical  
3 engineer?

4 A On occasion, yes, I have.

5 Q During the time that he was your roommate, Mr. Cates,  
6 have you visited each and every one of Mr. Trenkler's job  
7 sites?

8 A No, I haven't.

9 Q You are aware, however, that the defendant sometimes  
10 works on radio towers in his line of work; correct?

11 A Yes.

12 Q You are further aware that some of these radio towers are  
13 down on the South Shore or in other areas outside Metropolitan  
14 Boston?

15 A I know some to be in Rhode Island.

16 Q Do you know any other locations besides Rhode Island?

17 A Not specifically, no.

18 Q And directing your attention to the month of October of  
19 1991, Mr. Cates, where was the defendant working at that time,  
20 if you know?

21 A I believe he was working at the Christian Science  
22 Monitor, Christian Science Building in Boston.

23 Q And did you ever visit that job site, Mr. Cates?

24 A Yes, I did.

25 Q How many times?

1 A Probably twice.

2 Q And is the Christian Science Monitor close to where you  
3 were working at the Fleet Bank?

4 A Relatively, yes.

5 Q What branch of the Fleet Bank were you working at in  
6 October of 1991?

7 A I worked at the Copley Square location.

8 Q And were you a teller?

9 A I held a senior teller position at that branch.

10 Q Now, you know someone by the name of Thomas Shay, Jr.; do  
11 you not, Mr. Cates?

12 A I'm acquainted with him.

13 Q You know him?

14 A I'm acquainted with Thomas Shay.

15 Q Do you know who he is?

16 A Yes.

17 Q Did you ever see Thomas Shay, Jr. at the job site, at the  
18 Christian Science Monitor on any of the occasions that you  
19 visited that job site?

20 A No.

21 Q Do you know of your own personal knowledge whether he has  
22 ever been to that job site?

23 A No.

24 Q Do you know as a result of anything the defendant may  
25 have told you whether or not Thomas Shay, Jr. has ever been to

1       that job site?

2       A     No.

3       Q     You don't know one way or the other?

4       A     No, I don't.

5       Q     Now, in Mr. Trenkler's line of work he from time to time  
6       has the need to purchase electronic parts and components; does  
7       he not, Mr. Cates?

8       A     Yes.

9       Q     And in addition to his line of work, you know because  
10      you're a friend and a longtime roommate of the defendant that  
11      he also makes electronics and electrical engineering a hobby  
12      of his that he does kind of on the side?

13      A     I've known it to be his business.

14      Q     Okay. And when had the defendant wants to purchase  
15      electronic parts or equipment, where does he go to your  
16      knowledge, sir?

17      A     He purchases equipment at Radio Shack and another company  
18      that I know of would be U-Do-It Electronics.

19      Q     U-Do-It Electronics, is that one out on Route 95 in the  
20      Needham area?

21      A     I don't know exactly where it's located.

22      Q     Have you ever been there?

23      A     I have.

24               THE COURT: I'm sorry what is the name of that?

25               MR. KELLY: U-Do-It Electronics.

1 Q You don't have a car of your own; right, Mr. Cates?

2 A No, I don't.

3 Q You've been to that location I take it?

4 A Yes, I have.

5 Q Have you been driven there in the defendant's car?

6 A I don't know if whether we went in his car or a friend's  
7 car. I know that I have been to that location of U-Do-It  
8 Electronics.

9 Q If you had gone to the location in a friend's car, do you  
10 remember the name of the friend?

11 A A friend of Alfred's, Richard Brown, his business partner  
12 at the time.

13 Q And you mentioned that he would buy parts at Radio  
14 Shack. Which Radio Shack stores are you aware that he has  
15 purchased such parts at?

16 A I believe there is a location in the South Shore Shopping  
17 Center, South Shore Mall.

18 Q Any other locations?

19 A To my knowledge, no.

20 Q And have you been with him on occasions when he has  
21 shopped for Radio Shack parts?

22 A I'm not certain.

23 Q Well, how is it that you know that he goes there?

24 A Well, I could have possibly have been in one with him.

25 Q Possibly? You don't have a memory?

1 A Yes, I have a memory of being with him in Radio Shack,  
2 yes.

3 Q You do?

4 A Whether he made a purchase or not I don't know.

5 Q Sometimes he goes into Radio Shack and just looks around?

6 A If they didn't have an item he needed, he wouldn't be  
7 able to make a purchase.

8 Q On how many occasions would you say you've been to a  
9 Radio Shack with the defendant?

10 A Possibly a couple, two, three times.

11 Q You keep using the phrase "possibly."

12 A A couple, two or three times.

13 Q Different radio shacks?

14 A Yes.

15 Q Now, did the defendant keep all of his clothing and  
16 personal belongings at your apartment at 133 Atlantic Street  
17 in the fall of 1991 to your knowledge? For example, did he  
18 keep his entire wardrobe, clothing?

19 A Yes.

20 Q He didn't have any other locations where he had to go to  
21 retrieve something to wear or something to use based on your  
22 knowledge?

23 A No.

24 Q Other than I think you told us that over at his parents'  
25 house, he used the garage did you say?

1 A Yes, that's basically storage for equipment.

2 Q And to your knowledge did he use the room there at 7  
3 White Lawn Ave. to store any personal items at all?

4 A No.

5 Q And you know that because you've been inside that room?

6 A Yes.

7 Q And you didn't see anything that belonged to Alfred to  
8 your knowledge?

9 A No.

10 Q And at this apartment, this studio apartment you live at  
11 133 Atlantic Street, can you just describe the volume of  
12 personal items that Mr. Trenkler kept at that location?

13 A Just a small number of personal items, razor and  
14 clothing.

15 Q And you say clothing, I mean, did the clothing that he  
16 have fill an entire closet?

17 A No, actually the closet space was mostly taken up by my  
18 clothes.

19 Q And where would Mr. Trenkler keep the clothing that he  
20 owned, sir?

21 A Usually it would be stored in like an overnight bag.

22 Q You put all the clothing he owned in an overnight bag?

23 A I believe he also kept clothing in his car.

24 Q Whereabouts in his car?

25 A Hanging on, in the back of the car, on the coat racks.

1 Q What kind of a car did the defendant own in the fall of  
2 1991, Mr. Trenkler?

3 A He owned a Toyota Selica.

4 Q And do you know how long he owned that car for?

5 A No.

6 Q Did he own the car when you first met him in  
7 September/October of 1990?

8 A Yes.

9 Q Did he ever tell you how or when he acquired it?

10 A He didn't tell me when. He told me the circumstances of  
11 buying it.

12 Q And what color was that car, Mr. Cates?

13 A White.

14 Q Okay. And was that factory white, to your knowledge? In  
15 other words, was it the white that you get if you buy a car  
16 from Toyota?

17 A Yes.

18 Q Well, do you know that for a fact?

19 A It appeared to be. When you opened the door, the inside  
20 of the panels were white.

21 Q And you recall, sir, that I've asked you questions about  
22 this car on a previous occasion; haven't I, sir?

23 A Yes.

24 Q Okay. Volume 13, page 8. And I've asked you to describe  
25 the car and to describe the color of the car. And let me read

1 the following, sir:

2 Question --

3 MR. SEGAL: Can we have a date?

4 MR. KELLY: Volume 13, page 8, lines 20 through 24.

5 MR. SEGAL: Can I have just a minute?

6 (Pause.)

7 Q "Question: And it wasn't white as a new car white, was  
8 it, sir?

9 "Answer: It was probably even more white than  
10 white. It was a sun faded white.

11 "Question: It was kind of chalk, right?

12 "Answer: It wasn't a new paint job."

13 Do you remember that testimony?

14 A Yes.

15 Q So that's my question: Was it a new paint job?

16 A No.

17 Q It was -- somebody had painted over the car?

18 MR. SEGAL: Objection.

19 A I don't believe so, no.

20 Q Let me show you what has come into evidence as Government  
21 Exhibit 52. You've seen those photographs before; have you  
22 not, Mr. Cates?

23 A Yes, I have.

24 THE CLERK: Excuse me. I don't have 52 in evidence.

25 MR. KELLY: Your Honor, the United States would

1 offer, I believe without objection, Government's Exhibit 52.

2 MR. SEGAL: Can I see this.

3 (Pause.)

4 THE COURT: 52 is in evidence without objection?

5 MR. SEGAL: These are already in as defendant's  
6 exhibits. They're the same thing.

7 MR. KELLY: I'll use his. That's okay.

8 THE COURT: Okay.

9 Q Let me show you Defendant's Exhibit No. 2.

10 Do you recognize the photograph?

11 A Yes, I do.

12 Q Does it depict the car as you recall it?

13 A I'm sorry?

14 Q Does it depict the car as you recall it?

15 A Yes.

16 Q And looking at that photograph, sir, does it refresh your  
17 memory as to whether or not that was a new factory paint job  
18 when you buy the Toyota?

19 A I thought I had stated no, it wasn't a new paint job.

20 Q I just want to be clear.

21 A Yeah, no.

22 Q You can tell from the fading along the side, that whole  
23 driver's side, that it's not a new paint job; is it?

24 A Yes.

25 Q Okay. That's not a complete consistent color all the way

1 across; is it, Mr. Cates?

2 A No, I think there appears that there are rust spots that  
3 have been painted over.

4 Q In addition to the rust marks, above the rust marks, you  
5 can see kind of a fading darker color through the paint, you  
6 would agree with me?

7 A I don't know if that's the rust or the darker color.

8 Q Something is leaving a shading quality down the side;  
9 isn't it, Mr. Cates?

10 A It appears to be, yes.

11 Q Thank you, sir.

12 MR. KELLY: Your Honor, may I publish this?

13 THE COURT: Yes.

14 Q Now, Mr. Cates, sometime after October 28th of 1991, the  
15 defendant painted that car; didn't he, sir?

16 A Yes.

17 Q When did he do that?

18 A I don't know exactly when he painted the car. It was  
19 sometime, it was quite sometime after October 28th of '91 if  
20 that's the date that you just gave me, several months.

21 Q What color did you paint it?

22 A It was painted a primer color.

23 Q What do you mean by that?

24 A It was painted primer black.

25 Q Primer black. Who painted it?

1 A Alfred painted the car.

2 Q Was it painted with a brush or a spray of some kind?

3 A I believe it was sprayed.

4 Q Okay. Were you there when it was done?

5 A I'm not sure.

6 Q Did you assist?

7 A I don't recall, no.

8 Q Okay. You say a primer. Is that a glossy paint or flat  
9 paint?

10 A No, it's a flat paint.

11 Q You know the difference between glossy and flat?

12 A Yes.

13 Q Okay. Well, is it your understanding that this paint,  
14 for example, is glossy or flat, Mr. Cates?

15 A That appears to be flat to me.

16 Q Did the defendant ever say why he painted the car?

17 A No.

18 Q Now, before -- I'm sorry, did you finish your answer?

19 A Other than the car looked bad, why the black tended to  
20 hide the dents and cover the rust.

21 Q And the streaks, covered the rust?

22 A Covered the rust.

23 Q It didn't look very good?

24 A No, it looked much better once it was painted black.

25 Q Now, before the car had been painted, it had some kind of

1 a decal on the hood of the car?

2 A Yes, it did.

3 Q Do you recall that. And what was that a decal to, if you  
4 know?

5 A It was, I believe a microwave company insignia.

6 Q And did the defendant put the decal back on the car after  
7 he painted it black?

8 A No.

9 Q Did he ever tell you why he did that?

10 A No.

11 Q Now, looking at this photograph, defendant's Exhibit No.  
12 1, Mr. Cates, also of the vehicle, do you see above the  
13 license plate there's a sticker, it looks like a radio station  
14 sticker of some kind?

15 A Yes.

16 Q Are you able to read the writing on the sticker?

17 A Yes.

18 Q What does it say?

19 A It says WBCN.

20 Q And do you know when the defendant put that WBCN sticker  
21 on the back of the car before he had painted it black?

22 A No.

23 Q You don't know one way or the other?

24 A No.

25 Q Did you have permission to drive this car, Mr. Cates?

1 A I'm sorry?

2 Q Did you have permission to drive this car?

3 A On occasion, yes.

4 Q And how frequently would you drive it?

5 A Actually infrequently, maybe just on occasion, a trip to  
6 the store, the grocery store.

7 Q Now, you say that Mr. Trenkler, the defendant, stored  
8 some clothing in the back. Do you know if he stored anything  
9 at all in the trunk of the car?

10 A Tools, yes.

11 Q What kind of tools?

12 A Rigging tools, just tools that he would use in his every  
13 day operation of business.

14 Q Now, Mr. Cates, you've told us that you know a Thomas  
15 Shay, Jr.; correct?

16 A Yes.

17 Q Would you tell us when and where you first met this  
18 individual Thomas Shay, Jr.?

19 A Yes, I met him approximately the summer of 1988 in Canton  
20 in the Blue Hills.

21 Q Okay. And when you say in the Blue Hills, what do you  
22 mean?

23 A I mean the Blue Hills Reservation area that's located in  
24 Canton.

25 Q Okay. And that location at the Blue Hills Reservation,

1 you can go hiking there, take nature walks, things like that;  
2 correct?

3 A Yes.

4 Q It's got a ski resort of some kind that's used in the  
5 winter months?

6 A I believe so, yes.

7 Q And there's also an area over there at the Blue Hills  
8 which over the years has been a meeting place for gay males;  
9 correct?

10 A Yes.

11 Q And you have been there for that purpose, correct?

12 A Yes.

13 Q And this Thomas Shay, Jr., to your understanding was  
14 there for that purpose?

15 A That's where I met Thomas Shay.

16 Q You met him in one of those gay meeting areas or cruising  
17 areas?

18 A Well, they're not necessarily gay. I think all of the  
19 areas are pretty much mixed.

20 Q And to your knowledge, the defendant has been to the Blue  
21 Hills Reservation?

22 A Yes.

23 Q Has he been there with you?

24 A I think we walked through there.

25 Q And how many times would you approximate that you and the

1 defendant have been in the Blue Hills Reservation together?

2 A I would say two or three.

3 Q And on any of those occasions did you encounter this  
4 Thomas Shay, Jr. fellow that you say you know?

5 A No.

6 Q You only encountered him when you were not in the  
7 presence of the defendant at the Blue Hills?

8 A I met him there in 1988, Thomas Shay.

9 Q That wasn't my question. My question was, the only time  
10 you encountered Mr. Thomas Shay in the Blue Hills was when  
11 Mr. Trenkler the defendant was not with you?

12 A I didn't know him in 1988, no.

13 Q But my question was at any time thereafter to the  
14 present?

15 A Right.

16 Q So I am correct?

17 A Yes.

18 Q Mr. Cates, let me show you what has been marked as  
19 Government's Exhibit 55 and I believe admitted into evidence  
20 and that is a photo spread, sir, and ask you whether or not  
21 you recognize any of the people in that picture, in that group  
22 of pictures?

23 A Yes, I do.

24 Q And who do you recognize?

25 A I recognize Thomas Shay, No. 4.

1 MR. KELLY: Your Honor, if the record could indicate  
2 that he has correctly identified Thomas Shay, Jr.

3 THE COURT: Is this a good time to take the morning  
4 break? Let us do that.

5 [Whereupon, the jury left the courtroom.]

6 THE COURT: Mr. Libby.

7 MR. LIBBY: If I may, your Honor, just briefly, on  
8 the point that we left at the side bar with respect to the  
9 admissibility of -- for example, Mr. Plant's testimony,  
10 insofar as I believe all concerned agreed, if we simply  
11 rendered the name out of it and left an indefinite pronoun of  
12 some person, the Court is not concerned about that being  
13 important according to Richardson and that line of cases.  
14 What the Court's concern was --

15 THE COURT: Which court are you talking about?

16 MR. LIBBY: Well, with respect to the issue in the --  
17 the Bruten issue.

18 THE COURT: Right.

19 MR. LIBBY: Insofar as no direct naming of the  
20 defendant here, simply inserting a pronoun, we wouldn't have  
21 the issue because Richardson and Williams takes care of that.

22 THE COURT: I don't think so.

23 MR. LIBBY: Well, in this case, your Honor, I believe  
24 the Court's concern has to do with this defendant's ability to  
25 cross-examine, confrontation. Here those statements, Shay,

1 Jr.'s, I believe we put forth the statement, the same as we  
2 wanted to put in, page 6, the declaration gets penal interest  
3 argument 804(b)(3), if the Court found that Shay, Jr.'s  
4 statements as laid out there were indeed declarations against  
5 penal interests, then, they are by definition, they're called  
6 within a firmly rooted exception to the hearsay rule --

7 THE COURT: To the extent that he's talking about  
8 himself.

9 MR. LIBBY: I don't think that's correct, your Honor.

10 THE COURT: Give me a case that says otherwise.

11 MR. LIBBY: Your Honor, so far as the declarations  
12 are concerned it has to do with indicia of reliability and  
13 trustworthiness by virtue of the fact that it's against his  
14 penal interest to make these statements. It's with the  
15 declarant unavailable Shay, Jr.'s been unavailable since he  
16 refused to testify and took contempt.

17 As a matter of law, should the law find in his  
18 declarations against his penal interest at the time they were  
19 made, they satisfied, they were admissible notwithstanding any  
20 confrontation clause concerning, because they satisfied the  
21 confrontation clause, they satisfy that concern. So what we  
22 have is we have a Bruton and a confrontation clause, two sets  
23 of issues here, two sets of concerns.

24 So far as Bruton is concerned, Williams and  
25 Richardson satisfies those concerns when we use the indefinite

1 pronoun and Ohio Roberts takes care of confrontation clause  
2 concerns, your Honor, because we're dealing with a declaration  
3 against penal interest, and we're prepared to go down the line  
4 with respect to each of these statements made by Shay, Jr.,  
5 even though they go beyond simply themselves and to others,  
6 the statements themselves are declarations against his penal  
7 interest. For those reasons, your Honor, we believe we've  
8 covered all the concerns that the Court's expressed.

9 THE COURT: None of the cases that you gave me last  
10 night admitted the statements against anybody other than the  
11 defendant who gave the confession.

12 MR. LIBBY: And your Honor, that particular  
13 individual was on trial and they came in as admissions 801.  
14 Here we have the very same line of cases that we talked about  
15 previously with respect to getting Mr. Trenkler's statements  
16 in and I understand the distinction. In the Shay, Jr. case,  
17 the same rationale applies, what the Court's concern was  
18 there, with respect to the trustworthiness of those  
19 statements, not their content, per se.

20 THE COURT: But they have come in, they have come in,  
21 to the extent that there were statements against Mr. Shay's  
22 penal interest and implicated himself, they are in evidence  
23 through Mr. Plant, through Mr. Evans, through Mr. Thomas and  
24 so on. But the statements that Mr. Shay made that implicate  
25 Mr. Trenkler are out under the Bruton and they do not come in

1 under Richardson and Marsh which only allows such statements  
2 to come in in a short trial and subject to limiting  
3 instructions, and Williams had limiting instructions. If you  
4 look at the bottom of page 700, If the confession so viewed  
5 does not incriminate the defendant, then it may be admitted  
6 with the proper limiting instruction even though other  
7 evidence in the case indicates that the neutral pronoun is in  
8 fact a reference to the defendant. But it is a limiting  
9 instruction saying that the evidence comes in against one  
10 defendant on trial, but not against the other defendant on  
11 trial. It is not a limiting instruction that says it comes in  
12 as to one count, but not against another count.

13 MR. LIBBY: Well, your Honor, that's the reason for  
14 the 804(3)(B) respectively. It's because we have an  
15 unavailable declarant. Once that is established, the  
16 statement made to the extent that Shay, Jr. makes a statement  
17 inculcating himself and someone else, two issues arise: One  
18 is Bruten --

19 THE COURT: What does Richardson and Marsh stand for  
20 in your view?

21 MR. LIBBY: In our view, your Honor, we can still  
22 admit those statements and you do not implicate Bruten rights  
23 so long as you -- on its face, you redact any direct reference  
24 to other individual's names. The existence of the other  
25 individual may yet be proven by inserting the indefinite

1 pronoun, the other --

2 THE COURT: You agree, do you not, that Richardson  
3 and Marsh involve a joint trial, and the evidence was admitted  
4 only against the declarant.

5 MR. LIBBY: And that's because it was an admission as  
6 to the person on trial. We have a separate situation.

7 THE COURT: Precisely.

8 MR. LIBBY: We have a separate situation that doesn't  
9 in any way impair our being able to avail ourselves of  
10 804(3)(B).

11 THE COURT: But it does, it does, Mr. Libby.

12 MR. LIBBY: I think, once you say that somebody else  
13 is involved, that is also a declaration against your penal  
14 interest under the conspiracy.

15 THE COURT: But it's also a declaration against the  
16 defendant on trial, and you cannot cross-examine the  
17 declarant. That's Bruton.

18 MR. LIBBY: And it's also a firmly rooted exception  
19 to the hearsay rule and confrontation concerns are out because  
20 of that. If you then render it --

21 THE COURT: Cite me one case, one case in which  
22 somebody's confession was admitted against the co-defendant in  
23 the separate trial. None of the cases you've given me say  
24 that, not one.

25 MR. LIBBY: Your Honor, Pacerella, if your Honor

1 recalls we tried to, we moved to have the evidence of the '86  
2 device.

3 THE COURT: Is that one of my cases?

4 MR. LIBBY: No, your Honor. I believe it's a fifth  
5 or Seventh Circuit case. It's in the Government's brief in  
6 attempting to introduce moving in limine in having the '86  
7 device admitted in Shay, Jr.'s trial. The fact in that case,  
8 Pacerella was, evidence of the conspiracy not involving him  
9 was allowed in against that individual to show as it was  
10 relevant to the formation and existence of the charged  
11 conspiracy.

12 THE COURT: Well, I'll look at the case and if it  
13 says what you say it says then I will reconsider, but based on  
14 the submissions you've given me so far, the cases simply do  
15 not support the position that you're advocating. They just  
16 don't.

17 MR. LIBBY: Let us just look at Pacerella as well,  
18 your Honor. Thank you.

19 THE COURT: Let's bring the jury down.

20 What is the Government's best estimate as to when it  
21 will finish the evidence? One of the jurors told us she has a  
22 court date on the 22nd.

23 MR. KELLY: I think the Government will rest its  
24 case. I have forgotten about the holiday. I think we'll rest  
25 our case probably next Friday, possibly Wednesday end of the

1 day, but more likely Friday. We have --

2 THE COURT: How many days does the defense think it  
3 will take?

4 MR. SEGAL: It could be five to seven days, your  
5 Honor.

6 THE COURT: That would take us beyond Thanksgiving.

7 MR. SEGAL: With that recess, I think you're right.  
8 [Whereupon, the jury entered the courtroom.]

9 THE COURT: You may proceed.

10 MR. KELLY: Thank you, your Honor.

11 Q When you took the break, Mr. Cates, you had just picked  
12 out a photograph of Mr. Thomas Shay, Jr. out of Exhibit 55,  
13 would you describe what, if any, association you had with  
14 Thomas Shay, Jr. after you first met him in the summer of  
15 1988?

16 A Yeah, it was almost none. I might see him on the street  
17 and pass him, possibly greet him. There was basically no  
18 association since 1988.

19 Q Did you consider him a friend of yours?

20 A No.

21 Q Was he an acquaintance?

22 A Yes.

23 Q A person you had just occasionally seen from time to  
24 time?

25 A Yes.

1 Q At any point, either in the summer of 1988 or thereafter,  
2 did you have any kind of a friendship or relationship with  
3 him?

4 A No.

5 Q Among the places that you had seen him would be in and  
6 around some of these clubs or restaurants in the Boylston  
7 Street, Fenway area of Boston, correct?

8 A Yes.

9 Q But on the occasions when you would see Mr. Shay since  
10 1988, when you first met him, he never seems to remember your  
11 name, did he, sir?

12 A No.

13 Q Now, you thought that Thomas Shay, Jr. was kind of  
14 whacky; did you not?

15 A Yes.

16 Q And in fact, you encouraged the defendant, Mr. Trenkler,  
17 to avoid the guy if he ever saw him?

18 A Yes.

19 Q Now, the defendant is acquainted with Thomas Shay, Jr.;  
20 is he not?

21 A Yes.

22 Q And what did the defendant tell you about when he first  
23 met Thomas Shay, Jr.?

24 A Really almost nothing other than that he had met him.

25 Q Did Mr. Trenkler ever tell you how he became acquainted

1 with Thomas Shay, Jr.?

2 A No, not exactly.

3 Q When you say "not exactly," what do you mean by that,  
4 Mr. Cates?

5 A He didn't tell me the circumstances surrounding it or  
6 where they met.

7 Q Did he tell you the time frame of when, month and year,  
8 he first met Thomas Shay, Jr.?

9 A Yes, he did.

10 Q What did he tell you?

11 A He told me that he had met him between June 9th and 18th  
12 of 1991, I believe.

13 Q And he told you that that was the first time that he made  
14 his acquaintance between June 9th and June 18th of 1991?

15 A Yes.

16 Q Now, let's direct your attention to that time frame, that  
17 is the time frame in which you went outside the country on a  
18 vacation; did you not, Mr. Cates?

19 A Yes, I did.

20 Q Where did you go?

21 A I was in London.

22 Q Okay. And how long were you gone for?

23 A I was gone for nine days, from the 9th to the 18th.

24 Q And while you were away for those nine days --

25 THE COURT: I'm sorry, when was that, Mr. Cates?

1 A That was June 9th, to the 18th.

2 Q Of what year?

3 A I believe it was '91.

4 Q And while you were away on that vacation, and without  
5 your prior consent or authorization, the defendant  
6 Mr. Trenkler, brought Thomas Shay, Jr. to your apartment at  
7 133 Atlantic Street in Quincy; didn't you, sir?

8 A That's what I've been told.

9 Q And you know that because the defendant told you, told  
10 you that fact. You don't know it because you were present,  
11 obviously?

12 A Correct.

13 Q But you didn't know that fact immediately on your return  
14 from vacation in June of 1991, did you, sir?

15 A No.

16 Q You didn't know it in July of 1991?

17 A No.

18 Q Or August?

19 A No.

20 Q Or September?

21 A No.

22 Q Or October?

23 A No.

24 Q In fact, you didn't learn about the fact that  
25 Mr. Trenkler had Mr. Thomas Shay, Jr. to the apartment of 133

1 Atlantic Street until sometime in November of 1991; isn't that  
2 so?

3 A That's correct.

4 Q This would have been after the explosion that had  
5 occurred in Roslindale on October 28th, 1991?

6 A Yes.

7 Q And the reason, as you understand it, that the defendant  
8 told you about this circumstance in November of 1991 was that  
9 at that time in November he had come under close scrutiny from  
10 the authorities as a suspect in that bombing; isn't that so?

11 A Yes.

12 Q Now, would you agree with me, Mr. Cates, that despite  
13 your friendship with the defendant, in spite your being his  
14 roommate for a period of time and despite this open  
15 relationship as you described, there are certain matters,  
16 certain private matters and secrets that you kept from one  
17 another?

18 A No, not necessarily. We were always open and close,  
19 never very secretive.

20 Q Now, do you recall, taking your attention back to when  
21 you were called to testify in February of 1992 under oath page  
22 46 and 47, lines 23 and onward; do you recall me asking you  
23 the following question, Mr. Cates:

24 "Question: Would you agree with me that there are  
25 certain things about Mr. Trenkler that he keeps to himself or

1 at least he doesn't share with you, such as the visit to your  
2 apartment by Thomas Shay, Jr.?

3 "Answer: Yes."

4 Now, you agreed with me when I asked that same  
5 question in February of 1992, didn't you, Mr. Cates?

6 A Yes.

7 Q Let's take another example. You are presently aware, as  
8 you sit here today, that the defendant Mr. Trenkler was  
9 involved in another incident involving an explosive device,  
10 back in 1986, correct?

11 A Yes.

12 Q And you met the defendant, I think you said in October of  
13 1990. When did you first learn about Mr. Trenkler's  
14 involvement in that 1986 explosive incident?

15 A I'm not certain as to when I did learn of that.

16 MR. KELLY: If I could just have a moment.

17 (Pause.)

18 Q Let me show you a transcript of your prior testimony  
19 February of 1992, pages 30 and 31 and ask you to just take a  
20 moment and read the bottom half of page 30 and perhaps the top  
21 page of 31.

22 MR. SEGAL: Can I have a line where you're going to  
23 start reading, please.

24 MR. KELLY: I'm asking him to read the bottom half of  
25 the page, probably around line 11 or so down, the questions

1 kind of run together.

2 Q You don't need to read all of that page, just the top  
3 part.

4 A Okay.

5 Q Having read that, Mr. Cates, does that refresh your  
6 memory as to when you first learned?

7 A Yes, it does.

8 Q And when did you first learn that Mr. Trenkler had been  
9 involved in this explosive incident in 1986?

10 A In November.

11 Q In November of what year?

12 A '91.

13 Q So you moved in with him and became his friend and  
14 roommate in October of '90, but for the entire year thereafter  
15 this never came up?

16 A No.

17 Q Never told you that he had been arrested for this matter?

18 A I don't --

19 Q Between October of '90 and October of '91?

20 A I don't think he did.

21 Q In fact, it wasn't until after October 28th, 1991, after  
22 this explosion in Roslindale that Mr. Trenkler told you about  
23 this matter, correct?

24 A Yeah, it was after that.

25 Q And again, he told you that because at this time after

1     October of 1991, he had come under scrutiny by the police for  
2     his involvement or alleged involvement in the Roslindale  
3     bombing; isn't that your understanding, sir?

4     A     Yes.

5     Q     So he had kept this particular matter private or secret,  
6     at least for the first year of your relationship?

7     A     Yes.

8     Q     Despite this open relationship that you described, he  
9     never told you about having Mr. Shay to the house --

10           THE COURT: I do believe that is an argumentative  
11     question. The objection is sustained.

12     Q     But you described, sir, that you talked frequently and  
13     you were fairly open and you talked about all kinds of things,  
14     correct?

15           MR. SEGAL: Objection. We've been over this.

16           THE COURT: He can have this last question on the  
17     topic?

18     A     Yes.

19     Q     But he didn't tell you everything?

20           MR. SEGAL: Well, objection.

21           MR. KELLY: It's my last question, please, Mr. Segal.

22           THE COURT: One was the next to last and one is the  
23     last.

24     Q     But he didn't tell you everything, did he, sir?

25     A     No.

1 Q And when he did tell you about his involvement in this  
2 1986 incident, what did he tell you about it?

3 A I'm sorry, I didn't --

4 Q When he finally told you about this in November of 1991,  
5 what did he tell you about it?

6 A What did he tell me about --

7 Q The incident in 1986?

8 A In 1986, he told me about a prank that happened in 1986  
9 that that caused some problems and was, I guess eventually  
10 dismissed, that it was a 4th of July type firework burning.

11 Q And so he described it as a prank, I think you said?

12 A Yes.

13 Q And a 4th of July, 4th of July thing, is that what you  
14 said?

15 A It's my understanding, an M 80 of fireworks.

16 Q Give me just what he told you. Did he say the words M  
17 80?

18 A I don't recall.

19 Q You started to say you had an understanding, I want what  
20 he told you.

21 MR. SEGAL: I think he's trying to tell him.

22 THE COURT: Mr. Kelly is trying to elicit from him  
23 what it is that Mr. Trenkler said.

24 Q You used the word "prank" you used the word "4th of  
25 July" thing, do you recall how else he described the object in

1 question, the explosive device?

2 A Other than it was like a fireworks that was set off.

3 Q Like a firework?

4 A Like a firecracker, like an M 80.

5 Q Did he say that?

6 A I don't know if he said an M 80 or exactly what word he  
7 used.

8 Q Did he tell you anything about where this device had been  
9 situated?

10 A Yeah.

11 Q What did he tell you?

12 A On a fish truck.

13 Q On a fish truck. Did he say where on the fish truck?

14 A No.

15 Q Did he say how it was affixed to the fish truck?

16 A No.

17 Q Did he say the reason why he affixed this thing to the  
18 fish truck?

19 A A friend of his had wanted to pull a prank --

20 Q Did he mention --

21 A -- on someone at the fish company.

22 Q Did he mention the friend's name?

23 A Yes.

24 Q What was that person's name?

25 A Donna Shea.

1 Q Do you recall anything else he told you about the  
2 incident in 1986?

3 A Other than the Court's --

4 Q Well, the incident itself I'm relating to. Does that  
5 exhaust your memory, about the incident itself?

6 A Yes.

7 Q Mr. Cates, I want to direct your attention to the months  
8 of September and October of 1991. Is it fair to state, sir,  
9 that during that time period, this Mr. Shay, this Thomas Shay,  
10 Jr. whose picture you picked out for us here attempted to  
11 reach Mr. Trenkler on a number of occasions, correct?

12 A Yes, a couple of occasions, two to three.

13 Q And how would Mr. Shay attempt to reach Mr. Trenkler  
14 during this time frame?

15 A He would dial his pager. I would leave a message on his  
16 pager.

17 Q And the pager that Mr. Trenkler had at that time in  
18 September and October of 1991 was one of these kind of  
19 sophisticated items that allow, not only numbers to be sent  
20 over to Mr. Trenkler so that he could just simply call back  
21 the number, but it also allowed the leaving of voice mail  
22 messages, did it not?

23 A Yes.

24 Q And do you know, sir, on those occasions when Mr. Shay,  
25 Jr. attempted to reach your roommate, Mr. Trenkler, whether he

1     dialed up the voice mail feature or simply left a number to  
2     get a return call?

3     A     I believe that he left a voice message.

4     Q     He would leave audible messages for Mr. Trenkler?

5     A     If I called, yes.

6     Q     And do you have a recollection of what Mr. Trenkler's  
7     telephone pager number was in September and October of 1991?

8     A     I believe there were a couple of different numbers, ones  
9     that you could access the voice mail and a different number so  
10    that you could just punch in your phone number to be called  
11    back at.

12    Q     Do you recall either of the numbers?

13    A     Yeah, one of them is 553-0778, I believe.

14    Q     Let me show you what's been previously introduced as  
15    Government Exhibit 32, the address book of some kind, and do  
16    you see here on the face page where it indicates Al Trenkler,  
17    and it says, beeper, 617-553-0078, is that consistent with  
18    your recollection with at least one of Mr. Trenkler's pager  
19    numbers?

20    A     Yes.

21    Q     You said there were a couple of times when the pager went  
22    off and messages were received from this Thomas Shay, Jr. How  
23    many such messages do you recall in September or October of 19  
24    the 91, Mr. Cates?

25    A     A couple.

1 Q And did you ever hear any of these messages yourself,  
2 directly?

3 A I believe so.

4 Q And what message do you recall listening to, what audible  
5 message from Thomas Shay, Jr. do you recall being received at  
6 this pager number?

7 MR. SEGAL: Objection to what Mr. Shay said.

8 MR. KELLY: Well, your Honor, I'm not offering it for  
9 that purpose. I'm offering it for the effect on the listener,  
10 hearer.

11 THE COURT: I don't know what you expect me to listen  
12 -- it's hard for me to rule on it.

13 Q Do you have a specific memory of an audible message left  
14 for the defendant on or about October 20th of 1991, Mr. Cates?

15 A I recall that Tom left a message inviting Alan myself to  
16 a Halloween party.

17 Q And the message was something to the effect. Al's at a  
18 Halloween party, coming to a party of one, and you can bring  
19 your friend, he did not mention you by name, correct?

20 MR. SEGAL: Objection. I think that gets into the  
21 hearsay rule part of the message.

22 THE COURT: I'll allow that --

23 MR. KELLY: The message did not mention you by name,  
24 did it, Mr. Cates?

25 A No.

1 Q And you previously testified that on occasions on  
2 September and October 1991 when Mr. Trenkler received these  
3 beeper messages from Thomas Shay, Jr. that he was not  
4 surprised; do you remember that?

5 A Yes.

6 Q When you looked at his demeanor, you didn't seem  
7 surprised by these messages coming over from Thomas Shay, Jr.?

8 A No.

9 Q Now, directing your attention to the summer of 1991, I'm  
10 referring generally to the months of July, August, September  
11 1991, did you have occasion to see Thomas Shay, Jr. during  
12 that time frame while you were in the presence of the  
13 defendant, Mr. Trenkler?

14 A Yes.

15 Q How many times?

16 A I would say more than a couple.

17 Q Now, you had previously advised Mr. Trenkler of your view  
18 that this Shay fellow was kind of whacky and to stay away from  
19 him, correct?

20 A Yes.

21 Q How many times would you estimate that you gave  
22 Mr. Trenkler this advice?

23 A Once or twice.

24 Q And of course at this time in the summer of 1991, you  
25 didn't know that Thomas Shay, Jr. had come to the apartment at

1 133 Atlantic Street because as you told us you didn't learn  
2 that until November, correct?

3 A Right.

4 Q But during the summer, those three months that I just  
5 outlined, sir, Mr. Trenkler did not follow your advice, did  
6 not avoid all contact with Thomas Shay, Jr., did he, sir?

7 A It appeared to me that he did.

8 Q Do you recall at least one instance and perhaps others,  
9 where Mr. Trenkler gave Mr. Shay, Jr. a ride in his car that  
10 he was looking at, correct?

11 A Yes, I recall being in Alfred's car giving Tom Shay a  
12 ride.

13 Q When was that?

14 A It was sometime after June.

15 Q Right. After you had given this advice to stay away from  
16 the guy?

17 A Yes.

18 Q So he didn't follow your advice, did he, sir?

19 MR. SEGAL: Objection to that, your Honor. That's  
20 not necessarily so.

21 Q He had contact with him, didn't he, Mr. Cates?

22 MR. SEGAL: Objection.

23 THE COURT: Obviously, if they were in the same car  
24 together they had contact with each other.

25 MR. KELLY: So he should be able to answer the

1 question.

2 THE COURT: I think the jury can deduce it, can infer  
3 it.

4 MR. KELLY: I'm happy with that.

5 Q Now, you are not completely familiar with all of  
6 Mr. Trenkler's family members, friends, and acquaintances, are  
7 you, Mr. Cates?

8 A No, I am not.

9 Q You don't go to family functions, for example?

10 A I've been over, I think, for Easter dinner.

11 Q During the time you were roommates for two years, you  
12 didn't go out regularly for family functions, did you?

13 A No.

14 Q He didn't take you out to meet other friends and  
15 acquaintances he had had?

16 A Not generally, no.

17 Q From time to time the two of you might socialize with  
18 others independent of one another, correct?

19 A On a rare occasion.

20 Q Do you know a person by the name of Patricia O'Donahue,  
21 for example?

22 A No.

23 Q Do you know a person by the name of Jack Coyle, for  
24 example?

25 A No.

1 Q Do you know a person by the name of Michael Cody, for  
2 example?

3 A No.

4 Q Now, during the time frame of the summer and fall of  
5 1991, you were working virtually full-time as a senior teller  
6 at the Fleet Bank in Boston, correct?

7 A Yes.

8 Q And I think you've told us on a prior occasion, you  
9 weren't working 40 hours a week, you were working on 37 and a  
10 half or something like that; is that correct?

11 A That's correct.

12 Q And you worked regular kind of business hours?

13 A Yes.

14 Q From when to when?

15 A Depending on the shift, basically nine to five hours, or  
16 8 to 4, or 10 to 6.

17 Q Five days a week, generally?

18 A Yes.

19 Q And so, during the daylight hours, the time you were  
20 talking about the summer and fall of 1991, you had no  
21 knowledge of what Mr. Trenkler, the defendant was doing  
22 because you were at work at the Fleet Bank?

23 A Yes.

24 Q So you wouldn't know every job he was at or every  
25 appointment he went to or every person he had contact with,

1 would you, sir?

2 A No, not everyone, no.

3 Q Now, I want to direct your attention to the weekend of  
4 October 26th and October 27th of 1991. And specifically, I  
5 want to direct your attention to Saturday evening, October  
6 26th, 1991. Do you remember where you were that night,  
7 Mr. Cates?

8 A Yes.

9 Q Where were you?

10 A I was in Dorchester having dinner at a friend's.

11 Q And what time did you go to Dorchester that evening?

12 A I would say approximately 9, 9:30.

13 Q And who, if anyone, was with you when you went there?

14 A Alfred was with me.

15 Q Okay. And how long were you at this location in  
16 Dorchester?

17 A I would say until about midnight, 12:30.

18 Q And after you left the -- before we get to that, who else  
19 was present that night besides yourself and Mr. Trenkler at  
20 this dinner party in Dorchester?

21 A David Millette.

22 Q I'm sorry?

23 A M I L E T T E.

24 Q Okay. Anybody else?

25 A A friend of his, Tom Drowla (ph.)

1 Q His last name is spelled?

2 A I don't know how it's spelled.

3 Q Have you ever seen it written down?

4 A No.

5 Q Do you have contact with that person?

6 A No.

7 Q When is the last time you saw him?

8 A It's been quite sometime.

9 Q Do you know where he's residing?

10 A No, I don't. He moved with David Millette from  
11 Dorchester into Brighton and they lived there for awhile.  
12 Eric Wilke, he was also present.

13 Q Now, after this party that you claim to have attended,  
14 where did you go, if anywhere?

15 A I believe Alfred and I may have gone into Boston that  
16 night.

17 Q You say you believe?

18 A Yeah, I'm not sure whether we just went home or whether  
19 we had gone to Boston like we sometimes did on Saturday  
20 evenings.

21 Q Now, this was Saturday night, October 26th, a few days  
22 prior to the Halloween holiday, did you attend any Halloween  
23 parties that evening other than this dinner party in  
24 Dorchester?

25 A No.

1 Q Did you go to the Halloween party that had been, you and  
2 Mr. Trenkler had been invited to by Mr. Shay, via this voice  
3 message mail on October 20th?

4 A No, we didn't.

5 Q Now, when did you recall your whereabouts on the evening  
6 of Saturday night, October 26th, 1991 as having been at this  
7 dinner party in Dorchester?

8 A I place myself there when I realized where Dave Millette  
9 was living at the time.

10 Q That wasn't my question. My question was when did you  
11 have this recollection of your whereabouts that night, when  
12 did it come?

13 A Within the past three or four months.

14 Q Right around the time that you were called to testify in  
15 this very courtroom, correct?

16 A I don't know if it's been three or four months since I  
17 was here before or not.

18 Q Well, at some time prior to or around your being called  
19 as a witness in this courtroom, do you recall this dinner  
20 party in Dorchester on October 26th of 1991, correct?

21 A Yes.

22 Q Prior to that time, you didn't recall that dinner party,  
23 did you?

24 A No.

25 Q In other words, at a time closer to October 26th, 1991,

1 when your memory was probably sharper, you did not recall the  
2 dinner party?

3 MR. SEGAL: Objection. It's argumentative, your  
4 Honor.

5 MR. KELLY: I'll break it down.

6 Q Would you agree with me, Mr. Cates, that you had a better  
7 memory of your whereabouts and activities on October 26th,  
8 1991 within the first three months after that date, yes or no?

9 A No.

10 Q Why is that, sir?

11 A Certain events and certain realizations that I've come to  
12 or knowledge of where people live or were living at the time  
13 have helped jog my memory as to more as to where I was or what  
14 I was doing in different time periods.

15 Q Is it your testimony that your memory gets better with  
16 time?

17 A With certain pieces of information, yes, it does.

18 Q Do you recall being called to testify on two separate  
19 occasions, Mr. Cates, prior to when you were called to testify  
20 at trial in this courtroom. The first occasion was February  
21 6th, 1992, and we've talked about that a couple of times, do  
22 you recall that?

23 A Yes.

24 Q And do you recall, page 41, being asked the following  
25 series of questions by me and giving the following responses:

1           "Question: Do you recall where you and he  
2           referencing the defendant were during the weekend of October  
3           26th and October 27th?

4           "Answer: Most likely I can say that we were at my  
5           home and he wasn't working.

6           "Question: At 133 Atlantic Street?

7           "Answer: At 133 Atlantic Street.

8           "Question: Was there anybody else besides yourself  
9           who saw with you who was with you and could vouch for that?

10          "Answer: My landlord upstairs would probably say  
11          that we were in.

12          "Question: You don't know for a fact, but I take it  
13          that you're basing this on either your routine or your best  
14          memory or both?

15          "Answer: Exactly. It's routine. It's general  
16          routine and best memory, nothing out of the ordinary.

17          "Question: You don't remember any specific events  
18          going away or something that you attended?

19          "Answer: No. Nothing special that would set those  
20          two weekends apart from any other."

21                 Do you recall giving that testimony on February 6th  
22                 of 1992?

23         A        Yes.

24         Q        And you were called to testify again under oath on April  
25                 2nd of 1992, page 41, and you were asked the following

1 questions and gave the following responses:

2 "Question: Can you tell me now what you did that  
3 particular weekend and where Mr. Trenkler was that particular  
4 weekend? As you could tell from the previous question, we  
5 were referring to October 26th and October 27th?

6 "Answer: We probably spent that weekend together.

7 "Question: Well, beyond probably what have you been  
8 able to reconstruct with certainty.

9 "Answer: I haven't really gone back and tried to  
10 place myself having gone to a movie or exactly what we did."  
11 Moving down to line 21 through 24.

12 MR. SEGAL: Can I have the page again.

13 MR. KELLY: 41.

14 "Question: Do you remember what you did the Saturday  
15 night before the Halloween holiday which would have been the  
16 following Thursday?

17 "Answer: No."

18 Do you remember giving that testimony?

19 A Yes.

20 Q So in February of 1992 you didn't recall your whereabouts  
21 on that Saturday night, correct?

22 A No.

23 Q And in April, a couple of months later, after having been  
24 questioned about it specifically, you didn't recall at that  
25 time either, did you, sir?

1 A No.

2 Q And it was only 14 months later in July of 1993 when  
3 suddenly you had this revelation of a dinner party in  
4 Dorchester; that's your testimony, Mr. Cates?

5 A Yes, it is.

6 MR. KELLY: I have nothing further. One second,  
7 excuse me.

8 THE COURT: Let's stretch, and then we'll hear the  
9 cross-examination.

10 THE COURT: You may proceed.

11 Cross-examination by Mr. Segal

12 Q Good morning, Mr. Cates. My name is Terry Segal and I  
13 represent Mr. Trenkler. I think you told us that Al, when you  
14 met him in 1990,, was living at a company called Atell, am I  
15 correct?

16 A Yes.

17 Q And do you understand the work he was doing there was  
18 two-way radios?

19 A Yes.

20 Q Did you understand that part of his job was to fix  
21 two-way radios over there?

22 A Yes, I did.

23 Q And when he was working there when you first met him in  
24 September -- I think 1990, he was also living there; is that  
25 correct?

1 A Yes.

2 Q But after you met him around October 1990, he moved in  
3 with you; isn't that correct?

4 A Yes.

5 Q He took all of his clothes out of Atell and moved them  
6 over to Quincy with you?

7 A Yes.

8 Q And after moving in with you which is -- I'm sorry, was  
9 October 1990?

10 A I wouldn't say October, yes.

11 Q Isn't it fair to say that Al was living with you  
12 continuously right up until December 1992 when he was arrested  
13 with this case?

14 A Yes, it is.

15 Q And putting aside your trip to Europe, basically every  
16 night he would come home and stay at the location in Quincy  
17 from October 1990 through December 1992 from your observation?

18 A Yes, that's correct.

19 Q Now, when you first met Al in September 1990, was he  
20 driving the automobile that Mr. Kelly has shown you?

21 A Yes.

22 Q And he had the same car again in October 1991?

23 A Yes, he did.

24 Q Did the car change in any way in that year from September  
25 1990 to October 1991?

1 A No.

2 Q Would you describe any distinctive features that you can  
3 recall about that car?

4 A Just that it was pretty beat up, kind of an eyesore.

5 Q Did it have a lot of rust on it?

6 A A lot of rust.

7 Q Did it have a decal on it?

8 A In October, September/October?

9 Q Let's go right to October, 1991, do you have it having a  
10 decal on it?

11 A Yes.

12 Q Did it have an antenna that was fixed to the back of it?

13 A Yes, it did.

14 Q I'm just going to show you a little blown up version of  
15 the pictures that Mr. Kelly showed you, Defendant's Exhibit 6,  
16 looking at that exhibit, Mr. Cates, is that the way  
17 Mr. Trenkler's car appeared to you in October 1991?

18 A Yes.

19 Q Now, is this decal on the front, is that where it was  
20 placed at that time?

21 A Yes.

22 Q All right. And I think you told us he painted the car,  
23 but that was when?

24 A It was several months after October of '91.

25 Q So it's clear it wasn't --

1 A Sometime I would say in the middle of '92 or.

2 Q It's clear this car wasn't painted in November of 1991,  
3 isn't that fair to say?

4 A Yes.

5 Q It wasn't painted in December of 1991?

6 A No, it was not.

7 Q All right. Let me just show you Defendant's Exhibit 7,  
8 can you identify this particular electronic decal as the decal  
9 that was on Mr. Trenkler's car on October 1991?

10 A Yes, that is the decal.

11 Q Well, would you get a little closer to the mike?

12 A That is the decal that was on the car.

13 Q So, what I'm holding up is really the decal that's on  
14 that automobile?

15 A Yes.

16 Q Now, there's a sticker on the back of the car here in  
17 this photo, WBCN, do you recall that sticker being on the car  
18 in October 1991?

19 A It would be hard for me to say. I believe that it was.

20 Q All right. Let me ask about the antenna that's pictured  
21 in Defendant's Exhibit 5, do you see that's antenna that's  
22 affixed to the trunk of the automobile?

23 A Yeah.

24 Q Was that antenna on the automobile in October 1991?

25 A Yes, it was.

1 Q All right. Any doubt in your mind about that?

2 A No.

3 Q How about all that rust that's pictured in those three  
4 exhibits, was that on the car at that time?

5 A Yes.

6 MR. SEGAL: May I pass these to the jury, your  
7 Honor?

8 (Pause.)

9 Q I think you described your car as an eyesore in October  
10 1991; is that fair to say?

11 A Yes.

12 Q And what was the basis of that description?

13 A It was just pretty rusty, in need of a paint job, needing  
14 body work. It just wasn't a attractive car to look at.

15 Q And you identified it as a 1978 Toyota Selica car?

16 A I'm not certain of the year of the model.

17 Q Fairly old car, beat up, is that fair to say?

18 A Yes.

19 Q Because of all the problems with it, it wasn't tough to  
20 remember it; is it fair to say?

21 A Yeah.

22 MR. KELLY: Objection.

23 THE COURT: Sustained.

24 Q Let's go to June of 1991, sir you went on vacation, I  
25 think you told us.

1 A Yes.

2 Q June 9- 18th, correct?

3 A Yes.

4 Q You left specific instructions with Al not to bring  
5 anybody to the apartment; is that correct?

6 A Yes, I did.

7 Q At some point, sometime later you learned he had violated  
8 those instructions and brought Mr. Shay to the apartment;  
9 isn't that correct?

10 A Yes.

11 Q I take it you weren't happy about that; isn't that fair  
12 to say?

13 A That would be fair to say.

14 Q To your knowledge, from October 1990 through December  
15 1992, did Mr. Trenkler ever stay at 7 White Lawn Avenue  
16 overnight?

17 A To my knowledge, no.

18 Q The garage that is over there at 7 White Lawn Avenue, was  
19 that used by him to store some of his tools and paraphernalia?

20 A Yes.

21 Q You didn't have much storage over there at Quincy, at the  
22 apartment; isn't that fair to say?

23 A No, not a great deal.

24 Q Now, let's take it when you got back from Europe,  
25 Mr. Cates, I think you told us in response to Mr. Kelly's

1 question, you and Al saw Mr. Cates on the street one day,  
2 isn't that correct, I'm sorry, saw Mr. Shay on the street one  
3 day?

4 A Yes.

5 Q Was that in August of '91?

6 A It could have been July.

7 Q And where on the street did you see Mr. Shay, where were  
8 you when you saw him?

9 A We were in Alfred's car, I'm not sure it was the end of  
10 June, July, or August, and Tom needed a ride.

11 Q Did he ask for a ride?

12 A He asked for a ride.

13 Q And did the two of you give him a ride?

14 A Yeah.

15 Q From where to where?

16 A Around the 1200 block of Boylston up to, I would say, the  
17 library on Boylston Street.

18 Q Did he get out of the car then?

19 A Yes.

20 Q By the way, before you saw Mr. Shay on the street at that  
21 time had you just been picked up by Al from work?

22 A Possibly, yes, yeah, I think so.

23 Q When you were working at the Fleet Bank, wasn't the  
24 common routine for Al to drive you to work in the morning and  
25 then pick you up at night?

1 A Yes. As a general rule, yes.

2 Q That was part of the way he contributed to the rent?

3 A That was part of the exchange.

4 Q And he would drive you from Weymouth down to Copley Place  
5 to the bank?

6 A From Quincy into Copley, and in the afternoons from  
7 Copley to home.

8 Q And while he was living there in Quincy, wouldn't he also  
9 buy groceries?

10 A Yes.

11 Q And wouldn't he take you out to dinner?

12 A Yes.

13 Q And that was all part of paying his share of the expenses  
14 there?

15 A Yes.

16 Q Now, I think you told us, you told Mr. Kelly that  
17 Mr. Shay had called and left messages a couple of times on the  
18 voice mail; isn't that correct?

19 A Yes.

20 Q And you and Mr. Trenkler listened to the messages; is  
21 that fair to say?

22 A Yes.

23 Q He invited you people to a Halloween party, am I right?

24 A Yes, he did.

25 Q Did either of you to your knowledge call him back and

1 accept?

2 A No.

3 Q To your knowledge, did Al ever call Mr. Shay back when  
4 you left those messages?

5 A To my knowledge, no.

6 Q In fact in the fall of '91, the two of you were together  
7 each night, isn't that fair to say, you and Al?

8 A Yes.

9 Q He would pick you up from work and you would go home  
10 together?

11 A Correct.

12 Q He'd pick you up at night and he'd drive you home in the  
13 morning, isn't that fair to say?

14 A Yes.

15 Q Now, you told us you were at the job site of the  
16 Christian Science Monitor church in September/October of 1991;  
17 is that correct?

18 A I was at the job site. I don't know if it was September  
19 or October of 1991.

20 Q Can you place when you were there, sir?

21 A Not exactly.

22 Q At some point you went to that job site?

23 A Yes.

24 Q And did you understand that Al was installing satellite  
25 dishes for the Christian Science Monitor Broadcast Company?

1 A Yes, I did.

2 Q Did you understand that it was a very substantial job?

3 MR. KELLY: Objection, your Honor.

4 THE COURT: Well, his understanding is not relevant  
5 if you want to elicit conversations with the defendant, you  
6 can't do that either because it -- you can't. So the  
7 objection is sustained.

8 Q I think Mr. Kelly asked you about going with Al to the  
9 Blue Hills, you went there together in '92; is that correct?

10 A In '92, possibly, yes.

11 Q Wasn't the purpose of that to walk the dog that you had,  
12 sir?

13 A Yes, it was.

14 Q Mr. Kelly asked you about this October 26th dinner, do  
15 you recall his questions?

16 A Yes.

17 Q And that you -- you hadn't recalled that in February and  
18 April of '92, correct?

19 A I'm sorry.

20 Q You recall him asking some questions about not recalling  
21 them when you were testifying in February and April '92, do  
22 you remember that?

23 A Yes.

24 Q After that time, did you have a conversation with David  
25 Millette about that weekend?

1 A Yes, I did.

2 MR. KELLY: Objection to anything that Mr. Millette  
3 may have said.

4 Q As a result of that conversation did that in any way key  
5 your memory as to that Halloween weekend dinner?

6 A Yes, it did.

7 Q And how did it do it, without telling us what  
8 Mr. Millette said?

9 MR. KELLY: Well, objection, your Honor, how can he  
10 possibly tell us.

11 THE COURT: That's right. Objection is sustained.

12 Q As a result of speaking to Mr. Millette, were you able to  
13 fix that Saturday night before Halloween as being at  
14 Mr. Millette's house for dinner?

15 A Yes.

16 Q When did you have that conversation with Mr. Millette?

17 A That was three or four months ago.

18 Q You told us about one time where you went out, ran into  
19 Mr. Shay and you gave him a ride, for a couple of blocks, am I  
20 right?

21 A Yes.

22 Q Was there any other time after you got back from Europe  
23 that you and Al ran into Tom Shay, Jr.?

24 A We might have saw him in the street in the past and tried  
25 to avoid him.

1 MR. SEGAL: If I may have just a moment, your Honor.

2 (Pause.)

3 Q Mr. Kelly asked you about what Al told you about his  
4 involvement in that 1986 device, do you recall those  
5 questions?

6 A Yes.

7 Q Didn't Al tell you that his lawyer said --

8 MR. KELLY: Objection to anything the lawyer or Al  
9 said.

10 MR. SEGAL: Well --

11 MR. KELLY: No, no, I can offer it, he can't.

12 MR. SEGAL: I don't see the distinction. He asked  
13 what Al said about it.

14 THE COURT: That's right, but he was offering it  
15 against the defendant. He can do that, you can't offer it for  
16 the defendant. That's the rule.

17 MR. SEGAL: Respectfully, he's opened the door, your  
18 Honor. Your Honor, I should be able to fill in the rest of  
19 it.

20 THE COURT: No, the objection is sustained.

21 MR. SEGAL: May I have just one moment.

22 (Pause.)

23 MR. SEGAL: No further questions, thank you.

24 THE COURT: Mr. Kelly, anything else?

25 MR. KELLY: Yes, your Honor.

Redirect Examination by Mr. Kelly

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Q Mr. Cates, you told us that in response to some of Mr. Segal's questions just now that from September of 1990 after you met Mr. Trenkler until December of 1991, he lived continuously with you that whole period of time every single night; is that your testimony?

MR. SEGAL: Objection. That wasn't his testimony.

THE COURT: Well, I must confess that's what I understood it to take.

MR. SEGAL: I think you said he met him in September and moved in a couple of months later.

THE COURT: All right.

Q As of October 1991, every single night from October of 1991 all the way through to December of 19 -- December of 1990, December of 1991, he was always at the house?

A Yes.

Q Your answer is fine?

MR. SEGAL: I object to Mr. Kelly's characterization of the answer.

MR. KELLY: I'm stopping him so I can find my place so I can ask the next question.

Q Do you recall testifying in February of 1992, again under oath?

MR. SEGAL: Can we get a page?

MR. KELLY: Page 7.

1 MR. SEGAL: I'm sorry --

2 MR. KELLY: Page 7, February of 1992. Question,  
3 Kelly: "Now, has he lived with you continuously since the time  
4 he first moved in?

5 "Answer: No. There was a period when he was living  
6 with his parents."

7 Do you remember giving that answer to my question?

8 A Yes.

9 Q In addition, sir, I asked you when you were last in this  
10 courthouse, about whether there were any other instances when  
11 he was not living with you, and you told us that for a period  
12 of about a month, when he first moved in he had kept the  
13 apartment in South Boston at this business, Atell, so there  
14 was an overlap for about a period of a month, did he tell you  
15 that?

16 A Yes.

17 Q So he had both residences?

18 A Yes.

19 Q Well, to your knowledge, Mr. Cates, was this 133 Atlantic  
20 Street apartment that you shared with the defendant, was that  
21 his legal residence? In other words, did he have that address  
22 on your driver's license, to your knowledge?

23 MR. SEGAL: Objection. I'm sure that witness can't  
24 testify to that hearsay.

25 MR. KELLY: His knowledge whether he's ever seen the

1 driver's license.

2 THE COURT: He can certainly answer whether he's ever  
3 seen the driver's license.

4 Q Have you ever seen Mr. Trenkler, the defendant's driver's  
5 license?

6 A Yes, I believe.

7 Q And did he have listed between October of 1990 and  
8 December 1991 the address 133 Atlantic Street in Quincy?

9 A No, to my knowledge, no.

10 Q And did Mr. Trenkler, to your knowledge, receive all of  
11 his mail at 133 Atlantic Street in Quincy?

12 A No.

13 Q In fact, his driver's license said 7 White Lawn Avenue,  
14 Milton, didn't it?

15 A I don't know what address was on the driver's license.

16 Q It wasn't the apartment?

17 A It wasn't 133 Atlantic Street.

18 Q And you know because you were his roommate he was  
19 receiving the majority of his mail at 7 White Lawn Avenue,  
20 Milton, was the case. It's a simple question. Let me ask you  
21 again so there is no confusion. You know that he was picking  
22 up most of his mail at 7 White Lawn Avenue in Milton, correct?

23 A No.

24 Q He had a post office box, is that what you're telling me?

25 A Yes.

1 Q Now, you keep wanting to tell us that this car had lots  
2 of rust?

3 MR. SEGAL: I'm going to object to Mr. Kelly's  
4 speech.

5 THE COURT: The objection is sustained and the jury  
6 will disregard it.

7 Q Are you referring to the rust?

8 THE COURT: You may sit down, Mr. Segal.

9 Q That's observable on Defendant's Exhibit 5, is that the  
10 rust you're referring to at the bottom of the panel there?

11 A Yeah, that's part of it.

12 Q Is there rust on the other side of the car, the passenger  
13 side that you can't see in this picture?

14 A Yes.

15 Q Are there bigger rust marks on the opposite side that  
16 aren't observable as you approached the driver's side?

17 A I'm sorry?

18 Q Are you telling me that the bigger rust marks that you  
19 remember are on the passenger side as opposed to these ones  
20 that are observable on the driver's side?

21 A No, I would say both sides are pretty much rusted out,  
22 and are pretty comparable.

23 Q So that's what you mean. That's consistent with what  
24 you're trying to describe?

25 A Yeah.

1 Q Now, you were asked a question by Mr. Segal about the  
2 WCBN sticker, and of course, I had asked you about that matter  
3 earlier, and you said that you didn't recall, but then you  
4 said, well, when he asked you, do you know whether or not that  
5 was put on before October of 1991? Your response was, I would  
6 believe that it was, okay. Do you remember that answer?

7 A Yes.

8 Q You would believe that it was because you want to give  
9 testimony which is helpful to the defendant, Mr. Trenkler, do  
10 you not, Mr. Cates?

11 A I want to tell the truth like I'm required to do so.

12 Q Mr. Trenkler is your friend, correct?

13 A Yes.

14 Q He's your long time roommate?

15 A Yes.

16 Q You and he have been lovers?

17 A Yes.

18 Q You do not want to see anything bad happen to  
19 Mr. Trenkler the defendant?

20 A No.

21 Q In fact, on a previous occasion in this courthouse, you  
22 said under oath that you would lie for the defendant, did you  
23 not?

24 MR. SEGAL: Objection. This is beyond the scope of  
25 the cross.

1 THE COURT: Credibility is never beyond the scope.  
2 He may have the question.

3 Q You testified on a previous occasion in this very  
4 courtroom that you would lie for the defendant, Mr. Trenkler?

5 A Yes.

6 Q Do you remember that?

7 A Yes.

8 MR. KELLY: I have nothing further.

9 THE COURT: Mr. Segal.

10 Recross examination by Mr. Segal

11 Q What did you mean that you would lie for Mr. Segal?

12 A What I meant by that was in matters of, in an  
13 inconsequential manner if he needed me to step in and say  
14 something that was not true, I would, something of a great  
15 moral consequence.

16 Q Give us an example of such a matter that you're referring  
17 to?

18 MR. KELLY: Your Honor, I think that's the scope.

19 MR. SEGAL: Well, he's asked the question, your  
20 Honor.

21 THE COURT: He may have it.

22 MR. KELLY: I'm sorry the question was an example of  
23 when he would lie?

24 A Well, say, Alfred was late to the office one morning  
25 because he stayed up too late the night before, and a business

1 partner were to ask me, Oh, why was he late? He had a flat.  
2 The kind of lie that you would tell in a social situation four  
3 or five times a week.

4 Q You distinguish that sort of situation from testimony  
5 under oath?

6 A From opening myself up to perjury, yes, I do.

7 Q And you mean by that you've lied under oath in this case  
8 or in any case for Mr. Trenkler?

9 A No.

10 MR. SEGAL: Thank you, your Honor.

11 MR. KELLY: I think in light of those last couple of  
12 questions just to put it in context I ought to be able to, and  
13 ask the Court's permission, in one instance to clarify that  
14 one point with his prior testimony in this courtroom.

15 MR. SEGAL: I would object. We've had two rounds  
16 here. I always thought that that was it.

17 MR. KELLY: I'm asking for a lone exception.

18 MR. SEGAL: I would --

19 MR. KELLY: Are you proposing to read into the record  
20 what was said earlier?

21 THE COURT: You may do that, and Mr. Cates you are  
22 excused.

23 MR. SEGAL: Subject to being recalled for other  
24 matters that have not been gone into here. I ask that  
25 possibility, your Honor, that's all.

1 MR. KELLY: For the record, reading the two passages  
2 which are relevant which appear volume 17, page 67 and page  
3 74, Mr. Cates on the stand.

4 "Question: Would you lie, sir, for Alfred Trenkler?

5 "Answer: I would.

6 "Question: You would lie for Alfred Trenkler?

7 "Answer: I think so."

8 MR. SEGAL: Can we have a reference?

9 MR. KELLY: It's page 67.

10 MR. KELLY: Volume 17. And finally 74.

11 "Question: What would it take you to lie on behalf  
12 of Mr. Trenkler, Mr. Cates.

13 "Answer: What would it take me to lie?

14 "Question: Yes. You said you would. What would it  
15 take? I'm curious.

16 "Answer: I'm not sure I could answer that."

17 THE COURT: Who is the next witness?

18 MR. SEGAL: I would ask to read other portions of  
19 that. Could I read into context the other portions of the  
20 testimony.

21 THE COURT: How many more questions are there?

22 MR. SEGAL: There's two or three key questions.

23 THE COURT: You may have two questions.

24 MR. KELLY: What page?

25 MR. SEGAL: Page 17-67. I have to read Mr. Kelly's

1 predicate question to put it in context. His question: Would  
2 you lie, sir, for Alfred Trenkler?

3 "Answer: I would.

4 THE COURT: He's just read that.

5 MR. SEGAL: Here's my question.

6 "Question: Are you lying now?

7 "Answer: No.

8 "Question: Would you lie under oath for your friend,  
9 Alfred Trenkler?

10 "Answer: No."

11 Thank you.

12 THE COURT: Who is next?

13 MR. LIBBY: The United States calls Mr. Richard  
14 Brown.

15 THE COURT: Let's stretch.

16 Richard Brown, sworn

17 THE CLERK: Please be seated and state your name.

18 THE WITNESS: State my name.

19 THE CLERK: And spell it for the reporter please,  
20 yes.

21 THE WITNESS: Richard Brown, B R O W N.

22 THE COURT: You may proceed.

23 Direct Examination by Mr. Libby

24 Q Where do you live, sir?

25 A Quincy, Massachusetts.

1 Q How long have you lived there?

2 A 15 years.

3 Q How old are you?

4 A 27.

5 Q Are you working now?

6 A No, I'm not.

7 Q How long have you been unemployed, sir?

8 A For about a year.

9 Q Are you married?

10 A No.

11 Q Ever been married?

12 A No.

13 Q Are you hear today on a subpoena issued by the  
14 Government?

15 A That's correct.

16 Q Would you tell us, please, your formal education, where  
17 you went to school?

18 A Quincy Vo-tech and graduated 12th grade.

19 Q Following that, sir, did you find gainful employment?

20 A Yes.

21 Q Where? Doing what?

22 A Security.

23 Q In Boston?

24 A Yes.

25 Q What firm, please, with what firm?

1 A Bay View Security.

2 Q And what years were you working security details?

3 A From about 1985 and on and off.

4 Q At the same time, sir, did you find yourself employed in  
5 some other field?

6 A Yes.

7 Q What field generally, please?

8 A Communications.

9 Q And doing what, specifically, what kind of  
10 communications?

11 A Sales service repair, two-way radios.

12 Q Now, at some point, sir, you came to have a business  
13 relationship with the defendant in this matter, Mr. Alfred  
14 Trenkler, did you not?

15 A That's correct.

16 Q And Mr. Trenkler is in the courtroom today?

17 A Yes.

18 Q Would you point him out for us, please?

19 A The gentleman sitting between the female in the red and  
20 black and the other gentleman in the white shirt with the blue  
21 jacket on.

22 Q The second man from your right?

23 A That's correct.

24 MR. LIBBY: May the record reflect that Mr. Brown has  
25 correctly identified the defendant.

1 THE COURT: Yes.

2 Q Now, do you recall when you first met Mr. Trenkler in any  
3 context?

4 A Yes.

5 Q Now, when was that?

6 A Roundabouts 1984.

7 Q Now, would you tell us the circumstances when you first  
8 met him?

9 A I was at a party in Milton, Massachusetts, and I was  
10 introduced to him by one of my friends.

11 Q And who was that?

12 A Brown O'Leary.

13 Q And that individual also knew Mr. Trenkler?

14 A Yes.

15 Q Did you at that time in 1984 begin any sort of a detailed  
16 long standing relationship of any kind with Mr. Trenkler?

17 A Not at that time.

18 Q When did you next meet or have any dealings with  
19 Mr. Trenkler of any substantial nature?

20 A Roundabouts 1986.

21 Q And at that time would you describe for us, please, what  
22 you and Mr. Trenkler did together?

23 A He had a company that he was doing microwave work for a  
24 couple of colleges, and I thought it would be advantageous for  
25 me to make a little money doing this, that I was interested in

1 it, so I helped him.

2 Q So you are working security details essentially  
3 full-time?

4 A That's correct.

5 Q And you worked full-time with Mr. Trenkler?

6 A Yes.

7 Q What was the name of his company?

8 A AWT Associates.

9 Q What did AWT stand for?

10 A Alfred W. Trenkler.

11 Q Would you tell us, please, at that time your  
12 understanding of Mr. Trenkler's specialized background?

13 A From what I understood he went to a couple different area  
14 colleges.

15 Q Those would be?

16 A Wentworth at Northeastern.

17 Q Did you understand that he had a specialty in the field  
18 of communications?

19 A Yes.

20 Q What was that?

21 A Design limitation of circuitry and other devices as well  
22 as two-way radio.

23 Q You've worked -- from 1986 on you worked alongside him on  
24 various projects?

25 A You could say that.

1 Q Both large and small?

2 A Yes.

3 Q Could you give us a description, please, an example of  
4 the large project you've seen Mr. Trenkler involved, no  
5 electronics?

6 A Different various systems, dealing with terrestrial and  
7 microwave.

8 Q Would that include the Christian Science job?

9 A Yes.

10 Q Could you give us an example of the small amount of  
11 detail work Mr. Trenkler would be involved in electrical  
12 engineering?

13 A Preparing two-way radios and design different circuits.

14 Q What physically would Mr. Trenkler be working on when  
15 he's working on the circuits?

16 A It depends. There are different projects going on that  
17 he's working on.

18 Q Are you familiar with the term "circuit board"?

19 A Yes.

20 Q What's a circuit board, please?

21 A It's a type of plastic with holes in it that you put  
22 various devices on, resistors and capacitors, and so forth,  
23 and solder it together.

24 Q Have you seen Mr. Trenkler work on circuit boards?

25 A Yes.

1 Q More than once?

2 A Yes.

3 Q Frequently?

4 A More or less.

5 Q Did you see that Mr. Trenkler had some kind of expertise  
6 in your presence, specialized knowledge with respect to these  
7 circuit boards and soldering and the like?

8 A He was very good at what he did.

9 Q Now, have you seen Mr. Trenkler exercise his expertise  
10 and work skills in the area of tools of any kind?

11 A Yes.

12 Q What kind of tools?

13 A Hand tools, power tools.

14 Q Does he have his own set of tools?

15 A Yes.

16 Q Did he have his own set of tools in the mid '80's, '86  
17 on?

18 A Yes.

19 Q Have you seen him exercise the skill with these tools  
20 with respect to these circuit boards?

21 A Yes.

22 Q Now, when did you first go into business with him in this  
23 AWT business, please?

24 A It was around 1986.

25 Q And would you describe for us, please, you each had a

1 distinct role in AWT in the business, you each played a  
2 different role?

3 A We worked together. There were specific job roles, yes.

4 Q And Mr. Trenkler's role was what?

5 A Handling all the men and making sure the job got done.

6 Q He had the expertise?

7 A That's correct.

8 Q What was your role?

9 A Well, I assisted in forming the contracts and collections  
10 and paying out, accounts payable and receivable.

11 Q How long was AWT in business after you joined up? How  
12 long did you stay in business?

13 A A period of about a year, maybe.

14 Q Was it a success?

15 A No.

16 Q Was it distinctly unsuccessful, sir?

17 A Seeing that it failed, it was unsuccessful.

18 Q And would you spend any amount of particular amount of  
19 time with Mr. Trenkler working side by side when you were  
20 working at AWT?

21 A On several occasions.

22 Q How much amount of time typically would you spend with  
23 Mr. Trenkler during the course of your work?

24 A It varied. 10 to 30 hours depending.

25 Q Would some weeks be heavier than others?

1 A It all depended on what jobs he had going on.

2 Q Did you work with him on weekends?

3 A Yes.

4 Q Now, after that failed, Mr. Brown, I believe you said  
5 once you came on it was a pre-existing ongoing system, once  
6 you rejoined Mr. Trenkler?

7 A Yes.

8 Q You stayed with him about a year and then the business  
9 failed, right?

10 A Right.

11 Q Did you have an opportunity thereafter, and I guess that  
12 takes us roughly to 1987 or so, did you have an opportunity  
13 thereafter to once again join him in a business venture, join  
14 the defendant in a business venture?

15 A Yes.

16 Q What was that venture, please?

17 A ARCOM advanced research communications, we formed the  
18 company.

19 Q And when did you join Mr. Trenkler in that venture?

20 A It was around '89, '90.

21 Q Did you have office space?

22 A Yes.

23 Q Where was that office space?

24 A 82 Broad Street, Plymouth.

25 Q What did that consist of, please?

1 A Store front property with common displays in the windows;  
2 we had pagers; we had a background, bathroom a couple of desks  
3 with a phone.

4 Q How many rooms all told?

5 A Three, counting the bathroom and the back room.

6 Q Did ARCOM have a number of employees?

7 A We had several employees who we used on a part-time basis  
8 only.

9 Q And at any time, sir, what was the maximum amount of  
10 employees at ARCOM employed?

11 A Probably six or seven.

12 Q Most of the time how many folks work at ARCOM?

13 A Just myself and Al.

14 Q Now, do you recall, sir, when you first joined up with  
15 Mr. Trenkler at ARCOM the first project that you and he were  
16 interested in bidding on, bidding in on?

17 A Yes.

18 Q What was that?

19 A The Christian Science Monitor project.

20 Q And where was that located, please?

21 A Well various locations, Boston, and Dedham.

22 Q And what was the primary job site, what was the location  
23 of the primary job site?

24 A Boston.

25 Q Where in Boston?

1 A The Christian Science Monitor building.

2 Q And what was the nature of that job there, please?

3 A Setting up a microwave length between a couple of  
4 different locations, Dedham Boston.

5 Q What was Mr. Trenkler's role in connection with that  
6 project?

7 A To design exactly what the client needed to buy and  
8 implement it.

9 Q And your role, sir?

10 A Contracts, collections of money, paying the employees,  
11 paying for parts.

12 Q And how long was ARCOM involved in the Christian Science  
13 project, please?

14 A Probably about seven months totally.

15 Q Beginning in early '91 and lasting for some time  
16 thereafter?

17 A Yes.

18 Q Now, did you see, did you have occasion to visit the job  
19 site downtown Boston at the Christian Science building?

20 A Yes.

21 Q How frequently did you visit?

22 A It varied one or two times a week to.

23 Q And this is over that seven-month period, roughly  
24 seven-month period?

25 A Yes.

1 Q During those occasions where you visit, Mr. Brown, did  
2 you see Mr. Trenkler at the job site?

3 A Yes.

4 Q Now, and your understanding that Mr. Trenkler's role in  
5 this project pretty much kept him at the job site?

6 A Yes, he was responsible for the employees so he had to be  
7 there to make sure that the job was being done correctly.

8 Q Now, was ARCOM a financial success, sir?

9 A No.

10 Q Did it fail?

11 A Yes.

12 Q When approximately did ARCOM fail, please?

13 A Roundabout February or so.

14 Q Of?

15 A Of '91.

16 Q I'm not clear on that. I believe your testimony is you  
17 started up in ARCOM, Mr. Trenkler in early '91 and you  
18 continued on through the Christian Science project, correct?

19 A That's correct.

20 Q That included October of '91, true?

21 A Yes.

22 Q So the failure took place obviously after that?

23 A That's correct.

24 Q Now, did you stay in touch with Mr. Trenkler between the  
25 time you knew him from AWT back in '86, '87 and the time you

1 hooked up with him again in early '91, did you stay in touch  
2 with him in any respect?

3 A Yeah, we had conversations.

4 Q Where were you working during that period of time, were  
5 you working?

6 A Yes. I was working with a tool distributor in Weymouth.

7 Q Do you know if Mr. Trenkler was working at that time?

8 A Yes.

9 Q Where was he working, employees?

10 A Atell.

11 Q What is Atell?

12 A I don't know what it stands for.

13 Q What kind of business was it?

14 A A two-way radio repairs, sales and service.

15 Q Was it a large company?

16 A No, two or three employees.

17 Q And where was that business located?

18 A 144 Comm. Ave.

19 Q Had you visited there?

20 A Yes.

21 Q During the time Mr. Trenkler worked there?

22 A Yes.

23 Q And would you describe for us the building set up at  
24 Atell, please?

25 A Large two-story building, lower part was a garage for

1 service and the second floor had bathrooms with sleeping  
2 facilities as well as sales service offices.

3 Q And during the time that you saw Mr. Trenkler at Atell,  
4 was he living there?

5 A Yes.

6 Q In the second floor quarters?

7 A That's correct.

8 Q Was he living with anyone?

9 A No.

10 Q How many different occasions did you see visit  
11 Mr. Trenkler at Atell?

12 A A couple of different times during the week.

13 Q You saw that he had a bathroom a shower, a bed and things  
14 of that nature?

15 A Yes.

16 Q Did you see his clothes, and so forth, his belongings  
17 generally?

18 A Yes.

19 Q Now, during that period of time, Mr. Brown, did you have  
20 any business type relationship Mr. Trenkler when he was at  
21 Atell in South Boston?

22 A Well, the company that I was working for, he was a  
23 distributor for two-way radio equipment, he would call his  
24 inquiry as to whether we had stuff in stock. So I did talk to  
25 him on the phone line.

1 Q During this period of time also, to your knowledge, did  
2 Mr. Trenkler work for any other outfit?

3 A No.

4 Q Did you ever hear of a business known as Analog Devices?

5 A Yes.

6 Q To your knowledge, did Mr. Trenkler ever work for Analog  
7 Devices?

8 A Years before I met him.

9 Q I see. And what did Analog Devices deal with?

10 A As far as I know, they design circuit boards for  
11 different things, I'm not sure exactly what they do.

12 Q Mr. Brown, did there come a time in your dealing with  
13 Mr. Trenkler over the years that you became familiar with his  
14 sexual orientation?

15 A Yes.

16 Q Was that a matter of any controversy between you?

17 A No.

18 Q Now, did there also come a time, Mr. Brown, when you  
19 visited Mr. Trenkler in South Boston where you saw an  
20 individual whom you later learned to be Thomas Shay, Thomas A.  
21 Shay, otherwise known as Shay, Jr.?

22 A Yes.

23 Q Would you give us the description, please, of Shay, Jr.?

24 A About 6 foot 5, skinny, goofy looking.

25 Q And where were you the first time that you saw Shay, Jr.,

1 please?

2 A I believe it was at Atell.

3 Q Was he with anyone?

4 A Al Trenkler.

5 Q Where at Atell did you see him?

6 A Second floor.

7 Q Mr. Trenkler's living quarters?

8 A No, it was not living quarters.

9 Q It was on the second floor of that shop?

10 A That's correct.

11 Q Anyone else present besides the three of you?

12 A No, not when we first got there.

13 Q Do you recall what day of the week your visit was when  
14 you saw Shay, Jr. with Mr. Trenkler when you appeared?

15 A It was on a Friday.

16 Q All right. Did you have occasion to visit Mr. Trenkler  
17 at Atell later that weekend?

18 A Yes, it was on a Sunday.

19 Q And when you arrived there, was Mr. Trenkler alone?

20 A No.

21 Q Who was he with, please?

22 A He was with Thomas Shay.

23 Q Now, directing your attention back to that Friday night,  
24 did you have any conversation with Mr. Trenkler or Shay, Jr.  
25 as you were leaving that night?

- 1 A I just asked him if he was gay.
- 2 Q If who was gay?
- 3 A Tom Shay.
- 4 Q And do you recall what Mr. Trenkler told you?
- 5 A I said I don't know, ask me later.
- 6 Q Did you ask him later?
- 7 A Yes.
- 8 Q When did you ask him?
- 9 A Sunday.
- 10 Q That Sunday when you came back; is that right?
- 11 A Yes.
- 12 Q What did Mr. Trenkler say on that occasion?
- 13 A That he was.
- 14 Q And on that occasion or -- strike that. On any occasion,
- 15 do you recall having Shay, Jr. in your automobile?
- 16 A Yes.
- 17 Q Would you tell us, please, was it about the same time
- 18 that you saw Mr. Trenkler at Atell on that weekend?
- 19 A Yes.
- 20 Q Do you recall that, how long was Shay, Jr. in that
- 21 automobile with you?
- 22 A Probably 15, 20 minutes.
- 23 Q What were you doing?
- 24 A I was driving him somewhere, I don't remember if it was
- 25 his house or what.

1 MR. KELLY: If I may, your Honor approach.

2 THE COURT: Yes.

3 Q I show you Government Exhibit 55, Mr. Brown, and ask you  
4 a six window photospread and ask you if you can identify  
5 anybody in the photo?

6 A The only individual I know is No. 4.

7 Q And who is that?

8 A Thomas Shay.

9 Q Shay, Jr.?

10 A Shay, Jr., I'm sorry.

11 MR. LIBBY: May the record indicate that the witness  
12 has identified correctly Thomas Shay, Jr.

13 THE COURT: Yes.

14 Q Now, Mr. Brown, do you recall a time when Mr. Trenkler  
15 left those living quarters at South Boston at Atell?

16 A Yes.

17 Q When was that?

18 A I think it was around December or so.

19 Q Of '90?

20 A Yes.

21 Q Where did he then go to?

22 A Atlantic Street, Quincy.

23 Q Where were you living at the time?

24 A At my parents' house.

25 Q Which is where?

1 A Quincy.

2 Q How far are the two residences?

3 A About three minutes.

4 Q Do you have occasion to visit Mr. Trenkler at his  
5 Atlantic Street apartment?

6 A Yes.

7 Q Whom did you understand Mr. Trenkler was living with at  
8 the time?

9 A John Cates.

10 Q And where in the residence were they living?

11 A Basement apartment.

12 Q Was this the time, Mr. Brown, where you begun to have  
13 business dealings with Mr. Trenkler?

14 A That's correct.

15 Q Did there come a time, Mr. Brown, where you understood  
16 that Mr. Cates wasn't around for some period of time?

17 A That's correct.

18 Q When was that?

19 A February.

20 Q Of what year, of that year?

21 A Of that year.

22 Q Of '91?

23 A I believe so.

24 Q Do you recall specifically that month?

25 A No, I don't recall specifically.

1 Q Now, do you have occasion to visit -- strike that.

2 You were three or four minutes apart, your houses  
3 were three or four minutes apart?

4 A Yes.

5 Q You had occasion to visit him in the basement apartment  
6 from time to time?

7 A Yes.

8 Q Roughly how frequently, weekly?

9 A Two or three times a week.

10 Q Could you just stop over?

11 A Yes.

12 Q That was unannounced?

13 A Most of the time I didn't call.

14 Q Do you recall one particular occasion where Mr. Cates was  
15 absent for some period of time, you saw Mr. Trenkler in the  
16 basement apartment with a visitor?

17 A I believe so, yes.

18 Q And who was the visitor, please?

19 MR. SEGAL: Can we get a time frame?

20 THE COURT: Yes.

21 Q Do you recall when this was, please?

22 A What do you mean a time frame, what do you want to know?

23 Q Mr. Brown, do you recall an occasion when you visited  
24 Mr. Trenkler in the basement apartment at 133 Atlantic, he was  
25 not alone, he had a visitor?

1 A Yes.

2 Q Do you recall when in 1991 that was approximately?

3 A It was between the one-week period that he was -- Cates  
4 had gone, the first week he had gone. Exactly what day, I  
5 believe it was on the weekend.

6 Q What was your understanding as to what Mr. Cates was  
7 doing at that time?

8 A He had gone on vacation in Europe.

9 Q So it's during that weekend visit that you're talking  
10 about?

11 A That's correct.

12 Q And could you tell us, please, who the visitor was on  
13 that occasion?

14 A What I believe to be Tom Shay, Jr.

15 Q The same individual that you picked out here on No. 4,  
16 Exhibit 55?

17 A Yes.

18 Q Now, let me direct your attention, Mr. Brown, to a period  
19 immediately following the October 1991 explosion in  
20 Roslindale, it's about midNovember, do you recall being  
21 visited, Mr. Brown by agents of the Bureau of Alcohol, Tobacco  
22 & Firearms?

23 A Yes.

24 Q How many agents did you visit?

25 A Two.

- 1 Q Do you recall where that visit took place?
- 2 A 82 Broad Street.
- 3 Q Your office?
- 4 A Yes.
- 5 Q And who was present in that visit?
- 6 A Tom D'Ambrosio and Dennis Leahy.
- 7 Q The ATF agents?
- 8 A That's correct.
- 9 Q And yourself?
- 10 A Yes.
- 11 Q Anyone else?
- 12 A No.
- 13 Q And the general subject matter of the conversation during
- 14 the course of that visit was what?
- 15 A The bombing incident.
- 16 Q How long did they stay?
- 17 A A period of about an hour or so.
- 18 Q Was that a happy occasion for you?
- 19 A Definitely not.
- 20 Q Fairly unpleasant to be hit by federal agents?
- 21 A Yes.
- 22 Q As of that time in February of 1991, Mr. Brown, were you
- 23 still doing business with Mr. Trenkler?
- 24 A Yes.
- 25 Q Pretty much your full-time occupation at the time?

1 A That's correct.

2 Q Now, skipping ahead, did there come a time when you  
3 ceased dealing, ceased any kind of business relationship with  
4 Mr. Trenkler?

5 A Yes.

6 Q When was that?

7 A End of February, I believe.

8 Q The following year, '92, we're talking about midNovember  
9 '91 your visit by the ATF agents, right?

10 A That's correct.

11 Q So sometime thereafter?

12 A So it was '92, early '92.

13 Q Okay. And in between, would you tell the Court and jury,  
14 please, in between November '91 when you were visited by the  
15 ATF agents and into February '92 when were you ceased doing  
16 business with Mr. Trenkler of any kind, what were you and  
17 Mr. Trenkler engaged in?

18 A I don't understand the question.

19 Q During the months, the latter part of November, December,  
20 and January of '92, what were you doing during that time?

21 A Completing the rest of the Christian Science job.

22 Q And anything else?

23 A No, I was trying to get everything wrapped up because of  
24 what was happening.

25 Q Did it appear to you that your business was not going to

1       succeed at that time?

2       A       I knew it wasn't going to succeed with Feds and cops  
3       running around everywhere.

4       Q       And you wanted to avoid any default with any of your  
5       ongoing business deals, whatever they were?

6       A       That's correct.

7       Q       And during that period of time during that two and a half  
8       month period, Mr. Brown, did you continue to have some kind of  
9       person-to-person dealings with Mr. Trenkler?

10      A       After the jobs were done?

11      Q       Between December, January, February until you ceased to  
12      having --

13      A       A couple of times over the radio, telephone, beeper.

14      Q       Did you see him face to face?

15      A       A couple of occasions, yes.

16      Q       Now, back to that initial visit where Agents D'Ambrosio  
17      and Leahy visited you, would you tell us, please, the first --  
18      what they inquired of you with respect to any particular  
19      individual?

20               MR. SEGAL:  Objection to what was said by those  
21      agents, your Honor.  That seems to elicit that.

22               THE COURT:  You're right.

23               MR. LIBBY:  I'll move on your Honor.

24      Q       Do you recall whether the agents asked you at that time  
25      whether you could identify whether anyone --

1 MR. SEGAL: Objection.

2 THE COURT: He can have that general question yes or  
3 no, but I'm not sure we can go beyond that?

4 A Yes.

5 Q Did they show you a photospread?

6 A Yes.

7 Q Can I identify anyone in that photospread?

8 MR. SEGAL: Objection.

9 THE COURT: He can tell us what he did.

10 A Yes.

11 Q Did you have any hesitancy or did you have any difficulty  
12 in picking out any individual from that photospread?

13 A Surprisingly not at all.

14 Q And who was it that you picked out of the photospread,  
15 please?

16 A Thomas Shay, Jr.

17 Q Now, following that visit, having in mind that visit that  
18 Agents Leahy and D'Ambrosio, just the three of you together,  
19 did you have occasion to speak to the defendant, Mr. Trenkler?

20 A Yes.

21 Q And you spoke with him about that visit generally?

22 A More or less.

23 Q Did you have a question for Mr. Trenkler at that time  
24 with respect to Shay, Jr.?

25 A Yes.

1 Q What was your question to Mr. Trenkler?

2 A I asked him how he met somebody like that.

3 Q And Mr. Trenkler had a response for you?

4 A Yes.

5 Q What did he say?

6 A He told me that he just met him on a corner or some place  
7 and that he felt bad for him. He didn't have any friends and  
8 that's how he ended up exchanging numbers or he gave him his  
9 number and business card.

10 Q Now, you had this conversation between you and  
11 Mr. Trenkler, is this at ARCOM's offices?

12 A I don't recall where it was, but he did have a  
13 conversation between the two of you.

14 Q Just the two of you?

15 A Yes.

16 Q Now, did he also have a conversation with Mr. Trenkler  
17 about anything in particular, any of Mr. Trenkler's earlier  
18 dealings with the ATF agents?

19 A I don't understand the question.

20 Q Let me try again. Did your conversation with  
21 Mr. Trenkler at that time also include conversation regarding  
22 anything Mr. Trenkler had done previously with the ATF agents?

23 A Not at that time, I didn't have any conversation with him  
24 other than how we he would meet somebody like that, and they  
25 thought it was pretty foolish for him to give his number out

1 to somebody he just met.

2 Q At some point did you have a conversation with  
3 Mr. Trenkler with respect to Mr. Trenkler doing anything at  
4 the request of an ATF agent regarding a diagram?

5 MR. SEGAL: Object to the leading nature of that  
6 question.

7 THE COURT: He may have the question.

8 A He did draw a block diagram.

9 THE COURT: The question is did you have -- did you  
10 have a conversation with Mr. Trenkler about that, yes or no?

11 THE WITNESS: Yes.

12 Q What did you tell Mr. Trenkler and what did he tell you  
13 first about the nature of the diagram?

14 A It was a pretty quick thing just for the fact that he  
15 hadn't taken the diagram with him and had shredded it.

16 Q In the course of the conversation with Mr. Trenkler, what  
17 did you understand the diagram to represent?

18 MR. SEGAL: I object.

19 THE COURT: He may tell us anything Trenkler said  
20 about it, but his understanding about that is not relevant.

21 MR. LIBBY: I'll rephrase, your Honor.

22 Q What did Mr. Trenkler tell you that the diagram  
23 represented?

24 A I'm not exactly sure. It was a diagram of a bomb.

25 Q Beyond that Mr. Trenkler told you something else about

1 that diagram, did he say something about what happened to the  
2 diagram?

3 A As I said a couple of minutes ago, he had taken it and  
4 shredded it because ATF agents had taken it with him.

5 Q And would you tell us, please, Mr. Trenkler's demeanor as  
6 he told you that?

7 MR. SEGAL: Objection. I thought we were on the  
8 telephone. He was not in person but on the telephone.

9 THE COURT: If he was on the telephone, he couldn't  
10 tell us the demeanor.

11 Q Could you tell us Mr. Trenkler's demeanor when he told  
12 you?

13 A That I don't recall.

14 Q Were you face to face with him?

15 A No, I don't believe so.

16 Q Now, I believe you testified that you stopped dealing  
17 with Mr. Trenkler in roughly in the February '92 time frame?

18 A Yes.

19 Q Before you stopped having contact with Mr. Trenkler in  
20 February of 1992, do you recall a particular conversation with  
21 Mr. Trenkler with another person present at ARCOM's Broad  
22 Street offices?

23 A Yes.

24 Q And who was that third person, please?

25 A Donna Shea.

1 Q Who is Donna Shea, please?

2 A Long time acquaintances about myself.

3 Q And the three of you alone?

4 A Yes.

5 Q At the office at 82 Broad Street?

6 A That's correct.

7 Q And you're generally discussing the investigation as it's  
8 unfolding?

9 A Well, a couple of salesmen come in selling some stuff.  
10 We thought it was kind of odd and we struck up a conversation  
11 joking around, and asked if they had any remote control cars  
12 for sale and stuff.

13 MR. SEGAL: Can we get a time frame, your Honor, as  
14 to when this conversation took place.

15 THE COURT: Yes.

16 Q Do you recall this is before you stopped any dealings?

17 A That's correct. It was probably December or so.

18 Q Right. There is the three of you present, Donna Shea,  
19 that's S H E A?

20 A S H E A.

21 Q No relation to Thomas Shay, Jr.?

22 A That's correct.

23 Q No relation to the defendant and yourself?

24 A That's correct.

25 Q Do you recall after anyone else had departed whether you

1 had any conversation with Mr. Trenkler about Mr. Trenkler's  
2 potential involvement in the investigation?

3 A Yes.

4 Q First, what did you say at that time?

5 A I told him if he had anything to do with it that he  
6 probably should tell the officials about that because if he  
7 had anything to do with it then they would find out and he  
8 would get screwed later anyway and he should talk to them  
9 because he might be able to save himself.

10 Q After he said that, did Mr. Trenkler have a response?

11 A He didn't say anything it looked like he was --

12 Q Did he say anything to you, did he answer anything with a  
13 question?

14 A Well, he asked --

15 MS. GERTNER: Objection to the leading nature.

16 THE COURT: He's entitled to try to jog the witnesses  
17 memory to some extent.

18 MR. LIBBY: Thank you, your Honor.

19 A I can recall to the effect of, what do you want me to do,  
20 admit that I did it. I told him if he had anything to do it,  
21 you should tell him and if somebody else had planted the  
22 thing, if somebody else didn't have any part in it whatsoever  
23 you should tell them. It would save him because he's going to  
24 get in trouble anyway.

25 Q How far apart were you and Mr. Trenkler standing?

1 A Probably three feet, four feet.

2 Q Did you look him in the eye when you made that statement?

3 A I believe so.

4 Q Would you tell us what your next saw Mr. Trenkler do or  
5 say?

6 A Well, he didn't say anything to me. He looked at me and  
7 like he had thought about it and then I went back to doing  
8 what I was doing and he continued a conversation with  
9 Mr. Shay, and I don't know what was said.

10 MR. LIBBY: I have nothing further. Thank you, your  
11 Honor.

12 THE COURT: I think we'll suspend here until tomorrow  
13 morning at nine, and we'll continue with the cross-examination  
14 of Mr. Brown, and Mr. Brown I would ask you to return at  
15 9 o'clock.

16 THE WITNESS: Thank you.

17 THE COURT: You are excused, subject to the same  
18 admonitions.

19 [Whereupon, the jury left the courtroom.]

20 THE COURT: Court is in recess until 2, this case  
21 until 2.

22 MR. LIBBY: If your Honor, please, we're going to try  
23 and again to get some cases up to you.

24 In fact during the break, your Honor, we found one  
25 case that may --

1 MR. LOPEZ: Your Honor, in that --

2 THE COURT: I mean at some point --

3 MR. SEGAL: This is like six bites at the apple, your  
4 Honor. At some point there is some finale, we have plenty of  
5 cases from the Eleventh Circuit. I think at some point it's  
6 over when it's over.

7 THE COURT: We're having no further argument on the  
8 issue. If you have a case send it up and I'll read it, but we  
9 will have no further oral argument.

10 MR. LIBBY: Thank you, your Honor.

11 MR. SEGAL: We're submitting our cases now, your  
12 Honor.

13 MR. LOPEZ: There are three cases from the Eleventh  
14 Circuit which deal with the issues that you've raised, your  
15 Honor, and are clearly against the government's-- well, which  
16 we've discussed.

17 [Whereupon, the jury trial adjourned at 1 p.m. to  
18 reconvene on Friday, November 5th, 1993.]

19 **CERTIFICATE**

20 We certify that the foregoing is a correct  
21 transcription of our computer-aided stenographic notes of the  
22 proceedings in the above-entitled matter.

23 \_\_\_\_\_

24

25

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Alan Pransky, resumed (By Ms. Sharton)		6		
Larry Plant, sworn (By Mr. Kelly)	27		50	
(By Mr. Segal)		48		51
John Cates, sworn (By Mr. Kelly)	52		128	
(By Mr. Segal)		117		134
Richard Brown, sworn (By Mr. Libby)	137			

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
49A, B	(See Clerk's Notes.)		57
56A, B			61
46A- D			68

Defendant's  
(No Defendant's Exhibits marked.)

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Tenth Day of Trial11  
12  
13 APPEARANCES:14 For the Government:15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.17  
18 For the Defendant:19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
21 210 Commercial Street, Boston, MA. 02109.22  
23 Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

24 November 5, 1993

25 Computer-Aided Transcription

P R O C E E D I N G S

[Whereupon, the jury entered the courtroom.]

THE COURT: Good morning. Please be seated.

THE COURT: Where's the witness?

MR. LIBBY: Your Honor, he's coming right in. He had an emergency stop in the men's room.

[Pause.]

THE COURT: Understand you're still under oath. We won't swear you again but understand that you are still under oath.

Do you understand that?

THE WITNESS: Yes.

THE COURT: You may proceed.

Richard Brown, resumed

Cross-examination by Mr. Segal

Q Good morning, Mr. Brown.

A Good morning.

Q My name is Terry Segal. I think we met before, am I correct?

A Yes.

Q Mr. Brown, let's go to AWT Associates. You and Al worked very hard on that company; is that fair to say?

A Yes.

Q You worked, the normal work week was anywhere from 30 to 40 hours a week?

1 A Not with AWT.

2 Q But you both, you and Al worked very hard to make AWT a  
3 success; is that fair to say?

4 A Yes.

5 Q Let's go to ARCOM. That company was involved with  
6 satellite communications; isn't that fair to say?

7 A Yes, that was one of the --

8 THE COURT: Excuse me a moment. Do you want the  
9 window closed behind you. I'm sorry, I forgot to do it  
10 before. Okay. Let me know if you do and we can give you the  
11 stick and you can do it. Go ahead.

12 Q Mr. Brown, wasn't one of the other functions of ARCOM to  
13 sell two-way radios?

14 A Yes.

15 Q And in 1991 didn't ARCOM have a very substantial job at  
16 the Christian Science Church?

17 A Yes.

18 Q And that consisted of installing microwave dishes on the  
19 roof of the church, am I right?

20 A Yes.

21 Q So that the broadcasting from the church would go from  
22 Channel 68 up to a satellite, do you understand that?

23 A Yes.

24 Q Do you remember some of the people who were working on  
25 that project, sir?

1 A Employed by us?

2 Q Yes, on a day labor basis. Let me ask you. Do you  
3 remember David Flaherty working on that project?

4 A Yes.

5 Q And a fellow Nathan(ph?) Cadgis, C A D G I S?

6 A Yes, it's Cadgis. Yes, I do.

7 Q And there were some other people assisting Al putting up  
8 the microwave dishes on the church roof; isn't that fair to  
9 say?

10 A Yes.

11 Q And there were days that you were over there; is that  
12 correct?

13 A Yes.

14 Q And when you went over did you have to sign a log-in  
15 sheet to get up to the roof?

16 A To get the keys we had to sign a sheet to get to the  
17 roof, yes, but once people were on the roof.

18 Q Isn't it fair to say, Mr. Brown, you don't blame Al for  
19 the failure of ARCOM?

20 A No.

21 Q I think you told us yesterday the federal investigation  
22 after this bombing really contributed to the downfall of the  
23 company, isn't that fair to say?

24 A There were several factors.

25 Q Is that one of the factors?

1 A Yes.

2 Q Now, I think you told us initially yesterday that you  
3 thought ARCOM failed in February 1991. Do you recall that  
4 testimony?

5 A Yes.

6 Q But I think you later said that you had the Christian  
7 Science job in -- that started sometime in 1991 and went  
8 probably until the end of 1991, isn't that fair to say?

9 A Yes.

10 Q So when you told us it failed in February of 1991, you're  
11 just incorrect about the date, am I right?

12 A That's correct.

13 Q In fact, it's fair to say you put the failure more at  
14 February of '92?

15 A Yes.

16 Q Now, I think you told us you saw Thomas Shay at John  
17 Cates' apartment at one occasion with Al. Do you remember  
18 saying that?

19 A Yes.

20 Q And I think you told us yesterday you initially placed  
21 that date at some time when John Cates was away?

22 A That's correct.

23 Q In other words, when you saw Al at the apartment, John  
24 Cates wasn't there; am I correct?

25 A That's correct.

1 Q And I think you told us yesterday that initially you  
2 placed that date around February of '91. Does that sound  
3 correct?

4 A I'm not sure of your date.

5 Q Let me read you your testimony yesterday about this at  
6 9-155.

7 "Question: Did there come a town, Mr. Brown, that  
8 you understood that Mr. Cates wasn't around for some period of  
9 time.

10 "Answer: That's correct.

11 "Question: When was that?

12 "Answer: February.

13 "Question: Of what year? Of that year?

14 "Answer: Of that year.

15 "Question: Of '91?

16 "Answer: I believe so.

17 "Question: Do you recall specifically month?

18 "Answer: No, I don't recall specifically. "

19 MR. LIBBY: Your Honor, if I may, if I can have  
20 another question and answer read to put it in context at the  
21 bottom of page 156.

22 "QUESTION: Mr. Brown, do you recall an occasion when  
23 you visited Mr. Trenkler --"

24 MR. SEGAL: Could we save this to redirect?

25 THE COURT: If he wants to put a particular question

1 and answer in context, he's entitled to do it now and not to  
2 take it out of context later on.

3 MR. SEGAL: All right. Go ahead.

4 MR. LIBBY:

5 "Question: Mr. Brown do you recall an occasion when  
6 you visited Mr. Trenkler in the basement apartment at 133  
7 Atlantic, he was not alone, he had a visitor?

8 "Answer: Yes.

9 "Question: Do you recall when in 1991 that was  
10 approximately?

11 "Answer: It was between the one-week period that he  
12 was -- Cates had gone, the first week he had gone.

13 "Question: Exactly what day?

14 "Answer: I believe it was on the weekend.

15 "Question: What was your understanding as to what  
16 Mr. Cates was doing at that time?

17 "Answer: He had gone on vacation in Europe."

18 Thank you.

19 Q Mr. Brown, my question is do you have a clear memory of  
20 visiting Mr. Trenkler at some time when Mr. Cates was away?

21 A Yes.

22 Q You stated, by the way, Mr. Cates was away, right?

23 A That's correct.

24 Q And yesterday you thought or the testimony was you  
25 thought that was February; is that right?

1 A Yes.

2 Q If I suggest to you that Mr. Cates has testified that he  
3 went away in June of '91, would that help you with the time  
4 you might have seen Mr. Trenkler and Mr. Cates at the  
5 apartment?

6 A All I can say is that when I saw who I would believe to  
7 be Mr. Shay with Mr. Trenkler, Cates was not there, so, maybe  
8 I'm incorrect on the date, sorry.

9 Q Mr. Brown, haven't you suffered three serious head  
10 injuries which affect your memory?

11 A Yes.

12 Q All right. Weren't you hit by a baseball back in the  
13 head when you were 17 years old?

14 A Yes.

15 Q Weren't you hit -- didn't your head hit the rearview of a  
16 mirror of an automobile in a car accident in 1986 and 1987?

17 A Yes.

18 Q And didn't your head hit the windshield while you were  
19 driving with Al Trenkler in an automobile in Cohasset in 1990?

20 A No, it did not hit the windshield; but, yes, there was a  
21 head trauma as well.

22 Q Where did your head hit in that third accident?

23 A Driver's side pillar.

24 Q You were hospitalized with that, sir? You went to the  
25 hospital?

1 A I went to the hospital, yes.

2 Q Sir, don't you have what's called post -- I'm sorry.

3 Don't you have what's called postconcussion syndrome?

4 A Yes.

5 Q And that's basically similar to somebody who is like a  
6 punch-drunk, am I right?

7 A Yes.

8 Q In fact, do you have some scars on your head?

9 A That's correct.

10 Q And would you agree with me that you have a bad memory as  
11 a result of all these head traumas?

12 MR. LIBBY: Objection, your Honor.

13 THE COURT: What's your objection?

14 MR. LIBBY: Bad memory, the form of the question as  
15 to what time frame and to what degree.

16 Q Now. Let's just right now, sir. As a result these three  
17 traumas to the head and this postconcussion syndrome, would  
18 you agree with me that you don't have a great memory?

19 MR. LIBBY: Objection. Same objection, your Honor.

20 THE COURT: He said right now.

21 MR. LIBBY: Memory as to what time frame.

22 Q Today. Your memory today, you have trouble remembering  
23 dates and things because of these head injuries that you  
24 suffered?

25 A Certain things I have difficulty with, yes.

1 Q In terms of your memory?

2 A That's correct.

3 Q Now, I think yesterday you said Al told you over the  
4 telephone he drew a diagram of a bomb. Do you recall giving  
5 that testimony?

6 A I don't remember saying it was over the telephone. I do  
7 remember the diagram.

8 Q That he told you he had drawn a diagram, right?

9 A Yes.

10 Q Now, Mr. Brown, do you remember coming to my office this  
11 year to produce certain records in this case?

12 A Yes, I do.

13 Q In fact, do you remember getting this subpoena which is,  
14 I'll mark as Defendant's Exhibit 84 D, to produce certain  
15 records of ARCOM.

16 THE COURT: Is the question whether he remembers or  
17 whether he got it?

18 Q Did you receive that subpoena, sir? Did you look at ...

19 A I don't recall if it was this exact copy of the subpoena  
20 or not. I don't recall.

21 Q But you have a memory of coming to my office to produce a  
22 couple of boxes of ARCOM records; is that fair to say?

23 A Yes.

24 Q And if I suggested that you came in June of this year,  
25 would that be fairly accurate?

1 A It could have been.

2 Q All right. And you recall where my office was that you  
3 came to, sir?

4 A The address I don't remember, no.

5 Q Is it fair to say that it was in the waterfront North End  
6 area of Boston, can you recall that?

7 A Yes, it was.

8 Q Can you recall it was tough to park in that area?

9 A That's correct.

10 Q And that you had trouble parking; is that right?

11 A Yeah.

12 Q And that somebody waited for you and you came up with  
13 these boxes of records?

14 A Yes, I do.

15 Q And do you recall coming up to the second floor of my --  
16 of the building I was in with the records?

17 A Yes.

18 Q And then coming into my office on the second floor?

19 A Yes.

20 Q And bringing those two boxes of ARCOM records into my  
21 office on the second floor, am I right?

22 A Yes.

23 Q And do you recall that seated in my office beside myself  
24 there were two other people there? Do you recall that?

25 A Karolides, the investigator, and somebody else.

1 THE COURT REPORTER: I'm sorry. Who?

2 A Karolides. I don't know how to pronounce his last name.

3 Q If I suggested it's K A R O L I D E S, would that be  
4 about right?

5 A Yes.

6 Q You understood Mr. Karolides to be an investigator  
7 assisting me on the case?

8 A Yes.

9 Q And was there another fellow seated there who was a  
10 white-haired man?

11 A I know there was another individual there, I don't  
12 recall.

13 Q All right. Now, do you recall while you were in the  
14 office producing those records, you told us you had been  
15 present when ATF agents asked Al to draw a diagram of the  
16 bomb?

17 A Yes.

18 Q And do you recall telling us on that day that you saw Al  
19 draw a diagram of the bomb?

20 A No, I don't remember saying that, but I did see the  
21 diagram that he had drawn --

22 Q No, please, Mr. Brown. Stick with me. We're talking  
23 about the meeting in my office in June of this year when you  
24 came to produce the records. You recall that, right?

25 A Yes.

1 Q Do you recall saying at that meeting, you saw Al draw a  
2 diagram of the bomb? That's my only question. Do you recall  
3 saying that?

4 A No, I don't recall saying that.

5 Q Do you recall saying that you heard Al ask the ATF agents  
6 if he could keep the diagram?

7 A I don't remember saying that, no.

8 Q Do you recall saying at that meeting in my office that  
9 you were sure you had been present when Al drew the diagram  
10 for the ATF agents?

11 MR. LIBBY: Objection, your Honor, asked and answered  
12 twice.

13 THE COURT: He said you had asked him earlier whether  
14 he remembers being present.

15 Q And now the question is -- this is a little different.

16 Do you recall saying you were sure you were present  
17 when Al drew the diagram for the ATF agents?

18 THE COURT: He can have the question.

19 A I don't remember, no.

20 THE COURT: Members of the jury, let me caution you.  
21 When counsel asks the witness a question in the form of a  
22 statement and the witness doesn't accept the statement, that  
23 is not evidence of the truth of the statement. If I say to  
24 you, now you got up at 9 o'clock this morning, and you say no,  
25 that is not evidence of the fact that you got up at 9 o'clock

1 this morning. Do you understand?

2 Q Mr. Brown, let me show you this memorandum of Mr. Flynn  
3 of June 10, 1993. Do you see if that --

4 THE COURT: Memorandum of whom?

5 MR. SEGAL: Morris Flynn.

6 Q See if that refreshes your recollection about the  
7 conversation. And I'd like to direct your attention to page  
8 2, but please read to yourself the whole memorandum.

9 THE COURT: How many pages are there?

10 MR. SEGAL: Just one and a half pages. It's a very  
11 short memorandum.

12 (Pause.)

13 THE COURT: Now, the question is?

14 Q Having read that memorandum, Mr. Brown -- by the way, can  
15 you recall if Mr. Flynn was that white-haired fellow seated in  
16 Mr. Karolides' office? Do you remember the name "Flynn" at  
17 all?

18 A No, I don't.

19 Q But you remember a third person besides myself and Mr.  
20 Karolides?

21 A Yes.

22 Q Do you remember anything about that third person's  
23 physical description?

24 Is it fair to say he was a male?

25 A Yes, he was a male, older gentleman. I don't remember.

1 Q If I suggested about 45, 50, sort of distinguished  
2 looking fellow?

3 THE COURT: Well --

4 Q Well, how would you recall him, if you can?

5 A I do not recall.

6 Q But you're clear there were three people in that office  
7 when you had this conversation, am I right?

8 A I believe so.

9 Q Having read this memorandum, do you now have any memory  
10 that you said you were present, you were sure you were present  
11 when Al drew the diagram for the ATF agents of the bomb?

12 MR. LIBBY: Objection, your Honor.

13 THE COURT: You may have a general question as to  
14 whether it helps him to recall any part of this conversation.

15 MR. LIBBY: Yes or no, please. Thank you.

16 THE COURT: Does it help you to recall the  
17 conversation and what you said.

18 THE WITNESS: No, I don't. No, it does not.

19 Q Do you have a memory at that meeting of saying, My memory  
20 sucks?

21 MR. LIBBY: Objection, your Honor. He's reading from  
22 something that's not in evidence and further, your Honor --

23 THE COURT: The objection is sustained.

24 MR. LIBBY: We have not received any such materials.

25 THE COURT: The objection is sustained.

1           MR. SEGAL: May I be heard on that issue, your Honor,  
2 briefly. It's a central issue on the evidence point. I'd  
3 like to be heard on the evidence issue.

4           THE COURT: I don't think it's necessary.

5 Q       Did you ever say, sir -- strike that.

6           Have you ever been excused from testifying because of  
7 your memory problems, sir?

8 A       I see it in here but I don't recall saying something like  
9 that.

10 Q       Do you ever recall saying to us in that June meeting that  
11 you had been excused from testifying in court because of your  
12 memory problem?

13           MR. LIBBY: Your Honor, this is the problem we have.  
14 We object. Counsel is simply circumventing the notion of  
15 referring to specific matters --

16           THE COURT: I'll see you at the bench.

17           [Conference at the bench, as follows:

18           THE COURT: How can you read this memorandum and put  
19 it into evidence testified in this way.

20           MR. SEGAL: I'm not --

21           THE COURT: That's what you're doing.

22           MR. LIBBY: That's exactly what you're doing.

23           THE COURT: Mr. Libby.

24           MR. LIBBY: I'm sorry, your Honor.

25           MR. SEGAL: I can handle one or two.

1           Respectfully, I'm not prepared to put that memorandum  
2 in now.

3           THE COURT: You're putting it in through the  
4 questions.

5           MR. SEGAL: I am prepared in the light of this  
6 testimony to call Mr. Flynn and --

7           THE COURT: On what issue?

8           MR. SEGAL: This man has testified totally different  
9 to -- this is a clear prior inconsistent statement. I mean,  
10 may I be heard on it?

11           On his direct exam, he said, Mr. Trenkler said, I  
12 made a diagram and didn't give it to the agents. Now, he's --  
13 the memorandum says that when he came into the office, he said  
14 I was present and he drew a diagram in front of the ATF agents  
15 and he didn't turn it over to them. That's clearly  
16 contradictory to his first statement and goes right to the  
17 heart of this case because it's clear, the evidence will come  
18 in, that when Mr. Trenkler, whatever he drew at 1:30 in the  
19 morning on November 6th, this man wasn't present. So that's a  
20 clear prior inconsistent statement. And Mr. Flynn and Mr.  
21 Karolides are prepared to testify.

22           THE COURT: They can't come in and testify on that  
23 question because you would be offering them solely on the  
24 issue of this man's credibility and they can't come in just on  
25 this man's credibility. That is simply -- you cannot have

1 collateral evidence on the issue of a witness's credibility.

2 MR. SEGAL: No, that's not -- may I get the rule a  
3 second, your Honor?

4 THE COURT: You don't need the rule for that.

5 MR. SEGAL: I'm talking about Rule 613 and  
6 impeachment with a prior inconsistent statement, when this  
7 man --

8 THE COURT: Yes, but you can impeach him by showing  
9 him the prior inconsistent statement and have him either  
10 disavow it or not. But you cannot bring in other witnesses on  
11 that same question.

12 MR. SEGAL: Well, respectfully I disagree and I would  
13 like to submit something because the rule says, your Honor,  
14 when I show him that statement and he disavows it, I can put  
15 in witnesses to show it's a prior 613.

16 THE COURT: The rule says nothing of the sort.

17 MR. SEGAL: Look at 613(a) and (b), particularly (b),  
18 extrinsic evidence of a prior inconsistent statement, and  
19 that's what this is. Extrinsic evidence of a prior  
20 inconsistent statement by a witness is not admissible unless  
21 the witness is afforded an opportunity to explain or deny the  
22 same and the opposite party is afforded an opportunity to  
23 interrogate the witness thereon. I'm giving him that  
24 opportunity.

25 And now having given it to him, I'm entitled where

1 he's denied it at a later time to call Mr. Flynn and Mr.  
2 Karolides on that issue.

3 But there's another issue that's even more central,  
4 your Honor. Memory --

5 THE COURT: At the moment the question is whether you  
6 can interrogate the witness by putting to him the statements  
7 in this memorandum, and thus getting the contents of this  
8 memorandum into evidence. That's the immediate question.

9 MR. SEGAL: Respectfully, the question I phrased is,  
10 am I entitled to use that memorandum to ask him did you say X,  
11 Y, and Z so that he's given an opportunity to affirm or deny  
12 it. And then if he denies it, Mr. Flynn and Mr. Karolides can  
13 come in and say our memory is this, this, and this.

14 And I would like to add one other point. He has put,  
15 by testifying, memory is a central issue in this case. You  
16 talked yesterday about credibility. He puts his memory into  
17 issue and he testifies. So --

18 THE COURT: He doesn't put it into issue, you do.

19 MR. SEGAL: Well, the assumption is that somebody is  
20 here with a decent memory. If he at a prior time has told two  
21 people, " my memory sucks," I can't remember anything, I've  
22 been excused from testifying because of it," I am entitled to  
23 ask him those questions and then put the other people on to  
24 say what he said because that is clearly impeaching evidence.  
25 It goes to credibility and memory.

1           THE COURT: You have established that he has had head  
2 injuries, he has had memory problems and we will leave it at  
3 that. We're not going to put the contents of this memo in by  
4 asking him did you say this or do you remember saying this.  
5 We're just not going to do it. And whether or not other  
6 witnesses come and say otherwise -- I mean you've gone through  
7 it all now.

8           MR. SEGAL: I just want to be clear, in fairness to  
9 the rule and him, that I have given him every opportunity to  
10 admit or deny, solely because I'm planning to call those two  
11 witnesses. I have a memo from Mr. Karolides too.

12          THE COURT: You may call him but the likelihood of  
13 him testifying is not great.

14          MR. LIBBY: Two points, your Honor.

15               First of all, the questions have to do with, does  
16 this witness recall saying X, once he says no, he's entitled  
17 to see if he can refresh. He refreshes with this, the answer  
18 again is no, no further reference to an extrinsic matter such  
19 as that. That's point 1.

20               Point 2, we've asked for this stuff before. We've  
21 given the defense every scrap of written information here.

22          MR. SEGAL: I got this as he was going to the stand.  
23 I would ask --

24          THE COURT: Gentleman, we're making no further  
25 reference to the specifics of this. Mr. Libby pointed out

1 that the witness read it; it doesn't refresh his  
2 recollection. You're not going to ask him any more specific  
3 questions by reading from the memorandum. That's my ruling,  
4 your objection is noted. And I will deal with Messrs.  
5 Karolides and Flynn if you call them. My view is they cannot  
6 testify on this issue.

7 MR. LIBBY: Your Honor, the rule is he's stuck with  
8 the evidence from the witness testifying.

9 MR. SEGAL: There are two issues. And we can deal  
10 with them separately. As to memory, I am stuck with that, I  
11 understand. Where there is a prior inconsistent statement  
12 where he denies making a statement that is inconsistent, in  
13 other words, he denies --

14 THE COURT: "His memory sucks" is not at all  
15 inconsistent with anything. He has said he has a bad memory.

16 MR. SEGAL: No, I apologize for confusing the Court.  
17 What I'm saying now is he's testified on direct, Trenkler  
18 said, I made the drawing and destroyed it. Now, I said to  
19 him, Didn't you say at a prior time to this case, in front of  
20 these two people, I was present when Trenkler drew the  
21 diagram.

22 THE COURT: He was asked that question today and he  
23 has answered that.

24 MR. SEGAL: I understand that. Under Rule 613(a) and  
25 (b) and that authority, I am entitled --

1 THE COURT: I told you that I was going to deal with  
2 that when you call them on the basis of authority. But at the  
3 moment my view is it doesn't come in.

4 MR. SEGAL: All right.

5 ... End of conference at the bench.]

6 THE COURT: How much more do you have?

7 MR. SEGAL: I have no further questions, your Honor.  
8 Thank you.

9 Redirect Examination by Mr. Libby

10 Q Mr. Brown, how is your memory with respect to particular  
11 dates two or three years ago -- putting particular events at a  
12 particular point in time on a particular day? How is your  
13 memory generally?

14 A I believe it would depend on the importance of it.

15 Q Now, you told us that you have a bad memory with respect  
16 to certain matters; is that right?

17 A That's correct.

18 Q And that may have something to do with your personal  
19 injury history?

20 A Yes.

21 Q Do you, in any respect, sir, have difficulty recalling  
22 the substance of conversations and meetings and things of that  
23 nature?

24 A Not certain ones, no.

25 Q Okay. With respect to those matters you testified to

1 yesterday regarding, for example, your visits to Atell, where  
2 you saw Shay, Jr., you identified that photo spread with  
3 Mr. Trenkler, any difficulty recalling being at Atell and  
4 seeing that street --

5 THE COURT: Well, I don't think we want to review his  
6 entire testimony yesterday in this fashion.

7 MR. LIBBY: Your Honor, I think I'm entitled--

8 MR. SEGAL: It's beyond the scope of the cross.

9 THE COURT: No, it doesn't go beyond the scope of the  
10 cross unfortunately because you raised the issue of memory.  
11 And let me explain that to the jury.

12 You now know that we have two rounds of examination.  
13 The lawyer who calls the witness conducts the direct, and then  
14 comes the cross, then the redirect and the recross.

15 The rule is that if the lawyer on direct asks about  
16 topics 1 through 10, then on cross-examination the second  
17 lawyer may ask about every one of the topics 1 through 10.  
18 If, however, he asks only about 1 through 5, then on redirect,  
19 the lawyer can only ask about 1 through 5.

20 If on redirect he only gets into 1 and 2, then on  
21 recross, 1 and 2 are the only ones that can be asked about.  
22 That is, the scope of the examination is forever narrowed by  
23 what was gone into the examination immediately before, because  
24 we don't want to be here forever.

25 So I do not regard this as beyond the scope of the

1 immediately preceding examination because the issue there was  
2 memory. And this question goes to memory. It is always a  
3 judgment call whether it is or isn't beyond the scope.

4           However, I do not want you to review the direct by  
5 saying you, in fact, remember everything you told us yesterday  
6 in detail.

7           MR. LIBBY: I won't do that, your Honor. This will  
8 be very brief.

9       Q     Mr. Brown, do you recall faces? Do you know how to  
10 recall the faces of individual people?

11    A     Yes.

12    Q     Do you have any difficulty doing that?

13    A     No.

14    Q     With respect to your conversation with Mr. Trenkler at  
15 ARCOM where Donna Shea was present, do you recall that?

16    A     Yes.

17    Q     Okay. And you testified yesterday that you had in your  
18 mind a clear picture of the faces and the setting at that  
19 time?

20           MR. SEGAL: I'm going to object that it's beyond the  
21 scope of the cross. We didn't get into that.

22           MR. LIBBY: Your Honor, I'm--

23           THE COURT: It is not beyond the scope of the cross.  
24 You may have the question, if that's the objection.

25    Q     Did you have that picture in your mind as you were

1     testifying yesterday?

2     A     Yes.

3     Q     Did you have any difficulty calling back to that scene,  
4     whatever particular date it was, did you have any difficulty  
5     recalling that scene in your mind?

6     A     No, I remember the --

7     Q     It was a fairly significant conversation in your mind,  
8     was it not?

9     A     Yes.

10    Q     You don't have those kinds of conversations on a daily  
11    basis, do you?

12           THE COURT:  You are leading the witness, now, which  
13    is a no-no.

14           MR. LIBBY:  I have nothing further.  Thank you, Mr.  
15    Brown.

16                   Recross Examination by Mr. Segal

17    Q     Mr. Brown, I think you said you had problems with your  
18    memory with certain matters; is that fair to say?

19    A     Yes.

20           MR. SEGAL:  Thank you, Mr. Brown, I have no further  
21    questions.

22           THE COURT:  Thank you, Mr. Brown.  You are excused.  
23    Who is next?

24           MR. LIBBY:  The United States calls Edward Carrion.

25

Edward Carrion, sworn

THE CLERK: Please be seated and state your name.

THE WITNESS: Edward Carrion Kelly.

Direct Examination by Mr. Kelly

Q Can you spell that last name for us.

A C A R R I O N.

Q Where do you reside, Mr. Carrion?

A Boston, Massachusetts.

Q Tell us how old you are, please.

A Thirty-nine.

Q Are you employed at the present time, Mr. Carrion?

A Yes.

Q And in what capacity, sir?

A Computer network designer.

Q Mr. Carrion, have you ever been employed in the field of law enforcement?

A Yes.

Q And where was that, sir?

A In the County of Los Angeles in the City of South Pasadena and the City of Azusa, A Z U S A.

Q And what was your position with these two cities?

A For South Pasadena I was a non-paid volunteer reserve police officer. For the City of Azusa I was a paid full-time reserve police officer.

Q And during what period of time were you so employed by

1 the City of Azusa, California?

2 A From 1978 to 1981.

3 Q And what were the circumstances under which you left that  
4 position, Mr. Carrion?

5 A Due to a knee injury.

6 Q Now, how long have you been involved -- I believe you  
7 said you were in the field of computer networking?

8 A Yes.

9 Q How long have you been involved in that field, sir?

10 A Approximately six years.

11 Q Mr. Carrion, do you know an individual by the name of  
12 Thomas Shay or Thomas Shay, Jr.?

13 A Yes.

14 Q When did you first meet Mr. Shay?

15 A Approximately the spring of 1989.

16 Q Is it possible that you have your years mixed up?

17 A Yes. It could have been as early as '88. I'm sorry.

18 Q Would you describe the circumstances under which you  
19 first met this Mr. Thomas Shay?

20 A I met Mr. Shay down at an area called the Block.

21 Q Can you tell us what the Block is?

22 A It's an area that is -- it's an area that is used for men  
23 to pick up other men for cruising.

24 Q Is it fair to state that it's an area frequented by gay  
25 males?

1 A Yes.

2 Q And where is the Block located?

3 A It's an area, Boylston Street, Berkeley Street, Saint  
4 James and Arlington Street.

5 Q And what relationship, if any, did you have with this  
6 Thomas Shay after you first became acquainted with him in the  
7 spring of 1988?

8 A We became friends.

9 Q And how long did that friendship last, Mr. Carrion?

10 A To the fall of 1991.

11 Q What particular month in 1991, if you recall, did you  
12 last have an association with him?

13 A October.

14 MR. KELLY: With the court's permission, if I could  
15 approach.

16 Q Mr. Carrion, I want to show you what has previously been  
17 introduced as Government Exhibit 55, and ask if you recognize  
18 that item?

19 A Yes, I do.

20 Q And is that what is known as a photo spread, sir?

21 A Yes, it is.

22 Q And based on your experience in law enforcement, can you  
23 tell us what your understanding is of a photo spread  
24 generally?

25 A A photo spread is a number of photographs of equal size

1 of pictures resembling a suspect in which the suspect is in  
2 one of the photos.

3 Q And looking at that exhibit which contains six  
4 photographs, do any of the persons there look familiar to you?

5 A Yes.

6 Q Which one?

7 A No. 4.

8 Q And why does that photograph look familiar?

9 A It is a picture of Thomas Shay.

10 Q And showing you Government's Exhibit 54, is that, sir, an  
11 enlargement of the smaller photo item No. 4 on Exhibit 55 of  
12 Thomas Shay?

13 A Yes.

14 Q And is that a photograph of the Thomas Shay that you  
15 know?

16 A Yes.

17 Q Pardon the nature of the question, Mr. Carrion but what  
18 is your sexual orientation, sir?

19 A I'm an openly gay male.

20 Q And did your friendship with Thomas Shay, Jr. have an  
21 intimate side to it, sir?

22 A Yes, it did.

23 Q Now, during the time frame that you've outlined for us,  
24 sir, spring of 1988 to October of 1991, were you in regular  
25 contact with Mr. Shay throughout that period, sir?

1 A Yes.

2 Q Were there periods of time when Mr. Shay was not around,  
3 not in the area?

4 A Yes.

5 Q Would you describe for us in general terms during those  
6 occasions when he wasn't around when that was during this  
7 three-and-a-half year period, if you recall?

8 A It would generally be during the colder months, but not  
9 necessarily during the colder months of the year, during the  
10 fall and winter.

11 Q And when Mr. Shay was outside the Boston area, would you  
12 have knowledge as to where he was located?

13 A He would call me occasionally and tell me where he was  
14 at.

15 Q Okay. Now, approximately how many times during the  
16 three-and-a-half year period of your association with Mr. Shay  
17 would you estimate that you actually socialized or had contact  
18 with him, Mr. Carrion?

19 A In excess of 40 times.

20 Q And when you did socialize, would you just tell us the  
21 types of activities or outings that the two of you may have  
22 engaged in, please?

23 A Sometimes we would sit and talk, go out to the movies,  
24 sit at home, watch TV, et cetera.

25 Q And how many of these 40 or so occasions would have

1 involved contact of an intimate or a sexual nature,  
2 Mr. Carrion?

3 A About five or six.

4 Q Could you describe for us, sir, what assistance, if any,  
5 you provided to Mr. Shay during the period of your  
6 association?

7 A Often I would give Mr. Shay small amounts of money or  
8 other things such as dinners, T tokens, other things to help  
9 him out when he did not have money.

10 Q Now, on those occasions when he was not in the Boston  
11 area, you told us that you would speak to him by telephone.  
12 Would he call you collect or would he call you direct?

13 A Either/or.

14 Q Now, during this period of time that we've been focusing  
15 on here, spring of 1988 to October of 1991, did you own an  
16 automobile, Mr. Carrion?

17 A Yes, I did.

18 Q And during that period, sir, did you have occasion to  
19 provide rides or transportation to Mr. Thomas Shay from time  
20 to time?

21 A Yes.

22 Q And, again, during this period, how often would you say  
23 you provided rides to Mr. Shay?

24 A Approximately five to six times.

25 Q And where would you bring him, sir?

1 A Either to his mother's house, which he would identify as  
2 his mother's house, and or upper Mattapan -- upper Mattapan or  
3 lower Milton and to two occasions in the Milton area.

4 Q And do you know the names of either of the streets, the  
5 two streets in the Milton area that you may have dropped off  
6 Mr. Shay at, sir?

7 A I remember the name of only one of them.

8 Q What is the name of the one street that you recall?

9 A White Lawn Avenue.

10 Q And the location that you dropped him off at White Lawn  
11 Avenue in Milton, was it a house or a building? Can you  
12 describe the structure?

13 A It was a two-story wood-framed older building with a  
14 detached garage.

15 Q Mr. Carrion, I want to show you what has been previously  
16 introduced as Government's Exhibit 49 A to the left, the  
17 jury's left, and 49 B -- excuse me -- on the right, and ask  
18 you whether or not you recognize these two photographs, sir?

19 A Yes.

20 Q Can you tell us what's depicted here, please?

21 A It's the location of 7 White Lawn Avenue.

22 Q 49 A is the structure, the house?

23 A Yes, it is.

24 Q And 49 B is what, sir?

25 A The detached garage.

1 Q And if I held these correctly, which side of the house is  
2 the detached garage on?

3 A It would be on this side of the home.

4 Q Like this?

5 A Yes, slightly behind.

6 Q Now, how many times -- strike that.

7 Mr. Carrion, who did you understand resided at this  
8 location on White Lawn Ave., Milton?

9 MR. SEGAL: I object. It calls for a hearsay  
10 statement.

11 MR. KELLY: I'm not asking for a hearsay statement.

12 THE COURT: You may answer it.

13 A A friend.

14 Q A friend of yours?

15 A A friend of Shay's.

16 Q How many times would you say you dropped Mr. Shay off at  
17 this location on White Lawn Avenue in Milton?

18 A Maybe three or four times.

19 Q Could you tell when was the earliest time, the month and  
20 year, the best you can recall that you dropped him off at this  
21 location?

22 A Sometimes in the spring of 1989.

23 Q Did you ever have the opportunity at any time to see this  
24 friend of Mr. Shay's, this friend that resided at White Lawn  
25 Avenue in Milton?

1 A Residing at the home?

2 Q No, that's a bad question. I'm sorry, sir.

3 Did you ever have an opportunity to see the person,  
4 the individual who you understood to reside at White Lawn  
5 Avenue in Milton?

6 A Yes.

7 Q Approximately how many times?

8 A Only twice.

9 Q Could you describe the person?

10 A Older, I described him as being approximately the early  
11 '30s, late 20's, balding, heavier in build.

12 Q And do you see that same person in the courtroom here  
13 today, Mr. Carrion?

14 A Yes, I do.

15 Q Would you point him out for us, please?

16 A It is the person sitting at the defendant's table, second  
17 from the left.

18 MR. KELLY: Your Honor, if the record would reflect  
19 the identification of the defendant.

20 Q Mr. Carrion, directing your attention back to the month  
21 of February of 1992, some 20 months or so ago, were you  
22 visited by federal agents at that time, sir?

23 A Yes.

24 Q And were you asked some questions?

25 A Yes.

1 Q And at the time of this interview, were you shown another  
2 photo spread by the agents?

3 A Yes, I was.

4 Q And what were you asked to do with this photo spread that  
5 you were shown?

6 A To identify a person that I knew to be a friend of Thomas  
7 Shay.

8 Q I want to show you what has been previously introduced as  
9 Exhibit No. 54, Mr. Carrion, and ask you to pull it out of the  
10 plastic, please, and ask you if you recognize that item, sir?

11 A It's the photos --

12 THE COURT: Do you have an objection? What's the  
13 objection?

14 MR. SEGAL: Objection. Hearsay, prior consistent  
15 identification.

16 THE COURT: What?

17 MR. SEGAL: I submit that a prior consistent  
18 identification is hearsay, your Honor. He has made an  
19 in-court identification here.

20 THE COURT: Right.

21 MR. SEGAL: Nobody has challenged it yet so I submit  
22 to put in a prior consistent where there hasn't been a  
23 challenge is hearsay. That's my objection.

24 MR. KELLY: Your Honor, I've never heard that before,  
25 frankly. I mean, I'm asking --

1 THE COURT: I think the rule says something about  
2 that. Are you going to challenge it?

3 MR. SEGAL: No.

4 MR. KELLY: I'm entitled to show that at a time frame  
5 closer to the time in question --

6 THE COURT: You may have the question. You may  
7 answer.

8 Q Again, my question I believe was do you recognize the  
9 item on the table before you?

10 A Yes, it was the photo spread that was shown to me by the  
11 agents.

12 Q And, sir, were you asked to look at that photo spread  
13 and see if there was anyone who was familiar to you?

14 A Yes, I was.

15 Q And was one of the persons on the photo spread familiar  
16 to you?

17 A Yes.

18 Q Which photograph on which page?

19 A The right photograph on the second page identified as  
20 73-160.

21 Q And why was that photograph familiar to you when you were  
22 shown it back in February of 1992?

23 A It is the one person that I remember as being seen with  
24 Tom Shay.

25 Q Now, Mr. Carrion, you mentioned that you had seen this

1 individual a couple of times. Where -- what locations have  
2 you seen this person?

3 THE COURT: Which person are you talking about?

4 Q The person that you've identified in the courtroom and in  
5 the photo spread.

6 A I've seen him at the Block in the company of Tom Shay.

7 Q This is the same block that you earlier described for us  
8 as bounded by these various streets in Boston?

9 A Yes.

10 Q And on each of the two occasions that you saw him, was he  
11 in the company of anyone?

12 A He was in the company of Tom Shay.

13 Q And during what time period did you see the defendant and  
14 Mr. Shay together at the Block?

15 A In the period of 1989 to '90 at the very latest.

16 Q Now, during the three-and-a-half year period that you had  
17 a friendship with Mr. Shay, what, if any, conversations did  
18 you have with him, sir, about his father?

19 A I had --

20 MS. GERTNER: I object to anything Mr. Shay said to  
21 him.

22 MR. KELLY: Your Honor, could I be heard at the side  
23 if the Court wishes. The Government is offering this under  
24 801(c) offering to show Mr. Shay's intent, state of mind and  
25 the like.

1 THE COURT: I think it's admissible on state of  
2 mind. I'm trying to...

3 (Pause.)

4 MR. KELLY: Your Honor, I'll focus my questions  
5 around the fall of 1991, September/October.

6 THE COURT: I will allow the question.

7 Q Mr. Carrion, what, if any, conversations did you have  
8 with Mr. Thomas Shay about his father during the fall of 1991,  
9 sir?

10 A I had several conversations with Thomas Shay during that  
11 period. Thomas Shay would relate to me that he -- his father  
12 was going to die, he was ill, terminal with cancer or some  
13 other illness.

14 Q What else did he say when he had this -- when this  
15 conversation took place that his father was going to die, what  
16 else do you recall him saying to you, sir, if anything?

17 A We've had previous conversations.

18 Q Did he ask -- did he make any statements to you on the  
19 subject of money?

20 A He said he was going to inherit a large sum of money.

21 Q Did he ever put a figure on that, sir?

22 A No, he did not.

23 Q Did Mr. Shay express any feelings about his father to  
24 you, sir?

25 A Yes, he did.

1 Q And describe those. What did he say to you, sir?

2 A He was angry with his father because of abuse and  
3 neglect. And he would describe this to me.

4 Q What, if any, statements did Mr. Shay make besides his  
5 childhood relationship with his father while he was growing up  
6 that you recall?

7 A It was distance and it was not a happy one.

8 Q Do you recall him making any statements about his living  
9 arrangement with his father while growing up?

10 A He lived with his father a very few times. Apparently  
11 they did not get along together.

12 Q Did you ever meet the father, by the way, Mr. Carrion?

13 A No.

14 Q What was Mr. Shay's demeanor during the course of these  
15 conversations about his father? Describe it for us.

16 A Tom would sometimes get very aggravated, angry. He would  
17 stop the conversation and not talk about it anymore. He  
18 appeared to be very angry a lot of the times.

19 Q And when he had the conversation with you when he related  
20 about the fact that his father was going to die and was  
21 terminally ill, what was his demeanor at that time, sir?

22 A He was cold and uncaring as a matter of fact.

23 Q Did he display any sadness or concern for his father?

24 A None that I could detect.

25 Q And during this same time frame here, Mr. Carrion, in

1 September or October of 1991, did you observe Mr. Shay ever  
2 get angry or lose his temper with you, sir?

3 A Yes.

4 Q And do you recall any specific instances of that?

5 A There was one time in which Tom Shay came to my home and  
6 rang the doorbell. It was late at night. The doorbell was  
7 answered by my roommate. The person -- Tom Shay identified  
8 himself as a Boston Police Officer and demanded that someone  
9 come down and let him in. My roommate, George Nightingale,  
10 went down, let him in and -- well, went down and saw that it  
11 was Tom, came back and said for me to take care of the  
12 matter.

13 I went down and talked to Tom and basically told him  
14 that I didn't like what he was doing, that I was angry with  
15 him because this isn't the first time that he has pulled a  
16 stunt like this. There were previous times that he would do  
17 the exact same thing, and that I really didn't want him around  
18 me anymore.

19 Q So what happened?

20 A He got very angry, shaking his fists at me. He made a  
21 move to come at me, threatened him and backed off. This  
22 happened to me earlier in my apartment downstairs on the first  
23 floor. He turned, walked away and was yelling and screaming  
24 at me, cursing me out, very angry.

25 Q When do you recall this occurring, Mr. Carrion?

1 A It was on a Friday night and it was about the 18th of  
2 October or somewhere around there.

3 Q You've been questioned about this date on prior  
4 occasions, have you, sir?

5 A Yes.

6 Q So you've had an opportunity to attempt to pinpoint the  
7 date?

8 A Yes.

9 Q Is it your best memory, sir, that it was the 18th of  
10 October 1991?

11 A It was around that day.

12 Q Now, you do recall it being a Friday night?

13 A Yes, I do.

14 Q Now, did you have any continuing friendship or  
15 association with Mr. Shay after that time, Mr. Carrion?

16 A No.

17 Q Now, during the period of time that you did have a  
18 relationship with him, sir, what, if any, interest did  
19 Mr. Shay display in bodybuilders?

20 A Mr. Shay was interested in bodybuilders and young men who  
21 were particularly well built.

22 Q Did you ever see Tom Shay with any bodybuilding  
23 magazines?

24 A Yes.

25 Q Do you recall the specific titles of any of those

1 magazines?

2 A No.

3 Q Did Mr. Shay have any hobbies or interests that you saw  
4 him engage in?

5 A He liked electronics and remote control vehicles.

6 Q And how are you aware of his interest in remote control  
7 vehicles, sir?

8 A My roommate had remote control vehicles and Tom would  
9 sometimes come up and play with him on the roof top.

10 Q When you say "vehicles," you mean like little cars?

11 A Right.

12 Q And I think you mentioned your roommate's name. What was  
13 his name, sir?

14 A George Nightingale.

15 Q And do you also have some background and capability in  
16 electronics, Mr. Nightingale -- excuse me, Mr. Carrion?

17 A Yes.

18 Q And when you purchased electronic components that you may  
19 utilize, sir, where would you do so?

20 A Particularly Radio Shack.

21 Q And did you inform Mr. Shay of your purchasing items at  
22 Radio Shack?

23 A Yes.

24 Q To your knowledge, was Mr. Shay aware that you shopped at  
25 Radio Shack?

1 A Yes.

2 Q Now, Mr. Nightingale was your roommate for how long a  
3 period of time, sir?

4 A From July of '90 to November of '92.

5 Q And in or about the month of October 1991, how was your  
6 roommate, Mr. Nightingale, employed?

7 A He was a manager of a Radio Shack.

8 Q And what was the location of that Radio Shack?

9 A Massachusetts Avenue in Boston.

10 Q Could that have been 197 Massachusetts Avenue in Boston?

11 A Across the street from -- I don't know the exact  
12 location, address; but it's across the street of the mother  
13 church of the Christian Science.

14 MR. KELLY: Nothing further.

15 THE COURT: Mr. Segal.

16 MR. SEGAL: Yes.

17 Cross-examination by Mr. Segal

18 Q Good morning, Mr. Carrion. My name is Terry Segal. I  
19 represent Mr. Trenkler.

20 Is it fair to say that you shared with Tom Shay, Jr.  
21 your knowledge of electronics; isn't that correct?

22 A Tom Shay would ask me how to put together circuits, and  
23 things along that matter. Tom Shay was very persistent. And  
24 -- yes.

25 Q Mr. Carrion, didn't you yourself tell Tom Shay, Jr.,

1        didn't you show him how to build a remote control car?

2        A        No.

3        Q        Your roommate, Mr. Nightingale, had a remote control car  
4        at the apartment; is that fair to say?

5        A        Yes.

6        Q        And Mr. Shay when he came over would frequently use that  
7        car?

8        A        Occasionally, yes.

9        Q        He seemed very interested in electronics?

10       A        Yes.

11       Q        And would ask you questions about electronics?

12       A        Yes.

13       Q        You felt you were knowledgeable in that area?

14       A        Somewhat.

15       Q        By the way, in terms of electronics, do you know what the  
16       term "shunt" means?   S H U N T.

17       A        Shunt is a device in which you would either turn on or  
18       turn off the device.

19       Q        It's not like a switch, but it's some sort of a diverter  
20       of electricity?

21       A        Diverter of electricity, but it also can be used as a  
22       switch.

23       Q        It's a common term in electronics?

24       A        Most of the time, yes.

25       Q        Now, I think you told Mr. Kelly at some point Mr. Shay

1       said that he felt that his father was terminally ill and he  
2       was going to die of cancer; do you recall that?

3       A     Yes.

4       Q     Did you believe that statement?

5               MR. KELLY:  Objection, your Honor, his belief.

6               MR. SEGAL:  Let me take it this way.

7       Q     From your dealings with Mr. Shay, Jr., wasn't it sort of  
8       tough to separate truth and fiction in his stories?

9       A     With Thomas Shay I would listen to everything, discount  
10      most but keep it in memory.

11      Q     Isn't it fair to say that sometimes within the space of  
12      an hour and him telling the same story about the same events  
13      two or three different ways?

14      A     Yes.

15      Q     And you'd have to try to sort it out to figure out which  
16      was fact and which was fiction?

17      A     At that point you'd just ignore it and just let it be.  
18      Sorting it out would drive someone crazy.

19      Q     Because there were so many different versions?

20      A     Not so many but enough.

21      Q     Enough to make it difficult to separate the wheat from  
22      the shaft; is that fair to say?

23      A     If you listened, you could tell.

24               MR. SEGAL:  Thank you.  Thank you, sir.  I have no  
25      further questions.

1 THE COURT: Anything else, Mr. Libby?

2 MR. LIBBY: Mr. Kelly.

3 THE COURT: I'm sorry, Mr. Kelly.

4 MR. KELLY: It's okay.

5 THE COURT: Thank you, Mr. Carrion, you're excused.

6 Who is next?

7 MR. LIBBY: Your Honor, the United States calls Mrs.  
8 Nancy Shay.

9 Nancy Shay, sworn

10 MR. SEGAL: Your Honor, could I have just a moment  
11 with my client? If I could just have one moment?

12 THE COURT: Go ahead.

13 (Pause.)

14 THE CLERK: Please be seated and state your name.

15 THE WITNESS: My name is Nancy Shay.

16 THE CLERK: Could you spell the last name?

17 THE WITNESS: S H A Y.

18 Direct Examination by Mr. Libby

19 Q Good morning, Mrs. Shay.

20 THE COURT: Hold it. Are you ready?

21 MR. SEGAL: 20 seconds.

22 Thank you. I am, thank you.

23 THE COURT: You may proceed.

24 Q Mrs. Shay, where are you presently living?

25 A I've moved since the last time I was in the area. Now

1 I'm living in Canton.

2 Q In Canton?

3 A Yeah.

4 Q With whom, ma'am?

5 A With my boyfriend.

6 Q And how long have you been living in Canton?

7 A Only a week and a half, two weeks.

8 Q Before that, where were you living?

9 A Quincy.

10 Q Where in Quincy?

11 A 200 Falls Boulevard.

12 Q And was that a condominium complex?

13 A Right.

14 Q And you lived in that condominium complex for how long?

15 A Three years.

16 Q Beginning when?

17 A I believe in '91 to '93.

18 Q Beginning of early '91?

19 A Yes.

20 Q And you owned that condominium, ma'am?

21 A Yes.

22 Q And at the time that you moved into the condominium --  
23 well, would you describe it for us, please, how that is set  
24 up, how that condominium is set up?

25 A It's just two floors, a living room/kitchen combination

1 and the bedrooms upstairs. It's a townhouse.

2 Q Now, at one point, ma'am, you were married to a man named  
3 Thomas L Shay; true?

4 A True.

5 Q When did you marry, Mr. Shay?

6 A June 1965.

7 Q And at some point you separated from him?

8 A In 1982, I believe.

9 Q And ultimately you divorced him?

10 A Yes.

11 Q When was the divorce final?

12 A I've been divorced from him for about, I believe, five  
13 years.

14 Q And after you separated from him, Mr. Shay or Shay, Sr.  
15 as we've been calling him, went and resided in Roslindale;  
16 true?

17 A True.

18 Q At 39 Eastbourne Street?

19 A Yes.

20 Q Have you been there before?

21 A Yes, I have.

22 Q And he's living there at this --

23 THE COURT: Why do you need to get into that through  
24 this witness?

25 MR. LIBBY: I'll move on, your Honor.

1 Q You are Shay, Jr.'s mother, Tom Shay, Jr.'s mother?

2 A Yes, I am.

3 Q And Shay, Sr. is his father, his natural father; true?

4 A True.

5 Q And you had other children with Mr. Shay?

6 A Two other children.

7 Q They are?

8 A Nancy Shay and Paul Shay.

9 Q Are they older or younger than Tom, Jr.

10 A They're older.

11 Q Now, Mrs. Shay, you've testified before the federal grand  
12 jury in this investigation; true?

13 A True.

14 Q On several occasions, right?

15 A Right.

16 Q In fact, you testified in the trial of your son?

17 A Yes.

18 Q And on each of those occasions you've given testimony  
19 under oath, right?

20 A Yes, I have.

21 Q And dealt with difficult matters pertaining to your life,  
22 your history?

23 MR. SEGAL: Objection. This is --

24 THE COURT: Can we just have a question, please.

25 Q In each of those occasions you've testified under oath,

1 Mrs. Shay -- I've withdrawn that question.

2 MR. SEGAL: I'm objecting to prior occasions as  
3 hearsay, your Honor. My objection is to any reference about  
4 prior testimony at this time.

5 THE COURT: Well, he hasn't asked any hearsay  
6 questions yet.

7 MR. SEGAL: He's said, You've testified on prior  
8 occasions.

9 THE COURT: Right. She may answer that and has  
10 answered that so now we're going on to the next question.

11 Q Now, on each of those occasions, Mrs. Shay, you've  
12 attempted to testify to the best of your recollection and  
13 truthfully, correct?

14 A Yes.

15 Q Now, your marriage to Shay, Sr. was far from a happy one;  
16 true?

17 A It was very bad.

18 Q In fact, you suffered significant abuse at Shay, Sr.'s  
19 hands, right?

20 A Yes, for 16 years.

21 Q And that began almost immediately after you married the  
22 man, true?

23 A True.

24 Q And that included many repeated beatings, right?

25 A Yes.

1 Q And your children oftentimes witnessed these beatings,  
2 true?

3 A True.

4 Q Including Tom, Jr.?

5 A Tommy was not living with me a lot, so not always.

6 Q But he did have occasion to witness many of these  
7 beatings from Shay, Sr., true?

8 A When he was younger.

9 Q When he was living with you, right?

10 A Yes.

11 Q Now, during the time that Shay, Jr. was growing up and  
12 you were still living with Shay, Sr., isn't it true that Shay,  
13 Sr. had virtually nothing to do with Tom, Jr.?

14 MR. SEGAL: My objection is to the leading.

15 THE COURT: The objection is sustained to the form of  
16 the question.

17 MR. LIBBY: If I may, your Honor.

18 (Pause.)

19 MR. LIBBY: Your Honor, may I be heard at the side  
20 bar. I would ask leave at this point to proceed under 611.

21 THE COURT: You haven't established that you're  
22 entitled to it yet. I mean, ask a non-leading question, and  
23 then we'll see.

24 MR. LIBBY: One moment, your Honor.

25 If I may, your Honor, 611(c) I've established on the

1 record that the witness has been identified as an adverse  
2 party here.

3 THE COURT: Ask a non-leading question and see where  
4 it gets you.

5 Q Would you describe for us, Mrs. Shay, all the things that  
6 Shay, Sr. did with Shay, Jr. growing up with respect to sports  
7 and childhood activities and the like?

8 A He didn't do many things with him as far as athletic. He  
9 wasn't athletic himself.

10 Q In fact, he never did anything with him; isn't that  
11 right?

12 MR. SEGAL: Objection. We're back to the leading  
13 nature, your Honor.

14 MR. LIBBY: If I may, your Honor.

15 Q He never did anything with him, true, growing up?

16 THE COURT: That certainly is a leading question.

17 Q Did Shay, Sr. do anything with Shay, Jr. while growing  
18 up?

19 A He used to take Tommy out with him on weekends.

20 Q And he'd take him where?

21 A Down where his friends were.

22 Q Down to a tavern?

23 A Right.

24 Q Anything else?

25 A He didn't do too many things with him.

1 MR. LIBBY: If I may approach the witness, your  
2 Honor?

3 THE COURT: May I see counsel.  
4 Stretch.

5 [Conference at the bench, as follows:

6 THE COURT: May I ask why we're getting into this. I  
7 mean, you have established over and over again Mr. Shay's  
8 feelings about his father.

9 MR. LIBBY: Your Honor, this cuts right to the heart  
10 of the family home. This is our only witness on this with  
11 respect to her clear descriptions and explanations stemming  
12 back to the early childhood.

13 Your Honor, we also had the difficulty in the earlier  
14 trial where she was, in fact, jousting with me on this. The  
15 rule says once she is identified as an adverse witness --

16 THE COURT: First of all, I'm questioning the need  
17 for this because the issue of, the issue of Mr. Shay's  
18 feelings about his father we have now established through  
19 Mr. Carrion and through -- I've forgotten. There's been a  
20 bunch of people who talked about how he couldn't stand the  
21 sight --

22 MR. LIBBY: No, but it's what she saw. And he's  
23 established Shay, Jr. has told these other folks about the  
24 abuse and negligent. She witnessed it. It's a great  
25 difference with this witness in front of this jury. It has to

1 be the source of the credibility of the later witness's  
2 testimony.

3 THE COURT: What later witness?

4 MR. LIBBY: Well, Mr. Carrion talking about the abuse  
5 and neglect and so forth. He didn't see that happen. He's  
6 just relating his state of mind.

7 THE COURT: The issue is his state of mind.

8 MR. LIBBY: It's happened.

9 THE COURT: It has not what happened. The issue is  
10 what he perceived to have happened.

11 MR. LIBBY: Your Honor admitted in the earlier trial  
12 because this witness observed the son watching the father beat  
13 the mother and abusing the kid, direct evidence. This is  
14 direct evidence. It's is critical to our case.

15 MR. SEGAL: I would say they tried the Shay case  
16 once. This isn't the Shay trial. And my client is on trial  
17 here.

18 And, one, she's not an adverse party. Two, this is  
19 irrelevant testimony.

20 THE COURT: She is a hostile witness. There's no  
21 doubt about that. She was a hostile witness the first time  
22 around.

23 MR. SEGAL: Well, respectfully, in the first trial  
24 her son is a defendant --

25 THE COURT: I'm not saying she is adverse. I'm

1 saying she is a hostile witness. There is a difference.

2 MR. SEGAL: I understand, but there's no showing that  
3 she can't be asked nonleading questions.

4 THE COURT: What difference does it make?

5 MR. SEGAL: I object to him trying --

6 THE COURT: Is there any serious dispute about  
7 Mr. Shay's childhood?

8 MR. SEGAL: There will be a serious dispute about  
9 certain things she said and I just don't want her to be led.

10 THE COURT: Like what? What's there to dispute  
11 about?

12 MR. SEGAL: Well, seeing Mr. Trenkler at the house.

13 THE COURT: That's a different issue. Is there any  
14 reason why he can't lead the witness through Mr. Shay's  
15 childhood? You don't really object, right.

16 MR. SEGAL: Well, as long as I don't set up a  
17 precedent that prevents me down the road.

18 THE COURT: You may lead her through the childhood.  
19 And I assume you can do that in five or six questions. Then  
20 when you come to any of the relationship between this  
21 defendant and Mr. Shay you will not lead her, at least not  
22 initially.

23 MR. LIBBY: Until I find that she's jousting with me.

24 THE COURT: If, in fact, she is -- if I determine her  
25 to be hostile at that point, then I will let you know but

1 don't lead her immediately.

2 MR. LIBBY: Okay. I understand, your Honor.

3 ... End of conference at the bench.]

4 Q Did Mr. Shay do anything with Shay, Jr. besides go to  
5 this tavern on the weekends?

6 A You've got to understand that Tommy was not with us a  
7 lot. He was in several different homes.

8 Q During the time that Shay, Sr. resided with Shay, Jr.,  
9 did he do anything with him other than take him to this  
10 tavern?

11 A He did a lot of different things with him when he was in  
12 the programs.

13 THE COURT: No, when he was at home did he do  
14 anything with him besides take him to taverns is the question.

15 THE WITNESS: He took him to some baseball games.

16 MR. LIBBY: May I approach, your Honor?

17 Thank you.

18 Q I draw your attention to the grand jury in February 13,  
19 1992, page 59.

20 MR. SEGAL: Could we have a line, please?

21 MR. LIBBY: Yes. Lines 7, 8 and 9, please.

22 Q Could you read that for me, please.

23 You testified on that day before the grand jury, Mrs.  
24 Shay?

25 A Yes.

1 MR. LIBBY: You have to speak so the court reporter  
2 can hear you.

3 THE COURT: So do you, Mr. Libby.

4 MR. LIBBY: Thank you.

5 Q And you tried to testify as truthfully as you could that  
6 day, true?

7 A True.

8 Q And you testified on that day: He never--

9 MS. GERTNER: I object. That's not inconsistent with  
10 what she's just testified --

11 THE COURT: I don't know whether it is or it isn't.  
12 But can't we just get on with this. It really--

13 MR. LIBBY: I will try to move along, your Honor.

14 THE COURT: Well, let's do it.

15 Q " He never did anything with my son, he never took him to  
16 play sports, I did."

17 Did I read that correctly?

18 A Right. And I said that.

19 Q That was your testimony that day?

20 A Right.

21 Q And that was the truth that day, right?

22 A Right. He didn't take him to play sports. He took them  
23 to watch them, to Little League.

24 Q You did those things, didn't you, Mrs. Shay?

25 A He did them too.

1 Q Mrs. Shay, you took your son to the sports activities and  
2 things of that nature, right?

3 A I took him most of the time.

4 Q And that's because Shay, Sr. didn't play sports or do any  
5 of those things that fathers would do, right?

6 A No, he wasn't athletic. He was interested in sports but  
7 he didn't play them.

8 Q You understood he bet on them, he bet on the sports?

9 A Sports and he bet on them.

10 Q Now, Shay, Sr. at some point, Mrs. Shay, brought a  
11 lawsuit; right?

12 A Right.

13 Q Against the Dedham Service Center?

14 A Yes.

15 Q And that stems from an incident where something blew up  
16 next to his place of work?

17 A Yes.

18 Q And that incident where something blew up next to his  
19 place of work and the lawsuit which followed took place after  
20 you separated from him, right?

21 A Right.

22 Q And you understand that Tom, Jr. was a witness to that  
23 incident?

24 A Yes.

25 Q And Shay, Sr., after he presents the lawsuit, Shay, Sr.

1 told you that he was interested in getting Shay, Jr. back into  
2 town to take a deposition, right?

3 A Right.

4 Q And you understood that that was important to the father  
5 and his lawsuit, true?

6 A True.

7 Q And he called you up?

8 A Several times.

9 Q That's because you were in much more contact with Shay,  
10 Jr. than he was, true?

11 A True.

12 Q And he made, Shay, Sr. made repeated calls for you to get  
13 Tom, Jr. to get back into town?

14 A Yes.

15 Q And he did it time and again?

16 A Yes.

17 THE COURT: Well, that's what repeated means, I  
18 think.

19 Q Now, Mrs. Shay, did there come a time when Shay, Jr. did  
20 not attend a deposition he was supposed to attend?

21 A Yes, once or twice he didn't show up.

22 Q And on those occasions the father, Shay, Sr., was very  
23 angry at Shay, Jr. for that, true?

24 A True.

25 Q Now, when Shay, Jr. came back into town, it was primarily

1 for this deposition; right?

2 A Right.

3 Q And that was the effort, right?

4 A He wouldn't have come back except for that.

5 Q And he came back and stayed with you in the condominium  
6 in Quincy, right?

7 A Right.

8 Q And this was in the time frame of 1991, correct?

9 A Correct.

10 Q Roughly the middle of the summer sometime?

11 A I believe so.

12 Q And at that time you'd been living in the condominium for  
13 six or eight months by that time?

14 A Yes.

15 Q Now, immediately -- directing your attention to where you  
16 lived immediately before then, you lived in Milton, right?

17 A Right.

18 Q On Belvoir, B E L V O I R, Road?

19 A Right.

20 Q And was that a single-family home?

21 A Two- family.

22 Q Two-family.

23 And did you have a driveway?

24 A Yes.

25 Q Okay. And it connected obviously with the street out

1 front, right?

2 A Right.

3 Q So you could see cars coming up to the home and leaving,  
4 right?

5 A Right.

6 Q Now, at that time that you lived in Milton, who is living  
7 with you there at that time?

8 A My daughter Paula, David. I think my daughter Nancy was  
9 there.

10 Q David is who?

11 A My boyfriend.

12 Q And from time to time, Tom, Jr. stayed with you?

13 A Yes.

14 Q Now, you understand the defendant in this case to be  
15 Alfred Trenkler; right?

16 A Yes.

17 Q And you've seen that individual Alfred Trenkler --

18 (Mr. Segal stands.)

19 THE COURT: The objection is sustained to the form of  
20 the question.

21 MR. LIBBY: I'll move on.

22 THE COURT: To the form.

23 Q Do you see the individual you know now to be Alfred  
24 Trenkler in the courtroom today?

25 A This is the first time I've seen Alfred Trenkler.

1 Q Today is the first time you've seen Alfred Trenkler?

2 A Yes.

3 Q And where is he, your understanding as to where that  
4 individual is, please?

5 A Beside the lady.

6 Q Second in from your right?

7 A Yes.

8 Q Balding man?

9 A Yes.

10 MR. LIBBY: Now, may the record indicate for the  
11 purpose of that question, your Honor, that Mrs. Shay has  
12 correctly identified the defendant Alfred Trenkler?

13 THE COURT: Right.

14 Q Now, you say that today's the first day that you've seen  
15 this gentleman, Alfred Trenkler?

16 A Yes.

17 MR. LIBBY: If I may approach, your Honor?

18 THE COURT: Yes.

19 Q Grand jury transcripts April 23, 1992, please. Page 7,  
20 line 5. Would you read that with me, please.

21 "Question: Okay. Have you before today ever seen  
22 Mr. Trenkler before in person?

23 "Answer: I seen -- I -- I seen him once.

24 "Question: When did you see him?

25 "Answer: He came and picked up Tommy once.

1 "And where was that? At the Falls?

2 "Answer: No.

3 "In Dorchester.

4 "Answer: No, Milton.

5 "Question: You were -- what was the address in  
6 Milton?

7 "Answer: I lived at Belvar -- and it's spelled in  
8 here B E L V A R-- Road in Milton.

9 "Question: Belvoir Road?

10 "Answer: Yes, I owned a house there.

11 "Question: And do you recall when this was that Al  
12 Trenkler came to pick up Tom, Jr. at Belvoir Road?

13 "Answer: A few years ago."

14 Have I read that correctly, Mrs. Shay?

15 A Mm-hmm, yes.

16 Q Now, Alfred Trenkler came to pick up Tom, Jr., Mrs. Shay,  
17 in Milton as early as 1988; true?

18 MR. SEGAL: Well, objection.

19 THE COURT: I'll allow it.

20 MR. LIBBY: Thank you, your Honor.

21 Q Is that true, yes or no?

22 A I can't say that man was him.

23 Q Can you answer the question, ma'am, that he come to pick  
24 up Shay, Jr. in Milton as early as 1988; yes or no?

25 MR. SEGAL: Objection, leading.

1 THE COURT: No, I will allow the question; but I  
2 think she's answered it.

3 MR. LIBBY: As early as 1988, your Honor.

4 Q True?

5 A I need to explain that I looked out the window and  
6 seen --

7 Q Ma'am, the question is --

8 MR. SEGAL: Segal stands.

9 THE COURT: She may explain it.

10 A I looked up and I seen the person that looks similar to  
11 him but now that I've seen him for the first time in person  
12 and that's the not the person.

13 MR. LIBBY: If I may approach, your Honor?

14 THE COURT: Yes.

15 MR. LIBBY: Same transcript, page 8, line 11.

16 MR. SEGAL: I'm sorry. Which date?

17 MR. LIBBY: This is April 23.

18 Q Line 11.

19 "Question: Do you recall now when it was that Al  
20 Trenkler came to pick up Tom, Jr. at Belvoir Road?

21 "Answer: No verbal response.

22 Skipping down to, "Question: I understand. Was it  
23 sometime, was that Al Trenkler's visit to Belvoir Road  
24 sometime in 1989?

25 "Answer: I think maybe '88.

1 "Question: What makes you recall that it was '88?

2 "Answer: Because I know, you know, I moved out of my  
3 house two years ago and I know it was a long time before  
4 that."

5 Did I read that properly?

6 A Yes.

7 Q And you knew also, Mrs. Shay, that when Al Trenkler came  
8 to pick up Shay, Jr. at your home on Belvoir Road in Milton  
9 that he was going over to Mr. Trenkler's house; true?

10 MR. SEGAL: Objection. That assumes facts not in  
11 evidence, your Honor.

12 MR. LIBBY: Your Honor, I have a --

13 MR. SEGAL: There are two versions here.

14 MR. LIBBY: I have a good-faith basis to ask the  
15 question, your Honor.

16 COURT: Well, I mean, I think you do need to ask the  
17 question in a different way given the prior answer.

18 Q You knew where Shay, Jr. was going on that occasion; do  
19 you not, Mrs. Shay?

20 THE COURT: That's a proper question and you may sit  
21 down?

22 A When? In Milton?

23 Q Yes, that occasion you were talking about where Al  
24 Trenkler came up--

25 THE COURT: Well, the occasion when somebody came.

1 Q You knew where he was going, true?

2 A I can't remember.

3 Q And he was going at that occasion, on that occasion, you  
4 knew that Shay, Jr. was going to Al Trenkler's house, true?

5 MR. SEGAL: Objection. She just answered that  
6 question, your Honor, and now --

7 MR. LIBBY: May I approach, your Honor? Thank you.

8 Q Page 9.

9 MR. SEGAL: Is that April the 23?

10 MR. LIBBY: I beg your pardon.

11 Yes, April 23.

12 Q Line 25, page 8, page 9.

13 "Question: Do you recall the occasion that  
14 Mr. Trenkler came to pick up Tom, Jr. while he was coming to  
15 pick him up?

16 "Answer: Tommy used to go over his house."

17 Did I read that properly? Did I read that properly,  
18 ma'am?

19 A Yes.

20 Q This is your testimony under oath before the federal  
21 grand jury; is it not, Mrs. Shay?

22 A He went over to someone's house.

23 Q Ma'am, the question before you was, was that your  
24 testimony before the federal grand jury under oath in April of  
25 1992?

1 A Yes.

2 Q And, in fact, Shay, Jr. went over to Trenkler's house a  
3 handful of times, true?

4 MR. SEGAL: Objection.

5 THE COURT: The objection is overruled. She may  
6 answer it if she can.

7 A He had some friend that lived in Milton. He had a couple  
8 of friends, and went over his house.

9 Q He went over Mr. Trenkler's house a handful of times,  
10 true?

11 A I don't know whose house it was.

12 Q Can you answer my question, ma'am?

13 THE COURT: She did.

14 MR. LIBBY: If I may approach, your Honor?

15 THE COURT: Yes.

16 Q Page 11, line 14.

17 "Question: So in terms of Al, either Al coming to  
18 pick up Tom, Jr. or Tom, Jr. to your knowledge visiting Al at  
19 Al's home, he did that -- Tom, Jr. did that on a number of  
20 occasions?

21 "Answer: No, I wouldn't say a number of questions.

22 "Question: Can you tell me --

23 "Answer: I'd say maybe a few times.

24 "Question: A handful of times?

25 "Answer: About a handful, yes."

1 Did I read that properly?

2 A Yes.

3 MR. LIBBY: One moment, your Honor.

4 (Pause.)

5 Q Now, Mrs. Shay, directing your attention to that time  
6 where Tom, Jr. is back in town staying with you at the Quincy  
7 condo for purposes of appearing at the deposition, focusing on  
8 that time.

9 A Yes.

10 Q He was staying with you at your condo, right?

11 A Right.

12 Q Where was he sleeping in the condo?

13 A Sometimes on the couch.

14 Q Do you recall one occasion, Mrs. Shay, where you'd been  
15 out late alone, you came back to your condo about two or three  
16 o'clock in the morning?

17 A Right.

18 THE COURT: When was that, Mrs. Shay? Can you put a  
19 date on it?

20 THE WITNESS: I think it was September, maybe.

21 MR. LIBBY: Thank you.

22 THE COURT: Of what year?

23 THE WITNESS: Of '92, '91 and '92, I can't remember.

24 THE COURT: You don't know the year?

25 MR. LIBBY: If I may, your Honor I may be able to --

1 I'll pick that up later, your Honor.

2 THE COURT: All right.

3 Q On that occasion, you walked into the condominium and  
4 Shay, Jr., Thomas Shay, Jr. was sleeping on the sleeping bag  
5 on floor?

6 A True.

7 Q And you saw another individual, a man, sleeping on the  
8 couch?

9 MR. SEGAL: Objection to the leading of the nature of  
10 these questions.

11 THE COURT: I will allow him to lead.

12 A True.

13 Q True?

14 A True.

15 Q And you weren't pleased to see that at 2 or 3 o'clock in  
16 the morning, were you?

17 A No, I wasn't.

18 Q Why not?

19 A Because I didn't allow him to have anyone stay overnight.

20 Q You made that plain to Shay, Jr., right?

21 A Right.

22 Q And he had violated that, right?

23 A Right.

24 Q And, in fact, you were more than a little displeased, you  
25 flew into a rage over it; right?

1 A Right.

2 Q You started screaming at Tom, Jr. about it, right?

3 A Yes.

4 Q You woke up Shay, Jr. and this other man on the couch?

5 A Yes.

6 Q Okay. And you told him nobody stays over here without my  
7 permission, right?

8 A Right.

9 Q And get him out of here, right?

10 A Right.

11 Q Now, we're in the first, we're in the first floor of the  
12 condominium?

13 A Right.

14 Q It's a living room?

15 A Living room, kitchen combination.

16 Q And that's it, right?

17 A Right.

18 Q And how many bedrooms upstairs?

19 A One and a bathroom.

20 Q Any downstairs?

21 A No.

22 Q That's why they're sleeping in this living room area,  
23 right?

24 A Right.

25 Q And you saw this individual on the couch getting up

1 putting on his shoes to leave, right?

2 A Right.

3 Q And the man on the couch that you threw out that evening  
4 was this man, Alfred Trenkler, wasn't it?

5 A No. I swear to God that isn't the guy that was there.

6 Q Now, the man that you threw out that evening, Mrs. Shay,  
7 was built the same way and looked the same way as the fellow  
8 later known to you to be Alfred Trenkler who came by to pick  
9 up Tom, Jr. in front of your Belvoir Road home?

10 A I gave a description --

11 Q Can you answer my question, please. He looked the same  
12 way and he was built the same way?

13 A No, he wasn't bald like that.

14 MR. LIBBY: If I may approach, your Honor?

15 Q 14-15 of the earlier proceeding.

16 MR. SEGAL: May I have just a moment?

17 (Pause.)

18 MR. SEGAL: Can we have a reference to who she was  
19 referring to? There are two people in the last--

20 MR. LIBBY: Your Honor, I'm just giving the trial  
21 transcript reference number. At this point it's 14-15, line  
22 21.

23 Q "Question: Can you answer my question, ma'am, he was  
24 built the same way and he looked the same way as the fellow  
25 later known to you to be Al Trenkler who came to pick Tom, Jr.

1 up in front of your Belvoir Road home; true?

2 "Answer: I don't really know how Trenkler is built.  
3 The man I seen on the couch was about 5, 8 and about 140, 150  
4 pounds and he was balding."

5 Did I read that right?

6 A Yes, he was balding on top --

7 Q Did I read this right, ma'am?

8 A Yes.

9 Q "Question: He was short and balding; true?

10 "Answer: I don't know if you call 5, 8 short or not  
11 but --

12 "Question: But he had the same build and the same  
13 look as the fellow known to you later as Al Trenkler in front  
14 of your Belvoir Road home?

15 "Answer: He had a similar look."

16 Did I read that properly, ma'am?

17 A Yes.

18 Q And that was your testimony under oath in this court  
19 three months ago?

20 A Yes.

21 Q Now, the incident where you saw Shay, Jr. in the sleeping  
22 bag and this short balding man on the couch, ma'am, that took  
23 place within a month of October 28th, 1991; true?

24 A Yes.

25 Q Very briefly, ma'am.

1           To your knowledge, have you ever seen your son, Shay,  
2           Jr., working with electrical engineering materials?

3           A     No.

4           Q     To your knowledge, does Shay, Jr. have the capacity, the  
5           ability, the intellectual ability to deal with fine matters of  
6           electrical engineering?

7           MR. SEGAL:  Objection.

8           THE COURT:  The objection to that is sustained.

9           Q     Have you ever seen your son making projects with wood?

10          A     No.

11          Q     Have you ever seen him making boxes at any time using  
12          finishing nails and glue?

13          A     No.

14          Q     Did you ever see your son using power tools?

15          A     No.

16          Q     Mrs. Shay, did you consider your son Shay, Jr. to have  
17          the ability and motor skills necessary to design and build a  
18          remote control explosive device?

19          MR. SEGAL:  Objection.

20          THE COURT:  The objection to that is sustained.

21          MR. LIBBY:  I have nothing further, your Honor.

22          THE COURT:  Do you have any questions?

23          MR. SEGAL:  Just a couple.

24                   Cross-examination by Mr. Segal

25          Q     Good morning, Mrs. Shay.  My name is Terry Segal.

- 1 A Yes.
- 2 Q Are you nearsighted, Mrs. Shay?
- 3 A Yes.
- 4 Q At one time did you wear glasses?
- 5 A Yes. I'm supposed to wear them now.
- 6 Q As a child did you wear glasses?
- 7 A Yes.
- 8 Q And when did you stop wearing glasses?
- 9 A In my early 20's.
- 10 Q When you were living on Belvoir Road in Milton, you were
- 11 on the first floor or the second floor?
- 12 A Second floor.
- 13 Q I think Mr. Libby asked you if some people came over and
- 14 picked up your son; isn't that correct?
- 15 A Yes, one person.
- 16 Q All right. When you saw the person, where were you in
- 17 the house?
- 18 A I was upstairs looking out the window.
- 19 Q And did you have -- you didn't have your glasses on, am I
- 20 right?
- 21 A No.
- 22 Q Did you have a good view of the person?
- 23 A Just from the side. I seen him from the back.
- 24 Q And what sort of car do you recall the person driving?
- 25 A He had a dark car.

1 Q Do you recall the color?

2 A It was black. It was an expensive car.

3 Q Something like a Mercedes?

4 A Right.

5 Q It wasn't white?

6 A No.

7 Q When you lived at the condo in Quincy in 1991, were some  
8 of your daughters living with you at the time?

9 A Yes, my daughter Paula.

10 Q And did Tommy have any other parties at the condo where  
11 he invited his friends?

12 A He had a party when I rented an apartment on Richmond  
13 Street in Dorchester.

14 Q What year was that, do you recall?

15 A That was about three years ago.

16 Q All right. About how many people were there?

17 A About 30.

18 Q And you knew your son was gay?

19 A Right.

20 Q And from what you could tell, were most of these people  
21 gay?

22 A Yes.

23 Q Now, this gentleman here, Mr. Trenkler, do you recall him  
24 being at that party?

25 A No, he wasn't there.

1 Q Do you recall him ever calling the house and leaving a  
2 message for Tommy?

3 A No.

4 Q Do you recall him ever calling the house in Milton and  
5 leaving a message for Tommy?

6 A No.

7 Q Mr. Libby asked you whether Mr. Shay, Sr. had occasion to  
8 bet on sports? Do you remember that?

9 A Yes.

10 Q While you were married to him, do you recall him taking  
11 bets on sports on the phone?

12 MR. LIBBY: Objection, your Honor.

13 THE COURT: Sustained.

14 Q Did he ever say to you that he had a real gambling  
15 sickness?

16 MR. LIBBY: Objection, your Honor.

17 THE COURT: Objection sustained. It is totally  
18 beyond the scope.

19 MR. SEGAL: If I can have just a minute, your Honor.

20 (Pause.)

21 Q The person who picked up Tommy in Milton at Belvoir Road,  
22 how does he differ physically from Mr. Trenkler, if you can  
23 tell us?

24 A That person had a bald spot just on the top of the head,  
25 not the whole head like that.

1 Q Any other --

2 A He was taller than him and thinner, like between 140-150  
3 pounds.

4 Q And you put him at about 5 --

5 A He wasn't heavy-set person.

6 Q Would you call that person slim?

7 A Yes.

8 MR. SEGAL: Thank you, Mrs. Shay. I have no  
9 questions.

10 THE COURT: Mr. Libby.

11 Redirect Examination by Mr. Libby

12 Q Mrs. Shay, are you telling this Court and jury under oath  
13 that you saw one man come to pick up Shay, Jr. and it's not  
14 this man?

15 A It's not him.

16 Q Are you saying that?

17 A Yes.

18 MR. LIBBY: If I may approach, your Honor.

19 Q 14-13, please.

20 MR. SEGAL: May we have a line, please?

21 Q Actually starting on 14-12, line 19.

22 "Question: Now, when did you move from that  
23 two-family home at Belvoir Road, Mrs. Shay?

24 "Answer: About four years ago.

25 "Question: So 1989 and '90?

1 "Answer: Yes.

2 "Question: Right. And the time that Al Trenkler  
3 came in front of your home to pick up Tom, Jr. was at some  
4 point in time before that, a year or two before that; is that  
5 true?

6 "Answer: I believe I said in my statement it's '88.

7 "Question: 1988, is that right?

8 "Answer: Either '88 or '89, I'm not sure of the  
9 exact year.

10 "Question: It's true, also, Mrs. Shay, that Al  
11 Trenkler came to pick up Tom, Jr. a handful of times; true?

12 "Answer: I know two guys who came to see Tommy and I  
13 think maybe a few times."

14 Did I read that right?

15 A Right.

16 MR. LIBBY: I have nothing further, Your.

17 THE COURT: Thank you, Mrs. Shay -- oh, I'm sorry.

18 Cross-examination by Mr. Segal

19 Q Mrs. Shay, when you -- prior to today, is today the first  
20 time you've ever seen Mr. Trenkler and the first--

21 MR. LIBBY: Objection, your Honor.

22 THE COURT: What's the objection?

23 MR. LIBBY: That is asked and answered back during  
24 his, I believe his recross, or rather his cross.

25 THE COURT: That is true. We have covered it a few

1 times in both directions.

2 Q Let me ask this based upon -- at the time you testified,  
3 Mr. Libby just read you this testimony which is a couple of  
4 months ago, had you ever seen Mr. Trenkler in person?

5 A No. I've only seen a picture of him in the paper --

6 MR. LIBBY: Your Honor, I'll object at this point.  
7 The question called for a yes or no answer.

8 Q All right. Had you seen pictures of him in the paper at  
9 that time?

10 MR. LIBBY: Objection, your Honor.

11 THE COURT: No, I will allow that. Do you have more  
12 than that?

13 MR. SEGAL: No. Let me ask that question. You  
14 wanted me to stay here though.

15 A I seen a person from the back in Milton and I've seen a  
16 picture in the paper.

17 MR. SEGAL: Thank you. I have no further questions.

18 THE COURT: Thank you, Mrs. Shay, you are excused.  
19 And I guess we'll take the morning recess now.

20 [Whereupon, the jury left the courtroom.]

21 THE COURT: Two questions: One is the defendant has  
22 filed a motion to produce the encoding forms and ATF's  
23 incident reports with respect to the seven incidents that  
24 match theories similar that produce the bomb in this case.  
25 Any problem with that?

1 MR. LIBBY: Yes, your Honor.

2 THE COURT: What's that?

3 MR. LIBBY: The functional equipment that they're  
4 looking for is the functional equivalent of Cindy Wallace's  
5 lab notes. These are the things that Mr. Scheid --

6 THE COURT: Well, no, no, no, no, no. Cindy  
7 Wallace's lab notes is what she produced that she was doing  
8 while going along in this investigation which ultimately  
9 resulted in this report. And it's what she produced in  
10 connection with this case. The encoding materials is, as I  
11 understand it, is what the ATF agents produced in the normal  
12 course of events but not as in this case, but as information  
13 comes and forms the database.

14 MR. LIBBY: That's not correct, your Honor. The  
15 encoding form is that work sheet that Mr. Scheid has testified  
16 a couple of times now, he takes it and he punches in the  
17 information on work sheet onto the system.

18 THE COURT: That's right. It's the database for the  
19 system.

20 MR. LIBBY: His work product, it's his work product,  
21 not the ATF agent. It's what he does.

22 THE COURT: I understand that. But it's the database  
23 of the system.

24 MR. LIBBY: That's right.

25 THE COURT: Why shouldn't they have the database of

1 the system with respect to the particular ones that are  
2 being -- that focus on Mr. Trenkler or focus on this bomb?

3 MR. LIBBY: Your Honor, they have what has been  
4 generated. They have exactly what we have that's been  
5 generated by --

6 THE COURT: I understand that. But every time you go  
7 to a computer and you get a result from a computer, the result  
8 depends on what you input into the computer; and if you input  
9 the information erroneously, you get an erroneous result.  
10 What they are looking to see is whether the information --  
11 what the information that was that was inputted, and it's not  
12 clear to me why they were not entitled to that. Because in  
13 essence, is it not analogous, I don't know why I should make  
14 that argument, isn't it analogous to a 1001 summary because  
15 what comes out is the summary and when you use a summary,  
16 you've got to produce the underlying information.

17 MR. LIBBY: So the underlying information is what  
18 Mr. Scheid has written down on those encoding forms and  
19 punched in later on the computer?

20 THE COURT: I'm asking why is it not analogous to  
21 that?

22 MR. LIBBY: Your Honor, I would give --

23 THE COURT: I admit that's not what they tell me  
24 here, but --

25 MR. LIBBY: It seems to me, your Honor, it is in fact

1 the functional equivalent of Ms. Wallace's lab notes for  
2 further information for which Mr. Scheid then generates. For  
3 our purpose, as long as I understand the request being these  
4 work sheets which he fills out, I think I could contact Mr.  
5 Scheid.

6 THE COURT: That's all they're asking for.

7 MR. LOPEZ: Your Honor, there is a secondary aspect  
8 to it, and I've been very, very specific with respect to -- as  
9 Mr. Scheid has testified, he looks at hearsay.

10 THE COURT: Just tell me what you want.

11 MR. LOPEZ: The actual five reports incident reports  
12 on the five incidences that were investigated by ATF which Mr.  
13 Scheid then looked at, gleaned information from, and put them  
14 on to encoding sheets which he will be producing --

15 THE COURT: Which five reports are you talking  
16 about?

17 MR. LOPEZ: The five out of the seven that were  
18 investigated by the -- every incident except the New York  
19 incident and the Quincy incident, all the other five are, my  
20 memory escapes me as to which those five are.

21 THE COURT: And why are you entitled to those?

22 MR. LOPEZ: Well, your Honor, because we know that  
23 Mr. Scheid is not a bomb expert. We know that Mr. Scheid is  
24 relying upon reports of others. We know that Mr. Scheid looks  
25 at those reports, and based on those reports, take certain

1 information and determines that it should go in a particular  
2 place on the encoding form. That information which is based  
3 on these hearsay reports are then inputted into the computer,  
4 and it's just a chain. I mean it's a chain of hearsay, and I  
5 believe we're entitled to see whether or not it is accurate.  
6 Your Honor, how long is this piece of string? I mean we're  
7 going to be litigating these collateral matters--

8 THE COURT: It's not exactly collateral, it is the  
9 centerpiece of the Government's case.

10 MR. LIBBY: I understand the Court's reference to  
11 encoding forms alone to insure that there is some correlation  
12 between the face of the coding form and what is later  
13 generated in those seven forms. I understand that in terms of  
14 accuracy and completeness. What we're contemplating here is  
15 maybe boxes upon -- things --

16 THE COURT: I don't understand that to be the case.  
17 I understand that there is a form that is sent to Mr. Scheid.  
18 Mr. Scheid then interprets what's on that form into computer  
19 whatever and inputs it.

20 MR. LIBBY: I think Mr. Scheid's testimony was beyond  
21 that. It's information beyond--

22 THE COURT: All they're asking for is the form  
23 itself, that somebody fills out and gives to him, as I  
24 understand it, correct?

25 MR. LOPEZ: That's correct, your Honor.

1 THE COURT: And the forms themselves were offered  
2 into evidence, that the black form, the nature of the form  
3 were part of the evidence at the 404(b) hearing.

4 MR. LIBBY: Preprinted form.

5 THE COURT: The blank preprinted form, it can't be  
6 that much of a problem to get the form and his encoding of  
7 that form.

8 MR. LIBBY: Your Honor, I'm not entirely certain as  
9 to how Mr. Scheid testified on this, but I don't have a  
10 certain understanding of how those forms were --

11 THE COURT: Fine, we'll ask and if there's a problem  
12 we can discuss it further.

13 MR. SEGAL: Just on the Wallace, you said you took  
14 that under advisement.

15 THE COURT: I don't think -- Ms. Wallace we've heard  
16 from her and I don't think we'll hear any more from her. Your  
17 objection is noted.

18 MR. SEGAL: I have just a point on witnesses. We've  
19 had a general rule that agents, families can be here which is  
20 no problem. But I would ask Mr. D'Ambrosio's and Mr. Leahy's  
21 testimony, particularly the testimony relating to 4th, 5th,  
22 and 6th, that the other ATF agents or the other agent be  
23 excluded from that testimony and be instructed to one, testify  
24 not to talk to the other, because it's a crucial --

25 THE COURT: I'm sorry. We're not going to have two

1 people talking about the same thing, right?

2 MR. KELLY: I don't think that's the case, except as  
3 concerns this diagram because they challenged it. They will  
4 both testify about that.

5 THE COURT: We can excuse one while the other one  
6 testifies.

7 MR. KELLY: That's not a problem.

8 THE COURT: Let me ask you about scheduling. What  
9 exactly is the Government's best estimate as to where we are  
10 when? Today is November 5th, right.

11 MR. KELLY: The Government is still right on where we  
12 anticipated we would be. I expect the Government's direct  
13 case consists of probably another three full days of -- I'm  
14 talking about our 9 to 1 days. We have Agent D'Ambrosio to  
15 testify, Agent Leahy to testify, we have a very short witness  
16 outside the door who will be our next witness his name is  
17 Mr. Nutting.

18 We then after the completion of, we'll have some very  
19 short testimony from Detective Fogerty at one point. We'll  
20 have a series of four to five witnesses that relate to this  
21 incident in 1986, your Honor.

22 There'll be a Quincy police detective and Mr. Scheid  
23 will come back and Mr. Waskom will come back.

24 THE COURT: They're included in the 4 to 5.

25 MR. KELLY: Yes, and there will be a couple of lay

1 witnesses and a retired state chemist. We were hoping to  
2 avoid the chemist by way of stipulation, he's an old retired  
3 state chemist, but we can get him out there if we have to. We  
4 probably only have two or three witnesses to finish up, your  
5 Honor.

6 We have a Mr. Lindholm which is the one that Mr.  
7 Segal has some letters and motions on, and we have Mr. Frank  
8 Foley, the bomb squad officer, and we have one or two other  
9 witnesses, short witnesses, there's a Mr. Cody that we may  
10 call, at some point shortly thereafter, and that's the extent  
11 of it. And I honestly foresee the Government resting its case  
12 either at the close of the day on Wednesday or we're unable to  
13 finish sometime early in the day on Friday, I suspect we'll  
14 move pretty swiftly.

15 THE COURT: Mr. Segal in seriousness, how many days  
16 are you really going to use?

17 MR. SEGAL: My present intention and I will, I'm  
18 going over this this weekend, five to seven. I will give you  
19 a very clear number on Monday, but I don't think that's an  
20 unrealistic number.

21 THE COURT: See what you can do to cut it down.  
22 Here's the problem, one of the problems we have. Next week we  
23 will be here Monday, Tuesday, Wednesday, not Thursday, but  
24 Friday. The following week we have Monday and Tuesday only.  
25 I will not be here Wednesday, Thursday, and Friday as you

1 know. The week after that, which is the week of Thanksgiving,  
2 alternate juror No. 3, Ms. Walsh has given me her, I don't  
3 know what they call it, request to trial assignment. Her  
4 divorce is being heard on Monday and she's been summonsed to  
5 the Dedham Probate Court at 10 o'clock, 9:30 on the 22nd.

6 (Pause.)

7 My guess is that we can try to persuade the probate  
8 court to rearrange her schedule and accommodate us, but it  
9 would be enormously helpful if we can get the case to the jury  
10 before Thanksgiving, because if we don't, what we then have is  
11 a 1, 2, 3, 4 -- another four-day recess.

12 MR. SEGAL: I understand.

13 THE COURT: And if we don't get it to the jury at  
14 least a couple of days before Thanksgiving then we may have a  
15 deliberating jury over that four-day recess.

16 MR. SEGAL: I understand, but I want to be up front.  
17 Given what I think I want to put on, I don't know if the  
18 Government will have rebuttal, even putting that aside, it's  
19 going to be awfully difficult to -- to get my case --  
20 basically to get my case in in five days. Even if I get it in  
21 in five days, that takes us to the Wednesday before  
22 Thanksgiving and then you're talking about arguments and  
23 charge. So I think realistically, this case won't be able to  
24 go to the jury before Thanksgiving, and I'm not even sure I  
25 can finish before.

1 THE COURT: And I don't remember what the jurors told  
2 us. I think some of them had problems after Thanksgiving.  
3 We're going to lose some jurors.

4 MR. SEGAL: Your Honor, this is an important case.

5 THE COURT: I understand that, but counsel did, to  
6 some extent, mislead the Court and the jury because we all  
7 assumed that we would finish before Thanksgiving.

8 MR. SEGAL: Your Honor always asked me how long it  
9 would take, I said five to eight days for my case. I've never  
10 changed that.

11 THE COURT: Maybe you can change it now.

12 MR. SEGAL: With all due respect I wasn't aware of  
13 all the scheduling and the dates that we weren't to have.

14 THE COURT: You knew, that the only thing none of us  
15 focused on was the holiday.

16 MR. SEGAL: I don't think I was aware of the  
17 three-day hiatus, I've always said five to eight days. I have  
18 an important case that I have to put in, your Honor.

19 THE COURT: Let's see what we can do to expedite  
20 things now and expedite cross-examination some.

21 MR. LOPEZ: Your Honor, for the record --

22 THE COURT: Who is the next witness?

23 MR. KELLY: Mr. Nutting is outside the door.

24 THE COURT: Bring him in and he can be waiting when  
25 the jury comes.

1 MR. LOPEZ: These matters in the possession of the  
2 Government they'll be produced pursuant to the motion. Has  
3 the motion been allowed?

4 THE COURT: Yes. Mr. Libby is going to see what they  
5 have and he will turn it over to you if he has it. If he  
6 doesn't have it, he won't turn it over to you.

7 MR. LOPEZ: That's all I ask, your Honor.

8 THE COURT: The jury is on route so if you can kindly  
9 just wait in the witness box a moment.

10 [Whereupon, the jury entered the courtroom.]

11 Paul F. Nutting, Sworn

12 Direct Examination by Mr. Kelly

13 THE CLERK: Please be seated and state your name.

14 THE WITNESS: My name is Paul F. Nutting.

15 THE COURT: I'll turn it down. You may proceed.

16 Q Will you spell that last name for us, please?

17 A N U T T I N G.

18 Q Where do you reside, Mr. Nutting?

19 A I live in the Dorchester section of Boston.

20 Q How old a person are you?

21 A Thirty-two.

22 Q And are you employed, Mr. Nutting?

23 A Yes, I am.

24 Q How are you employed, sir?

25 A In the food service industry.

1 Q Mr. Nutting, do you know a person by the name of Al  
2 Trenkler?

3 A He's an acquaintance.

4 Q And when did you first meet this individual,  
5 Mr. Trenkler?

6 A In the early '80's.

7 Q And how many different times would you say you have seen  
8 Mr. Trenkler or been in the company since that time, your best  
9 estimate, sir?

10 A No less than three, no more than six.

11 Q Do you see the Al Trenkler that you know in the courtroom  
12 here this morning?

13 A Yes, I do.

14 Q Would you point him out for us, please?

15 A The second person in from my right on this table.

16 MR. KELLY: Your Honor, if the record would indicate  
17 the identification of the defendant.

18 THE COURT: Yes.

19 Q Mr. Nutting, do you know a person by the name of Thomas  
20 Shay, or Thomas Shay, Jr.?

21 A I know of him.

22 Q When did you first encounter this person?

23 A The first time I ever saw him was on WBZ program called  
24 People Are Talking.

25 Q And is that some kind of a television show?

1 A Yes.

2 Q And did you watch that TV show?

3 A I did.

4 Q And do you remember, sir, when that program was aired, as  
5 best you can recall?

6 A I believe it was in the spring of 1990.

7 Q And do you remember what the topic area of the subject  
8 matter of the television show was, Mr. Nutting?

9 A I believe the topic was gay teenagers.

10 Q And what do you recall of Mr. Shay's appearance on that  
11 show?

12 A I recall that he was trying to come to grips with his  
13 homosexuality and what stuck out most in my mind was that his  
14 mother was on the program, she was in shadow. She didn't want  
15 her identity revealed.

16 Q Now, have you seen Mr. Shay in person since you've had  
17 occasion to see him on this TV show, People Are Talking?

18 A Yes, I have.

19 Q Approximately how many times have you seen him since  
20 then, sir?

21 A No more than three times.

22 Q Can you describe his physical appearance for us, please?

23 A He's rather tall as I am, probably about my height, maybe  
24 a little bit taller.

25 Q How tall are you?

1 A I'm 6 foot 4.

2 Q Anything else distinctive about him that you recall?

3 A I remember that he was scrawny and he seemed to have an  
4 acne problem.

5 Q And your testimony was you saw him three times or so?

6 A Approximately.

7 Q Where have you seen him, the locations?

8 A I've seen him in Provincetown on Cape Cod.

9 Q Anywhere else?

10 A I've seen him at the Blue Hills Reservation.

11 Q Where is the Blue Hills Reservation?

12 A It straddles both Quincy and Milton in the section I saw  
13 him. It covers some other towns as well.

14 Q Does it also touch part of Canton?

15 A Canton, Randolph, Quincy, I believe.

16 Q And is there an area at the Blue Hills that is commonly  
17 frequented by gay males?

18 A Several areas.

19 Q Mr. Nutting, I want to show you what has been previously  
20 marked and introduced as Exhibit No. 55 which is a photospread  
21 and ask you if you recognize any of the persons that are  
22 depicted therein, sir?

23 A The person I have recognize is No. 4.

24 Q And who is that, sir?

25 A Thomas Shay.

1 Q And showing you Exhibit No. 54, is that an enlargement of  
2 photograph No. 4 on Exhibit 55?

3 A Yes, sir.

4 Q Also Thomas Shay?

5 A Yes, sir.

6 Q Directing your attention, Mr. Nutting, to the spring of  
7 1991, did you have occasion to see Mr. Thomas Shay at that  
8 time?

9 A Yes, I did.

10 Q Where did you see him, sir?

11 A At the Blue Hills Reservation.

12 Q And was there anything distinctive about his appearance  
13 or clothing on that occasion that you recall?

14 A Yes, he was wearing a white T-shirt and in large black  
15 letters spelled out the words "act up" which stand for a gay  
16 political--

17 MR. LOPEZ: Objection as to this witness's knowledge  
18 as to what a shirt that Tom Shay, Jr. was wearing might stand  
19 for.

20 THE COURT: He may answer. He already has answered.

21 A It was a white T-shirt and in large black letters across  
22 the front, and I believe across the back as well, "act up"  
23 were the words, and that stands for a somewhat radical gay  
24 political action group.

25 Q Did you see the Defendant Al Trenkler the same day that

1 you saw Mr. Shay in the spring of 1991?

2 A I did.

3 Q Where did you see him, sir?

4 A He was driving a car that, the car that Mr. Shay alighted  
5 from.

6 Q Tell us what you observed on that occasion, sir?

7 A Well, a small white car pulled up, Mr. Shay alighted from  
8 it.

9 Q "Alighted" means?

10 A Means --

11 Q Got out?

12 A Got out.

13 Q All right. Go ahead.

14 A And after he got out, I could see the driver, and the  
15 driver was the defendant Al Trenkler.

16 Q And where were you at the time he made these  
17 observations, Mr. Nutting?

18 A In a parking area.

19 Q Were you inside a vehicle?

20 A I was inside my vehicle, yes.

21 Q And what happened after you made these observations of  
22 Mr. Shay, getting out of the car, did you make any further  
23 observations of either Mr. Shay or Mr. Trenkler?

24 A Mr. Shay began to talk to various people who were hanging  
25 around. Mr. Trenkler had driven off and I saw him drive by a

1 couple of times not stopping.

2 Q Is that uncommon for a car to drive by the Blue Hills  
3 where you're at?

4 A No, not at all. Some people prefer to get out of cars,  
5 some people prefer to drive back and forth.

6 Q Is this what might called "cruising"?

7 A It could be.

8 Q Meaning an effort to perhaps meet other people?

9 A I don't know what their intentions were that day.

10 Q I'm not asking for their intentions. I'm asking  
11 generally if people walk this area of the Blue Hills or drive  
12 their car back and forth in the Blue Hills, is that what's  
13 known as cruising?

14 A I'd say so, yeah.

15 Q Just a final question. What memory do you have of that  
16 car that you saw that day, Mr. Nutting?

17 A I just remember it was a small white car in disrepair.

18 Q In disrepair?

19 A Yeah.

20 Q What do you remember about it, anything specific about  
21 the disrepair?

22 A It wasn't completely white. There may have been rust  
23 spots or primer paint or --

24 Q That's what you recall. Thanks. I have no further  
25 questions.

1 THE COURT: Any questions, Mr. Lopez?

2 MR. LOPEZ: Yes.

3 Cross-examination by Mr. Lopez

4 Q Good morning, Mr. Nutting. My name is Scott Lopez, and I  
5 represent Al Trenkler in this matter. Mr. Nutting, I believe  
6 you testified that you saw a car sometime in 1991?

7 A That's right.

8 Q Do you recall if that was in June of 1991?

9 A I do not.

10 Q So it may have been in June of 1991?

11 A It may have.

12 Q And I believe you indicated that it was a white car?

13 A That's right.

14 Q And I believe you testified that you saw Shay, Mr. Shay,  
15 Jr. three times?

16 A Approximately three times.

17 Q Once in Provincetown, once in the Blue Hills, and once on  
18 a TV show?

19 A Right. I may have seen him on other occasions at bars  
20 and whatnot, but they don't stand out in my memory.

21 Q You saw him with Mr. Trenkler only one time; is that  
22 correct?

23 A That's correct.

24 MR. LOPEZ: Thank you.

25 THE COURT: Anything else?

1 MR. KELLY: No, your Honor.

2 THE COURT: Thank you, Mr. Nutting. You're excused.  
3 Who is next?

4 MR. LIBBY: Your Honor, the United States calls  
5 Thomas D'Ambrosio.

6 Thomas D'Ambrosio, sworn

7 Direct Examination by Mr. Libby

8 THE CLERK: Please be seated and spell your name for  
9 the reporter.

10 THE WITNESS: My name is Thomas D'Ambrosio,  
11 D' A M B R O S I O.

12 Q Good morning, sir?

13 A Good morning.

14 Q What do you do for a living?

15 A I'm a special agent with the United States Treasury  
16 Department, Bureau of Alcohol, Tobacco & Firearms.

17 Q How long have you been doing that?

18 A A little over 17 years.

19 Q Would you describe for us what it is you do day-to-day?

20 A Yes, special agents with ATF and myself are charged with  
21 enforcing the federal firearms and explosives laws,  
22 investigating violations of those laws.

23 Q And throughout that period of time, sir, can you tell us  
24 where you were stationed?

25 A My whole time with ATF has been here in Boston.

1 Q Would you give us a brief description, sir, of your  
2 training in the field of ATF in general?

3 A Training with ATF begins with basic criminal  
4 investigators school which is a 7-week school. You then  
5 continue on to new agent training which is another 7-week  
6 school which focuses on the laws, investigations at ATF  
7 conducts. Those are the basic schools required for all  
8 agents. Since that time I have attended a two-week  
9 enhancement schools in a variety of areas particularly with a  
10 specialty in explosives investigations, handling explosives,  
11 identification of explosives, resulting in a certification as  
12 a ATF explosives specialist.

13 Q You received that certification from what source, please?

14 A From the national -- excuse me, the ATF National Academy.

15 Q Now, after your entry on duty as an active ATF agent,  
16 sir, you got involved in case specific investigations?

17 A Yes, I have.

18 Q How many investigations over those 16, 17 years, sir,  
19 have you been involved in?

20 A Hundreds.

21 Q And they have primarily involved incidents occurring  
22 where, what's your jurisdiction?

23 A In the District of Massachusetts.

24 Q Now, Agent D'Ambrosio, you have been involved in the  
25 investigation arising out of the 1991 explosion in Roslindale,

1 correct?

2 A Yes, I have.

3 Q When did you begin your involvement in that matter?

4 A The day of the explosion, October 28, 1991.

5 Q And since the date of that explosion, Agent D'Ambrosio,  
6 could you tell us, please, what portion of your working time  
7 has been spent on this investigation?

8 A Pretty much since that day all my time has been spent on  
9 this investigation.

10 Q Now, directing your attention to the 4th of November  
11 1991, Agent D'Ambrosio, do you recall what day of the week  
12 that was?

13 A Yes, I do.

14 Q What day was that?

15 A It was a Monday.

16 Q Were you working that day?

17 A Yes, I was.

18 Q And where were you on that day?

19 A I was here in Boston.

20 Q Specifically?

21 A At the homicide unit of the Boston Police Department.

22 Q You were working with the Boston Police Department on  
23 that day?

24 A Yes.

25 Q Would you describe for the Court and jury the

1 relationship between you and other ATF agents and the Boston  
2 police as of that time?

3 A Well, as of the date of the explosion from that point  
4 forward, ATF has assisted the Boston police departments,  
5 specifically the homicide unit with the investigation right  
6 through the early 1992 when ATF began taking the lead in this  
7 investigation, but prior to that we were assisting Boston with  
8 the investigation, interviews, following up investigative  
9 leads.

10 Q Roughly how many ATF agents, roughly how many  
11 investigators, ATF agents were assigned to the matter at the  
12 outset preliminarily?

13 A In the early days of the investigation, it may have been  
14 upwards of 20, 25.

15 Q And during that period of time I believe you said you  
16 were at the homicide unit?

17 A That's correct.

18 Q Could you describe for us, please, physically what the  
19 layout was, was there a room set aside for that matter?

20 A The Boston Police Department provided a conference room  
21 for use by the ATF agents assigned to the investigation so  
22 that we would have a base of operation within their office  
23 space.

24 Q And what typically would come into the, this  
25 headquarters, if you will, from day to day?

1 A On a day-to-day basis agents were out conducting  
2 investigations and following leads and would bring whatever  
3 information they attained back to that room so that we could  
4 have a central place to sit down, discuss what we had done,  
5 where we were going, what needed to be done the following day.

6 Q What you are describing is typically what happened at the  
7 close of the day each day?

8 A It was our intention to meet at the end of each day, to  
9 discuss where we had been, where we're going.

10 Q Now, I direct your attention to that Monday evening, sir,  
11 do you have that in mind?

12 A Yes, I do.

13 Q Would you tell us, please, roughly how many law officers  
14 were in the homicide headquarters room at that time?

15 A My best guess would be a dozen.

16 Q And you're all seated around the table and so forth?

17 A Yes.

18 Q Now, what hour do you have in mind here?

19 A Early evening, I would say sometime between 6 p.m. and 7  
20 p.m.

21 Q By that time on that date Monday the 4th of November  
22 Agent D'Ambrosio, had investigators determined as to the means  
23 of the initiation of the explosive device in Roslindale?

24 A Yes.

25 Q And what was that?

1 A It was a remote control explosive device.

2 Q Now, as of that Monday evening, Agent D'Ambrosio, was  
3 there any information available at the headquarters room at  
4 homicide relating to any other incident occurring, having  
5 occurred in Massachusetts which was also remote control  
6 explosion?

7 A Yes, there was.

8 Q And what information was that, please?

9 A There was a Quincy Police Department report of an  
10 explosion that occurred in September of 1986 in bombing a  
11 remote control explosive device.

12 Q And how long had that report been available at  
13 headquarters?

14 A It had been there for a couple of days.

15 Q Now, did that report identify, invite any information as  
16 to the identity of the individual responsible for that 1986  
17 remote control explosive device?

18 A Yes, it did.

19 Q And the name, please?

20 A Alfred Trenkler.

21 Q Now, up to that moment, that's Monday evening, Agent  
22 D'Ambrosio, had any law officer assigned to the matter,  
23 assigned any particular significance to just the name on that  
24 report, Alfred Trenkler?

25 A No, they did not.

1 Q Now, did there come a time that evening, agent, when  
2 there was in fact some significance attached to that name?

3 A Yes.

4 Q Would you recount that for us, please?

5 MR. SEGAL: Can we get a direct -- I don't know  
6 what's coming, I would just like a more focused question.

7 MR. LIBBY: I'll try and rephrase it.

8 Q Was there some conversation that had specific reference  
9 to that Quincy report?

10 A Yes, there was.

11 Q On that evening?

12 A Yes, there was.

13 Q Would you recount that information for us, please?

14 THE COURT: How is that admissible?

15 (Segal stands.)

16 MR. LIBBY: Again, I brought this up with your Honor  
17 three days ago on the investigative path this took. This is  
18 Monday the 4th, now.

19 THE COURT: I understand, but I truly, I know that  
20 you attach much importance to the investigators' state of  
21 mind, but I have some difficulty with it. I mean I just don't  
22 understand it. The fact is that they did at that point attach  
23 importance to it. That's the relevant fact.

24 Q Without telling us the conversation, Agent D'Ambrosio,  
25 did you see, any agent at that time picking up that 1986

1 Quincy report?

2 A Yes, I did.

3 Q And as a result of any conversation you had at that time,  
4 did you take any steps?

5 A Yes, I did.

6 Q What did you do?

7 A I reviewed the address book that had been attained from  
8 Thomas Shay, Jr.

9 MR. LIBBY: If I may approach, your Honor.

10 THE COURT: Yes.

11 MR. LIBBY: Thank you.

12 Q Government's Exhibit 32, and I'll ask you, Agent  
13 D'Ambrosio if you recognize that?

14 A Yes, I do.

15 Q What do you recognize it to be?

16 A A photocopy of Thomas Shay, Jr.'s address and telephone  
17 book.

18 Q Is that what you had in your hand on that evening in  
19 question?

20 A Either this one or another photocopy.

21 Q Would you tell the Court and jury, please, what you did  
22 with this at that time?

23 A I looked through this book for the name Alfred Trenkler.

24 Q And did you find it immediately?

25 A Not immediately.

1 Q Why not?

2 A I was looking in the back of book for the T's and did not  
3 find the name closed the book and realized the first page had  
4 his name Al Trenkler and then realized that the book was  
5 alphabetized by first names.

6 Q If I may, your Honor, let me show you what's marked as  
7 Government's Exhibit 32 A. Is that a photographic enlargement  
8 taken from that address book?

9 A Yes.

10 Q It was taken from 32 previously?

11 A Yes.

12 MR. LIBBY: Now, if I may your Honor publish.

13 THE COURT: We don't need to give the jury the big  
14 one.

15 MR. LIBBY: No.

16 Q At that time -- your Honor, I would like to at this point  
17 to offer 32, and 32 A in evidence as an accurate depiction.

18 MR. SEGAL: No objection.

19 THE COURT: It may be marked.

20 [Government's Exhibits 32, 32A entered into  
21 evidence.]

22 Q Now, at that time, Agent D'Ambrosio, did you and the  
23 other investigators attach any significance to the address  
24 book?

25 A Yes, we did.

1 Q What significance was that, please?

2 A It was the first time that we had linked Thomas Shay, Jr.  
3 with another party Alfred Trenkler and continuing that link to  
4 a previous bombing.

5 Q Now, did you take any action in response to having drawn  
6 that connection that evening?

7 A Yes.

8 Q What did you do?

9 A Checked the Massachusetts driver's license files.

10 Q Is that the Registry of Motor Vehicles?

11 A Yes.

12 Q And what did you find?

13 A I found that Alfred Trenkler's driver's license listed 7  
14 White Lawn Avenue in Milton.

15 Q And having determined that what did you do, if anything?

16 A Went to Milton.

17 Q That evening?

18 A Yes.

19 Q Did you go directly to 7 White Lawn?

20 A No.

21 Q What did you do?

22 A I went directly to Milton Police Department, and make  
23 some inquiries as to whether they were familiar with Alfred  
24 Trenkler.

25 Q And then you left the police department?

1 A That's correct.

2 Q And you found your way ultimately to 7 White Lawn?

3 A Yes.

4 Q In Milton?

5 A Yes.

6 Q At about what hour did you arrive there?

7 A At that point it would be sometime around 9 p.m.,  
8 possibly later.

9 Q And would you tell us, please, what you found at 7 White  
10 Lawn that evening?

11 A There were no lights on at the residence. There were no  
12 vehicles in the driveway. It appeared as though nobody was at  
13 home.

14 Q Did you approach the door, take any further investigative  
15 steps with respect to the residence of White Lawn Avenue that  
16 evening?

17 A No.

18 Q Directing your attention to the following day, Agent  
19 D'Ambrosio, was there any other information on the face of  
20 that Quincy Police Department report on the 1986 remote  
21 control explosion?

22 A Yes, there was.

23 Q And did you do anything that day, that Tuesday, the 5th  
24 of November as a result of that information?

25 A Yes.

1 Q What did you do?

2 A Excuse me, I went to an address in Hingham to interview a  
3 Mrs. Donna Shea whose name appeared on that report.

4 Q And did you go alone?

5 A No, I did not.

6 Q Who went with you?

7 A Special Agent Dennis Leahy.

8 Q About what time did you arrive there?

9 A I believe it was around noontime.

10 Q How long did you stay?

11 A I think the interview lasted approximately an hour.

12 Q At some point that afternoon, Agent D'Ambrosio, did you  
13 return to Boston?

14 A Yes, I did.

15 Q Where did you go?

16 A Back to the offices at the homicide unit.

17 Q What time did you get there?

18 A Mid to late afternoon.

19 Q You and Agent Leahy together?

20 A Yes.

21 Q And what did you do when you got to homicide?

22 A I think immediately prepared the report of the interview  
23 that we had just conducted, began doing that.

24 Q At some point that afternoon, Agent D'Ambrosio, did you  
25 receive a report from agents out in the field?

1 A Yes.

2 Q What was the nature of that report, please?

3 A Supervisor Palaza either called in, called in on the  
4 telephone, and requested some assistance from those that were  
5 in the office to join him and others in the Weymouth area to  
6 conduct the surveillance.

7 Q Did you do that?

8 A Yes, I did.

9 Q And could you tell us, please, what the objective of that  
10 surveillance was?

11 A As I understood it, the objective was to locate and  
12 identify who Alfred Trenkler was, with an intention to  
13 determine where he lived.

14 Q Did you positively identify Mr. Trenkler that day?

15 A Yes.

16 Q Could you tell us, please, how many officers were  
17 involved in the surveillance project at the time?

18 A I would say between a dozen and 15 in several vehicles.

19 Q Now, you knew Mr. Trenkler's name --

20 A Yes.

21 Q -- by that time. Had you ever seen Mr. Trenkler?

22 A No, I had not.

23 Q Did you have a picture of Mr. Trenkler?

24 A I did not.

25 Q To your knowledge, did any of the other officers have any

1 picture of Mr. Trenkler?

2 A No.

3 Q To your knowledge, sir, did any of the other law officers  
4 on the surveillance assignment have any means of identifying  
5 Mr. Trenkler?

6 A All that was available to us at that time was the  
7 description on the driver's license which I believe was a  
8 height description.

9 Q Was there a local police officer who had the ability to  
10 recognize Mr. Trenkler in person?

11 A Later that evening, yes.

12 Q Who was that?

13 A Detective Tierney from the Quincy Police Department.

14 Q Did all the officers stay together during the course of  
15 the surveillance?

16 A No.

17 Q Were you with Officer Tierney throughout the later  
18 afternoon, early evening?

19 A No, I was not.

20 Q At some point, Agent D'Ambrosio, did there come a time  
21 when you learned that Mr. Trenkler had to positively identify  
22 and locate?

23 A Yes.

24 Q First, when did that call come from?

25 A It was shortly before 11 o'clock, approximately quarter

1 to.

2 Q Where were you when you got that call?

3 A I was in a parking lot in the vicinity of downtown  
4 Quincy, on Mechanic Street.

5 Q And you received that information how?

6 A It was either by radio or by cellular telephone. I'm not  
7 sure which.

8 Q What was your understanding of Mr. Trenkler's location at  
9 the time of this identification?

10 A That he had been identified at the scene, entering an  
11 address at 133 Atlantic Street in Quincy.

12 Q And after you received that report what did you do?

13 A Proceeded to 133 Atlantic Street in Quincy.

14 Q And who went with you, please?

15 A In my vehicle was Boston Police Detective Sergeant  
16 Timothy Murray, Special Agent Dennis Leahy and Special Agent  
17 Sandra LaCourse.

18 MR. LIBBY: If I may approach, your Honor.

19 THE COURT: Yes.

20 Q Showing you, what's mark Government's Exhibit 46 A, Agent  
21 D'Ambrosio, and ask if you recognize that, please?

22 A I do, that is 133 Atlantic Street in Quincy.

23 Q Agent D'Ambrosio, I'll show you Government's Exhibit 46  
24 D, and ask if you recognize what's depicted there?

25 A Yes, I do.

1 Q What is that?

2 A That is the door, entry door to the basement apartment  
3 133 Atlantic Street in Quincy.

4 Q And finally, let me show you what's been marked  
5 Government's Exhibit 46 F, and ask if you recognize what's  
6 depicted there?

7 A It's the photograph of the interior basement apartment.

8 Q If I understand, your Honor, these have already been  
9 admitted into evidence. Now, Agent D'Ambrosio, what did you  
10 do on your arrival at 133 Atlantic Street that evening?

11 A Well, after a brief meeting on the sidewalk, assisted  
12 other officers and went to the basement apartment.

13 Q Were you the first officer through the door?

14 A No, I was not.

15 Q When you went down into the basement apartment, were you  
16 present before any law officer entered that apartment?

17 A Yes, I was.

18 Q What did you next hear or see, please?

19 A I heard a knocking on the door. I heard the  
20 identification, police, I heard a dog barking. At some point  
21 I heard the door open.

22 Q And when the door opened, what did you see from where you  
23 were?

24 A Initially, I wasn't able to see anything because there's  
25 a staircase leading into the apartment. It was very dark. I

1 stopped on the staircase.

2 Q How long after any first law officer entered the  
3 apartment before you went?

4 A I would say three to five minutes.

5 Q And as you entered the apartment, would you please tell  
6 us who recognized in the apartment?

7 A Well, I recognized the officers and agents that  
8 accompanied me there.

9 Q Who were they?

10 A Detective Peter O'Malley, Detective William Fogerty,  
11 Detective John McCarthy, Special Agent Dennis Leahy.

12 Q Now, other than the law officers, did you see any other  
13 individuals?

14 A Yes, I did.

15 Q Did you see the law officers speaking to any particular  
16 individual?

17 A Yes.

18 Q And you -- who did you later learn that individual to be?

19 A Alfred Trenkler.

20 Q Is Mr. Trenkler in the courtroom today?

21 A Yes, he is.

22 Q Would you point him out for us, please, for the record?

23 A He is seated in between defense counsel, Ms. Sharton and  
24 Mr. Segal.

25 MR. LIBBY: May the record reflect that Agent

1 D'Ambrosio has correctly identified the defendant.

2 THE COURT: Yes.

3 Q Now, Agent, as you entered could you tell us, please,  
4 what you did as you initially entered the apartment?

5 A Excuse me, as I went to the door there was another  
6 individual seated on a sofa bed. And I stood there, I did not  
7 want to interrupt an ongoing conversation with Mr. Trenkler.

8 Q Now, back to the individual on the sofa bed, would you  
9 describe him for us, please?

10 A At that time he was seated after he stood up, I realized  
11 that he was tall, maybe 6, 1, 6, 2, thin, wore wire framed  
12 glasses.

13 Q Did you later learn who that individual was?

14 A John Cates.

15 Q Back to the individual Mr. Trenkler saw you, that  
16 occasion, would you tell us how the defendant was dressed?

17 A He had jeans and a shirt on.

18 Q And his demeanor during the time you saw him engaged in?

19 A He was -- the conversation, he was talkative, he was  
20 speaking with the agent and detectives.

21 Q Were you engaging in the conversation with him, did you  
22 join that conversation?

23 A I did not.

24 Q Now, did you take any further action in the apartment  
25 that day?

1 A Yes, I did.

2 Q What did you do?

3 A At some point I noticed that Special Agent Leahy was  
4 looking through the built-in shelves that were in the kitchen  
5 alcove area, and I walked over to Special Agent Leahy and he  
6 pointed to a speaker that's on the shelf. I asked him if  
7 Mr. Trenkler had given us permission to search the apartment.

8 Q As a result of that conversation, what did he do?

9 A Special Agent Leahy told me, said it was okay to look  
10 around so I assisted him in searching the apartment.

11 Q At any time did you take part in or were you referring to  
12 any conversation involving Mr. Cates?

13 A No, I was not.

14 Q Did you see Mr. Cates speaking with any officer at the  
15 basement apartment that evening?

16 A Yes, I did.

17 Q What did you see take place?

18 A Briefly --

19 MR. SEGAL: I object to conversations.

20 MR. LIBBY: I asked him what he saw took place, your  
21 Honor?

22 A I saw conversation between Mr. Cates and Detective  
23 Sergeant Timothy Murray.

24 Q And what you did you say take place after that?

25 A Shortly after that conversation they left the apartment.

1 Q Was there any touching between Mr. Cates and Mr. Murray  
2 at that time?

3 A No.

4 Q Rather did Detective Murray have his hand on Mr. Cates?

5 A No, he did not.

6 Q Now, at some point in the conversation in the basement  
7 with Mr. Trenkler, was there any conversation regarding ARCOM?

8 A Yes, there was.

9 Q Please tell us the substance of that conversation  
10 recalling ARCOM?

11 A Mr. Trenkler was asked if we could leave the apartment  
12 and go to his business premises in Weymouth so that we could  
13 look around the office space.

14 Q And what did Mr. Trenkler say?

15 A He agreed. He was concerned that he didn't have a  
16 vehicle. He was told that we would provide transportation for  
17 him.

18 Q And having learned that, what did Mr. Trenkler do, if  
19 anything?

20 A He just asked if he had to find his keys and had to get a  
21 pack of cigarettes before he left.

22 Q And did you see him do that?

23 A Yes.

24 Q And after that some officers left with Mr. Trenkler?

25 A Yes.

1 Q About how long had you been at the basement apartment by  
2 this time, please?

3 A I would say at that point we had been approximately one  
4 hour.

5 Q And when you left, what did you do?

6 A Drove to the offices of ARCOM which are located in 82  
7 Broad Street, Weymouth.

8 Q And did Mr. Trenkler direct you there?

9 A I knew where the offices were.

10 Q About what time did you arrive at ARCOM?

11 A About a ten-minute drive, that time of night, arrived  
12 shortly after midnight.

13 Q Would you describe for us, please, what ARCOM looked  
14 like?

15 A ARCOM is located on the first floor of a three story  
16 building, the first floor being a business store front. I  
17 don't know what's above it.

18 MR. LIBBY: If I may, your Honor?

19 THE COURT: Yes.

20 Q I show you what's been marked as Government's Exhibit 56  
21 A and ask you if you recognize what is depicted there?

22 A That's the building that ARCOM is located in.

23 Q Where was ARCOM's offices as they appeared on the into  
24 the of the 5th of November, 1991?

25 A ARCOM is in the left-hand side of the building behind

1 these three windows with the orange lettering.

2 Q Now, were you in a position to see officers and  
3 Mr. Trenkler as you entered?

4 A Yes.

5 Q Would you tell us, please, how that unfolded?

6 A We all got in the sidewalk, Mr. Trenkler opened the  
7 door,, said that there was an alarm on the back wall, turned  
8 the lights, went through the office space, touch pad alarm  
9 system.

10 Q Mr. Trenkler went in first?

11 A Yes, he did.

12 Q And would you give us, please, a physical description, a  
13 description of the physical layout of ARCOM's office space as  
14 you appeared that evening?

15 A As you entered a large open room, there was a desk, and  
16 two or three chairs, some office supplies, the rear of the  
17 large room, that was a door that led to a work shop area in  
18 the utility room for the building.

19 Q At that point, was there any conversation with  
20 Mr. Trenkler?

21 A Yes, there was.

22 Q Would you count that for us, please?

23 A I asked Mr. Trenkler what was in that back room. He told  
24 me that he used it as a work shop area, that he had a work  
25 space back there. He also used it for storage of some

1 business materials.

2 Q I'm sorry, go ahead.

3 A I asked him if it would be okay to search that room and  
4 he agreed and said sure.

5 Q See where Mr. Trenkler went there after?

6 A He proceeded at the desk.

7 Q In the front room?

8 A Yes.

9 Q How many officers on the scene at this time?

10 A I believe there was eight.

11 Q Did you, what did you see the officers do?

12 A Some officers were sitting with Mr. Trenkler at the desk,  
13 speaking with him, others were looking through some business  
14 files that were stored in old crates around the outside  
15 interests of the floor space.

16 Q Did you remain in the front room for the entirety of time  
17 that you were at ARCOM?

18 A No, I did not.

19 Q Where did you go?

20 A I went to the back room, the utility room, work shop  
21 area, and searched that area.

22 Q How long all told did you stay at ARCOM that evening?

23 A Approximately an hour and a half.

24 Q So, after some initial discussion in the front room, did  
25 you go to the back room?

1 A That is correct.

2 Q And how long did you stay in the back room?

3 A I would say 30, 40 minutes.

4 Q Were you alone?

5 A I was not.

6 Q Who was with you?

7 A Special Agent Leahy.

8 Q After 30 or 40 minutes, did you come out to the front  
9 room?

10 A That is correct.

11 Q Who did you see?

12 A Mr. Trenkler was still seated at the desk. He noticed  
13 some tool boxes near the front windows, asked Mr. Trenkler if  
14 it would be okay to search the tool boxes. He agreed and  
15 Agent Leahy and I each searched through some tool boxes.

16 Q Now, had Mr. Trenkler seated at the desk anything on the  
17 desk that you recall?

18 A There was papers, some pens and pencils.

19 Q Following your looking through these tool boxes, Agent  
20 D'Ambrosio, did you have any conversation with Mr. Trenkler?

21 A Yes, I did.

22 Q Would you recount that for us, please?

23 A I asked if I could sit down and talk with him for a  
24 couple of minutes. He agreed. I sat at the desk and I said  
25 to Mr. Trenkler that I understood he was involved in an

1 explosive incident in 1986. He acknowledged that. I asked  
2 him if he would sketch for me--

3 Q Before you get to that point, Agent D'Ambrosio, did he  
4 give you any description or explanation of the 1986 -- did he  
5 give you any description or did he characterize the 1986  
6 explosive incident in any way?

7 A Yes, he did.

8 Q What did he say?

9 A He said that it utilized a large firecracker type device,  
10 that it would never have harmed anybody, and that it was not  
11 intended to harm anybody.

12 Q And you had some further conversation with him after  
13 that?

14 A I did.

15 Q What did he say to these statements?

16 A I asked him if he could sketch for me a rough wiring  
17 diagram of that 1986 device, given the fact that I had just a  
18 very basic understanding of wiring. He agreed to do that for  
19 me.

20 Q And did he do that?

21 A Yes, he did.

22 Q Where were you, how far apart were you --

23 A Seated at the same desk that he was at.

24 Q Who was with you at the time, please?

25 A Seated next to me was Special Agent Leahy.

1 Q So you were both watching him do this?

2 A That's correct.

3 Q So you were both asking him to do this at the time?

4 A On the desk was a pad of legal paper and Mr. Trenkler  
5 began diagraming what he described as the 1986 device. As he  
6 sketched out this wiring diagram, he described for me what it  
7 was, what he was drawing.

8 Q And would you describe for us, please, how he described  
9 it, the 1986 explosive device?

10 A Yes, he started with, what he described would be a power  
11 source, a battery pack, that in turn would be wired to a  
12 switch which would then in turn be wired to a radio receiver  
13 which was then wired to what he characterized as a large  
14 firecracker type device.

15 Q As he was doing this for you, please, describe for us,  
16 Mr. Trenkler's demeanor how he behaved with you as he was  
17 doing this?

18 A He was very cooperative and seemed willing to provide me  
19 with the information that he was asking for.

20 Q Now, after he has completed this diagram in your  
21 presence, did he have any conversation with him about remote  
22 control jobs?

23 A Yes, I did.

24 Q Would you tell us, please, about that conversation?

25 A I asked him about remote control, about devices and what

1     their range would be. He told me that it would all depend on  
2     the quality of the equipment.

3     Q     Was there any further conversation about infrared?

4     A     Yes.

5     Q     And what was that?

6     A     Detective O'Malley asked whether these devices were any  
7     different than remote controls utilized in your television  
8     set. Mr. Trenkler explained that remote controls and  
9     television sets operate on an infrared line of sight method  
10    where as the remote controls typically found in hobby shops or  
11    like the one that was in the 1986 device operated on radio  
12    frequency.

13    Q     Now, after Mr. Trenkler had drawn this diagram for you  
14    and you have had this conversation about infrared and TV  
15    remote controls, what's the difference between that and the  
16    other remote controls?

17           THE COURT: Would you sort of keep your voice up  
18    please.

19           MR. LIBBY: I will do that, your Honor.

20           THE COURT: Thank you.

21    Q     After you had drawn this diagram and you had this  
22    conversation about infrared, and so forth, and inferences of  
23    remote control, do you recall who spoke next?

24    A     Yes, I do.

25    Q     Who spoke next?

1 A I did.

2 Q And what did you say?

3 A I said to Mr. Trenkler, as he probably well understood by  
4 that point, that our interest was not the 1986 explosive  
5 incident, and that our concern was the more recent explosion  
6 in Roslindale. He acknowledged that. So I then said to him,  
7 If I told you that the bomb that detonated in Roslindale also  
8 utilized remote control, but rather than a large firecracker  
9 type device, it utilized dynamite, how would the wiring of the  
10 diagram you just drew for me be different.

11 Q Did Mr. Trenkler first say anything about your request?

12 A No, he did not. He said that he would just show me on  
13 paper.

14 Q And what did he then do?

15 A He drew a second diagram next to the first one he drew on  
16 the same sheet of paper. The diagram as he drew it, he again  
17 explained it to me. The diagram was essentially the same,  
18 beginning with a power source wired to a switch which was then  
19 turned wire to a radio receiver. At that point, he diagramed  
20 what he described as two blasting caps which were then  
21 inserted into two sticks of dynamite.

22 Q One blasting cap for each stick of dynamite?

23 A That is correct.

24 Q You saw two blasting caps in that diagram, sir?

25 A Yes, I did.

1 Q Mr. Trenkler described them to you as blasting caps?

2 A I believe he did.

3 Q Now, did you consider at the time that Mr. Trenkler was  
4 drawing this for you, did you consider that to be significant?

5 A When he completed the diagram, I did consider it very  
6 significant.

7 Q Now, did you show -- strike that. Did you indicate that  
8 you considered that significant in any way to anyone else in  
9 the room?

10 A Not verbally.

11 Q How did you do it?

12 A I glanced at Special Agent Leahy. He acknowledged my  
13 glance. I think he recognized the importance also.

14 Q Was Mr. Trenkler watching you glancing at Agent Leahy?

15 A I don't know that.

16 Q Now, at that time, by that time, Agent D'Ambrosio, had  
17 you told Mr. Trenkler -- strike that. By that time, had  
18 investigators learned as to the number of blasting caps  
19 involved in the 1991 explosive device?

20 A Yes, they had.

21 Q How many were involved, please?

22 A At least two.

23 Q Did you share that information with Mr. Trenkler before  
24 you asked him to draw that diagram?

25 A No, I did not.

1 Q To your knowledge, did any of the investigators share  
2 that information with Mr. Trenkler before he drew that  
3 diagram?

4 A No.

5 Q And you had been with Mr. Trenkler throughout the evening  
6 of that evening, correct?

7 A That's correct.

8 Q And that was the first time that investigators had laid  
9 eyes on Mr. Trenkler; is that right?

10 A That's correct.

11 Q Now, do you recall when everyone left all the law  
12 officers and Mr. Trenkler left ARCOM that evening?

13 A It's fairly close to 1:30 in the morning.

14 Q And at what point in the visit, at what point did  
15 Mr. Trenkler draw these diagrams, these diagrams for you?

16 A I would say that we left within 15 minutes of his  
17 completion of drawing the diagrams.

18 Q After Mr. Trenkler has completed this second diagram, and  
19 as I understand it, it's on the same sheet of paper?

20 A Yes.

21 Q And it's on the desk?

22 A Yes.

23 Q Did you reach over after he completed that second  
24 diagram, Agent D'Ambrosio and pick it up?

25 A No, I did not.

1 Q Did you consider doing it at that time?

2 A Considered it.

3 Q You chose not to do so?

4 A Yes, I did.

5 Q Why?

6 A I thought that if I took it at that moment that it would  
7 cause the conversation that we're having to cease that he  
8 would recognize that that was in fact important to me.

9 Q Did you during the time, the next ten or 15 minutes I  
10 believe you testified while you were still there, did you stay  
11 at the desk area?

12 A No, I did not.

13 Q Where did you go?

14 A I got up and walked away, I think probably to explain to  
15 supervisor Palaza what significance I placed on that diagram.

16 Q Did you see anybody else handling the diagram?

17 A No, I did not.

18 Q To your knowledge, it remained on the desk?

19 A Yes.

20 Q Would you describe for us, please, in the next ten or 15  
21 minutes what you did with the supervisor, what you did in the  
22 ARCOM office space?

23 A At that point I stood off to the side, I asked Agent  
24 Leahy to write a receipt for the items we were taking which  
25 were suppliers, and wire cutters and scraps of the wire.

1 Q What hour did you finally leave ARCOM?

2 A As I recall, it was right around 1:30 in the morning.

3 Q What time did you start your day, Agent D'Ambrosio,  
4 about?

5 A The days were early, I began somewhere around 6 a.m.

6 Q Would you describe for us, please, your general condition  
7 as you left ARCOM's office that hour?

8 A Fatigued.

9 Q Now, you indicated that some of the investigators, I  
10 believe Agent Leahy took into possession some materials?

11 A Yes.

12 Q Those were?

13 A Some pliers, wire cutters, some scraps of wire. There  
14 may have been a piece of tape.

15 Q And were those materials taken with Mr. Trenkler's  
16 consent?

17 A Yes, they were.

18 Q Did you ever take possession of that diagram at any time  
19 at any time before leaving ARCOM, sir?

20 A No, I did not.

21 Q Why not?

22 A Purely an oversight on my part.

23 Q Did you ever see it again?

24 A No, I did not.

25 Q Is there any question in your mind with respect to the

1 substance of that diagram, specifically the second sketch that  
2 Mr. Trenkler drew that there were two blasting caps there?

3 A No doubt in my mind.

4 Q At any time, thereafter, sir, did you tell anybody  
5 outside of law enforcement about the fact that Mr. Trenkler  
6 had drawn you a diagram?

7 A Yes.

8 Q Who did you tell?

9 A Mr. Richard Brown --

10 MR. SEGAL: I'm going to object to that.

11 THE COURT: I'll allow that. He can tell us what he  
12 said.

13 MR. LIBBY: I'm sorry.

14 THE COURT: Told Mr. Richard brown.

15 Q When?

16 THE WITNESS: Told Mr. Richard brown.

17 Q When did you say that?

18 A It was several weeks later during the course of the  
19 interview with Mr. Brown.

20 Q Why did you tell him that?

21 MR. SEGAL: Objection as to why.

22 THE COURT: I assume it has to do with the  
23 investigation.

24 MR. LIBBY: It does, your Honor.

25 THE COURT: I'll allow it.

1 A Knowing that Mr. Brown was Mr. Trenkler's business  
2 partner, and had access to that same office space, I was  
3 curious whether Mr. Brown had ever seen that diagram.

4 Q Now, after you left ARCOM, where did you go?

5 A 7 White Lawn Avenue.

6 Q Was your conversation with Mr. Trenkler about -- excuse  
7 me, sir.

8 (Pause.)

9 You left ARCOM, now you're talking about -- there's  
10 six of them actually, 1:30 in the morning?

11 A Yes.

12 Q You leave the ARCOM Broad Street in Weymouth office space  
13 that you see in the photograph?

14 A True.

15 Q Where did you go?

16 A 7 White Lawn Avenue in Milton.

17 Q Did you have a conversation with Mr. Trenkler about that?

18 A Yes.

19 Q And generally, what was that conversation about?

20 A Generally, he had told us that he stored some of his  
21 equipment and supplies in the garage of his parents' house.  
22 We asked if we could go search the garage.

23 Q And did Mr. Trenkler give you consent to do that?

24 A He did -- initially, reluctantly because he was afraid  
25 that we would probably awaken his parents which would cause

1     some problems for him causing him to explain why the police  
2     were in the garage.

3     Q     Did you address those concerns?

4     A     Yes, we did.

5     Q     How did you do that?

6     A     Told him that we would only take one vehicle, we would  
7     not make a lot of noise, in that, if by chance we woke his  
8     parents, he could tell him anything he wanted to, he could  
9     make up a story as to who we were.

10    Q     Did you make your way to 7 White Lawn?

11    A     Yes, we did.

12    Q     How many agents approached the garage, please?

13    A     Two.

14    Q     Who were they?

15    A     Myself and Special Agent Vince Leahy.

16    Q     Anyone else with you?

17    A     Yes.

18    Q     Who was that?

19    A     Mr. Trenkler.

20    Q     And you parked somewhere out of the way?

21    A     Detective O'Malley dropped us off at the end of the  
22    driveway and drove off.

23    Q     How long did you stay on the scene there?

24    A     I would say no more than 20 minutes.

25    Q     Going through parts of the garage?

1 A That's correct.

2 Q Did Mr. Trenkler say anything about what portion of the  
3 garage he commonly used?

4 A He did.

5 Q What did he say?

6 A When he opened the garage door, which I believe was the  
7 right-hand side garage door, the garage was literally full of  
8 material, stacked in mill crates quite high, and he explained  
9 that most of the right-hand side of the garage were items  
10 belonging to himself, and on the left-hand side of the garage  
11 which were very apparently woodworking materials belonging to  
12 his brother.

13 Q What did you next do next?

14 A We spent 15, 20 minutes doing research of the garage.  
15 There was just too much inside.

16 Q What were the lighting conditions?

17 A There was, I think, overhead lighting, and I had a  
18 flashlight.

19 Q I'm sorry, how long did you stay at the garage?

20 A No more than 20 minutes.

21 Q Did either you or Agent Leahy remove anything from the  
22 garage?

23 A I believe we took a couple of pieces of wire.

24 Q And before doing that, did you have Mr. Trenkler's  
25 consent to do so?

1 A Yes, we did.

2 Q Now, after leaving the garage at 7 White Lawn, your  
3 Honor, please, if I may.

4 THE COURT: Why don't we stretch for a moment?

5 Q Showing you the photographs of 49 A and 49 B, Agent  
6 D'Ambrosio, do you recognize what's depicted on these two  
7 photographs?

8 A Yes, I do.

9 Q What do you recognize them to be?

10 A The house and the garage at 7 White Lawn Avenue in  
11 Milton.

12 Q This is the garage that you searched that evening with  
13 Agent Leahy?

14 A Yes.

15 Q After you left there, where did you go?

16 A At that point we headed -- we were going to take  
17 Mr. Trenkler back to his apartment, but the decision was made,  
18 the request was made to Mr. Trenkler if we could go search his  
19 vehicle.

20 Q And what did you understand his vehicle to be?

21 A His vehicle was an older Toyota Selica. It was parked in  
22 a parking lot in downtown Quincy.

23 Q You made your way to the parking lot at Quincy?

24 A Yes, we did.

25 Q How many cars?

1 A Just one.

2 Q And who was in the car, please?

3 A Driving was Detective Peter O'Malley. In the front seat  
4 was Detective John McCarthy, and the back seat was myself,  
5 Agent Leahy and Mr. Trenkler.

6 Q And would you describe the car for us, please, the color?

7 A A white Toyota.

8 Q Do you have an understanding as to why it was parked  
9 there?

10 A Mr. Trenkler told us that the car had died on him,  
11 couldn't start.

12 Q What did you do as you arrived and approached the  
13 vehicle, what did you do?

14 A Asked Mr. Trenkler if it would be okay to search through  
15 the car.

16 Q What did he say?

17 A He agreed, told us that he would have to open it, because  
18 I believe the locks in the door were broken and he has his own  
19 way of getting into it.

20 Q What did Mr. Trenkler do that?

21 A Yes, he did.

22 Q How long?

23 A No more than ten minutes.

24 Q Did you take anything from the car?

25 A Yes, we did.

1 Q What did he take?

2 A When we asked to search for the trunk, we asked to take a  
3 sample of the carpeting of the trunk which we did.

4 Q And did Mr. Trenkler have a response for you?

5 A He agreed. He allowed us to do that.

6 Q How long how large a sample was it?

7 A It was a small square, I don't think it was any larger  
8 than 6 by 6.

9 Q You were in the vehicle for how long?

10 A Ten or 15 minutes.

11 Q Then what did you do?

12 A At that point we decided it was getting late, and we  
13 would drop Mr. Trenkler off at his house.

14 Q Did he go directly to his house?

15 A No, he did not.

16 Q What did you do?

17 A Mr. Trenkler had run out of cigarettes, and we told him  
18 that if he knew a place where he could buy some we'd run him  
19 by the store so he could pick up some cigarettes which we did.

20 Q Did you get out of the car and get some smokes and come  
21 back into the car?

22 A Yes.

23 Q And then following that where did you go, sir?

24 A To 133 Atlantic Street.

25 Q What happened then?

1 A Dropped off Mr. Trenkler.

2 Q And you went where?

3 A Back to homicide in Boston.

4 Q About what time was this, then?

5 A At that point it was 2:30, quarter of 3 in the morning.

6 Q Now, with respect to the materials that you collected  
7 that evening, Agent D'Ambrosio from ARCOM Broad Street in  
8 Weymouth, the garage, from the Toyota, the vehicle, first of  
9 all, I believe you testified all those things were taken for  
10 Mr. Trenkler's consent?

11 A That is correct.

12 Q What was done with those materials?

13 A They were shipped to our national laboratory in  
14 Rockville, Maryland.

15 Q For what?

16 A For forensic comparison to evidence collected at the  
17 scene.

18 Q Are you familiar with the results of that,  
19 Mr. D'Ambrosio?

20 A Yes, I am.

21 Q And what was the result of that?

22 A There was no connection between any of those items and  
23 the scene of the bombing.

24 Q Now, Agent D'Ambrosio, to your knowledge, was there a  
25 written report of these events that you've described here in

1 terms of the visits with the basement apartment at 133  
2 Atlantic Street and then on to ARCOM and then on to White Lawn  
3 Avenue and the vehicle?

4 A Yes, there was.

5 Q By whom, sir, was that report authored?

6 A A Boston police officer.

7 Q Now, as of that time, Agent D'Ambrosio, the 5th and 6th  
8 of November, 1991, a few days following the blast, ATF's role  
9 in the investigation was what?

10 A To assist the Boston Police Department in this  
11 investigation.

12 Q Did ATF prepare and file a formal report with respect to  
13 all those activities that evening?

14 A No.

15 Q Now, thereafter, sir, you and Special Agent Leahy have  
16 occasion to visit with Richard Brown?

17 A Yes, we did.

18 Q When was that?

19 A I believe it was November 20th, 1991.

20 Q How long did you visit, Mr. Brown?

21 A Approximately an hour.

22 Q Is that in person?

23 A Yes, it was.

24 Q And where was it, please?

25 A In the office space 82 Broad Street, offices of ARCOM.

1 Q Following that visit, Agent D'Ambrosio, did either you or  
2 Agent Leahy prepare a report on that visit?

3 A Yes.

4 Q Who prepared that report?

5 A Agent Leahy.

6 Q Is it common practice for the ATF to have one agent  
7 prepare a report of the same matter that two or more agents  
8 were involved in?

9 A Yes.

10 Q Now, thereafter, Agent D'Ambrosio, did you have occasion  
11 to speak alone with Mr. Brown?

12 A Yes, I did.

13 Q Was that in person?

14 A No, it was not.

15 Q How was it?

16 A Telephonically the following day, November 21st, '91.

17 Q And as you were talking with Mr. Brown, did you take any  
18 notes of the conversation?

19 A Yes, I did.

20 Q Now, did you file or prepare any report with respect to  
21 your conversation, your conversation alone with Mr. Brown over  
22 the telephone on that day?

23 A Yes, I did.

24 Q Agent D'Ambrosio, are you familiar with the term  
25 "supplemental report"?

1 A Yes, I am.

2 Q What's a supplemental report, please?

3 A It's a report prepared to add something to a previously  
4 written report that may have been left out.

5 Q Now, have you read Agent Leahy's report of your visit  
6 with Mr. Brown on the 20th?

7 A Yes, I have.

8 Q Do you recall after having read that what if anything you  
9 did?

10 A At some point when I reviewed that report, I realized  
11 that I did not include --

12 MR. SEGAL: Objection to what that report included,  
13 your Honor.

14 THE COURT: It does not include certain information.

15 MR. LIBBY: I don't know he's going to make any  
16 specific reference to what -- please continue.

17 A It did not include anything about my conversation the  
18 following day.

19 Q So as a result of that what did you do?

20 A I wrote a report to supplement Agent Leahy's report.

21 Q How long after you made that determination about Agent  
22 Leahy's report did you make your report?

23 A Approximately a year later.

24 Q Did you make that report shortly after you recalled in  
25 your mind that there was something further to be added to

1 that?

2 A Yes, I did.

3 Q When you filed -- when you were prepared to file your  
4 supplemental report, Agent D'Ambrosio, was there any question  
5 in your mind as to the substance of your conversation of  
6 approximately a year before with Richard Brown?

7 A No.

8 Q Does that have significance to you?

9 A Yes, it did.

10 Q The conversation that you had with Mr. Brown?

11 A Yes.

12 Q Now, directing your attention to the latter part of  
13 January, 1992 specifically the 31st of January, do you recall  
14 the date of what that was?

15 A I don't.

16 Q What were you doing that day?

17 A Executing a search warrant, a series of search warrants,  
18 actually.

19 Q Would you tell us were there other search warrants?

20 A Yes, there are.

21 Q Were there other search warrants that day?

22 A 82 Broad Street, Weymouth, the offices of ARCOM, and 7  
23 White Lawn Avenue, the residence of Mr. Trenkler's parents.

24 Q Did you play any part in applying for those search  
25 warrants, sir?

- 1 A Yes, I did.
- 2 Q What role did you play?
- 3 A Prepared the affidavit to support those warrants.
- 4 Q And on that day you were conducting one of those search  
5 warrants?
- 6 A Yes, I was.
- 7 Q Where were you?
- 8 A 82 Broad Street in Weymouth, the offices of ARCOM.
- 9 Q What hour did you get there?
- 10 A Approximately 8 a.m.
- 11 Q How many officers were with you?
- 12 A Including myself, there was a total of five.
- 13 Q How long did you stay?
- 14 A We left the offices approximately 1:30 in the afternoon.
- 15 Q Just basically, generally speaking what were you doing  
16 there?
- 17 A Searching for evidence that would link Mr. Trenkler or  
18 other business at ARCOM to device components who covered the  
19 scene of the explosion.
- 20 Q Were photographs taken that day?
- 21 A Yes, they were.
- 22 Q Materials, files, things of that nature, looked through?
- 23 A Yes.
- 24 Q Was were there anything taken from the premises that day?
- 25 A Yes, there was.

1 Q For forensic examination?

2 A Yes.

3 Q Are you familiar with the results of that examination,  
4 please?

5 A Yes, I am.

6 Q And the results, please?

7 A There was no link to -- from any of those items taken to  
8 the explosive device that exploded in Roslindale.

9 Q Now, moving ahead, Agent D'Ambrosio, a few days to the  
10 4th of February, 1992, do you recall where you were that day?

11 A Yes, I do.

12 Q Where were you?

13 A In the ATF offices here in Boston.

14 Q And on that day, did you have occasion to see  
15 Mr. Trenkler at the ATF offices?

16 A Yes, I did.

17 Q At about what time, please?

18 A I believe it was around 11:30 in the morning.

19 Q Describe for us the circumstances under which you saw  
20 Mr. Trenkler that morning.

21 A He was seated in our conference room talking with Special  
22 Agent Leahy and special Agent LaCourse.

23 Q And would you give us a description of the conference  
24 room, please?

25 A Fairly large room, maybe 15 by 25. There's a large

1 conference table in the center surrounded by 15 or 20 chairs.

2 Q Was Mr. Trenkler in the conference room when you enter?

3 A Yes.

4 Q And who else was present?

5 A Special Agent Leahy and Special Agent LaCourse.

6 Q And how long did you stay in the conference room?

7 A Approximately ten minutes.

8 Q During that period did anyone leave?

9 A Yes.

10 Q Who left?

11 A Special Agent LaCourse.

12 Q And did you have a conversation during that ten-minute  
13 period of time with Mr. Trenkler?

14 A Yes, I did.

15 Q What did you say and what did he say, please?

16 A I said to Mr. Trenkler that since I first met him in  
17 November that we have learned of inconsistencies in his  
18 statements relating to his acquaintance with Tom Shay, Jr..  
19 He told me that he has had, since that time, he had time to  
20 think about it and that he recalled first meeting Tom Shay,  
21 Jr. in the summer of 1991. He remembered that date  
22 specifically because his roommate John Cates was away on  
23 vacation.

24 Q Did he give you a month?

25 A I believe he said it was July of '91.

1 Q Please continue.

2 A I also once again brought up the issue of the 1986  
3 bombing. Again Mr. Trenkler told me that, yes, he was  
4 responsible, but it was really not a big deal. He was  
5 constructing a firecracker-type device that would never harm  
6 anybody.

7 Q So far as Mr. Trenkler's conversation regarding to you  
8 after you told him that you had determined some  
9 inconsistencies, he told you that he thought about it the  
10 first time you met Shay, Jr. was during that time when his  
11 roommate was away on vacation?

12 A That is correct.

13 MR. LIBBY: I have nothing further, your Honor.  
14 Thank you.

15 Thank you, Agent D'Ambrosio.

16 THE COURT: You may cross-examine.

17 Cross-examination by Mr. Segal

18 Q Good afternoon, Agent D'Ambrosio.

19 A Good afternoon, Mr. Segal.

20 Q Let's go back to November 5th, 1991, 11:30 p.m. That's  
21 approximately the time that you went into the apartment at 133  
22 Atlantic?

23 A I believe it was earlier than that.

24 Q Give us your best estimate.

25 A Closer to eleven.

1 Q All right. By the way, you had been with ATF how many  
2 years as of that date, sir?

3 A Fifteen.

4 Q You had qualified as an explosives specialists, am I  
5 correct?

6 A Yes.

7 Q And what does that mean, explosive specialists?

8 A It is training provided by ATF, training certain agents  
9 in the recognition, identification of explosive materials, the  
10 proper procedures in transporting, handling and storing  
11 explosive materials and finally the proper procedures and  
12 techniques utilized in either destroying explosive materials  
13 that ATF recovers in investigations that are no longer needed  
14 or to utilize explosives in training demonstrations and all  
15 the proper techniques involved.

16 Q And you would agree that you had more explosives training  
17 than the normal ATF agent?

18 A I would agree with that, yes.

19 Q Are you teaching explosive courses at that point also?  
20 Do you have any teaching responsibilities?

21 A Occasionally, from time to time.

22 Q And what courses would you teach?

23 A From time to time requests are made of our office from  
24 either police departments, sometimes some private  
25 organizations in either basic recognition and identification

1 of explosive materials.

2           There are also requests made for some instruction in  
3 searching as a result of bomb threats that are received by  
4 private office buildings or private industry, that type of  
5 teaching.

6 Q     And you were sent out by the agency to respond to those  
7 requests?

8 A     I'm one of several people that handle those requests,  
9 yes.

10 Q    You are also part of the Northeast National Response  
11 Team, sir?

12 A    No, I am not.

13 Q    At 11 p.m. on November 5th, you knew that the bomb that  
14 had detonated the week before had two blasting caps; is that  
15 correct?

16 A    Yes.

17 Q    You knew at that point that Thomas Shay, Jr. was a prime  
18 suspect in this case?

19 A    Yes.

20 Q    And that in his telephone book was Mr. Trenkler's phone  
21 number?

22 A    Yes.

23 Q    They were both gay. You knew that as of November 5th, am  
24 I right? I'm talking about the night of November 5th.

25 A    Yes.

1 Q You were talking to Donna Shea and you knew that by the  
2 end of the night; is that right?

3 A That is correct.

4 Q And you knew about the 1986 Quincy incident involving the  
5 flash simulator?

6 A Yes.

7 Q Weren't there about nine ATF and Boston PD officers that  
8 went to the location there at 133 Atlantic Avenue?

9 A There may have, in fact, been more, but not everybody had  
10 to take part.

11 Q But a fairly large number drove over to that location,  
12 accompanied by a Quincy Police Officer Mr. Tierney, right?

13 A I believe he was already there. We met him there.

14 Q And you knew Tierney had been involved in investigating  
15 the '86 incident, the flash simulator?

16 A I did know that.

17 Q You were looking as you went into that apartment for  
18 anything that would connect Shay or Trenkler to the bomb; is  
19 that correct?

20 A Yes.

21 Q You were looking for wires?

22 A Yes.

23 Q Magnets?

24 A Yes.

25 Q Dynamite?

1 A Yes.

2 Q You left there at approximately 12:30 a.m.?

3 A I think it was closer to 12 midnight.

4 Q And you first arrived at ARCOM approximately what time,  
5 sir?

6 A Shortly after midnight, 12:10. It's a short ride.

7 Q And the number of agents that went into ARCOM was how  
8 many to your best recollection?

9 A Including myself, four, and four police officers.

10 Q Okay. The four agents were yourself, Special Agent  
11 Leahy, Agent LaCourse and Supervisor Palaza, am I right?

12 A Correct.

13 Q And then the Boston PD were O'Malley, Detectives O'Malley  
14 McCarthy, Mahoney, correct?

15 A Correct.

16 Q And Tierney was there with the Quincy PD?

17 A Yes.

18 Q And Mr. Trenkler was fully cooperative about opening up  
19 and letting you search?

20 A Yes, he was.

21 Q And he consented to having the tools taken and sent by  
22 overnight mail I think to the ATF lab, am I right?

23 A I'm not clear as to whether they were sent overnight mail  
24 but he consented to us taking the tools, yes.

25 Q And didn't he also consent to have records and sales

1 slips taken from the premises?

2 MR. LIBBY: Can we have a time frame on that,  
3 please?

4 MR. SEGAL: At the ARCOM premise.

5 Q While you were at ARCOM on the night of November 5th,  
6 1991?

7 A I'm sure he was agreeable because he was all night. I'm  
8 not sure whether we took any records, paper-type records that  
9 night.

10 Q And Agent Leahy, in fact, gave him a receipt that early  
11 morning for the tools that you people took; am I right?

12 A Yes.

13 Q Now, this might be a Government Exhibit already. Let me  
14 show you what I've marked as Defendant's Exhibit 85. Can you  
15 identify this as a copy of the receipt that Agent Leahy gave  
16 Mr. Trenkler in the early morning hours of November 5th, 1991  
17 for the tools you took?

18 A This does look like a copy of it, yes.

19 Q All right.

20 MR. SEGAL: I don't know if the Government's moved  
21 that into admission but I'd like -- I'm sorry.

22 MR. LIBBY: Objection.

23 MR. SEGAL: I'd like to move for admission what's  
24 marked --

25 THE COURT: Are you saying there's an objection or

1 there is not?

2 MR. LIBBY: No objection, your Honor.

3 THE COURT: All right. It may be marked Defendant's  
4 Exhibit, whatever that number is.

5 MR. SEGAL: 85.

6 THE COURT: 85.

7 MR. SEGAL: And if the government has a number, we  
8 will straighten that out.

9 [Defendant's Exhibit 85 entered into evidence.]

10 Q Agent D'Ambrosio, the conversation about -- strike that.

11 You sat down with Mr. Trenkler at the table, am I  
12 right?

13 A That is correct.

14 Q All right. And you, you described the '86 incident as no  
15 big deal, basically a firecracker; is that correct?

16 A I believe that was his characterization, yes.

17 Q He said it wouldn't hurt anybody?

18 A Yes.

19 Q It was intended to hurt anybody?

20 A That's correct.

21 Q And you basically agreed with him?

22 A Yes, I did.

23 Q At that point you asked him to describe the '86 device,  
24 am I right?

25 A That is correct.

1 Q And he drew the internal components of the wiring system  
2 of the device, am I right, the '86 device?

3 A He drew a diagram that explained what it was he was  
4 drawing for me.

5 Q While he's drawing it, you're seated next to him, am I  
6 right?

7 A Yes.

8 Q Where is Special Agent Leahy?

9 A He is either next to me or across the table, and he's  
10 also at the table.

11 Q All right. Seated?

12 A I believe so, yes.

13 Q And Detective O'Malley is over somebody's shoulder?

14 A He may have been over my shoulder, yes.

15 Q Anybody else right in the proximity of that table?

16 A No, that I recall.

17 Q I think you told Mr. Trenkler your power source for the  
18 '86, am I right?

19 A Yes.

20 Q A battery?

21 A I believe he described it as one and the same.

22 Q And he drew a switch?

23 A Yes.

24 Q Radio receiver?

25 A Yes.

1 Q And then, anything else?

2 A What he described as a large firecracker.

3 Q Now, it's your testimony that after that you asked him to  
4 draw -- you told him about the '91 device and asked him to  
5 draw a device, am I right? Well, what did you say to him  
6 before he drew the next diagram?

7 A I told him that, as it was probably evident to him, our  
8 interest was not the 1986 device, but that our interest was  
9 with the more recent 1991 device.

10 I then proposed to him that given the '91 device was  
11 also a remote control device but rather than utilizing, using  
12 his term, a large firecracker, it utilized dynamite, how would  
13 the wiring diagram be different than the one he had just  
14 drawn.

15 Q And he drew a diagram according to your testimony that  
16 had two blasting caps, am I correct?

17 A That is correct.

18 Q And that was non-public information at that point?

19 A Correct.

20 Q Either he was the bomber or he took an awfully lucky  
21 guess, am I right?

22 A I would agree with that.

23 Q That diagram was very significant information to you, am  
24 I right?

25 A Yes, it was.

1 Q Isn't it true that you didn't arrest him at that spot?

2 A True.

3 Q You didn't take the diagram?

4 A True.

5 Q You stayed on the premises for about 15 to 20 minutes, am  
6 I right?

7 A Yes.

8 Q Seven or eight agents, and a couple of agents being ATF,  
9 Boston Police and the Quincy officer, all were there at the  
10 offices with Mr. Trenkler?

11 A By that time, Detective Mahoney and Detective Tierney may  
12 have, in fact, left but the rest of us were still there, yes.

13 Q And the number of you now went to White Lawn Ave. and  
14 conducted a search there?

15 A Yes.

16 Q And you took some wire?

17 A I believe we did, yes.

18 Q You took Mr. Trenkler home but you stopped on the way,  
19 and also, with his consent, searched his automobile?

20 A Yes.

21 Q And you took some carpet from the automobile?

22 A That is correct.

23 Q That was because you were looking for hairs and fibers in  
24 there to see if any of that would match the debris -- I mean,  
25 you being the ATF?

1 A That's not correct.

2 Q You took the carpet and sent it down to the ATF lab to  
3 have it analyzed to see if they could make a match; isn't that  
4 fair to say? Or to see if it would help them in the  
5 investigation of this case?

6 A Yes.

7 Q All right. Then you drove him home back to Quincy at  
8 about 2:45 in the morning, am I right?

9 A Approximately. Maybe slightly earlier.

10 Q And the next day, you went to work, am I right?

11 A Yes, I did.

12 Q When was the first time you realized, Agent D'Ambrosio  
13 that you had left that piece of paper with the two diagrams on  
14 the table?

15 A I would say the next day.

16 Q Can you give us any sort of time frame?

17 A It probably would have been the following morning.

18 Q That morning you realized you left a very significant  
19 piece of evidence sitting on the table over there at ARCOM, am  
20 I right?

21 A Yes.

22 Q Did you then sit down and attempt to on that day draw a  
23 recreation of what you recall Mr. Trenkler drawing the night  
24 before?

25 A No, I did not.

1 Q Did you call the lab that day and inform them about these  
2 components you had seen the night before, the two blasting  
3 caps, to assist them in the investigation?

4 A I saw no need to notify the laboratory regarding that.

5 Q You talked about Detective McCarthy from the Boston PD.  
6 He was with you at ARCOM, isn't that right?

7 A Yes, he was.

8 Q And he wrote a report of the events that took place that  
9 night and the next morning, November 5th and 6th?

10 A Yes.

11 Q You've seen that report?

12 A Yes, I have.

13 Q And it's fair to say that it doesn't mention anything  
14 about the two diagrams, you'll agree with me? I'll be happy  
15 to show you the report.

16 A I would like to see it.

17 Q All right. Let me show you what I've marked  
18 Defendant's -- I think it's Exhibit 83.

19 Would you read that report to yourself. I'll  
20 represent that's the two-page report of Detective McCarthy.

21 THE COURT: Can we agree that it either does or  
22 doesn't say anything about the diagram?

23 MR. LIBBY: We can agree to that, Your Honor.

24 THE COURT: That it does not say anything about the  
25 diagram?

1 MR. LIBBY: That's correct.

2 MR. SEGAL: You'll agree with me on that.

3 THE COURT: We have stipulated that.

4 MR. SEGAL: All right.

5 Q Now, wasn't Agent Kerr the case agent on this case, sir?

6 A Yes, he was.

7 Q And he was responsible for writing most of the reports?

8 MR. LIBBY: Objection, your Honor. Whose reports.

9 MR. SEGAL: All right.

10 Q Let me ask you this: Let me show you Special Agent  
11 Kerr's report of November 7, 1991 which I've marked as  
12 Defendant's Exhibit 86 for identification.

13 Would you agree with me, one, that that report covers  
14 the events of November 5th and 6th in connection with  
15 Mr. Trenkler?

16 A It is a general summary report.

17 Q And would you agree with me that nowhere does that  
18 three-page report mention the drawing of the diagram?

19 MR. LIBBY: Object, your Honor, foundation. Just  
20 talk about the events generally of November 5th and 6th. I  
21 believe the entrance here is it had to do with this visit.  
22 Can you establish that first?

23 THE COURT: I thought you had the witness testify a  
24 moment ago that Mr. McCarthy wrote the only report of the  
25 events of that evening?

1 MR. SEGAL: That wasn't my testimony, your Honor. He  
2 wrote the Boston PD report, but now I'm asking about the ATF  
3 report that mentions the events of that night. I'm asking if  
4 there's any mention in that of this diagram. There's two  
5 separate issues. One is McCarthy who is the Boston PD report  
6 and now the ATF report.

7 MR. LIBBY: Your honor, if he can first establish  
8 that this report has something purporting to do with this  
9 visit on that evening.

10 MR. SEGAL: All right.

11 THE COURT: Does it, Mr. D'Ambrosio?

12 THE WITNESS: Yes, it does.

13 THE COURT: Okay. So it has to do with the events of  
14 that evening. Does it have to do with things at ARCOM?

15 THE WITNESS: No, it does not.

16 THE COURT: Well, that's it; isn't it?

17 MR. SEGAL: May I have just a moment, your Honor?

18 (Pause.)

19 Q Would you look at page 2 of Mr. Kerr's report and tell us  
20 whether it refers to events of November 5th, 1991 and an  
21 interview of Mr. Trenkler on that date?

22 A Yes, it does.

23 Q It is your position that that's not referring to the  
24 interview over at ARCOM on that date?

25 A This report makes no reference to ARCOM.

1 Q But it refers to an interview of Mr. Trenkler on November  
2 5th, am I right?

3 A Yes, it does.

4 Q You interviewed him on November 5th; am I right, sir?

5 A Yes, I did.

6 Q Agent D'Ambrosio, isn't it fair to say, that the first  
7 report either you or Agent Leahy wrote that mentioned that  
8 that drawing -- drawing the diagram was on January 17th, 1992?

9 A I believe that's correct.

10 Q And how many agents were assigned to this case, sir?

11 A It varied as the investigation progressed.

12 Q At one point I thought you told us initially there were  
13 about 23 agents?

14 A That's correct.

15 Q I've got a pile of ATF reports from November 7th, 1991  
16 through January 17th. Would you accept my representation  
17 there are 50 pages of reports generated in that period of  
18 time?

19 A I'll accept that.

20 Q When Agent Leahy filled out the receipt from Mr. Trenkler  
21 -- that's the receipt there -- didn't he have to sit right at  
22 the desk where Mr. Trenkler had allegedly drawn that diagram?

23 A Yes.

24 Q So Agent Leahy now used the same desk that Mr. Trenkler  
25 had used, am I right?

1 A Yes.

2 Q And did he sit right next to Mr. Trenkler when he filled  
3 out the receipt?

4 A He may have.

5 Q But the diagram was right next to Agent Leahy when he  
6 filled out the receipt, isn't that fair to say?

7 A It would be fair to say.

8 Q You participated in the search of ARCOM on January 31,  
9 1991, isn't that correct?

10 A Yes.

11 Q Did you have radio communication with the people  
12 searching at White Lawn Ave. that day?

13 A No.

14 Q You got a call that day from some lawyer who said he was  
15 representing --

16 MR. LIBBY: Objection, your Honor. I object to that  
17 whole line of questioning.

18 THE COURT: I don't know where you're going with this  
19 but--

20 MR. SEGAL: I'm not going to ask any conversations --

21 MR. LIBBY: I object to the relevance, your Honor,  
22 fundamentally.

23 Q Let me ask you this. Were you aware as of January --

24 THE COURT: No, the objection to that is sustained as  
25 well.

1 MR. SEGAL: I could tie it up to the next event, your  
2 Honor. My question would be are you aware.

3 MR. LIBBY: Your Honor --

4 THE COURT: I don't want to hear it now. I don't  
5 believe that there's any relevance to that. If you have to,  
6 I'll talk to you at the side bar; but I don't understand what  
7 this has to do with anything.

8 MR. SEGAL: Well, I'd like to be heard at the side  
9 bar.

10 THE COURT: Then I'll hear you. Let's do it fast  
11 because we want to be done with this witness by 1 o'clock.

12 MR. SEGAL: Okay. I'll just go forward and then we'll  
13 try to pick this up, your Honor. I'd rather use my time to  
14 ask questions.

15 Q Mr. Trenkler came over to ATF on February 4th to pick up  
16 some items; is that right?

17 A Yes.

18 Q And those were items that were seized on January 31st, am  
19 I right?

20 A Yes.

21 Q And he was at ATF for a couple of hours in your  
22 observation, isn't that fair to say?

23 A I know that after the fact, yes.

24 Q All right. But while he was -- did you learn the day  
25 before that he was coming?

1 MR. LIBBY: Objection, your Honor. I'm sorry, I  
2 don't see how this is relevant to the direct examination of  
3 this witness with respect to that conversation.

4 THE COURT: I don't know. It certainly doesn't -- it  
5 may be background, I don't know.

6 Q Did you learn the day before that he had called and was  
7 coming over?

8 A I am not clear as to whether he was coming. It may have  
9 been the day before it may have been early that morning.

10 Q But you had a conversation with him on February 4th, 1992  
11 when he came over to pick up the records, am I right?

12 A Yes.

13 Q You related some of that conversation to us today?

14 A Yes, I did.

15 Q Did you ever bring up -- isn't it fair to say that you  
16 never even mentioned the subject of the 1991 diagram in that  
17 conversation on February 4?

18 A That's correct.

19 Q He wasn't there with a lawyer, was he?

20 A No, he was not.

21 Q You knew as of --

22 THE COURT: No, we're not getting into that.

23 MR. SEGAL: All right.

24 Q You never asked him anything about, could you draw a  
25 diagram for me. I can't seem to have found the other

1 diagram? I'm talking about on February 4th, you never brought  
2 up the subject of the diagram that was allegedly drawn at  
3 ARCOM, isn't that fair to say?

4 A I did not bring up the subject.

5 Q From what you could see he was trying to be cooperative  
6 on February 4th when he was responding to your questions?

7 A That is correct.

8 Q From February 4th until Mr. Trenkler was arrested, did  
9 you ever call him up and say, gees, Al, can you help me with  
10 that diagram that you drew in November, I can't seem to find  
11 it?

12 A I personally did not.

13 Q Agent D'Ambrosio, isn't the first time that you drew a  
14 recreation of what you say Mr. Trenkler drew, isn't the first  
15 time you did that was on, in May of 1993 in connection with  
16 hearings in this case?

17 A That is correct.

18 MR. SEGAL: I wonder if I could -- do you have that  
19 chart?

20 MR. KELLY: No.

21 (Pause.)

22 MR. SEGAL: Your Honor, there's a chart I wanted to  
23 use which isn't here. And I wondered if we could go over  
24 because I would like to ask questions on that chart.

25 THE COURT: What chart?

1 MR. SEGAL: It was a Government's Exhibit for  
2 identification --

3 MR. KELLY: No, it was not.

4 MR. LIBBY: We're not offering it.

5 MR. SEGAL: I understand, but there's a big blowup  
6 here.

7 THE COURT: I understand but --

8 MR. SEGAL: It's a blowup of a --

9 MR. LIBBY: We know what he's referring to, your  
10 Honor; but we have not been told until right now that Mr.  
11 Segal has any interest in pursuing that particular item.

12 THE COURT: I'm sorry?

13 MR. LIBBY: We have not been told before right now  
14 that Mr. Segal has any interest in pursuing that particular  
15 item and since it's not part of our case we simply don't have  
16 it.

17 THE COURT: Do you have any objection to his pursuing  
18 this?

19 MR. KELLY: No.

20 MR. LIBBY: No, it's just a logistical problem.

21 MR. KELLY: It's not marked for identification and  
22 it's not in the courtroom, that's the point.

23 MR. SEGAL: I wondered if --

24 THE COURT: Here I thought it was something serious.

25 MR. KELLY: If he wants it in the next five minutes,

1 we can get it. If he wants it in the next --

2 THE COURT: Do you have any other questions besides  
3 the one having to do with that particular item?

4 MR. SEGAL: I do.

5 THE COURT: In the meantime, maybe somebody can go  
6 and get it. Now, that we're dying of curiosity.

7 (Laughter.)

8 Is that it?

9 MR. SEGAL: I'm going to go over my notes to see what  
10 other areas.

11 THE COURT: You found something else to fill the  
12 time.

13 Q When you spoke to Mr. Trenkler on February 4th, this is  
14 at the ATF office, am I right?

15 A Yes.

16 Q You came in briefly, he was talking to other agents; is  
17 that right?

18 A Yes.

19 Q You understood he was waiting there to pick up copies of  
20 his records that had been seized?

21 A He came to get some records, yes.

22 Q And I think you told us that he stated that he made the  
23 device in '86 and could not have possibly harmed anybody; is  
24 that correct?

25 A Something to that effect, yes.

1 Q And did he say at that time that he was innocent in this  
2 matter?

3 A I believe he did.

4 Q And did he say that on more than one occasion in that  
5 reading?

6 A I think he may have said it only once to me.

7 MR. SEGAL: I think I have to wait, because the last  
8 set of questions do relate to the diagram.

9 THE COURT: Do you have any redirect?

10 MR. LIBBY: I do, your Honor.

11 THE COURT: I suppose we could start it and then go  
12 back to Mr. Segal's cross-examination.

13 MR. LIBBY: I prefer not to do that.

14 THE COURT: I knew that.

15 MR. KELLY: He's here if you want to go over to  
16 Monday. It won't take more than 15 minutes Monday morning.

17 THE COURT: What happens if you don't finish, as you  
18 now know, on one day, they go home and they think about all  
19 these questions that they want answered. So what really would  
20 be a five-minute examination suddenly turns out to be a 35  
21 minute examination. That's why we try to finish at the end of  
22 the day, so there's lots of pressure on everybody.

23 Q Let's go back to Mr. Trenkler to allegedly drawing those  
24 diagrams, that was about 1 a.m. on the morning of November 6th  
25 at ARCOM?

1 A Yes.

2 Q Do you agree with me that the only people in the room  
3 were law enforcement people and Mr. Trenkler; is that fair to  
4 say?

5 A Yes, it is.

6 Q Richard -- you know who Richard Brown is?

7 A I do.

8 Q There's no doubt in your mind that Mr. Brown wasn't in  
9 the room at that time when Mr. Trenkler allegedly drew these  
10 diagrams?

11 A That's correct.

12 THE COURT: This is Defendant's Exhibit 86, now, your  
13 Honor.

14 MR. SEGAL: I'll have to -- it's a Government  
15 sticker, we'll put another one on.

16 THE COURT: It's Defendant's 86 -- Defendant's 90.

17 MR. SEGAL: Just for identification.

18 MR. LIBBY: One way or the other, he's using it in  
19 front of the jury.

20 MR. SEGAL: I'm just marking it for identification at  
21 this time.

22 THE COURT: It's 90 in evidence.

23 MR. SEGAL: All right. 90 in evidence.

24 **[Government's Exhibit 90 entered into evidence.]**

25 Q Agent D'Ambrosio, what's been marked Government 90, this

1 is a chart that you drew in May of 1993 in connection with  
2 hearings in this case; is that correct?

3 A That's correct.

4 Q You might have to keep your voice up just a little. What  
5 you did is try to sit down in May of 1993, and in your mind  
6 recreate what you say Mr. Trenkler drew about 18 months  
7 before; isn't that right?

8 A Yes.

9 Q And you didn't do that, that's the first time you sat  
10 down and did that recreation, May of 1993; is that correct?

11 A Yes.

12 Q And you had help from Agent Leahy, isn't that fair to  
13 say?

14 A Yes, it is.

15 Q Because Agent Leahy was there that night and saw  
16 Mr. Trenkler draw these two diagrams, right?

17 A Yes.

18 Q He's also experienced in explosives at ATF?

19 A Yes, he is.

20 Q All right. Now, the first diagram, that's your  
21 recreation of what you said Mr. Trenkler drew in connection  
22 with the 1986 device, right?

23 A Yes.

24 Q And it has the components and all the circuitry and  
25 whatever, am I right?

1 A It's very crude.

2 Q But it's your best recreation 18 months later of what he  
3 drew now --

4 THE COURT: Come on, without repeating.

5 Q All right. The second diagram, that's the one you claim  
6 Mr. Trenkler drew that had the two blasting caps; is that fair  
7 to say?

8 A Yes, it is.

9 Q And where do the two blasting caps that are reflected in  
10 that diagram, just point it out?

11 A Here and here.

12 Q All right. Agent D'Ambrosio, this wasn't a  
13 significant -- those two diagrams weren't -- strike it.

14 Agent D'Ambrosio, what Mr. Trenkler drew that  
15 morning, wasn't really significant, was it?

16 A I don't agree with that.

17 Q Isn't it true, sir, all he drew was the '86 diagram which  
18 was ancient history because you knew it already?

19 A That's not true.

20 Q And isn't it true that that piece of paper, you left on  
21 the table that morning, only contained the '86 diagram and  
22 not the '91?

23 A That's not true.

24 MR. SEGAL: No further questions.

25 MR. LIBBY: If I may, your Honor.

Redirect examination by Mr. Libby

Q Agent D'Ambrosio, if I may approach, your Honor, and I will show you both what I believe is Defendant's 90, it's not marked as such?

THE COURT: Not yet, because we haven't had a chance yet.

MR. LIBBY: We will, your Honor. That's an enlargement of this diagram, Mr. D'Ambrosio.

THE COURT: What's the diagram?

MR. LIBBY: This we'll mark 90 A. Any objection to 90 A?

[Exhibit 90A entered into evidence.]

Q If you sat down to do that, if you hold that up, please, the actual original, you did that at whose request, sir?

A Yours.

Q And that was the actual proceeding here?

A Yes.

Q Is it your testimony that the spacing and the lines and everything there is precisely to scale?

A No.

Q Is that your testimony? Is that your testimony?

A No, it isn't.

Q Regardless of spacing and lines and the various boxes there, would you tell us, please, regardless of that, looking to the bottom right-hand portion of your recreation, this is

1 your best memory as to what Mr. Trenkler drew on that  
2 occasion, correct?

3 A Correct.

4 Q And regardless of how it's depicted, is there any  
5 question in your mind that he, in fact, depicted two blasting  
6 caps, sir?

7 A There's no question in my mind.

8 THE COURT: All right. Now --

9 THE COURT: I think we'll suspend here until Monday  
10 morning at 9. Members of the jury, a couple of things. Next  
11 week you will recall at your request we have the holiday on  
12 November 11th. So we will be here Monday, Tuesday, Wednesday  
13 and again on Friday. The following week we will be here on  
14 Monday and Tuesday. We cannot now tell when you this trial  
15 will end. It's possible that we will not finish before  
16 Thanksgiving, but even if we don't we will not be here on the  
17 Friday after Thanksgiving as I promised you will not be. I  
18 will know better on Monday where we're estimated to come out.  
19 In any event, next week you will have a holiday on Thursday,  
20 but we'll be here Monday, Tuesday, Wednesday, and Friday.

21 Second, do please do not depart today before Ms.  
22 Aeurbach will give you your checks. Kindly do not talk about  
23 your case, and do not make up your minds about anything at all  
24 in the case. I need to caution you about that as well.  
25 Although you've her heard a lot of evidence, you are in no

1 position to decide the case and you will not be until I tell  
2 you to be in your deliberations. So kindly do not make up  
3 your minds about it, and do not read, listen or watch anything  
4 about it.

5 Thank you.

6 [Whereupon, the jury left the courtroom.]

7 THE COURT: Oh, may I see counsel and Ms. Walsh  
8 please.

9 THE COURT: Ms. Walsh has given me a notice of a  
10 hearing in connection with her divorce proceeding on November  
11 22nd and I think you've been called to Dedham at 9:30, is it?

12 THE JUROR: Yes.

13 THE COURT: Is there any possibility you can have it  
14 changed to 2. If you could not, I would ask your permission  
15 to inquire with the Court if I can get it changed.

16 THE JUROR: I'll try this afternoon.

17 THE COURT: If you do have a problem, let me know.  
18 Maybe we can get it done if you can't.

19 THE JUROR: Thank you very much.

20 MR. KELLY: We don't need the record.

21 (Discussion off the record.)

22 ... End of conference at the bench.]

23 [Whereupon, the jury trial concluded at 1 p.m. To  
24 reconvene Monday, November 8th, 1993 at 9 a.m.]

25

**CERTIFICATE**

We certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

---

Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Richard Brown, resumed (By Mr. Segal)	2		25	
(By Mr. Libby)		22		
Edward Carrion, sworn (By Mr. Kelly)	26			
(By Mr. Segal)		43		
Nancy Shay, sworn (By Mr. Libby)	46		77	
(By Mr. Segal)		73		78
Paul F. Nutting, sworn (By Mr. Kelly)	89			
(By Mr. Lopez)		96		
Thomas D'Ambrosio, sworn (By Mr. Libby)	97		169	
(By Mr. Segal)		144		

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
32, 32A	(See Clerk's Notes.)		105
90			166
90A			169
<u>Defendant's</u>			
85			150

Brown-11-f

11-1

Leahy - 72 - make up

note 9495

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CR 92-10369-Z

ZOBEL, D. J.

UNITED STATES OF AMERICA

v.

ALFRED TRENKLER

Eleventh Day of Trial

APPEARANCES:

For the Government:

Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

For the Defendant:

Terry Philip Segal, Esq., Scott Lopez, Esq.,  
and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
210 Commercial Street, Boston, MA. 02109.

Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

November 8, 1993

Computer-Aided Transcription

P R O C E E D I N G S

[Whereupon, the jury entered the courtroom.]

Good morning, please be seated.

THE REPORTER: Please state your name.

THE WITNESS: Thomas D'Ambrosio.

THE COURT: You do understand that you are still  
under oath.

THE WITNESS: Yes, your Honor.

THE COURT: Do you want the window --

MR. LIBBY: That might be a good idea.

THE COURT: I think it is Mr. Wood's window.

(Pause.)

Thomas D'Ambrosio, sworn

Continued Redirect Examination by Mr. Libby

Q Good morning, Agent D'Ambrosio.

A Good morning.

MR. LIBBY: Your Honor, if I may approach?

THE COURT: Yes.

Q Showing you what's been marked Defendant's Exhibit 86 for  
I.D. Do you recall being questioned about that report Friday?

A Yes, I do.

Q Do you recall that?

A Yes.

Q The report deals with generally with what, please?

A A synopsis of the investigation up to November 7th of

1 '91.

2 Q And do you recall Mr. Segal's questioning to you about  
3 Agent Jeff Kerr?

4 A Yes, I do.

5 Q And Jeff Kerr is the case agent in matter?

6 A Yes, he is.

7 Q And do you recall his questioning with respect to case  
8 agent's responsibilities for all reports in the matter?

9 A Yes, I do.

10 Q Does that mean that the case agent prepares and files all  
11 reports?

12 A No, that is not correct.

13 Q Do you recall my question to you was, whether Defendant's  
14 Exhibit 86, that report, was prepared by Agent Kerr?

15 A Yes, it is.

16 Q It made reference to specific details regarding the visit  
17 to ARCOM on the evening of 5/6 November 1991?

18 A Yes.

19 Q And I believe you testified that it made no specific or  
20 provided no specific details of that visit; is that correct?

21 A That's correct. It is just a summary.

22 Q Now how many different agents at any time, sir, ATF  
23 agents, were assigned to this matter?

24 A Early on in the investigation, maybe in excess of 20. It  
25 became less and less as it went on.

1 Q And how many different ATF agents prepared and filed  
2 reports such as we see here, Defendant's Exhibit 86?

3 A Many.

4 Q How many reports were filed over the course of the  
5 investigation by ATF agents, of any identification?

6 A I would say it was in excess of 200.

7 Q Now, does --

8 THE COURT: Excuse me, one minute. Ms. Mitchell,  
9 would you mind terribly closing that curtain, too.

10 Thank you.

11 Q Does Agent Kerr's report, which you have in your hand  
12 there, Defendant's Exhibit 86, purport to summarize those  
13 events of the investigation up to that date attempt to detail  
14 the events of that visit to ARCOM, sir?

15 A No, it does not.

16 MR. SEGAL: Objection.

17 THE COURT: He has already answered question. You  
18 may have another one.

19 Q Was Agent Kerr even present at ARCOM that evening?

20 A No, sir, he was not.

21 Q Do you recall Mr. Segal's questions to you about the  
22 circumstances where Mr. Trenkler drew the diagram?

23 A Yes.

24 Q He drew actually two diagrams on one piece of paper,  
25 correct?

1 A Correct.

2 Q And do you recall Mr. Segal's questioning to you about  
3 your leaving the diagram on the table?

4 A Yes, I do.

5 Q That evening?

6 And you further recall Mr. Segal questioning you as  
7 to whether you had gone back to get it? Right?

8 A Yes.

9 Q Whether the next day or any time up to the time he was  
10 arrested in December of 1992; do you recall that questioning?

11 A Yes, I do.

12 Q Now, first, would you tell us, please, with respect to  
13 the day or two shortly after that visit at ARCOM, why you did  
14 not go back to try to retrieve that diagram?

15 A Well, recognizing the significance of the diagram, and  
16 also keeping in mind that we forgot to take it with us, going  
17 back would have alerted Mr. Trenkler to the importance of  
18 that. And at that point, I felt that we best be served just  
19 by leaving it alone.

20 Q Same reason as you testified previously why you didn't  
21 reach across the table and grab it on the occasion of his  
22 actually writing it?

23 A Yes.

24 Q Now, in the week or two thereafter, sir, did anything  
25 come to your attention which indicated to you it would be

1       futile to go back to seek the actual diagram?

2       A       Yes.

3       Q       What did you learn?

4               MR. SEGAL: Well --

5               THE COURT: It is being offered for his state of mind  
6       which is now in issue and I'll allow it on that only.

7               MR. LIBBY: Thank you, your Honor.

8               THE WITNESS: Around November 20th, I had an  
9       interview with Mr. Richard Brown, Mr. Trenkler's business  
10      partner, and during that interview, I mentioned to Mr. Brown  
11      that when we had visited ARCOM on the evening of the 5th, 6th  
12      that Mr. Trenkler had drawn the two diagrams for us.

13              The following day, on the 21st, I called Mr. Brown on  
14      the telephone and asked him if he had any conversation with  
15      Mr. Trenkler since I had left the day before. And he told me  
16      that he had and that Mr. Trenkler told him that he wasn't  
17      worried about the diagram that he had destroyed it.

18              THE COURT: Members of the jury, this evidence cannot  
19      prove that Mr. Trenkler in fact destroyed it the diagram. It  
20      can only, as we recounted by this witness, it can only show  
21      that Mr. Brown said something for the purpose of showing what  
22      Mr. D'Ambrosio's state of mind was and why he did not go  
23      back. That's all this testimony can prove.

24              MR. LIBBY: Thank you, your Honor.

25      Q       Do you recall counsel's questioning to you on Friday

1 before we broke for the weekend regarding why, rather  
2 regarding that you had not approached Mr. Trenkler to ask him  
3 to do it again? To recreate that diagram, do you recall that  
4 questioning?

5 A Yes, I do.

6 Q And he specifically, I believe, asked you if you had  
7 brought it up during the occasion Mr. Trenkler's visit to  
8 ATF's offices on the 4th of February, do you recall that?

9 A Yes, I do.

10 Q It was about five days after the search warrant, the  
11 search warrants were executed?

12 A Yes.

13 Q Now, you did not ask Mr. Trenkler on this occasion of his  
14 visit to the ATF's offices on the fourth of February 1992,  
15 Agent D'Ambrosio, you did not ask him to recreate that  
16 diagram, did you?

17 A I did not.

18 Q Why not?

19 A On the 4th, when I saw Mr. Trenkler I knew that he had  
20 been asked that question previously by Special Agent Leahy on  
21 the 31st.

22 Q And that conversation took place where to your knowledge?

23 A In the driveway of 7 White Lawn Avenue.

24 Q Tell us what you learned about that conversation, please?

25 MR. SEGAL: Objection.

1 THE COURT: I don't think we need this witness to  
2 tell us about that.

3 MR. LIBBY: I have nothing further at this time.

4 Recross-examination by Mr. Segal

5 Q Agent, you'll agree with me that by the way, how many  
6 pages is Agent Kerr's report which is Defendant's Exhibit 86  
7 and it is dated November 7th?

8 A Three.

9 Q And you'll agree with me that there is no mention in  
10 there of the 1991 diagram?

11 A That's correct.

12 Q You'll also agree, sir, you didn't request, you didn't  
13 try to get a search warrant the next day, isn't that fair to  
14 say?

15 A That's fair to say.

16 Q Now, I think you told us you spoke to Mr. Brown on about  
17 November 20th; is that right?

18 A Yes.

19 Q And he said that Trenkler told him he had drawn a diagram  
20 and destroyed it, is that your recollection?

21 A Told me that on the 21st of November.

22 Q Didn't Brown, at that time, say that Trenkler didn't seem  
23 concerned about having drawn a diagram?

24 A Told me that Mr. Trenkler wasn't concerned.

25 Q Wasn't it almost a year later before you wrote a report

1 about that --

2 THE COURT: I do believe we covered that on the  
3 cross.

4 MR. SEGAL: I'm sorry?

5 THE COURT: We did cover that once before.

6 MR. SEGAL: Well, I just, I don't think I covered it  
7 on this.

8 THE COURT: I thought you did.

9 MR. LIBBY: He certainly did, your Honor.

10 THE COURT: You did.

11 Q There's no doubt, though, that Mr. Brown didn't say --  
12 that Mr. Trenkler drew two diagrams. He said he drew a  
13 diagram; isn't that fair to say, sir?

14 A Not clear who said that.

15 Q Let's go back to the Brown conversation.

16 You had a conversation with Mr. Brown. He said  
17 Mr. Trenkler drew a diagram of a bomb; is that right.

18 THE COURT: Are you offering this now to show the  
19 truth of what Mr. Trenkler told Mr. Brown or as to his state  
20 of mind?

21 MR. SEGAL: His state of mind. We went into that  
22 once. I thought we finished it.

23 Q Do you understand my question?

24 A I do. I'm sure that Mr. Brown knew that --

25 Q Not what he said to you. He said to you Mr. Trenkler

1 drew a diagram of a bomb, isn't that fair to say, that's what  
2 he said to you?

3 A He may have said that.

4 Q All right.

5 MR. SEGAL: Thank you, sir. No further questions.

6 THE COURT: Thank you, Mr. D'Ambrosio, you're  
7 excused. Who is next?

8 MR. KELLY: The United States calls Michael Cody.

9 [Conference at the bench, as follows:

10 THE COURT: There is a motion in limine concerning  
11 evidence through Mr. Cody that Trenkler was soliciting people  
12 homosexually, young men.

13 MR. KELLY: We are not going to through this witness  
14 get into any issues that bear on sexuality at all.

15 THE COURT: In that case, I don't need to deal with  
16 it.

17 MR. SEGAL: I take it, not drugs either?

18 MR. KELLY: Nor drugs.

19 MR. SEGAL: Okay. Those are the two things.

20 ...end of conference at the bench.]

21 THE CLERK: Please be seated, and state your name for  
22 the record.

23 THE WITNESS: Michael Cody.

24

25

Michael Cody, sworn

Direct Examination by Mr. Kelly

1 Q Mr. Cody, will you spell your last name for us, please.

2 A C O D Y.

3 Q Where do you reside, sir?

4 A Hanover.

5 Q How old a person are you, Mr. Cody?

6 A Twenty-eight.

7 Q Are you married or single, sir?

8 A I'm divorced.

9 Q Do you have any children, Mr. Cody?

10 A Yes, I do.

11 Q And how many?

12 A One.

13 Q And how old is your child?

14 A She's eight years old.

15 Q Do you have legal custody over this child?

16 A Yes, I do.

17 Q Are you employed at the present time, sir?

18 A Yes, I am.

19 Q What do you do?

20 A I'm a paralegal working for an attorney.

21 Q All right. Do you go to school Mr. Cody?

22 A Yes, I am finishing up my undergrad law work, senior.

23 Q Where do you go to school, sir?

1 A Suffolk University.

2 Q And what is your major or field of study?

3 A Law.

4 Q Are you here this morning, Mr. Cody, pursuant to a  
5 subpoena issued by this Court?

6 A Yes, I am.

7 Q Mr. Cody, do you know an Alfred Trenkler of Milton?

8 A Yes, I do.

9 Q And how do you know him, sir?

10 A He was a companion of mine from early 1980 to about 1983  
11 and a half.

12 Q He was a friend of yours?

13 A Yes.

14 Q And over what period of time did you have a friendship or  
15 association with Mr. Trenkler?

16 A Approximately about the age of 15 and a half, 9th Grade  
17 high school until about 18.

18 Q Three or four years?

19 A Yes.

20 Q During the course of your friendship with the defendant,  
21 did you take any trips out of state with him, sir?

22 A Several.

23 Q And where did you go, for example, what places?

24 A The first trip was to California for approximately eight  
25 or nine days.

1 Q Where else?

2 A The second trip would have been to Fort Lauderdale,  
3 Florida, for the spring break; and the third trip, a ski trip  
4 for about four days, I believe.

5 Q And the times you went to California and Florida, how did  
6 you get there, sir?

7 A By plane.

8 Q And when you went to those locations where did you stay?

9 A At a hotel in California. And I believe somebody's house  
10 he was acquainted with.

11 Q And did you pay for these trips, Mr. Cody?

12 A No, I did not.

13 Q Who paid for the trips?

14 A I believe Mr. Trenkler did.

15 Q By the way, sir, do you see the Alfred Trenkler that you  
16 know in the courtroom here this morning?

17 A Yes, I do.

18 Q Could you point him out for us, please?

19 A He's the second man from the right end table.

20 MR. KELLY: Your Honor, the record would indicate he  
21 has identified the defendant.

22 THE COURT: Yes.

23 Q Over the period time that you had a friendship with the  
24 Defendant Mr. Cody, other than taking trips with him, did he  
25 provide you with any other items?

1 A Yes.

2 MR. SEGAL: I object on relevance grounds.

3 MR. KELLY: I think I can connect it up.

4 THE COURT: I will allow it on the representation  
5 that it will be connected.

6 A Yes. He supplied me with basically anything wanted,  
7 clothes, cars, moneys, furnishing, furniture for my  
8 apartment.

9 Q You mentioned that he provided with you a car?

10 A Yes. Two cars.

11 Q And when did he provide you with a car?

12 A At the time I met him I had not had my license. And I  
13 was anxious to get it, but it required driver's ed. It was  
14 costly. He said he would pay for it and he did. And at the  
15 time I received my license, once I complete my driver's ed, he  
16 furnished me with a car.

17 Q What kind of a car?

18 A A 1977 or 1978 Thunderbird.

19 Q And how much what was the car worth, if you know?

20 A Approximately \$5,000.

21 MR. SEGAL: I object and move to strike. I don't see  
22 the relevance of any of this, your Honor.

23 THE COURT: Well, I have to rely on the government,  
24 in its representation, that it will connect it. It is being  
25 admitted de bene only until it is connected. That means the

1 evidence is conditional subject to its being connected to the  
2 having to do with this case. Let's do it fast.

3 MR. KELLY: Yes, your Honor.

4 Q How long did you have this car, Mr. Cody?

5 A Approximately six months.

6 Q Where was the defendant residing during the period of  
7 time that you had a relationship with him, sir?

8 A He was living with his parents, on White Lawn Ave. in  
9 Milton.

10 Q Did any members of your family meet the defendant during  
11 this time frame?

12 A No, never. That was --

13 Q Just you answered my question, sir. What business or  
14 field or employment was the defendant in during the time that  
15 you knew him, sir?

16 A He worked with electronics. He also worked for a  
17 television production station. And did some side jobs, light  
18 shows, things of that nature.

19 Q Did you ever visit any defendant's job sites?

20 A Yes.

21 Q Where did you, do you recall any specific towns?

22 A Yes, one was in Andover. It was a tower, a receiving  
23 tower, where he had put some devices on; several locations to  
24 that effect, where he would drive me to maybe Plymouth,  
25 Duxbury, to climbing towers, to Rhode Island, to the same

1 thing, towers.

2 Q Did any of these job sites have any storage areas, to  
3 your memory, sir?

4 MR. SEGAL: I'm going to object, again, to the  
5 relevance, particularly the time frame, '80 to' 83.

6 THE COURT: May I see counsel, please.

7 [Conference at the bench, as follows:

8 THE COURT: Is this --

9 MR. KELLY: The points that the government deems  
10 relevant here, in trying to adduce from this testimony, is  
11 this gentleman visited several job sites of the defendant  
12 which appear to have sheds or storage facilities that the  
13 defendant had access to and the defendant had working areas  
14 and tools and things of the like.

15 THE COURT: This was in 1980 to '83?

16 MR. KELLY: He's got THE time frame wrong. It's  
17 actually '81 to '84; he's missed it by a year. There will  
18 also be testimony as it relates to defendant's background and  
19 interest in use of remote control, the defendant's access to  
20 and possession of certain unique types of magnets which  
21 connect here. The defendant's, finally, the defendant's  
22 having on one occasion been involved in an explosive that he  
23 blew off one night when he was with this gentleman.

24 There's three or four different points that we intend  
25 to.

1 THE COURT: What does the storage have to do with  
2 this case?

3 MR. KELLY: Well, it is our position, your Honor,  
4 that the reasonable inference to be drawn from the fact when  
5 the defendant built the 1986 device, he didn't about build it  
6 at his house, he didn't build it at his business, he didn't  
7 build it in his parent's garage. He built it, what the  
8 evidence will be, at a picnic bench behind somebody's house;  
9 that the defendant has other areas accessible to him that he  
10 has access to and at which he has tools and can perform  
11 certain tasks. That's the relevance of it.

12 THE COURT: What he did in 1981 to '84 is relevant to  
13 what he may have done 1991, ten years later?

14 MR. KELLY: Well, it will show up to through '84 and  
15 in '86, the events the 1986 bomb, this is a fellow has who had  
16 access to these locations throughout because he's been  
17 consistently involved in the field of electrical engineering,  
18 microwave communications, and the like.

19 THE COURT: Are these places in Plymouth, Andover and  
20 such, these towers and sheds, is there any evidence that he  
21 had anything to do with his building anything other than  
22 working there on a job?

23 MR. KELLY: I don't know if I can answer that. Do we  
24 have specific evidence?

25 THE COURT: I guess what I'm thinking of is to the

1 extent that you expect to elicit from this witness that he  
2 built some kind of an explosive device, presumably not at  
3 home, is that what he's going to tell us? And to the extent  
4 that there will be evidence of a 1986 device being built at  
5 the picnic bench, it might come in as sort of modus operandi  
6 evidence. But if the sheds have nothing to do with anything  
7 except they at one time were available to him...

8 MR. KELLY: If he's got work areas at which he has  
9 access to keys and they have tools at, it would be our  
10 position that the reasonable inference to be drawn by the jury  
11 is that, especially in the light of the evidence, that there  
12 was no physical connection at the home, the garage, the  
13 worksite. This is an individual who has as access to other  
14 remote locations which he has at his disposal.

15 THE COURT: What evidence is there that he still has  
16 such access; that, indeed, those places still existed in  
17 1991? Is there going to be evidence that Andover and Plymouth  
18 still existed in 1991?

19 MR. KELLY: I don't think I can connect a specific  
20 site in Andover to specific access in 1991. What I am  
21 offering it for is this gentleman's longtime consistent  
22 practice which existed in 1986 and continued to exist up until  
23 1991, 1992.

24 MR. SEGAL: May I be heard?

25 THE COURT: Beyond that, what's the next thing he's

1 going to tell us about building a device?

2 MR. KELLY: The defendant's interest, hobby, in  
3 remote control.

4 THE COURT: That's admissible.

5 MR. KELLY: The defendant's access to or possession  
6 of a certain unique type of magnets.

7 THE COURT: That is admissible.

8 MR. KELLY: And one instance where he recalls the  
9 defendant blowing up a very large kind of explosive  
10 firecracker at night with him, where he attached it to tree  
11 and blew it up.

12 THE COURT: I think that's admissible.

13 MR. SEGAL: My concern is, and that's what  
14 Mr. --

15 THE COURT: What's the relevance of the cars, the  
16 gift of the cars?

17 MR. SEGAL: That's what I wanted to talk about.

18 MR. KELLY: It is our position here that this is an  
19 individual who's a friend of the defendant for three or four  
20 years. There's another roommate who is going to testify to  
21 the connection with the '86 bomb. This defendant provided  
22 this individual with clothing, material goods, ultimately, a  
23 very extensive car, worth several thousands dollars, the  
24 inference to be drawn by the jury, as it relates to the  
25 motive, the relationship between this defendant and Tommy

1     Shay, is that he was willing to provide items, willing to  
2     provide favors to maintain friendship or a relationship with  
3     people, up to and including the building of a device, that's  
4     the argument we wish to make, and it is something that just  
5     didn't appear out of thin air; that there are other instances  
6     of him having done this in the past, and I think it is very  
7     probative.

8             MR. SEGAL: Respectfully, my problem is Mr. Kelly  
9     goes to third base without touching first and second. I  
10    submit he will not put in any evidence that Mr. Trenkler  
11    provided anything to Mr. Shay, automobiles, this or that.

12            THE COURT: Except the bomb.

13            MR. SEGAL: Sorry?

14            THE COURT: Except the bomb.

15            MR. SEGAL: All right. Well, that's his inference.

16            The point is, he's putting in all this evidence of  
17    trips and cars with this witness, and there is no evidence  
18    that he's going to put as to Mr. Shay. This is highly  
19    prejudicial. Because then, the jury is unfairly going  
20    assume: Well, he must have provided all those things to  
21    Mr. Shay; and therefore, he made the bomb. Mr. Kelly can  
22    argue all he wants, that he made the bomb or didn't with  
23    Mr. Shay. But to put this evidence in is unfairly  
24    prejudicial, since he can't link up the similar evidence --

25            THE COURT: Except, you will argue there is no such

1 similar evidence. And what the government's point is that he  
2 is willing to do favors of various kinds for his friends.

3 Anyway, I will not strike what's already in  
4 evidence. But I think the shed evidence, you'd better move on  
5 to something else. It is sufficiently removed.

6 MR. SEGAL: Just note my objection to strike.

7 THE COURT: It is noted, and your to strike is  
8 denied.

9 MR. SEGAL: Thank you.

10 ...end of conference at the bench.]

11 THE COURT: You may proceed.

12 Q Mr. Cody, what if any hobbies or interests did the  
13 defendant have during the time that you had a friendship with  
14 him, sir?

15 A He was very much interested in remote control and  
16 electronics, gadgetry.

17 Q And what specifically do you recall about remote control,  
18 sir?

19 A He used to have a remote control jeep in his jeep that I  
20 used to play with.

21 Q When you say that, do you mean one of these little toy  
22 things?

23 A Yes. You know, a little jeep with a remote control.

24 Q And do you remember the make of this particular unit,  
25 sir?

1 A Tyco.

2 Q How is it that you remember that, sir?

3 A I took it.

4 Q Meaning what?

5 A I took the jeep from his jeep.

6 Q At some later point?

7 A Yes.

8 Q Did you ever know the defendant to possess any magnets of  
9 any kind, Mr. Cody?

10 A Yes.

11 Q And did you have opportunity to observe these items?

12 A Yes.

13 Q Where did you observe the items?

14 A Inside his jeep while he was doing his electronics on the  
15 towers.

16 Q You don't mean the little toy jeep?

17 A No, I mean the big jeep. His vehicle.

18 Q And describe, describe what you saw in this regard, sir?

19 A Sometimes I was there for hours. So I went with the  
20 jeep, to keep busy, I went through his box of supplies. At  
21 that point I found several magnets, a quarter size, with a  
22 hole in the middle, and shavings across the top. I remember  
23 the magnets because I took two of them and put them on my  
24 shoe -- on my coat string, and I kept them as well.

25 Q Did the defendant, during the time that you had this

1 friendship with him, ever demonstrate any interest in  
2 fireworks or explosives, sir?

3 A At one time when we were out, I'm not sure exactly where  
4 it was, it was at nighttime, in a remote area, with people he  
5 had known, friends of his with, me along with him, we were  
6 out, had a bonfire going, things like that. And he ran across  
7 the field and set something up and then came back and it  
8 exploded.

9 Q Describe what you heard or saw.

10 A Just a massive explosion, I could not hear for several  
11 hours. We were very close to where it had exploded. His jeep  
12 was -- I was sitting in his jeep. The other people were at  
13 the fire, which was on the other side of the jeep. So, what I  
14 heard, what I saw, was a massive explosion. My ears, I could  
15 not hear any more. There was a ringing in my ears. Much  
16 pain, and it lasted several hours.

17 Q Are you yourself, Mr. Cody, familiar with, like, fire  
18 crackers or little cherry bombs?

19 A Yes.

20 Q Was this blast, or whatever it was, was it equivalent to  
21 that?

22 A No.

23 Q In what respect was it different?

24 A It was the loudest explosion I've ever heard in my life.

25 Q On occasions when had the opportunity to socialize with

1 the defendant, Mr. Cody, did you ever have the opportunity to  
2 go with him to some place called the Blue Hills?

3 A Yes.

4 Q How many times would you, do you recall. Going there  
5 with the defendant?

6 A That didn't begin until after our acquaintance, after our  
7 friendship.

8 Q My question was, sir:

9 How many times do you recall going there with the  
10 defendant?

11 MR. SEGAL: Objection. Irrelevant.

12 A Twenty.

13 MR. SEGAL: Objection, on relevance grounds, your  
14 Honor.

15 THE COURT: Well, he's answered it. I don't know, I  
16 hope we're going on to something else.

17 MR. KELLY: We are, your Honor, we're almost done.

18 Q You said that you had a relationship with the defendant  
19 for approximately three to four years. Who ended that  
20 friendship or relationship, Mr. Cody?

21 A I did.

22 Q And how did the defendant react when you did so?

23 MR. SEGAL: Objection.

24 THE COURT: Sustained.

25 THE COURT: Hold it. The objection sustained.

1 THE WITNESS: Sorry.

2 MR. KELLY: Nothing further, your Honor.

3 THE COURT: Mr. Segal, you may cross-examine.

4 Cross-examination by Mr. Segal

5 Q Good morning, Mr. Cody. My name is Terry Segal, I only  
6 have a couple of questions to ask you.

7 I think you told us that you haven't seen  
8 Mr. Trenkler for a number of years; isn't that correct?

9 A I don't believe I told that you.

10 Q You were describing events some time ago; isn't that  
11 correct?

12 A That is correct.

13 Q All right.

14 And from what you could see, Mr. Trenkler was  
15 knowledgeable about electronics; isn't that fair to say?

16 A Very much so.

17 Q And you're aware he went to Thayer Academy and then  
18 Wentworth Institute?

19 A I'm not aware of his educational background.

20 MR. SEGAL: Thank you, sir, I have no further  
21 questions.

22 THE COURT: Anything else, Mr. Kelly?

23 MR. KELLY: No, your Honor.

24 THE COURT: Thank you, Mr. Cody, you are excused.

25 Who is next?

1 MR. KELLY: The United States calls Dennis Leahy.

2 THE CLERK: State your name.

3 THE WITNESS: I name is Dennis Leahy,

4 L E A H Y.

5 Dennis Leahy, sworn

6 Direct Examination by Mr. Kelly

7 Q How are you employed, Mr. Leahy?

8 A I'm employed by the Federal Bureau of Alcohol, Tobacco &  
9 Firearms.

10 Q Can you tell us how long you have been so employed, sir?

11 A I'm in my eighteenth year.

12 Q And where are you currently assigned, sir?

13 A I'm assigned to the Boston Division, the Arson Squad.

14 Q How long have you worked as an ATF agent in Boston?

15 A Eighteen years.

16 Q How long have you been assigned to the Arson Squad?

17 A Approximately six years.

18 Q Does the Arson Squad also have responsibility for bombing  
19 investigations?

20 A In arsons, explosions can occur and vice versa. So,  
21 while we don't have specific responsibility for bombings, it's  
22 not uncommon that we would be investigating an explosion.

23 Q Agent Leahy, do you have my specialized training in the  
24 field of explosives, sir?

25 A Yes, sir, I do.

1 Q Would you describe it for us, sir.

2 A Yes. As part of my employment, ATF has sent me to  
3 courses in the Federal Law Enforcement Training Center,  
4 Glenco, Georgia on the storage, handling, and instruction in  
5 explosives. I've also attended the FBI/U.S. Army Hazardous  
6 Devices School in Redstone, Alabama, and I've returned there  
7 for refresher. And I've also attended the U.S. Navy-run  
8 Explosive Ordnance Demolition Improvised Devices course in  
9 Indian Head, Maryland. And I've attended training seminars  
10 that ATF puts on. And all agents are given a basic  
11 introduction to explosives.

12 Q Agent Leahy, did you have any military service prior to  
13 joining ATF?

14 A Yes, I did.

15 Q In that capacity, sir, did you have any explosives  
16 training through the U.S. military?

17 A Yes, sir, I did. I had the normal basic training with  
18 hand grenades, et cetera. And then the unit I was assigned  
19 to, both active duty and in the U.S. Army Reserves, for about  
20 eleven years, dealt extensively with explosives.

21 Q During the course of your 18 years with ATF, how many  
22 investigations have you worked on that involved arsons or  
23 bombings?

24 A Probably around a hundred.

25 Q Have you ever been a member of what is known as the

1 Northeast National Response Team?

2 A Yes, sir, I was.

3 Q And for how long a period time?

4 A Approximately five years.

5 Q Agent Leahy, when did you first become involved in the  
6 investigation in what I'll refer to as the Roslindale bombing,  
7 the bombing on October 28, 1991?

8 A The day of the bombing.

9 Q And what was your role in the initial stages of the  
10 investigation, sir?

11 A Well, the first day when it happened, I was in the  
12 office, and I assisted in the arrival of the NRT, general  
13 computer checks, of general assistance. And then on the 29th,  
14 I attended the briefing at West Roxbury, at a police station,  
15 and performed duties relating to the search team and other  
16 duties.

17 Q And during the course of your involvement in the early  
18 stages of the investigation, say, the first month or so, did  
19 you have contact with the person who resided at 39 Eastbourne  
20 Street?

21 A Yes, sir, I did.

22 Q And that was Mr. Thomas Shay, Sr.?

23 A That's correct.

24 Q How many times in that period did you have contact with  
25 Mr. Shay, Sr.?

- 1 A The first 30 days?
- 2 Q Yes.
- 3 A Several to more than several, I guess.
- 4 Q And on any of the occasions when you had contact with
- 5 him, did you have ever find him to be uncooperative?
- 6 A No, sir, I did not.
- 7 Q At the time you were having contacts with Mr. Shay, Sr.,
- 8 the first 30 days or so, was he a suspect in the
- 9 investigation, sir?
- 10 A Yes, he was.
- 11 Q When did he first become a suspect?
- 12 A The day the bombing happened.
- 13 Q How long did he remain a suspect in this crime?
- 14 A For an extended period of time, months. Probably the
- 15 primary suspect for the first week or so.
- 16 Q Focusing on, say, the first two months after the bomb
- 17 exploded, can you tell us, sir, how many different suspects
- 18 were there in connection with this crime?
- 19 A Perhaps eight to ten.
- 20 Q And were each of these eight to ten suspects
- 21 investigated?
- 22 A Yes, sir.
- 23 Q Was each of the subjects interviewed?
- 24 A Yes, sir.
- 25 Q Was each of the suspects called to testify before a grand

1 jury?

2 A I'm not sure all were called, but most.

3 Q Did there come time, Agent Leahy, when Alfred Trenkler of  
4 Milton, Massachusetts, became a suspect?

5 A Yes, sir there did.

6 Q And when was that?

7 A I believe it was November 4th, 1991. His name was linked  
8 from Tom Shay's address book to the Quincy bombing in 1986.

9 Q Now, following this development, what was the first  
10 investigative step that you recall taking?

11 A The first investigative step I recall is Agent D'Ambrosio  
12 and I went to interview someone who was on that Quincy PD  
13 report, the 1986 bombing.

14 Q What was that person's name?

15 A Donna Shea.

16 Q And when did you interview Ms. Shea?

17 A November 5th, 1991.

18 Q Who was present at the interview?

19 A Agent D'Ambrosio and I.

20 Q What was your purpose in going to interview her?

21 A To find out about the previous incident and any  
22 information she might have concerning the concerning the 1991  
23 bombing.

24 Q Now, what if anything else happened that same day.

25 November 5th, 1991, in connection with this investigation,

1 Agent Leahy?

2 A I believe it was late afternoon, I received direction to  
3 go over to Boston Police Homicide, that they were going to --  
4 were in the process of running a mobile surveillance and I  
5 should assist them, and I did that for the early evening into  
6 later evening hours.

7 Q And did there come a time, sir, when you were called to a  
8 location in Quincy known as 133 Atlantic Street?

9 A Yes, sir, there was.

10 Q And what -- strike that.

11 What time did you go, first go, to that location,  
12 Agent Leahy?

13 A I believe we were arrived about 11 p.m.

14 Q And what did you understand that location to be when you  
15 first arrived?

16 A The residence of Alfred Trenkler.

17 Q Now, earlier that evening, had you and other ATF agents  
18 been trying to locates the residence of Mr. Trenkler?

19 A Yes, we had.

20 Q Had you had any difficulty doing so?

21 A Yes, we did.

22 Q What steps did you take to attempt to locate the  
23 residence?

24 THE COURT: Why do we need to get into that?

25 MR. KELLY: Just a question, your Honor, to explain

1 the time of his arrival at 11 clock.

2 With the Court's permission.

3 THE COURT: Go ahead. Go ahead.

4 Q Go ahead.

5 A We had run his license plate in the commuter, it came  
6 back, I believe, to a Milton address. We had looked in the  
7 phone book. We had taken normal investigative steps, and  
8 could not locate any specific address for him.

9 Q Describe what happened when you first arrived at 133  
10 Atlantic Street?

11 A Boston Police Homicide, I believe there might have been a  
12 Quincy detective, agents of ATF, approached the residence.  
13 Some stayed in front; most went around to the rear. It was  
14 our understanding that it was a multi-unit residential  
15 building. And there was a common entry in the back. We  
16 entered the common entry,, went down to the basement, where we  
17 understood Al Trenkler's apartment to be, and knocked on the  
18 door.

19 Q Now, who was down there in the common entry that was  
20 actually at the site of the door when someone knocked on the  
21 door?

22 A Detective McCarthy and I were first.

23 Q That's Detective John McCarthy from the Boston Police  
24 Department?

25 A Yes, sir, it is.

1 Q So, it was you and he who were the two officers at the  
2 door?

3 A That's correct.

4 Q Okay.

5 Now, tell us what happened after Detective McCarthy  
6 knocked on the door.

7 A There was a voice from within: Who is it? I heard  
8 Detective McCarthy reply: Police. The person said: Wait a  
9 minute, I'll put some clothes on, put my pants on. And then a  
10 dog started barking. So we asked the individual to put the  
11 dock in the bathroom or in a room, so that when he entered  
12 there wouldn't be a problem with the dog.

13 Q And a few minutes later, is it fair to say, the door was  
14 opened?

15 A Yes, it was.

16 Q And what did you observe when you first had the door  
17 opened?

18 Were there persons in the apartment?

19 A Yes, sir, there were.

20 Q How many did you observe?

21 A Two.

22 Q Okay.

23 There was the person that opened the door?

24 A Correct.

25 Q And where was the other person?

1 A There was another person on a sofa-type bed.

2 Q Did you later come to learn that the other person was an  
3 individual named John Cates?

4 A Yes, sir, I did.

5 Q Now, did Mr. Cates make any comments in your presence in  
6 the first few minutes after the door was opened?

7 A No, he did not.

8 Q Did Mr. Cates remain inside the apartment over the course  
9 of the next, say, 30 to 45 minutes?

10 A No, he did not.

11 Q What happened to Mr. Cates during that time frame, sir?

12 A After several minutes, five minutes, I'm not sure, ten  
13 minutes, he was asked to put his clothes on. And detective  
14 Lieutenant Tim Murray from the Boston Police Homicide unit  
15 asked him if he would mind stepping outside to answer a few  
16 questions. He left.

17 Q And what was the reason why Mr. Cates couldn't have  
18 responded to some questions right there in the apartment?

19 A Well, several reasons. It is a small apartment. There  
20 were several of us in there. And it is standard law  
21 enforcement procedure when you interview people, you separate  
22 them and then compare their stories later.

23 MR. KELLY: If I may briefly approach.

24 (Pause.)

25 Q Agent Leahy, just briefly to show you some photographs

1 that had previously been introduced in evidence, Exhibit 46 A,  
2 is that the house at 133 Atlantic Street as you recall it?

3 A Yes, it is.

4 Q You say you went around to a back door.

5 Showing you Exhibit 46 B, is that the back door of  
6 that residence that you recall?

7 A Yes, sir.

8 Q As you entered that door, did you have to go down some  
9 stairs?

10 A There's like a landing, and then you go left and down,  
11 and sort of curves around.

12 Q Showing you Exhibit 46 C, is that what you are describing,  
13 sir?

14 A Yes, sir, it is.

15 Q So, you come through that door, you hit this landing, and  
16 then you go down around the corner?

17 A That's correct.

18 Q And when you go around the corner, showing you Exhibit  
19 46 D, do you see that doorway?

20 A Well, actually, if you are looking straight ahead, you  
21 see a regular basement. Look to the right, and then you see  
22 the door.

23 Q Is that the door that Detective McCarthy knocked on?

24 A Yes, sir, it is.

25 Q And looking at Exhibit 46, I happen to have F in my hand,

1 is that a fair depiction of the apartment, at least from one  
2 perspective?

3 A Yes, sir, it is.

4 Q Now, how long were you inside the apartment at  
5 133 Atlantic Street that evening, November 5th and 6th, Agent  
6 Leahy?

7 A Approximately an hour.

8 Q And how much of that time, if any, was spent conversing  
9 with the defendant, Alfred Trenkler?

10 A The majority of it.

11 Q And do you see the Alfred Trenkler that had conversation  
12 with that night?

13 A Yes, sir, I do.

14 Q Could you point him out, please?

15 A He's seated at the defense table, second on the left from  
16 where I sit.

17 MR. KELLY: Your Honor, if the record would indicate  
18 an identification of the defendant.

19 Q During the course this conversation, Agent Leahy, where  
20 specifically inside the apartment were you?

21 A Well, I did move around a little. But most it took  
22 place, as you go through the door, you walk straight ahead,  
23 and that's where there were basically three of us there.  
24 Detective -- sorry.

25 Q Who were the three?

1 A O'Malley, Boston Police Homicide, myself, and  
2 Mr. Trenkler.

3 Q And is it fair to state, Agent Leahy, that you were in  
4 the vicinity for a good portion of the conversation, which  
5 looks like a kitchenette of some kind over here, in the center  
6 of this photograph, Exhibit 46 F?

7 A Right, it would be like a triangle.

8 Can I point?

9 Q Yes.

10 A I think Detective O'Malley was here. Mr. Trenkler was  
11 here. And I was -- I think the couch was this way, and I was  
12 standing about here.

13 Q And the three of you were standing for the majority of  
14 the conversation?

15 A Yes, sir.

16 Q Describe the initial portion of the conversation that you  
17 had with the defendant that evening to us, please.

18 A We entered. Detective McCarthy identified himself. I  
19 identified myself. Mr. Trenkler asked if we were there about  
20 his phone call, which I had no idea what he was talking  
21 about. And he went on to talk about someone was taking photos  
22 in the neighborhood or doing something in the neighborhood.

23 So, we explained to him why we were there. He was,  
24 you know, somewhat shaken up to have the police come. And we  
25 talked to him about, you know, his name, where he lived. He

1 said he lived there,, You know, general history-type  
2 questions, for several minutes.

3 Q And during the first several minutes, what was his  
4 demeanor?

5 A He, he was a little shaken, upset.

6 Q Did his demeanor change after a few minutes?

7 A Yes, it did.

8 Q And what was his demeanor thereafter?

9 A He was calmed down, normal conversation. And it was a --  
10 he was very, very chatty, talkative with us.

11 Q And describe for us, sir, the types of questions you  
12 asked in and his responses, as best you can recall them?

13 A I asked him if he lived there. He said he lived there  
14 for approximately eight months. Asked him who the individual  
15 there was with him. Asked him a number of questions.

16 Q And at some point during the course of this initial  
17 conversation, did you ask permission of the defendant to look  
18 around the apartment?

19 A Yes, I did.

20 Q And how did he respond?

21 A He responded in the affirmative. He said: Sure, go  
22 ahead.

23 Q And what did you do thereafter?

24 A I spent several minutes, maybe five or ten minutes, just  
25 looking around.

1 Q Were there other agents doing the same thing?

2 A Yes, there was.

3 Q And as you did this, Agent, did you notice whether the  
4 defendant kept any clothing or personal items inside the  
5 apartment? What did you observe?

6 A I opened the closet door, and there were two shirts  
7 there. You know, I think there was one pair of shoes. And I  
8 went back to him. I said: Are you sure you live here; you  
9 know, there is no clothing. He said: Yes, we just don't have  
10 much. I keep some clothes at my parents' house. And I  
11 thought it was a lot. We discussed it for a while.

12 MR. SEGAL: I object to what he thought.

13 THE COURT: What he thought may go out. The rest may  
14 stay in.

15 Q At any time during your discussion with the defendant,  
16 there in the apartment, did he ask you whether or not he was  
17 going to be arrested?

18 A Yes, sir, he did.

19 Q And when in the conversation did at that question come  
20 up, sir?

21 A Probably halfway through.

22 Q And how many minutes into the conversation was halfway  
23 through?

24 A Maybe 20 30 minutes.

25 Q And what triggered this question by the defendant, if you

1 recall?

2 A Detective O'Malley asked, stated to him that we knew  
3 about the 1986 bombing.

4 Q What happened next?

5 A He became visibly red. His jaw was clenching. There was  
6 silence. And after, what seemed like a minute or two minutes,  
7 he said: Are you going to arrest me?

8 Q And how did Detective O'Malley respond? What did he  
9 say?

10 A Again, there was another minute or two minutes, we just  
11 looked at each other. And finally, Detective O'Malley said:  
12 No, we're not going to arrest you.

13 Q And did his demeanor change at any point after that?

14 A Yes, again, it took, you know, a minute or two, three  
15 minutes, and he was again calm and talkative and very  
16 cooperative with us.

17 Q And is it fair to state that, Agent, that most of your  
18 questions in the apartment were of a biographical nature?

19 A A lot were, yes.

20 Q And what he did for a living, where he resided, how old  
21 he was, things of that nature?

22 A Yes.

23 Q During the course of that discussion, was there any  
24 conversation concerning his business?

25 A Yes, there was.

1 Q And as a result of that discussion concerning the  
2 business, what happened, sir?

3 A We asked him if he would mind letting us look around in  
4 his business. He stated he didn't have the a car, so we  
5 offered to drive him. And he knew one of the Quincy  
6 detectives, and felt comfortable with him, so he went with the  
7 Quincy detective. Agent D'Ambrosio and I drove in one of our  
8 vehicles, and we met, we met them at his business.

9 Q Did he tell you the name of his business?

10 A Yes, he did.

11 Q What was the name?

12 A ARCOM.

13 Q And did he tell you where it was located?

14 A Yes, he did.

15 Q And where was that?

16 A 82 Broad Street in Weymouth.

17 Q How long did it take to drive from his apartment in  
18 Quincy to that location?

19 A Maybe 15 minutes.

20 Q Do you recall what time it was approximately that you  
21 arrived at ARCOM that evening?

22 A Midnight or shortly after midnight.

23 Q Tell us what happened upon your arrival, sir.

24 A We all got out the cars, met at the front door of ARCOM.  
25 Mr. Trenkler produced a set of keys, opened the door. I

1 started to walk in, and he grabbed me by the arm. He said:  
2 No, there is an alarm. He shut the alarm off. He proceeded  
3 to the alarm pad, punched in the code. And then we asked him  
4 if we could look around, and he agreed. And myself and  
5 several of the other agents started to look at his business.

6 Q And so, was a consent search conducted at that point?

7 A Yes, sir, there was.

8 Q And describe when you use the phrase, consent search,  
9 what do you mean?

10 A We asked if he was agreeable, and he replied  
11 affirmatively.

12 Q This is a search that is conduct ed without getting a  
13 formal written search warrant; is that correct?

14 A That's correct.

15 Q Just generally, sir, describe the nature of the search,  
16 where within the business you looked for items.

17 A Well, there was a large room. There were some tool  
18 boxes. There were some milk crates on the floor with some  
19 files in them. There were one or two desks, and then  
20 coffeepot; a small bathroom off that. Then there was a back  
21 room that appeared to be like a working room which had a lot  
22 of tools and materials associated with his business.

23 Q Is some of what you're discussing or describing,  
24 reflected here in Government's Exhibit 56 B, Agent Leahy?

25 A Yes, sir, it is.

1 Q And what's depicted out here in the main part of this  
2 photograph is what, sir?

3 Is this the main room you were describing?

4 A That's correct.

5 Q Where is this back room?

6 A You can see the opening off to the left.

7 Q That would be this doorway here?

8 A That's correct.

9 Q And does this picture, does it fairly reflect the way  
10 that that business looked, at least this portion of that  
11 business, during the night of November 5th and 6th, that you  
12 were there?

13 A Yes, sir, it does. Although, I remember some milk crates  
14 on the floor with files, maybe they are not there.

15 Q Now, this picture shows a table here off to the right  
16 side behind this orange post. Do you recall the table being  
17 in that room that night?

18 A Yes, I do.

19 Q Was the table in roughly the same location it is in this  
20 photograph, sir?

21 A Yes.

22 Q How long did you conduct this search of the premises  
23 there of the business for, Agent Leahy?

24 A We were there approximately an hour.

25 Q And were any items taken as a result of this search?

1 A Yes, sir, there were.

2 Q And what kind of items did you take?

3 A Some of the tools, some tape; I believe some wires.  
4 Items that I thought reasonably could be associated with a  
5 device.

6 Q The defendant previously offered, without objection,  
7 Government's Exhibit -- Defendant's Exhibit 85. Can you tell  
8 us what that is, Agent Leahy?

9 A Yes, I left Mr. Trenkler a receipt for the items we took,  
10 and he was agreeable to letting us take them.

11 Q That's the handwritten receipt?

12 A Yes, sir.

13 Q Written by you?

14 A Yes, it is.

15 Q And what happened to the items that are listed on this  
16 receipt that were taken that evening?

17 A They were transmitted to our National Laboratory.

18 Q And for purposes of analysis?

19 A Yes, sir, that's correct.

20 Q At some later point, were you notified of the results?

21 A Yes, I was.

22 Q What were the results?

23 A There was no positive findings.

24 Q No connection between any of the items taken and any of  
25 the components or the debris from the bomb; is that fair to

1 say?

2 A They could not make any connection; that's correct.

3 Q Now, what if any conversation did you have with the  
4 defendant that evening there at ARCOM?

5 A I talked to him, perhaps, for about 20 minutes or so.  
6 Talked to him about Tom Shay, Jr. He said he had given him  
7 rides to his place at 133 Atlantic Ave.

8 Q Before we get into the conversation, let me just ask a  
9 couple of preliminary questions.

10 Where within the business were you when this  
11 conversation took place?

12 A At the table.

13 Q Okay. And who was else was at the table if you can  
14 recall?

15 A Agent D'Ambrosio. And then there were two detectives,  
16 either standing or sitting there, and then Supervisory Agent  
17 Palaza was, you know, either there or searching, going back  
18 and forth.

19 Q How long were you at the business for on that evening, in  
20 total, best can you recall?

21 A Approximately an hour.

22 Q And did this conversation with the defendant at the table  
23 take place after the searches, before the searches or kind of  
24 in between?

25 A In between.

1 Q Did a little searching, then talked, and then did a  
2 little more searching?

3 A That's correct.

4 Q The conversation that you did have at the table lasted  
5 approximately how long?

6 A Maybe 20 minutes.

7 Q Describe the conversation, as best you can recall it, in  
8 the sequence you recall it unfolding. What's the first topic  
9 that came up?

10 A I think I asked him about his business: What did he do;  
11 where did he work; you know, what do you have all these tools  
12 for? You know, it was evident that they had the tools for  
13 some -- they had radios in the window, I believe. And, you  
14 know, he told me he put up microwave transmitters and radio  
15 towers; and then, after the generic, you know, who are you and  
16 what do you do, we moved into specifics.

17 Q What if any conversation do you recall about the 1986  
18 incident in Quincy?

19 A We discussed that with him. He admitted that he was the  
20 perpetrator of the 1986 incident. We asked him about the 1986  
21 device, you know, what it consisted of, how did it  
22 functioned? And at one point, Agent D'Ambrosio asked him to  
23 draw a diagram of the 1986 bombing, and he did.

24 Q When you asked him what it consisted of and how it  
25 functioned, what do you recall him saying to you, sir?

1 A It was a remote control, had batteries, had a magnet, had  
2 tape, he said duct tape. It had a military tank simulator as  
3 the main charge. He went on to describe it in some detail.

4 Q Describe what the occurred with respect to the drawing of  
5 any diagrams, sir?

6 A Agent D'Ambrosio asked him to draw the 1986, you know,  
7 schematic, the wire diagram.

8 Q And what did he do?

9 A He drew it.

10 Q On what?

11 A A sheet of paper.

12 Q Any particular type of paper, if you recall?

13 A I think it was yellow-lined paper. I'm not a hundred  
14 percent positive.

15 Q And describe what he drew, as best you recall.

16 A He drew a diagram of the power source, the switch, remote  
17 control, and then a main charge for the '86 bombing.

18 Q Did he discuss the diagram in any respect after drew it?

19 A I believe discussed it as he was drawing it, and we  
20 talked about it afterwards, also.

21 Q What happened next?

22 A Agent D'Ambrosio asked him hypothetically,  
23 hypothetically, how would you draw the 1991 bombing? And  
24 asked him to do so, and he did on the same sheet of paper.

25 Q And what do you recall?

1 A He drew a power source, a switch, a remote control, and  
2 he drew two electric blasting caps to what appeared to be two  
3 sticks of dynamite.

4 Q Where did he draw this particular diagram?

5 A Same sheet of paper.

6 Q What if any instruction, do you recall Agent D'Ambrosio  
7 giving the defendant prior to his drawing the diagram?

8 A To assume that you were going to, to build it or draw it,  
9 how would you do it, specifically?

10 Q And what did he tell him that it contained, if anything?

11 A I think he may have said "dynamite," I'm not sure.

12 Q Do you recall whether at any time prior to the drawing  
13 being made that the defendant being told that the device  
14 contained two blasting caps?

15 A No, I do not.

16 Q Do you recall whether or not the blasting caps were  
17 mentioned in any respect before the drawing was made?

18 A I don't remember blasting caps being mentioned at all.

19 Q Was there any discussion with the defendant about the  
20 second diagram, either while he was drawing it or after he had  
21 drawn it?

22 A Well, he was talking, I think, as he was drawing. Once I  
23 saw the two blasting caps, I didn't ask any questions.

24 Q Was the second diagram significant to you, sir?

25 A Yes, it was.

1 Q Why?

2 A I knew that the 1991 bomb had two blasting caps in it. I  
3 knew that they were electric. I knew that there was  
4 approximately two to three sticks of dynamite in the bomb.

5 Q Was the existence of two blasting caps in the 19 91  
6 Roslindale device public knowledge at that point, sir?

7 A No, it was not.

8 Q To your knowledge or memory, had that fact been reported  
9 in the media, for example?

10 A To my knowledge, it was never reported in the media.

11 Q You have no recollection of it actually being discussed  
12 prior to any diagram being drawn?

13 A That's correct.

14 Q Now, you didn't take the piece of paper or the two  
15 diagrams on it, did you, Agent Leahy?

16 A No, I did not.

17 Q Why not?

18 A I was asked to come over while he was being spoken to.  
19 And after a while, I went back to help search the files in the  
20 back room, again.

21 Q Is it fair to say that someone else was already at the  
22 table when you were called over?

23 A That's correct.

24 Q And you also mentioned that there was some other  
25 conversation. What if any conversation do you recall at the

1 table there at ARCOM about Thomas Shay, Jr.?

2 A We had asked him if he knew him. He said he did. He  
3 said where he met him, in Boston, over near, I think it is  
4 Boylston Street; how he met him, I think he met him in the  
5 White Hen Pantry over there. And we asked him how friendly  
6 were they. He said he had only given him a ride a couple  
7 times, that he had never been inside his apartment at Atlantic  
8 Ave., although -- excuse me, he had driven him to the  
9 apartment, near it several times.

10 Q Now, did you go to any other locations with the defendant  
11 that evening, I guess it is now the early morning hours of  
12 November 6th, correct?

13 A That's correct.

14 Q And where else did you go, if anywhere?

15 A We went to 7 White Lawn Avenue, Milton, Massachusetts.

16 Q How or why was it decided to go to that location at that  
17 point, sir?

18 A In our conversations with Mr. Trenkler, he said that he  
19 stored materials at his parents' garage, and we asked him if  
20 we could, you know, do a cursory search of the garage.

21 Q What was his reaction?

22 A Initially he resisted. He said he didn't know. It was a  
23 late night, he didn't want to wake up his parents. We told  
24 him that we would be very low key, that we would take one car,  
25 that only the three of us would go to the garage; and if his

1 parents woke up, we would say we were employees of his, and we  
2 just getting some tools for an early morning job. And at that  
3 point, you know, he was very cooperate. He said as long as we  
4 do it in that manner or similar to it, it would be agreeable.

5 Q So, who drove to that location?

6 A Detective O'Malley drove us there. I believe it was  
7 Detective McCarthy, Agent D'Ambrosio, Mr. Trenkler, and  
8 myself.

9 Q Approximately what time did you arrive at 7 White Lawn  
10 Ave.?

11 A Either 1 a.m. or shortly thereafter, I believe.

12 Q And who actually went to the garage at that location?

13 A Agent D'Ambrosio, Mr. Trenkler, and myself.

14 Q And was the garage locked?

15 A Yes, it was.

16 Q And how did the defendant gain access to it?

17 A He had keys to the garage.

18 Q He opened the door. Describe what you saw.

19 A Literally, almost tons of material. It was probably  
20 piled up, you know, waist high, chest high in areas. A lot  
21 of, a lot of electronic components, material I assumed he used  
22 in his job.

23 Q Did someone flip on the lights so you could see, look  
24 around?

25 A Yes.

1 Q Okay. Did you have a flashlight?

2 A No.

3 Q Did anyone have a flash light?

4 A I think Agent D'Ambrosio had one.

5 Q Did you conduct a complete search of the garage that  
6 night?

7 A No, we basically in 15, 20 minutes did a cursory search.

8 Q Why didn't do a complete search while you were there?

9 A Probably would have taken five or six hours.

10 Q What if anything did you take?

11 A Took some scrap wires, perhaps some pieces of tape.

12 Basically worthless items. I asked Mr. Trenkler if he wanted  
13 a receipt. He said: No., you know, they are basically  
14 throw-away type items.

15 Q Any conversation with the defendant about certain items  
16 in the garage being his and certain items being someone  
17 else's?

18 A Yes, there was.

19 Q What did he say?

20 A He said he had the right side o f the garage. His  
21 brother had the left side.

22 Q Any discussion at that time at the garage about whether  
23 the defendant stored any items of personal materials inside  
24 the house at that 7 White Lawn Ave. address?

25 A Yes, there was.

1 Q What did he say?

2 A He said he had, basically, a room in his parents' house,  
3 and he kept some of his clothes there.

4 Q After leaving the garage there at 7 White Lawn Avenue,  
5 did you make any other stops that evening?

6 A Yes, we did.

7 Q Where did you go?

8 A We went back, I believe, to Mechanics Street in Quincy.

9 Q Why did you go there?

10 A His vehicle was there. It was, I believe, it is a white  
11 Toyota.

12 Q And did he tell you why his vehicle was parked at that  
13 location?

14 A I believe he said it was inoperable.

15 Q What happened when you arrived there, sir?

16 A We asked him if we could look through the car, and he  
17 said yes. And then I asked him if I could take a sample, a  
18 small sample of the carpet from the trunk, and he agreed to  
19 that. I took a small sample of the carpet.

20 Q When you say a small sample, how big a piece did you  
21 take?

22 A Two inches by an inch, maybe.

23 Q Now, what happened next?

24 A He asked to be driven home. On the way he wanted some  
25 cigarettes or some other items. We stopped at Store 24, and

1 then we dropped him back off at Atlantic Ave.

2 Q Roughly what time was it when you dropped him back off at  
3 his apartment?

4 A Perhaps 2:30, maybe 2.

5 Q Now, Agent Leahy, did you prepare a report of the events  
6 of that evening, November 5th, November 6th, including some of  
7 your conversations with the defendant?

8 A Yes, I did.

9 Q And was this a verbatim report where you tried to capture  
10 everything that he said?

11 A No, sir, it wasn't.

12 Q What did the report contain?

13 A Basically, my recollection of the significant events of  
14 the evening.

15 Q Is it fair to describe it as a summary report?

16 A Yes, I would, yes.

17 Q When did you prepare that report, Agent?

18 A In mid-January of 1992.

19 Q Explain to us, sir, why there was a lapse of  
20 approximately two months in your preparation of that report?

21 A The day the bombing occurred, ATF offered its assistance  
22 to Boston Police Homicide. And mainly, that was through the  
23 National Response Team, additional agents to interview  
24 neighbors. We were in a subordinate role to Boston Police  
25 Homicide, or, it was agreed, would be primary interviewers of

1 the primary suspects and prepare the reports on these  
2 interviews, and the ATF would not prepare a duplicate report  
3 of interviews.

4 Q And when you sat down to prepare that report in  
5 mid-January, what did you refer to or rely upon, sir?

6 A Basically my recollections. However, there was a Boston  
7 Police report, and I was attending -- we were having either  
8 weekly or every two or three days, investigative meetings, so  
9 it was kept fresh.

10 Q Now, had you prepared other reports in this investigation  
11 between November 5th, when you interviewed this woman, Donna  
12 Shea, and when you prepared the report of the events of that  
13 evening, in mid-January; or, in that two-month time frame, had  
14 you prepared other reports of this investigation?

15 A Yes, sir, I had.

16 Q Approximately how many?

17 A A half dozen, maybe.

18 Q Did any of those half dozen reports involve investigative  
19 events in which representatives of Boston Homicide were  
20 actually present and participating in the interview of  
21 whatever subjects were interviewed?

22 A No, I prepared the reports when there were only federal  
23 agents present. Or when, you know, maybe a detective walked  
24 in at the end the interview. But it would be only when the  
25 federal agents were there and no Boston Police.

1 Q So, had there been an interview where there was a Boston  
2 Police detective present the entire time taking notes, would  
3 you have prepared an ATF report?

4 A No, I would not.

5 Q Now, what happened in mid-January to change that  
6 circumstance that you just described with ATF in a support  
7 role?

8 A There was a decision made between the U.S. Attorney's  
9 Office, the Suffolk County District Attorney's Office, the  
10 Boston Police, ATF, that there was some resource, that the  
11 investigation would now be primary federal, and the Boston  
12 Police would continue along with the investigation with us.

13 Q And so what happened with respect to the preparation of  
14 any reports?

15 A There was, what we call, a file review conducted. We  
16 started day 1, go back over everything, to see if there's  
17 anything we might have missed or that we could, you know,  
18 investigative leads to look for. And it was noticed, I think  
19 it was Agent LaCourse noticed, there was no report for the  
20 evening of November 5th, 6th. So, I offered to do the  
21 report.

22 Q Had ATF been the primary investigative agency from the  
23 date of the bombing forward, would there have been a  
24 requirement that a report of the interview on November 5th and  
25 6th be prepared shortly thereafter as a matter of general

1 procedure?

2 A Yes, sir, there would.

3 Q I want to direct your attention ahead to the day of  
4 January 31st, 1992, agent Leahy, did you take some  
5 investigative action on that date?

6 A Yes, sir, I did.

7 Q What did you do?

8 A I executed a federal search warrant.

9 Q And were -- was that search executed at multiple  
10 locations?

11 A Yes, sir, there were three search warrants.

12 Q And where were the three locations that the search  
13 warrant was executed that day?

14 A 133 Atlantic Ave., in Quincy; 82 Broad Street, in  
15 Weymouth; and 7 White Lawn Ave., in Milton, Massachusetts.

16 Q And which location were you at that day, sir?

17 A I was at 7 White Lawn Ave., in Milton, Massachusetts.

18 Q And who was the team leader of that search being  
19 conducted at that garage?

20 A I was, sir.

21 Q What does it mean to be the team leader in a search?

22 A Basically, you have the administrative duties of  
23 assembling and briefing all the agents, police, pending the  
24 search warrant, before it happens. I also coordinated with a  
25 chemist, Cindy Wallace and with an explosives technology

1 person to assist us, I believe it was, Larry McCune. You  
2 appoint an evidence technician who logs the evidence. You  
3 appoint the photographer. I insure that there is evidence  
4 tags and bags. You have a checklist that you write down the  
5 check list and insure that everything is done according to our  
6 policies and procedures.

7 Q Approximately what time when you begin executing the  
8 search warrant at 7 White Lawn Ave. that day?

9 A Approximately 7:30 a.m.

10 Q And at some point, the defendant, Mr. Trenkler, arrived  
11 at the scene?

12 A Yes, sir, he did.

13 Q And what time did he arrive, as best you recall?

14 A Approximately 9 a.m.

15 Q And can you tell what happened when he arrived?

16 A It was Detective Fogerty that saw him driving up. And he  
17 parked his car, came walking over to us. We walked out to  
18 meet him. At this time I advised him that we were executing a  
19 federal search warrant, requested that he stay away from the  
20 garage area, that he not interfere; if he had any questions, I  
21 would be glad to answer them. I told him about our  
22 procedures, how if, you know, if he remained, we would give  
23 him a copy of everything we took; he would have an opportunity  
24 to view everything we took. I went through the administrative  
25 procedures of a federal search warrant.

1           And then Detective Fogerty advised him not to say  
2 anything to us, that he had had a lawyer; Mr. Trenkler  
3 acknowledged he had a lawyer. Detective Fogerty said  
4 Well, take his advice and don't say anything.

5       Q     Had you shown a copy of the actual written search warrant  
6 to either Mr. Trenkler or anybody else on the premises that  
7 morning?

8       A     Yes, I had.

9       Q     Who what was that?

10      A     I believe I showed it to his parents first and obtained a  
11 consent search of his room. And then I showed the warrant to  
12 Mr. Trenkler when he arrived.

13      Q     Now, following the discussion that you just described  
14 about the lawyer, was there, in fact, conversation with the  
15 defendant?

16      A     Yes, there was.

17      Q     And describe the initial stages of that conversation for  
18 us, please.

19      A     Well, he was quite inquisitive as to what we were doing,  
20 and our procedures. And he asked a lot of questions about it,  
21 and I answered them as best I could. And he was very  
22 talkative, very cooperative.

23      Q     What if anything do you recall -- strike that.

24           How long did Mr. Trenkler remain on the scene that  
25 day at the driveway at 7 White Lawn Ave.?

1 A Approximately an hour.

2 Q And did he remain in one place the entire time?

3 A No, sir, he did not.

4 Q Describe his activities during that hour, as best you  
5 with recall them.

6 A He talked to us. I think he then went and moved his car  
7 to different location; come back and talked to us; go into his  
8 house, talked to his parents; came back and talked to us. I  
9 think he asked to use my car phone at one time.

10 Q Did you allow him to use the car phone?

11 A I did.

12 Q Now, what if anything do you recall the defendant saying  
13 to you concerning the 1986 bomb?

14 A Once again, we discussed it. He talked about the  
15 components of it, that he had admitted doing it, described how  
16 it was a remote control from a car. You know, he went through  
17 the components and the scenario with Donna Shea and so forth.

18 Q Did he say anything about where the remote control  
19 components for that '86 bomb came from?

20 A I think they came from a remote control car that he had  
21 had as a hobby or toy.

22 Q What if anything do you recall the defendant saying in  
23 the driveway about blasting caps?

24 A We were discussing the '86 bomb, and it led into the a  
25 discussion of the explosives in general. And he discussed how

1 the blasting caps have a shunt on them. He discussed how the  
2 two leg wires can act as an antenna. He discussed how  
3 explosives if they are placed neck to each other can -- when  
4 one explodes it can cause the other to explode, which is known  
5 as a sympathetic detonation.

6 Q Was there any discussion or mention of dynamite?

7 A Yes, sir, there was.

8 Q And was that in connection with this sympathetic  
9 explosion that you just described?

10 A That's correct.

11 Q And you mentioned that in discussing blasting caps that  
12 he commented about blasting caps having a shunt, what is a  
13 shunt, Agent Leahy?

14 A Well, to prevent static electricity or some current  
15 getting in the wires and causing the cap to function, there's  
16 a piece of metal, sometimes it is a little circular piece of  
17 metal, sometimes it is like foil, sometimes it is a little  
18 metal square clip that's placed on the leg wires, so that  
19 there can't be any static electricity to cause the cap to  
20 function.

21 Q When you say "leg wires," what does that mean?

22 A On almost all blasting caps or detonators, there's two  
23 leg wires coming out of the, two small thin wires that you  
24 then hook into the firing circuit.

25 Q And when you use the phrase "blasting caps," is that

1 synonymous with detonators?

2 A Yes, sir, it is.

3 Q And you said that the defendant mentioned something about  
4 electrical wires coming out of the blasting caps, what, again,  
5 specifically do you recall about that part of the  
6 conversation?

7 A We were talking about blasting caps in general. And he  
8 described how they have the two wires coming out, leg wires,  
9 how there's a shunt on them, and, you know, how it takes  
10 electricity to cause it to function.

11 Q What if anything do you recall the defendant saying about  
12 using a remote control from a toy car in connection with the  
13 construction of some kind of a device, what did he say, if  
14 anything?

15 A He told me it was unreliable to use a toy car because  
16 sometimes the toy cars can go straight ahead and, then,  
17 without any command at all it will turn right or left. So  
18 that, basically, they are inexpensive and not as reliable.

19 Q What if anything do you remember him saying about Radio  
20 Shack?

21 A I discussed where he was working, at the Christian  
22 Science. And he had stated that he had been in the Radio  
23 Shack across the street maybe four times. That would be 197  
24 Mass. Ave. He stated that he made purchases there.

25 Q Did he make any statements to you concerning Mr. Thomas

1 Shay, Jr. attempting to contact him?

2 A Yes, he did.

3 Q What did he say?

4 A He said that Shay, Jr. had paged him twice. I believe he  
5 said he invited him to Halloween party on one of the  
6 occasions.

7 Q What else do you recall him saying about Mr. Shay that  
8 day in the driveway?

9 A That he had been to -- he had given him rides more than  
10 just to 133 Atlantic Ave. and that he had been in the  
11 apartment once just watching TV.

12 Q Did he mention anything about Mr. Shay's father?

13 A Yes, he did.

14 Q What did he say?

15 A He said that Shay, Jr. hated his father.

16 Q Did he say anything about Mr. Shay's father in connection  
17 with these rides he was describing?

18 A He said that he had driven him to Shay, Sr.'s house  
19 once.

20 Q Was there any discussion that day in the driveway about a  
21 place called Atell in South Boston?

22 A Yes, there was.

23 Q What did he tell you about that?

24 A He said that he had spent the weekend with Shay, Jr. at  
25 Atell. He had forgotten to tell us the previous time I talked

1 to him.

2 Q During the course of this discussion -- strike that.

3 Was this the second time that you had actually had  
4 face to face contact with Mr. Trenkler after having seen him  
5 on November 5th and 6th?

6 A I believe it was; although, perhaps I might have  
7 interviewed someone because we were in that general area in  
8 Weymouth.

9 Q Was this the first time you actually had an opportunity  
10 to have conversation with him since November the 5th and 6th?

11 A Yes, it was.

12 Q And at any time during this discussion in the driveway,  
13 did the subject of this drawing involving the two blasting  
14 caps come up?

15 A Yes, it did.

16 Q Tell about that, sir.

17 A He was being very cooperative. He also allowed a consent  
18 search of his car. And he was talking very freely. He was  
19 very cooperative. So I asked him if he'd mind drawing a  
20 diagram again of the 1991 bomb, and he refused. He said he  
21 had spoken to an attorney, that wouldn't do it.

22 Q What was the defendant's demeanor during this  
23 conversation that you have been describing to us, sir?

24 A For the whole hour he was just about very, very  
25 cooperative.

1 Q Did his demeanor change at any point in the discussion?

2 A Just when I asked him to redraw it.

3 Q To draw the diagram?

4 A That's correct.

5 Q How if at all did his demeanor change at the point?

6 A He was flustered for a minute or two.

7 Q Did you conduct searches of any other locations besides  
8 the garage while you were there at the premises of  
9 7 White Lawn Ave.?

10 A Yes, sir, we did.

11 Q Where else did you look at?

12 A In his room in his parents' house and in his vehicle.

13 Q And in order to do that, those two locations had not been  
14 covered by the search warrant issued by a magistrate judge,  
15 correct?

16 A That's correct.

17 Q So what did you have to do?

18 A I asked the parents and I asked Mr. Trenkler's to sign a  
19 consent form.

20 Q I'll show you, Agent, what has been marked as  
21 Government's Exhibit 50, and ask you if you recognize that,  
22 sir?

23 A Yes, sir, I do.

24 Q What is it?

25 A That's the consent form I asked him to sign.

1 Q And what was that signed in your presence?

2 A Yes, it was.

3 Q By the defendant, Mr. Trenkler?

4 A That's correct.

5 Q And who else?

6 A His parents.

7 MR. KELLY: Your Honor, the United States would offer  
8 Exhibit 50.

9 THE COURT: No objection?

10 MR. SEGAL: No objection.

11 THE COURT: All right.

12 **[Government's Exhibit 50 entered in evidence.]**

13 MR. KELLY: If I may publish?

14 THE COURT: Yes.

15 Q When did you next have contact with the defendant after  
16 January 31st, 1992, Agent Leahy?

17 A I think it was in February.

18 Q Do you remember the date?

19 A I think I had a telephonic contact with him February 3rd,  
20 and then he came into our office on the 4th.

21 Q Did you call him, or did he call you initially on  
22 February 3rd, 1992?

23 A He called me.

24 THE COURT: Why don't we stretch.

25 (Pause.)

1 Q Agent Leahy, I want to show you what has been marked for  
2 identification as Government's Exhibit 60; do you recognize  
3 that, sir?

4 A Yes, sir, I do.

5 Q Will you tell us what it is, please?

6 A It is a memorandum of a call. Mr. Trenkler called, and I  
7 wasn't in the office, so they do a phone message, basically.

8 Q What's the date on that memo?

9 A February 3rd, 1992.

10 Q A call came into ATF, and somebody left you a memo that  
11 he had called?

12 A That's correct.

13 MR. KELLY: At this point, your Honor, I believe  
14 without objection, the United States would offer Exhibit  
15 No. 60.

16 THE COURT: Okay.

17 **[Government's Exhibit 60 entered in evidence.]**

18 Q Did you return Mr. Trenkler's call that morning, Agent  
19 Leahy?

20 A I don't think I did. I think he called back again.

21 Q Okay.

22 And did you have a conversation with him over the  
23 telephone at that time, on February 3rd, 1992, sir?

24 A Yes, I did.

25 Q What was the purpose of his call, by the way?

1 A He was looking for records and phone books, et cetera,  
2 that had been removed from his parents' garage on the 31st,  
3 basically looking for return of them.

4 Q Okay.

5 Did you copy any items for Mr. Trenkler?

6 A Yes, I did.

7 Q And what did you tell him about the items you were  
8 getting copied?

9 A I told him that -- he was asking for specific items, and  
10 I told him I would copy his address book with phone numbers  
11 and so forth. There may have been one other thing I copied  
12 for him.

13 Q And did you make any statements to him about how he could  
14 get these items back that you copied for him?

15 A I said that they would be ready the next day.

16 Q Okay.

17 Now, how long were you on the telephone with the  
18 defendant that day, being February 3rd, 1992?

19 A Probably 15 or 20 minutes.

20 Q And you had some conversation with him at the time?

21 A Yes, I did.

22 Q What if anything did the defendant say to you during that  
23 telephone conversation about Tom Shay, Jr.?

24 A He talked -- I think I asked him when he first met him,  
25 again. And he said that he had met him in June of '91. I

1 asked him if he was sure, and he said he was, because his  
2 roommate was in Europe at the time and that's how he could  
3 recall when he met him. You know, I went over where did he  
4 meet him, again. Went over if he gave him rides again, where  
5 he gave him rides to. And I think this time he said he gave  
6 him a ride to Rhode Island, that he gave him a ride to  
7 Winthrop. I think he explained where he had driven him.

8 Q Did you ask him again whether or not Mr. Shay, Jr. had  
9 ever been to his apartment there in Quincy?

10 A Yes, I did.

11 Q And what do you recall him saying to you?

12 A That he had been in the apartment once.

13 Q And had he previously told you that he had never been in  
14 the apartment?

15 A On the first occasion, yes.

16 Q Now, what if anything do you recall him saying in that  
17 conversation about his father Tom Shay, Sr.?

18 A I recall Mr. Trenkler saying that Shay, Jr. hated his  
19 father.

20 Q Do you recall anything that he said to you about any  
21 lawsuit?

22 A I think he said he didn't know about the lawsuit until he  
23 read it in the paper.

24 Q Did he make any statements to you about something called  
25 a sniffer?

1 A Yes, he did.

2 Q What did he say?

3 A When we executed the search warrant at White Lawn Ave.,  
4 we had an experimental machine that's sniffs vapors, the air  
5 for explosives. I think we got it from MIT. And he said to  
6 me: I know you found nothing on the sniffer. I went up to  
7 ask him why and so forth. We had a discussion about that.

8 Q Had you previously told him that the results of this test  
9 with this experimental device was negative?

10 A No, I had not.

11 Q Now, directing your attention to the following day,  
12 February 4th, 1992, what happened that day, Agent Leahy?

13 A Approximately 11 a.m., I got summoned to a reception  
14 area. Mr. Trenkler was there, and I was surprised to see him.

15 Q You did you anticipate his arrival?

16 A No, I assumed that a courier or a messenger would come by  
17 and just pick up the records.

18 Q What happened?

19 A Well, I didn't have them. So, right off, the reception  
20 area is like a conference room, so I asked him if he would  
21 have a seat, I'd go get the xerox copies and I'd be right  
22 back. So, I went down. And where we're located almost at  
23 the opposite end of the office. So I walked down, got the  
24 copies that were xeroxed. And I asked Agent LaCourse to  
25 accompany me because there was a suspect there and that I was

1 going to turn over these records to him. And then we both  
2 went down to the conference room.

3 Q And were the records in an envelope of some kind?

4 A They may have been.

5 Q But in any event, you handed him the documents. Tell us  
6 what happened at that point.

7 A Well, he leafed through the documents. And he started  
8 complaining, he said: I need more than this. I said: That's  
9 all we have. He said: I need -- he started naming business  
10 files: I need this file, I need that file. And I said:  
11 Well, that's all we're prepared to give you. He said: Well,  
12 I want them. We had a general discussion. So, at this time,  
13 it was going on for a few minutes, so we all sat down.

14 Q Did you agree to him give him any of the materials that  
15 day?

16 A No, I did not.

17 Q Now, what if any conversation did you have with the  
18 defendant there at the ATF offices that day, February 4th?

19 A I had a lengthy conversation. I started off by reminding  
20 him that he had an attorney and he had counsel. He said he  
21 wanted to talk to us. He was extremely talkative. We talked,  
22 I think it was two-and-a-half hours. He was very inquisitive  
23 in nature. He was asking us: What are we doing? How is the  
24 investigation going? You know, where are you headed? I was  
25 answer some questions, deferring on others, talking.

1           We went back over all the subjects we talked about.  
2       I made a list of the files he wanted. And at one point, you  
3       know, I was giving him my reasons why he should cooperate with  
4       the government. And I went on to give him my standard: You  
5       know, we know you did. If you cooperate we'll bring it to  
6       attention of the U.S. Attorney and the Court. And, you know,  
7       you tell us, you know, did someone help get the dynamite, you  
8       know, the mitigating factors. And went on and on.

9       Q     How did he respond to that, sir?

10      A     Well, then I told him he had confessed to the 1986  
11      bombing, nothing had happened, that maybe it wouldn't be that  
12      bad. He looked at me. He said: I'm not going to make  
13      up -- and he stopped, and he just looked down at down at his  
14      papers.

15      Q     Did you have any conversation with him, or do you recall  
16      him telling you what he believed or who he believed was  
17      responsible for the bombing in Roslindale?

18      A     He said he had two theories, and that one of them was  
19      that Shay, Jr. did it.

20      Q     Did he say anything to the effect he put money on it that  
21      Shay, Jr. did it?

22      A     Yes, he did.

23      Q     How long was the defendant there at ATF that day?

24      A     Approximately from 11 a.m. to 1:30 p.m.

25      Q     And when he finally did leave, whose idea was it for him

1 to depart?

2 A It was my idea.

3 Q Okay.

4 And tell us about that. What if any discussion did  
5 you have with him as he was about to leave?

6 A I was walking away him from -- it is a very short walk,  
7 it's only a few steps from the conference room, which has two  
8 doors, one which goes internally to our office, and Agent  
9 LaCourse was going that way. I was going to the right, where  
10 the door is to the reception area. Right in the doorway, he  
11 was still talking to me. He wanted to stay and talk some  
12 more. The final thing he said to me was -- I'm not positive  
13 of the exact words, but he said: If we did it, then only we  
14 know about it. How will you ever find out and if neither one  
15 of us talked?

16 Q How did you respond to that, Agent Leahy?

17 A I asked him to leave.

18 Q What was -- Agent, what was his demeanor during the large  
19 portion of the conversation that you had with him there on  
20 that day in the conference room?

21 A Very cooperative, very talkative, very inquisitive. At  
22 points, it was like a cat and mouse game. It was --

23 MR. SEGAL: I object to that characterization, "cat  
24 and house," your Honor.

25 THE COURT: I may stand. It is descriptive. He was

1 asked to describe it.

2 Q What was his demeanor at the time he made this comment in  
3 the doorway, sir?

4 A He was arrogant.

5 Q Arrogant, you say?

6 A That's correct.

7 Q At any point during the conversation there at the ATF  
8 that morning, was the defendant under arrest?

9 A No, sir.

10 Q Did anyone force him to stay?

11 A No, sir.

12 Q Agent Leahy, I want to direct your attention to the month  
13 of March, 1992, the following month, what investigation --  
14 excuse me, investigative activity did you take at that time,  
15 sir?

16 A At that time, myself and Agent Kerr, and two Boston  
17 Police Homicide detectives went to San Francisco.

18 Q What was your reason for going to San Francisco at the  
19 time?

20 A Thomas Shay, Jr. had jumped bail, and we were going out  
21 to try to apprehend him.

22 Q How did you become aware that Mr. Thomas Shay, Jr. was in  
23 California?

24 A He had sent a, I believe it was, a postcard back to a  
25 friend. And we ascertained from the postmark that it was

1 mailed from San Francisco.

2 Q And how long were you in California before you actually  
3 located Mr. Shay?

4 A Approximately three days, 72 hours.

5 Q And was he living under his home name in California?

6 A No, sir, he was not.

7 Q What name was he using?

8 A James Keough.

9 Q And did you locate and arrest him?

10 A Yes, that's correct.

11 Q Was he subsequently returned to Massachusetts?

12 A Yes, he was.

13 MR. KELLY: Your Honor, have one last area, and if I  
14 can just see the Court briefly at side bar?

15 [Conference at the bench, as follows:

16 THE COURT: I couldn't hear what he said, what  
17 Trenkler said....

18 MR. KELLY: He said, I believe he said, I wasn't sure  
19 of the exact wording, but that it was something to the effect  
20 if we did this and neither of us talked, how will you ever  
21 find out who did it, or something like that.

22 THE COURT: Okay.

23 MR. KELLY: Your Honor, the last area I was proposing  
24 to go into with, with Mr. Leahy, relates to his involvement  
25 with Thomas Shay, Jr., on September the 18th, 1992, when

1 Mr. Shay was arrested for the federal charge of making a false  
2 bomb threat. And I'm only interested in the following remark,  
3 where he says -- it's gets several typos it in -- but  
4 effectively, I'm not the guy who build it -- it is a typo.  
5 I'm not the guy two got the dynamite. I'm not the guy who  
6 placed it. I'm not -- it should be -- the violent one, which  
7 is what I understand he would respond to my questions.

8 MR. SEGAL: I object for the reasons that we have  
9 been at it for the last two weeks.

10 THE COURT: I have not ruled on the most recent which  
11 by my count, this is the fourth motion for reconsideration.

12 MR. KELLY: And last.

13 THE COURT: Until I rule on it, let's not get into  
14 it. If I allow it, then you can recall call him.

15 MR. KELLY: Thank you.

16 ...end of conference at the bench.]

17 MR. KELLY: I just have a couple of quick questions,  
18 your Honor.

19 THE COURT: Yes.

20 Q Agent Leahy, to finish up, sir, in your several  
21 discussions with the defendant that you have been describing  
22 to us this morning, has he been consistent with you in  
23 responding to any questions that you may have asked about his  
24 whereabouts on the morning of Monday, October 28th, 1991?

25 MR. SEGAL: Objection to the "consistent." Maybe we

1 can ask --

2 THE COURT: Well, if you want, he'll go through it  
3 all.

4 MR. SEGAL: All right. I'll stay with it. I'll  
5 withdraw it.

6 THE COURT: You may answer the question.

7 A No, he hasn't been consistent.

8 Q What has he told you about his whereabouts that day,  
9 briefly?

10 A On one occasion told me he was at Videocom, a store, a  
11 place of business in Dedham. On another case occasion, he  
12 told me at the Christian Science, working. On another  
13 occasion, he said he was at ARCOM. He wasn't consistent.

14 Q Has he been consistent with you in responding to your  
15 questions about whether Mr. Thomas Shay, Jr. has ever been to  
16 his apartment in Quincy?

17 A No, sir he hasn't.

18 Q Finally, has he been consistent with you in responding to  
19 your questions about giving rides to Thomas Shay, Jr.?

20 A No, sir, he has not.

21 Q How, with respect to that, what has he told you changed?

22 THE COURT: I think that he has testified to,  
23 already.

24 MR. KELLY: I just didn't think it was clear, your  
25 Honor.

1 MR. SEGAL: I think we heard the testimony, your  
2 Honor. Honor.

3 MR. KELLY: If I can ask one last question.

4 Q When you first questioned him about the subject of rides,  
5 did he tell you that he had given him a ride to Rhode Island,  
6 for example?

7 MR. SEGAL: I object. We've been over this, your  
8 Honor.

9 MR. KELLY: I just don't think it is clear, your  
10 Honor.

11 THE COURT: You may have the question.

12 A No, at first he did not.

13 MR. KELLY: I have nothing further.

14 THE COURT: We will take the morning recess and then  
15 go to the cross.

16 [Whereupon, the jury was excused.]

17 THE COURT: Court is in recess.

18 [Recess.]

19 THE COURT: Please be seated.

20 [Whereupon, the jury entered the courtroom.]

21 THE COURT: You may proceed.

22 MR. SEGAL: Thank you, your Honor.

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Cross-examination by Mr. Segal

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Q Agent Leahy, my name's Terry Segal. I think you told Mr. Kelly that in the first stages of this case there were a number of other suspects; is that correct?

A Yes, sir, it is.

Q That would be Shay, Sr.?

A Yes, sir.

Q Mr. Berry from the Dedham Service Center?

A Yes, sir.

Q Mr. Giamarco?

A Yes, sir.

Q Mr. Brown?

A Yes, sir.

Q Mr. Carrion?

A No, sir.

Q And early on, Shay, Jr. was a suspect; isn't that fair to say?

A Well, if you consider the last two years after the week he was; yes, sir.

Q I'm sorry. The period following the explosion on October 28th, within a week it was fair to say Shay, Jr. was a leading suspect; is that fair?

A Yes.

Q At some point in November, there was a reward of about 50,000 put out in connection with this case; isn't that fair

1 to say?

2 A There was a reward. I thought it was 65,000, but it may  
3 have been 50.

4 Q And that was made public?

5 A Yes, sir, I don't recall the date it was made public.

6 Q November or December, does that sound right of '91. It  
7 was early on in the case?

8 MR. KELLY: I would object to that, your Honor,  
9 unless he can give it a specific date.

10 MR. SEGAL: Just a moment.

11 Q Let me show you the Globe article of November 13th, 1991,  
12 to see if that refreshes your recollection as to when the  
13 reward was made public?

14 A Yes, sir. The articles dated November 13th, the Boston  
15 Globe, and it says a \$50,000 reward was offered.

16 Q And at some point it was increased to 65,000?

17 A I believe it was yes, sir.

18 Q Sir, you teach bomb investigations at ATF; is that right?

19 A I've taught it at the Federal Law Enforcement Training  
20 Center in the past, I've taught at some places. I don't  
21 normally teach that, no.

22 Q But you're an experienced bomb explosives officer at ATF;  
23 is that fair to say?

24 A I've received specialized training and done a number of  
25 investigations, yes, sir.

1 Q Would you agree that your knowledge in the area of  
2 explosives is more than the normal ATF here in Boston?

3 A Yes, sir.

4 Q You have been with the agency for how many years, sir?

5 A I'm in my 18th year, sir.

6 Q As of November 5th, was it Mr. Trenkler also a prime  
7 suspect in this case, November 5th, 1991?

8 A He was evolving into a prime suspect, yes, sir.

9 Q You knew about the '86 bomb at that time?

10 A Yes, sir.

11 Q You found his name in Shay, Jr.'s notebook?

12 A I didn't personally, but it was found, yes, sir.

13 Q The agency -- how many -- roughly how many officers both  
14 Boston PD and ATF went to his apartment that night?

15 A I'm not sure of the exact total.

16 Q I don't mean just entered, I mean physically --

17 A That's why I wasn't sure. Some stayed outside in the  
18 front, some stayed outside in the back. It may be eight,  
19 ten.

20 Q Now, let's go to ARCOM. You went to ARCOM with  
21 Mr. Trenkler at about what time that morning. It would be  
22 November 6th, I take it?

23 A I didn't go there with him. He road with a Quincy  
24 detective, and I rode with Agent D'Ambrosio.

25 Q What time do you recall getting to ARCOM?

1 A Somewhere in the vicinity of midnight.

2 Q You've written a report that detailed the events of  
3 November 5th and 6th, and that report was written in January  
4 1992, am I correct?

5 A Yes, sir, it was more of a --

6 Q Well, let me ask you.

7 A Yes, sir.

8 Q I have, look in front of you, I think it's an exhibit for  
9 identification, Defendant's Exhibit 87, is that the two-page  
10 document that you wrote on January 17th, reflecting the events  
11 of November 5th and 6th?

12 A Yes, sir, it is.

13 Q Now, if you have to refer to it, that's fine in  
14 connection with any question. My question to you, sir, is on  
15 that morning at ARCOM, didn't Mr. Trenkler give consent for  
16 several of his records and sales slips to be taken for  
17 examination?

18 A Yes, sir.

19 Q In other words, he consented to not only tools to be  
20 taken, but also any papers that you wanted to take and  
21 examine; isn't that fair to say?

22 A Yes, sir, he is very cooperative.

23 Q All right. Now, after, while he was drawing the '86  
24 diagram, you were at the table, and Agent D'Ambrosio, am I  
25 right, at the table?

- 1 A Yes, there were others, also.
- 2 Q All right. Who else was right in that vicinity,  
3 Detective O'Malley?
- 4 A Correct, sir.
- 5 Q Detective McCarthy?
- 6 A I'm not positive, but he may have been.
- 7 Q Who else do you recall?
- 8 A I think Supervisory Agent Palaza was standing behind us  
9 also.
- 10 Q When you say supervisory agent, he's with the ATF,  
11 Supervisor Palaza?
- 12 A Yes, sir.
- 13 Q So there were at least five people right in the immediate  
14 area while he was drawing the '86 diagram, right?
- 15 A Five or six.
- 16 Q Now, you said this was a joint -- I'm sorry, wasn't this  
17 a joint Boston PD and ATF investigation?
- 18 A Yes, sir.
- 19 Q Okay. You're both out there trying to solve this  
20 situation, isn't that fair to say?
- 21 A Absolutely, sir.
- 22 Q ATF had 23 agents involved in this case, because it was a  
23 highly significant matter, you would agree with me?
- 24 A I don't know the total, but --
- 25 Q Okay. If I suggest that number, am I far off. We're

1 talking now about November 1991, you had a lot of personnel  
2 committed to try and help straighten, solve this case; is that  
3 fair to say?

4 MR. KELLY: Your Honor, I would object, because I  
5 think the testimony was it varied at different times.

6 THE COURT: The objection is sustained. You may  
7 rephrase it.

8 Q As of November, isn't it fair to say that ATF had a  
9 number of personnel assigned to this case?

10 A Yes, sir.

11 Q All right. Now, after -- I think your testimony is that  
12 Mr. Trenkler, after he completed the '86 diagram drew another  
13 diagram?

14 A Yes, sir, that's correct.

15 Q After he drew the second one, isn't it true neither you  
16 nor Agent D'Ambrosio asked him to label it?

17 A That's correct. We did not ask him to label it.

18 Q Didn't ask him to sign it, isn't that correct?

19 A That's correct, sir.

20 Q Didn't ask him to date it?

21 A That's correct.

22 Q After he drew the diagram, the alleged diagram of the '91  
23 device, how long were you still on the premises, sir?

24 A 20, 30 minutes, maybe.

25 Q And it was after he drew the diagram that you wrote out

1 impression and it will come through on the next page, am I  
2 right?

3 MR. KELLY: I would object to that, your Honor.

4 Q Are you aware of that, sir?

5 MR. KELLY: I would object to that, it's a bit of a  
6 generalization.

7 THE COURT: I suppose it depends on how hard you  
8 draw. The objection is sustained.

9 Q Based upon your experience, Agent Leahy, having found  
10 situations where somebody writes on page 1 of this, you can  
11 look at page 2 and see the impression on it, have you ever  
12 seen that?

13 A It's possible.

14 Q And the lab can actually bring up the impression; isn't  
15 that fair to say?

16 A That's also possible.

17 Q Now, Detective McCarthy was with you that night -- now  
18 I'm talking about the early morning hours too -- he was there  
19 on the 5th, at Quincy and then at ARCOM, isn't that fair to  
20 say?

21 A Yes, sir.

22 Q He wrote a report of those events, am I right, sir?

23 A I believe he did.

24 Q And in fact, it's in front of you I think as Defendant's  
25 Exhibit 89 for identification, if you would take a look at

1 it? Isn't it fair to say that that two-page report of  
2 Detective McCarthy describes the events of November 5th and  
3 6th at ARCOM and Atlantic Avenue?

4 MR. KELLY: I would object to the question as  
5 phrased, "describes the events."

6 Q Let me ask it this way. Is that a report of Detective  
7 McCarthy of the events of November 5th and 6th that we've been  
8 talking about?

9 A Some of them.

10 Q Isn't it fair to say that nowhere in that report is  
11 Exhibit 89 for identification, does Detective McCarthy say  
12 anything about the 1991 diagram, and please read the report to  
13 yourself.

14 MR. KELLY: There's no need to have him do that, your  
15 Honor. The Government will stipulate that it doesn't make any  
16 reference to it.

17 MR. SEGAL: Okay. That's fine.

18 Q And Detective McCarthy was right over the defendant's  
19 shoulder when he was drawing this diagram?

20 MR. KELLY: I object. I don't think that's what he  
21 said.

22 Q Let me ask you this. Detective McCarthy was right there  
23 in the room when Mr. Trenkler was asking the diagram?

24 A I believe he was. I think he might have been in front of  
25 the table.

1 Q How far from Mr. Trenkler?

2 A During the hours solely we were there, various people  
3 would want to go and listen for a while, go and assist the  
4 search and go back, so I am not positive exactly how long he  
5 was there, what he was going to do.

6 Q After Mr. Trenkler drew what you claim is the '81  
7 diagram, you and Agent D'Ambrosio looked at each other; isn't  
8 that fair to say?

9 A '91 diagram.

10 Q I apologize, '91. You and Agent D'Ambrosio looked at  
11 each other, right?

12 A Yes, sir.

13 Q You both knew it was significant?

14 A Yes, sir.

15 Q Together you had about over 30 years with ATF, isn't that  
16 fair to say?

17 A Yes, sir, it is.

18 Q And you stayed on the premises about 20 minutes before  
19 leaving, am I right?

20 A No. We were there approximately an hour --

21 Q After the drawing you were there for an hour?

22 A No, no. We were there total for about an hour. After  
23 the diagram, we were probably there about 20 minutes or so,  
24 about 20, 20, 30.

25 Q From what you can see Mr. Trenkler was trying to be

1 cooperative with you in signing consent forms to search and  
2 that kind; isn't that fair to say?

3 A No, sir, he didn't sign a consent form.

4 Q I'm sorry, permitting you to search that night without  
5 any warrant or form; is that right?

6 A Yes, sir.

7 Q In fact, he even went with you that morning to his  
8 parents' garage at about what, 2 a.m.?

9 A I'd say it was after 1.

10 Q His concern was simply that you people could wake up the  
11 parents or cause a commotion in the neighborhood, am I right?

12 A That's what his major concern, yes, sir.

13 Q But once you worked out a plan to say, well, we're just  
14 working and we'll only do it low key, he said, fine, I'm happy  
15 to have you come over to look in the garage?

16 A I'm not sure he was happy. He consented.

17 Q He consented. Then after you went over there on the way  
18 home, you stopped at his car which had been disabled and you  
19 said, Can I take a piece of carpet out of the trunk; and he  
20 said, Fine; is that fair to say?

21 A He allowed us to take a sample of the carpeting, yes,  
22 sir.

23 Q When did you realize the next day when you left the  
24 alleged diagram sitting on the table?

25 A I think Agent D'Ambrosio and I were sitting around having

1 coffee going over the previous evening.

2 Q Just give me a time if you could?

3 A Maybe midmorning, late morning.

4 Q You didn't apply for a search warrant at that point, am I  
5 right, sir?

6 A That's correct.

7 Q You didn't visit ARCOM that morning again?

8 A That is correct.

9 Q You didn't call Mr. Trenkler at that point?

10 A No, we didn't.

11 Q Now, let's go to January 31st. You were in charge of the  
12 search at White Lawn Avenue; am I correct, sir?

13 A Yes, I was the team leader.

14 Q Mr. Trenkler talked with you that day for approximately  
15 what, an hour?

16 A He was there for approximately an hour and probably for  
17 most of the hour he talked to us, but he didn't go in the  
18 house; he didn't move his car; he didn't make a call, so 45  
19 minutes, maybe.

20 Q And I think, by the way, the report, you wrote a report  
21 about the events of that day which is Defendant's Exhibit 92.  
22 It should be before you. Do you see that report, sir?

23 MR. KELLY: For identification.

24 MR. SEGAL: For identification.

25 A Yes, I do.

1 Q All right. Now, and if you want to refer to that report  
2 in answering any of these questions, that's fine, agent.  
3 Isn't it fair to say that, at that, you talked to him for  
4 about an hour on that date, right?

5 A It was about 40 minutes, 45 minutes.

6 Q And he discussed in detail how he built the '86 bomb,  
7 used the military tank simulator connected to a switch  
8 batteries, toy car remote control device and batteries and  
9 placed it on a truck; he said that basically to you?

10 A Yes, sir.

11 Q You never said to him at that point, you know, could you  
12 draw for us that '86 thing again, what you've just described?

13 A Not the '86, no, sir.

14 Q Okay. Agent Leahy, are you familiar that the term  
15 "shunt" is also used in electronics?

16 A No, sir, I'm not.

17 Q Are you familiar that it's used in medicine?

18 A No, sir, I'm not -- oh, yes, I am, I had my appendix out  
19 and they put a shunt in.

20 Q What's a shunt medically?

21 A It's like a drain.

22 Q Sort of a diverter, it diverts things, drains things out?

23 A It drains things, I'm not sure, it diverts things.

24 Q Okay. If you became aware that Mr. Trenkler was involved  
25 in the microwave communications business, isn't that fair to

1 say, sir?

2 A Yes, sir.

3 Q And that he sold two-way radios?

4 A I'm not sure if he sold them or leased them or rented  
5 them, it was something of the beepers and radios.

6 Q And from your experience and explosives, sir, isn't it  
7 dangerous to use two-way radios near blasting sights?

8 A It could be.

9 Q And that's because they could emit stray radio signals  
10 that could set off some dynamite?

11 A Well, actually, sir, there is a process that could  
12 happen, that could cause an explosion.

13 Q You're aware Mr. Trenkler was involved also in building  
14 microwave towers, isn't that fair to say?

15 A Well, I'm not sure. I think he connected the dishes on  
16 top of the towers. I'm not sure if he actually built the  
17 tower or not.

18 Q By the way, on January 31st, you also had a function  
19 besides handling the search at White Lawn Avenue of driving  
20 Dr. Hobbs from MIT around; isn't that fair to say?

21 A I don't think so. He, someone else drove him to White  
22 Lawn, and then when we were finished, I think I offered to  
23 drive him to another address.

24 Q So he used his device at more than one address; is that  
25 fair to say?

1 A Yes, sir.

2 Q There was a fancy term, am I right if I call it a  
3 "sniffer"?

4 A Yes, sir.

5 Q And what other addresses did Dr. Hobbs use that address,  
6 use that device on him that day?

7 A 133 Atlantic Avenue in Quincy and 82 Broad Street in  
8 Weymouth.

9 Q From your experience, Agent Leahy, isn't it true that  
10 every blasting cap is made with two electrical wires?

11 A No, sir, it's not, from my experience, almost all are.  
12 However, it's possible to have one leg wire.

13 Q In your experience, heat alone can't cause dynamite to  
14 blow up, can it?

15 A If you're asking me generally, heat, temperature does not  
16 generally cause dynamite to function. Heat and shock wave  
17 propagation from another blast, perhaps, could cause dynamite  
18 and close proximity to function.

19 Q But just heat alone they store dynamite in outdoor  
20 bunkers in the summer that are not air conditioned; isn't that  
21 fair to say?

22 A Yes, sir, it is.

23 Q So heat alone wouldn't normally do?

24 A Not normally, no, sir.

25 Q Mr. Trenkler, on January 31st never used the term

1 "sympathetic detonation," did he?

2 A No, sir.

3 Q February 3rd, Mr. Trenkler called and asked to come over  
4 and pick up records, am I right?

5 A No, sir. He asked about the records and would they be  
6 xeroxed and I told them they would be ready.

7 Q Okay. Did he tell you in that conversation that he  
8 needed records to the MIT job that he was working on?

9 A I think it was the next day, he gave me a specific list  
10 of job records he wanted, not on the phone conversation.

11 Q All right. You remember what those records were?

12 A I wrote down. I think there were four jobs he was  
13 looking for.

14 Q Was one, if you can recall MIT?

15 A I'm not sure. I don't think so.

16 Q Was one the Christian Science job?

17 A It may have been.

18 Q I think you testified that, on that -- he came into the  
19 office for about two hours on February 4th, am I correct?

20 A Approximately two and a half.

21 Q At that time did he say he put money on it that Shay, Jr.  
22 had done the bombing?

23 A I believe he did.

24 Q And didn't he also volunteer to talk to Shay, Jr. for the  
25 Government?

1 A Yes, sir.

2 Q In fact, he said I know this guy, I'll I wear a wire and  
3 go into talk to him; did he say that?

4 A I'm not sure if those are his exact words.

5 Q Did I capture the substance of it?

6 A He agreed to talk to Shay, Jr. for us.

7 Q And didn't he say, he might tell me more than he'll tell  
8 you people because I know him?

9 A I don't believe he said that.

10 Q Let me jump back to January 31st, one second, Agent  
11 Leahy. Didn't Mr. Trenkler give you theories on that date as  
12 to how this might have happened. Didn't he say the guys who  
13 Shay, Sr. worked for might have done this?

14 A I don't think so. I think he gave me two theories. I  
15 don't think that was one of them.

16 Q What are the two that you recall?

17 A That Shay, Jr. did it while Shay, Sr. was involved with  
18 Mrs. Shay.

19 Q And was this on January 31st?

20 A I believe it was.

21 Q Did he also say that day that he was concerned that the  
22 Feds would fabricate evidence against him?

23 A Yes, sir, he did.

24 Q At some point this case became what was called a  
25 "sensitive investigation," isn't that fair to say?

1 A It's a way we monitor different groups of investigation  
2 for filing of reports, so you could say that it was not  
3 routine, that we checked the block sensitive.

4 Q And doesn't "sensitive" mean that any significant event  
5 indicates that you have to write a report immediately?

6 A As a general rule, in law enforcement if there is a  
7 significant event you try and do a report and you try to do it  
8 as soon as you can.

9 Q Now, let me show you what's been admitted into evidence  
10 as Exhibit, Defendant's Exhibit 90 and 90A. Is this the  
11 recreation that you and -- well, let me ask you this. Is this  
12 the, was that exhibit done by Agent D'Ambrosio?

13 A Yes, sir, it is.

14 Q And that was done in about May of 1993 in connection with  
15 hearings in this case, am I right?

16 A Well, it was done at the request of the U.S. Attorney's  
17 Office in May of 1993.

18 Q And the two of you got together and sat down and  
19 D'Ambrosio put down what your collective memories of what the  
20 alleged 1991 device looked like, isn't that fair to say?

21 A Both the '86 and the '91, yes.

22 Q But that's the first time either of you sat down and  
23 wrote out a recreation on paper; is that fair to say?

24 A Yes, sir.

25 Q Isn't it fair to say, sir, that your memory of that

1 device was much better on November 5th, 1991 than it was in  
2 May 1993?

3 A Yes, sir, that's why --

4 Q I'm asking you if you can answer my question, and I have  
5 no further questions.

6 THE COURT: Anything else, Mr. Kelly?

7 MR. KELLY: Briefly, your Honor.

8 Redirect Examination by Mr. Kelly

9 Q You responded to Mr. Segal's questions whether the  
10 defendant Mr. Trenkler was a prime suspect on November 5th,  
11 1991 by saying that he was evolving as a suspect?

12 A Yes, sir, that's correct.

13 Q And did there come a time, Agent Leahy, when you could  
14 describe the defendant as a prime suspect?

15 A Yes, sir.

16 Q And what factors, if any, led the defendant to become  
17 what you had labeled as a prime suspect?

18 MR. SEGAL: Object, beyond the scope.

19 MR. KELLY: No, it's not beyond the scope in all due  
20 respect. He asked the question.

21 MR. SEGAL: The question was limited to that  
22 particular period of time. My question did not go beyond  
23 November 5th on that issue. I think he's entitled to that at  
24 that time.

25 MR. KELLY: I will withdraw the question, your Honor,

1 in the interests of time.

2 Q The conversation that you were asked about by Mr. Segal  
3 in the driveway at -- excuse me, at 7 White Lawn Ave., he  
4 asked you about the blasting caps and about the sympathetic  
5 explosion. Do you remember those questions?

6 A Yes, sir.

7 Q Did you determine these remarks, this aspect of the  
8 conversation that day in the driveway to be significant?

9 A Yes, sir, I did.

10 Q Why?

11 A I felt that a layperson would not know about shunts on  
12 blasting caps. There are different types, would not know a  
13 lot about leg wires, blasting caps, you could get static  
14 electricity from blasting caps; would not know there's a short  
15 propagation that could set off explosives that are near other  
16 explosives.

17 Q And to clarify, when the defendant was asked to draw a  
18 diagram of the 1991 device, what was the defendant asked to  
19 assume prior to him actually putting pen to paper, pencil to  
20 paper?

21 A On November 6th.

22 Q On November 6th?

23 A He was asked to assume that it was a remote control  
24 device and that he built it.

25 Q And what else was he told about any of the componentry,

1 if anything?

2 A I believe he may have been told to assume to use  
3 dynamite.

4 Q Was he told anything about blasting caps?

5 A No, sir.

6 MR. KELLY: Nothing further.

7 THE COURT: Anything else?

8 MR. SEGAL: I have no other questions.

9 THE COURT: Thank you, Mr. Leahy, you're excused.

10 Who is next?

11 THE WITNESS: Thank you, your Honor.

12 MR. KELLY: Your Honor, the United States calls  
13 Mr. William Lanergan.

14 THE COURT: He wasn't on the list you gave me last  
15 week.

16 William Lanergan, sworn

17 Direct Examination by Mr. Libby

18 THE CLERK: Please be seated and spell your name for  
19 the reporter.

20 THE WITNESS: My name is William Lanergan, that's

21 L A N E R G A N

22 THE COURT: All right. You may proceed.

23 MR. LIBBY: Thank you, your Honor.

24 Q Good morning, Detective.

25 A Good morning, sir.

- 1 Q Spell your name for the reporter, please.
- 2 A I have.
- 3 Q Bill Lanergan?
- 4 A L A N E R G A N.
- 5 Q And you're employed by whom, sir?
- 6 A I'm employed by the City of Quincy Police Department.
- 7 Q In what capacity, please.
- 8 A I'm assigned to the plain clothed unit.
- 9 Q As?
- 10 A A detective.
- 11 Q How long have you been a detective, sir?
- 12 A Since 1985.
- 13 Q How long have you been with the Quincy Police Department
- 14 in any department?
- 15 A Since April of 1971.
- 16 Q And have you worked continuously since then, sir?
- 17 A I have.
- 18 Q Are you married, sir?
- 19 A I am.
- 20 Q Children?
- 21 A Two.
- 22 Q Directing your attention back to 1986, Detective
- 23 Lanergan, specifically the late August, early September time
- 24 frame; do you have that time frame in mind, sir?
- 25 A I do.

1 Q What was your ship in fall of 1986, your tour of duty?

2 A I was assigned to the day shift starting at 8 a.m. and  
3 completing at 4 p.m.

4 Q Were you assigned a detective partner?

5 A I was.

6 Q And who was that, please?

7 A That was Detective Thomas Tanning.

8 Q Directing your attention to Tuesday, Tuesday immediately  
9 following Labor Day, the 2nd of September 1986, do you recall  
10 being informed of an explosion which had taken place over the  
11 weekend with respect to a truck in Quincy?

12 A I do.

13 Q And when on that day were you so informed?

14 A Shortly after 8 a.m.

15 Q And by whom, sir?

16 A Captain David Roul (ph), chief of detectives.

17 Q Do you recall anything about identifying the truck,  
18 please?

19 A I was given a copy of the responding officers report, and  
20 I read it over that particular morning to familiarize myself  
21 with that case.

22 Q And in the course of that investigation did you learn as  
23 to identity of the owner of that truck?

24 A I did.

25 Q And who was that?

1 A It was Cape Way Fish Company owned by James and Walter  
2 Wojtanski.

3 THE COURT: How do you spell that one?

4 Q Do you have anything with you, Detective, with respect to  
5 notes to reports regarding your investigation in that matter?

6 THE COURT: Well, can we spell the name -- maybe you  
7 can help him, I'm trying to help the reporter.

8 Q Is that -- if I could have a moment, your Honor. W O J T  
9 A N S K I, does that refresh your recollection?

10 A I believe that's correct, yes, sir.

11 Q It's been seven years since that investigation, sir?

12 A Correct.

13 Q Have you brought anything with you today to assist you  
14 perhaps in refreshing your recollection in those matters?

15 A I have.

16 Q What have you brought with me?

17 A Copies of reports that I've made.

18 MR. LIBBY: If I may approach, your Honor.

19 THE COURT: Please.

20 Q If I may see those reports, please. Let me show you for  
21 identification, Government Exhibit 61, please. Do you  
22 recognize that, sir?

23 A I do. I do.

24 Q That's a three-page single space typewritten report, sir?

25 A Correct.

1 Q Who offered you that report?

2 A I did.

3 Q Let me show you what's been marked Government's Exhibit  
4 62 for identification, a single-page document, it appears to  
5 be handwritten; do you recognize that?

6 A I do.

7 Q And what is that, please?

8 A That is my handwritten report that I made supplemental.

9 Q Now, Detective Lanergan, would you tell us, please, that  
10 Tuesday morning having been assigned to the matter, both you  
11 and Detective Tierney were assigned to the matter?

12 A Correct.

13 Q And your understanding as to when the explosion took  
14 place, please.

15 A In the early morning hours of September 1st, 1986.

16 Q What day of the week was that?

17 A That was a Monday.

18 Q And where did the explosion take place, please?

19 A Up on Willard Street in West Quincy.

20 Q Now, after having reviewed that incident report, sir,  
21 what did you do?

22 A Myself and Detective Tanning drove to the Cape Way Fish  
23 Store in Weymouth.

24 Q Did you go to the scene, sir?

25 A No.

1 Q Why not?

2 A The presumption is the truck would not be there. There  
3 would be an operation at the business, and we figured we would  
4 go to the business first.

5 Q And you did go to the business?

6 A Correct.

7 Q And with whom did you meet there, please?

8 A The two Wojtanski brothers, Walter and James.

9 Q How long did you stay there?

10 A Oh, about a half an hour, I believe.

11 Q Did you have some conversation with these individuals?

12 A We did.

13 Q Following that, sir, where did you go, what did you do?

14 A We went to an address on Front Street also in Weymouth.

15 Q And with whom did you visit there, please?

16 A We visited a girl by the name of Lorraine Morgan and a  
17 girl that was known to us at that time as "Pixie" who turned  
18 out to be a Basler, B A S L E R woman.

19 Q And how long did you visit with them?

20 A I'd say a half-hour, 45 minutes.

21 Q Following that, where did you go?

22 A Pardon?

23 Q Where did you go?

24 A We went to another address over on Lake Street in  
25 Weymouth also.

1 Q And who were you looking for?

2 A We were looking for a girl by the name of Donna Shea, S H  
3 E A.

4 Q And you understood that to be your residence?

5 A Correct.

6 THE COURT: How old are these girls?

7 A I believe Lorraine Morgan was in her early '30s, also the  
8 Basler girl was in her early '30s and Donna Shea was in her  
9 middle 20's.

10 Q You meant young ladies, is that right?

11 A Young ladies.

12 Q Now, did you visit, did you see, is Donna Shea in the  
13 Lake Street residence?

14 A No.

15 Q Did you see her later that day?

16 A I did.

17 Q Where did you see her?

18 A She was coming out of the Quincy District Court house at  
19 the rear door.

20 Q Did you stop and speak with her?

21 A I did.

22 Q For how long?

23 A Approximately 15 to 20 minutes.

24 Q And after you and Detective Tierney, was Detective  
25 Tierney with you throughout this?

1 A He was.

2 Q Where did you go after that?

3 A We went back to the Quincy Police Station.

4 Q What took place later that day, please?

5 A I received a telephone call.

6 Q From?

7 A From Lorraine Morgan.

8 Q The young lady that you visited with earlier that day?

9 A Correct.

10 Q And what further, you had conversation with her?

11 A I did.

12 Q What further step did you take that day, please, with  
13 respect to this investigation?

14 A I went all by myself, back to her home in Weymouth.

15 Q And you visited with Mr. Morgan then?

16 A I did.

17 Q Did you take any further steps that day, that Tuesday  
18 with respect to this investigation, Detective?

19 A No, that was at the conclusion of the business for the  
20 day.

21 Q Now, with respect to the following day, September 3rd,  
22 what day of the week was that, please?

23 A It was a Wednesday.

24 Q And at some point you and Detective Tierney were making  
25 steps with respect to this investigation?

1 A I did.

2 Q What did you and Detective Tierney do, please?

3 A We went to 35 Union Street in Quincy.

4 Q And who were you looking for there, please?

5 A Mr. Alfred Trenkler.

6 Q What was your understanding with respect to 35 Union  
7 Street?

8 A That Mr. Trenkler looked at that address.

9 Q Could you describe that address for us, please?

10 A It was a multi-unit apartment building that had basically  
11 an address on two sides, 136 Main Street. Mr. Trenkler was on  
12 the second floor of the three-story building.

13 Q Did you approach the doorway there?

14 A We did.

15 Q Did you knock?

16 A We went on the second floor and knocked.

17 Q Who came to the door, please?

18 A A male party answered the door.

19 Q And shortly thereafter, did Mr. Trenkler appear?

20 A He did.

21 Q Was the gentleman you learned to be Mr. Trenkler?

22 A Correct.

23 Q Tell us, please, the initial part that have conversation?

24 A We identified ourselves as Quincy police officers,  
25 showing our badge of office, and --

1 Q Did Mr. Trenkler introduce himself?

2 A He did.

3 Q What did he say?

4 A He said he was Al Trenkler.

5 Q And you're standing in the doorway of his apartment at  
6 this time?

7 A No, we were inside of the apartment now.

8 Q Did you request permission to come in?

9 A We were invited in by the first gentleman.

10 Q Did you see that individual later known to you as being  
11 Al Trenkler in the courtroom today?

12 A I do.

13 Q Would you point him out for us, please?

14 A He's sitting at the first table, second person in on the  
15 left.

16 MR. LIBBY: Your Honor, may the record reflect the  
17 correct identification of the defendant.

18 THE COURT: Yes.

19 Q Now, after the introductions Detective Lanergan what if  
20 anything did you do or say?

21 A I advised Mr. Trenkler of his rights under the Miranda  
22 decision, I asked if he understood them.

23 Q What did he say?

24 A He replied he understood them.

25 Q Did he say anything else?

1 A He was willing to talk to us.

2 Q Who spoke next?

3 A Yes.

4 Q What did he say?

5 A I informed that we were conducting an investigation  
6 relative to an explosion that occurred at Cape Way Fish Store  
7 in Quincy on September 1st.

8 Q And who spoke next?

9 A Al did.

10 Q What did he say?

11 A He told us that he was good friends with Donna Shea, and  
12 he knew about some problems that Donna Shea was having with  
13 the Cape Way Fish Company.

14 Q At this point did you have an opportunity to observe  
15 Mr. Trenkler and how he was dealing with you?

16 A Yes, I did.

17 Q Would you describe that for us, please?

18 A He was very cordial, friendly, very calm.

19 Q Would you tell us, please, did he go on to say anything  
20 more about Donna Shea?

21 A Other than he knew that there was problems between Cape  
22 Way Fish Store and Donna Shea, there was nothing else --

23 Q Did he say anything about having had dinner with him or  
24 seen him previously?

25 A He further said that he had gone over to the home Donna

1     Shea and her husband John on August 31st and had a dinner  
2     there, a barbecue style type cook-out. He stayed there for  
3     supper and he left shortly, I guess it was around on midnight  
4     he left to go home.

5     Q     He's telling you at this time he left around midnight to  
6     go where, please?

7     A     To go back to his home in Quincy.

8     Q     Did he continue to say anything?

9     A     He did.

10    Q     What did he say?

11    A     He told me that we must consider him a good suspect in  
12    that particular case we were investigating because he was an  
13    electronics engineer and he also repaired microwave ovens.

14    Q     Did you know that about Mr. Trenkler at that moment that  
15    you were standing in this apartment?

16    A     No, sir, I did not.

17    Q     Had you and Detective Tierney indicated to Mr. Trenkler  
18    anything other than the fact that you were investigating the  
19    gateway explosion?

20    A     No, sir.

21    Q     Did he continue?

22    A     He did.

23    Q     What did he say?

24    A     He said if anybody could get an M 80 device, he could go  
25    to Chinatown, anybody could buy that kind of stuff.

1 Q Now, after he said that, Detective, who spoke next?

2 A I told him -- I did.

3 Q What did you say?

4 A I told him we didn't mention any type of device.

5 Q Did you ask him any question at that point?

6 A No, I did not.

7 Q Do you recall asking him anything about the M 80 or any  
8 particular reason as to why he had mentioned it?

9 A I did.

10 Q What did you say?

11 A I told him that we hadn't mentioned any M 80 device, and  
12 why he would pick that particular item out.

13 Q Now, at that time, Detective, how far apart were you from  
14 Mr. Trenkler?

15 A I'd say about three to four feet separating.

16 Q Were you looking at him?

17 A I was looking right at his face, yes.

18 Q Did he have a response to your question as to why he  
19 picked that out?

20 A He didn't have a verbal response.

21 Q What did you see?

22 A He just looked at me in a way I wouldn't forget. I was  
23 in the apartment. It was dark and he just stared right at me.

24 Q Who spoke next?

25 A I believe Al did.



1 Q After what period of time, please, did he speak?

2 A It seemed like a long time -- a few minutes, it was  
3 probably only a minute or two that he had just looked at me  
4 and he mentioned that I had to go to work at Northeastern in  
5 Boston.

6 Q And what then did you do?

7 A We left the apartment. We told him he could go to work.

8 Q You said we left the apartment, who left?

9 A Detective Tierney and I left.

10 Q Did you see Mr. Trenkler leave the apartment?

11 A We were outside the building on the sidewalk and a few  
12 minutes later Mr. Trenkler came out and gone down on his car  
13 and left.

14 Q Did you have an opportunity to see Mr. Trenkler in the  
15 vicinity of his automobile?

16 A We did.

17 Q What did you see in connection with anything with the  
18 automobile?

19 A I believe the automobile was a station wagon, the back  
20 was open. You could see all the cars he had some stuff that  
21 could be electrical tape supplies.

22 Q At that time, any time thereafter that day, Detective, do  
23 you have any further questions, did you have any further  
24 questions for Mr. Trenkler?

25 A On that day?

1 Q Yes.

2 A No, sir.

3 Q Did you place him under arrest?

4 A Not on that day, no, sir.

5 Q Directing your attention to the following day, Thursday  
6 the 4th of September, Detective, do you recall where you were?

7 A I was on duty from 8 to 4 again.

8 Q And did you begin your day any place in particular?

9 A Well, we started off in the police station, but we  
10 eventually went back to 35 Union Street, Mr. Trenkler's  
11 apartment.

12 Q When you say we, you mean who?

13 A Detective Thomas Tierney.

14 Q Went back to 35 Union Street?

15 A Correct.

16 Q Could you tell us, please, what happened there?

17 A Went downstairs to the second floor, knock on the door,  
18 Mr. Trenkler was in the apartment, and we told him we would  
19 like to speak to him down at the Quincy Police Department.

20 Q What did Mr. Trenkler say?

21 A He agreed to come to the Quincy Police Department, we  
22 informed him we would drive his own vehicle there, and the  
23 police car would meet him there.

24 Q To your knowledge there, did Mr. Trenkler drive his own  
25 vehicle to the police station?

1 A He did.

2 Q Would you tell us, please, what happened on your arrival  
3 at Quincy Police Station?

4 A We went to the second floor.

5 Q You say "we," the three of you?

6 A No, Detective Tierney and myself and eventually  
7 Mr. Trenkler came up, we told him where we would be on the  
8 second floor.

9 Q Did he join you?

10 A He joined us in one of the rooms, correct.

11 Q Could you describe the floor, the rooms, the layout?

12 THE COURT: Why do we need to get into this detail?

13 MR. LIBBY: I'll move on.

14 Q The three of you, at some point, were alone in the  
15 conference room?

16 A Correct.

17 Q Now, after you get yourself situated in the conference  
18 room, please, what's the first thing that happened?

19 A I readvised Mr. Trenkler of his rights under the  
20 Miranda. He said he had no questions, he understood them, and  
21 he was still willing to talk to us.

22 Q And then who spoke next, please?

23 A I believe Mr. Trenkler did.

24 Q What did he say?

25 A He told me a story about an unknown male party had

1 contacted him and wanted him to make a device for him.

2 Q Did he say whether -- in reciting this, did he indicate  
3 whether he would be paid for this, do you recall, had this  
4 unknown party was going to pay him to make this device?

5 A I don't think there was any mention of a payment, no,  
6 sir.

7 Q Would you -- directing your attention to your report,  
8 your three-page report there, Detective, the bottom, the  
9 second page, please, take a moment and read that to yourself.

10 A (Witness complies.)

11 Q Can I refresh your recollection?

12 A It does, sir.

13 Q Please, what do you recall now what Mr. Trenkler said?

14 A He paid that he was going to be paid by the unknown man.

15 Q Please continue. Did he say anything at this time about  
16 that device, about delivering that device? Do you need to  
17 refresh your recollection?

18 A I do, sir, I apologize.

19 THE COURT: Maybe he can give us the conversation.

20 A He was going to deliver the device to a man in Weymouth.

21 Q After having said that, did you say anything?

22 A I did.

23 Q What did you say?

24 A Based on that story, I told him I didn't believe him. It  
25 didn't make any sense.

1 Q And what was Mr. Trenkler's response at that time?

2 A At that time he went into the store to tell us how he  
3 made the device.

4 Q Was there any pause?

5 A There was pauses during it, yes, sir.

6 Q And would you describe Mr. Trenkler's demeanor as he was  
7 telling you this?

8 A Again, he was very polite, very calm, very relaxed, a  
9 true gentleman at the time.

10 Q And after you said, I don't believe it, it doesn't make  
11 any sense, what did Mr. Trenkler say?

12 A He went into this story.

13 Q What is the story, please, as best as you can recall what  
14 he said then?

15 A He told me how he made the bomb.

16 Q How was that, and if you need your notes to refresh your  
17 recollection?

18 A Well, he started to talk about it and he was going so  
19 fast and I wanted to get exactly how the bomb was made. I  
20 repeatedly had to tell him to slow down so I can write down  
21 everything in my notes.

22 Q He could see you taking notes?

23 A He was sitting on the opposite side of the table, sir.

24 Q Please, tell us as best as you can recall what he said  
25 then at that time?

1       A     He said he used four AA batteries and two six-volt  
2     batteries to make a 12-volt system. He made a receiver with  
3     parts that he purchased; that he purchased at Radio Shack  
4     stores; that the circuit could be tested with a toggle switch  
5     and some type of light bulb, small type light bulb.

6       Q     Did he say anything about a speaker magnet?

7       A     He said everything was bound together with duct tape and  
8     I believe it was a six-inch speaker magnet.

9           THE COURT: Please, I'm sorry, can you go back for a  
10    moment. You talked about batteries, how many batteries?

11          THE WITNESS: There was four AA batteries, and two  
12    six-volt batteries.

13          THE COURT: Okay. And what was the second item?

14          THE WITNESS: There was a -- the way to test the  
15    circuit using some type after toggle switch and a small type  
16    of light bulb.

17          THE COURT: All right. And then what?

18       Q     I believe you said something about a speaker magnet, sir?

19       A     There was a speaker magnet used and everything was put  
20    together with duct tape. There was a six-inch speaker type  
21    magnet.

22       Q     Did he go on to say anything about remote control?

23       A     He made a remote control device. It would be used to  
24    trigger it. But it had to be done within a short distance, a  
25    half a mile or less.

1 Q Did he make any statement with respect to the presence of  
2 an antenna?

3 A There was an antenna, yes, a piece of wire was used for  
4 the antenna.

5 Q Now, at that point, can you explain, it was explained how  
6 we designed and constructed this device; did you say anything?

7 A I told him I still didn't believe the entire story.

8 Q Did you ask a question of him, please, if you need  
9 something to refresh your memory?

10 A I did ask him a question.

11 Q What was the question?

12 A If there was anything else to the story that he wanted to  
13 change.

14 Q What did he say?

15 A Yes, there was.

16 Q And his demeanor, please, when he said that?

17 A Again, his demeanor remained the same, he was gentle,  
18 relaxed, calm.

19 Q And what did he say?

20 A There was no unknown man.

21 Q Please continue.

22 A He said Donna Shea of the Weymouth had contacted him,  
23 that she just wanted to, as he put it, scare the shit out of  
24 the Wojtanski brothers.

25 Q Did he go on to explain anything further about the

1 device, please, you need to look at your notes?

2 A He told me he put the device together at his house in  
3 Weymouth, in Quincy, and then when he went over to supper at  
4 Donna Shea's house.

5 Q Was that Sunday night?

6 A August 31st, he was given the simulator there, he put it  
7 together and he tested the circuit there.

8 Q Now, please continue. After he puts the device together  
9 at -- this is now, some parts are assembled at his home and he  
10 brings that to the Sheas; is that correct?

11 A Yes.

12 Q That was put at Donna Shea's house after dinner?

13 A That's correct.

14 Q The device is all put together and what then took place,  
15 sir, according to Mr. Trenkler?

16 A They eventually went into the Shea's car, John Shea,  
17 Donna Shea, and Al Trenkler, and they drove back to Quincy  
18 with the device.

19 Q Where specifically did Mr. Trenkler say that they drove?

20 A They were heading up to 295 Willard Street because Donna  
21 wanted to see a Cape Way fish truck.

22 Q Was this a 295 Willard Street where it was ultimately  
23 parked for the explosion?

24 A Correct.

25 Q Continue telling us what happened on the course of his

1 arrival at Willard street?

2 A I don't know if they actually got there. Donna wanted  
3 Mr. Trenkler to put the device on the truck.

4 Q What did Mr. Trenkler then say?

5 A Donna wanted her husband John to put on the device, and  
6 he too wouldn't do it. And Al claimed that an argument  
7 developed between John and Donna Shea, and then Al told me  
8 that he told the Sheas to drive him back to his house in  
9 Quincy which he says they did.

10 Q Was his house in Quincy?

11 A To Al's house in Quincy.

12 Q All right. And then what happened, according to  
13 Mr. Trenkler?

14 A Well, he got dropped off at the house and they left. And  
15 Al said he was preparing for the worst, and he got in his car  
16 and he drove over to West Quincy, to his house.

17 Q When you say West Quincy, is that the vicinity of Willard  
18 Street?

19 A Willard Street is considered West Quincy, yes, sir.

20 Q And Mr. Trenkler went on to explain to you what?

21 A Well, as he was driving over there, he came up on the  
22 intersection of West Quincy and where Willard and Copeland  
23 Streets intersect, and he drove underneath the Expressway, and  
24 when he drove underneath it, he heard a loud explosion. He  
25 continued on around. The expressway you have to go under and

1 over and go back around. It's a giant size four-leaf clover  
2 basically. And when he came back to the area where he would  
3 be able to view where the fish truck was, he said he saw  
4 police and fire engines there, and he just drove off and went  
5 home.

6 Q Now, after Mr. Trenkler completed explaining the sequence  
7 as he claimed, what then took place?

8 A He asked me if he could leave. He had --

9 Q I'm sorry, go ahead.

10 A He asked me if he could leave. His grandmother had died,  
11 he told us.

12 Q And did you have a response for him?

13 A At that time, no, I had a brief little conversation with  
14 Detective Tierney who was in the room, and then I told him  
15 that he could not leave he was under arrest.

16 Q And did you arrest him?

17 A He was formally booked to the detectives, and wasn't  
18 booked to me.

19 Q Did you then leave the room?

20 A Detective Tierney took him downstairs to the first floor  
21 to the booker desk.

22 Q What's in there, please?

23 A The standard booking procedure by the sergeant where they  
24 ask them all the information and they tell him the true  
25 charges where he's arrested for and they injured his charges.

1 Q What charge was he arrested for, please?

2 A He was charged with possession of an inferno machine  
3 under the state law.

4 Q After that, Detective, did you have a further  
5 conversation with Mr. Trenkler that day?

6 A No, sir, I did not.

7 Q Did you take any steps, further steps in connection with  
8 this investigation later that day?

9 A I did.

10 Q What did you do?

11 A I reduced my handwritten notes to a typed report which we  
12 have here.

13 Q Is that a three-page report that you are looking to  
14 refresh your recollection?

15 A Yes, sir and then I --

16 Q I'm sorry, go ahead.

17 A Then I also wrote down some specific notes about the  
18 construction of the bomb that I found significant enough that  
19 I had to send it into the bomb technician who came in the  
20 scene, the night of the incidents and he can understand how  
21 it's made.

22 Q Is that that handwritten note marked 62 for  
23 identification, please?

24 A Yes, sir, it is.

25 Q What did you do with the regular rough notes?

1 A As is my procedure the rough notes are destroyed once you  
2 reduce it into the typewritten report.

3 Q And you filed your final three-page report directly?

4 A I did.

5 Q Now, to your knowledge, sir, how long did that case  
6 remain open?

7 A Pardon.

8 Q How long did that case remain open, the possession of the  
9 inferno device case?

10 A I think it was almost a year.

11 Q All right. Did you have any later contact of any kind  
12 with Mr. Trenkler?

13 A I did.

14 Q On what occasion?

15 A On one occasion, I saw him at the Stop & Shop in the  
16 Southern Artery in Quincy.

17 Q Do you live in that area?

18 A I do not. No, sir, I was working there.

19 Q Did you have an occasion at that time having a  
20 conversation with him?

21 A Just in passing, maybe hello, that was about it.

22 Q Did you have a conversation of any kind with  
23 Mr. Trenkler?

24 A I did.

25 Q Where were you, where was he?

1 A I was wearing a uniform at a cafe, sitting in a Chinese  
2 restaurant in North Quincy.

3 Q Would you tell us, please, briefly what that conversation  
4 consisted of?

5 A Mr. Trenkler was in there with another man.

6 THE COURT: When was this?

7 MR. LIBBY: When was that, detective?

8 THE WITNESS: I honestly don't recall the date.

9 THE COURT: What year? Approximately.

10 THE WITNESS: Maybe 1989.

11 Q It was two or three years following the incident in 1986?

12 A Correct.

13 Q Please?

14 MR. SEGAL: Object, is there some relevance to the  
15 '86 incident, is that what we are talking about.

16 THE COURT: I'm assuming it has some relevance to  
17 something in the case. Is that a fair assumption?

18 MR. LIBBY: Well, your Honor, I think it speaks to  
19 this officer's lack of any bias.

20 THE COURT: Well, nobody has attacked his bias.

21 Q Did your conversation -- I'll ask it this way, Mr.  
22 Segal -- is your conversation on that occasion have anything  
23 to do with the 1986 incident?

24 A It did.

25 Q To what extent did it, please?

I learned from Mr. Trenkler when he was bidding on a job to do some kind of a security surveillances at the restaurant, and he asked me not to mention the previous incident.

And did you comply with him?

I never mentioned it, no, sir, I complied with his request.

I have nothing further. Thank you.

THE COURT: Do you have any questions?

MR. SEGAL: Briefly.

Cross-examination by Mr. Segal

Good afternoon, Detective. My name is Terry Segal and I'll try to be brief. You weren't one of the officers who responded to the scene that morning of September 1st, am I right?

That is correct, sir.

That was officer Terowsky (ph)?

Officer Peter Terowsky.

And did you ever see the material -- you mentioned the late bombings, is that Leo Boyt?

Yes, sir.

Leo has passed away since?

Correct, sir.

Did you ever see the material that was given to him by people on the scene?

No, I did not, sir.

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1           In terms of the larger scheduling, I think at this  
2 point, I can inform the Court and Mr. Segal for purposes of  
3 scheduling, it looks like the Government is going to rest its  
4 case midmorning Wednesday. Just so everyone understands, at  
5 this point, your Honor, there's only really two things that  
6 the Government is looking to offer that relate to the issue  
7 which is still looming.

8           THE COURT: There are two issues now looming, because  
9 there's a defendant's motion on the EXIS business.

10           MR. KELLY: That's Mr. Libby's matter. I know  
11 nothing about this EXIS system. The discussion we've had  
12 about Mr. Shay's statement, I add it now because it gets into  
13 the schedule here. The only two things that we would propose  
14 to do is to, one, recall Agent Leahy for five minutes of  
15 testimony related to the September 18th issue; and two, to  
16 play literally a six-minute excerpt of the WLVI videotape.  
17 We've chopped it to six minutes, to two minutes, now to six  
18 minutes. Late today or first thing tomorrow we could have the  
19 Court and Mr. Segal look at the six-minute tape, preferably  
20 today in case we have to dub anything to tell whether there is  
21 an objection borne in any respect.

22           THE COURT: Show it first to Mr. Segal and let him  
23 decide if there are any objections, if there are no  
24 objections --

25           MR. SEGAL: My sense is I probably will have an

1 objection since he wants to play more than --

2 MR. KELLY: I expect him to object to anything.

3 MR. SEGAL: I'll look at it in fairness, but I  
4 sense --

5 THE COURT: Well, look at it.

6 MR. SEGAL: If it's innocuous, he wouldn't be playing  
7 it.

8 MR. KELLY: Well, it's not going to be innocuous.

9 MR. LOPEZ: Would it be fair to say that the six  
10 minutes would be similar in content to the --

11 THE COURT: Let me say we will proceed with him and  
12 we'll have time at the end of the day when we need to excuse  
13 the jury.

14 MR. KELLY: That's fine.

15 MR. SEGAL: That's fine.

16 ... End of conference at the bench.]

17 THE COURT: Mr. Craig, would you mind standing for a  
18 moment to take the oath, and then we'll proceed.

19 THE CLERK: Please be seated and state your name.

20 THE WITNESS: My name is Robert Francis Craig.

21 THE COURT: Mr. Craig, can you get a little closer to  
22 the microphone and I'll turn up the volume so you can hear  
23 you. Could you say your name again?

24 THE WITNESS: Robert Francis Craig.

25 THE COURT: Go ahead.

Robert Francis Craig, Sworn

Direct Examination by Mr. Kelly

Q Mr. Craig, would you please spell your last name for us, sir?

A C R A I G.

Q You need to pull the microphone closer to you. Where do you reside at the present time, Mr. Craig?

A White Beach, Florida.

Q And would you tell us how old a person you are?

A Twenty-eight.

Q Are you employed at the present time, sir?

A Yes, I am.

Q And what do you do for employment?

A I manage a restaurant in Florida.

Q And where are you from originally, Mr. Craig?

A I'm from Milton, Massachusetts.

Q Where did you go to school?

A I went to Milton High School.

Q Now, do you know an individual by the name of Alfred Trenkler, Mr. Craig?

A Yes, I do.

Q How do you know him?

A We were roommates for about four, four and a half years.

THE COURT: Please keep your voice up, because you need to be heard over here.

1 Q During what time frame were you a roommate of Alfred  
2 Trenkler?

3 A Probably '85, '89, somewhere around there.

4 Q Do you see the Alfred Trenkler that you know in the  
5 courtroom here this morning, sir?

6 A Yes, I do.

7 Q Would you point him out for us, please?

8 A This gentleman over here.

9 Q The record would indicate that he has identified the  
10 defendant. Do you have any other association with the  
11 defendant other than being his roommate for a period of four  
12 years or so?

13 A We also worked with him.

14 Q And what kind of work did you do together?

15 A Microwave communications.

16 Q What was the name of the company, Mr. Trenkler?

17 A AWT Associates.

18 Q And did the AWT stand for anything?

19 A It stands for Alfred W. Trenkler.

20 Q Is it fair to say that you were an employee of the  
21 defendant for a period of time?

22 A Yes, I was.

23 Q And how long were you an employee of AWT Associates?

24 A On and off the time that we lived together and a little  
25 bit before that.

1 Q Not consistently throughout the whole four years?

2 A Well, technically, I was the whole time, but we did other  
3 jobs, and so forth, in between that time.

4 Q Again, you kind of have to keep your voice up. It has a  
5 tendency to fade. What was your specific job or role with AWT  
6 and associates?

7 A Just troubleshooting, climbing.

8 Q What does "troubleshooting" mean in the context of this  
9 business?

10 A Replacing wires or anything like that.

11 Q And what business was AWT associates in?

12 A Communications.

13 Q And was it exclusively the installation of microwave  
14 systems or were there other activities that that company  
15 engaged in?

16 A We installed several different ones with antennas, and so  
17 forth.

18 Q And how long was that company in existence for,  
19 Mr. Craig?

20 A I'm not sure, maybe four or five years. I don't know, I  
21 don't know how long a period. I couldn't tell you.

22 Q Was it in existence the entire time you were a roommate  
23 of the defendant?

24 A As far as I know, I think he -- bankruptcy is somewhere  
25 in there also.

1 Q Did the company run into some financial problems?

2 A Yes.

3 Q And did you have to find employment elsewhere after that,  
4 Mr. Craig?

5 A Yes.

6 Q Now, just so we get the time frame correct, sir, when did  
7 you actually relocate to Florida?

8 A In '89, in September '89.

9 Q How long after you ceased to be a roommate of the  
10 defendant did you relocate to Florida?

11 A I drove to Florida in September, and I never came back.

12 Q So, when you were last in Massachusetts, you were living  
13 with the defendant; is that fair to say?

14 A Yes.

15 Q And how many different locations, apartments of the like  
16 were you residing at with the defendant during the four years  
17 that you were his roommate?

18 A About four.

19 Q And throughout that period of time in these various  
20 locations, did you pay rent for the apartments?

21 A Yes, well, when I worked, the money would go toward the  
22 rent and bills.

23 Q And when you didn't work what happened?

24 A The money we had in the bank went toward the rent and  
25 bills.

1 Q Were there any times that Mr. Trenkler paid the rent and  
2 you didn't have to contribute?

3 A No, I wouldn't say that.

4 Q What would you say?

5 A Like I said, any monies that we earned went towards bills  
6 and rent.

7 Q Was there any time in that four years that you weren't  
8 earning income, you weren't employed, Mr. Craig?

9 A There was times when we weren't working, yes.

10 Q Let's not use "we," let's use you. Were there times  
11 during the four years that you weren't deriving income or  
12 working?

13 A Yes.

14 Q And during those periods of times, sir, did you  
15 contribute to the rent?

16 A No.

17 Q It's fair to say the defendant paid the rent, is it not?

18 A It's fair to say that the money that was made was made by  
19 both of us.

20 Q Are you telling me --

21 A It was all the same --

22 Q Are you telling me when you were unemployed, he was  
23 unemployed?

24 A If I wasn't working, he wasn't working most of the time.

25 Q And on those occasions when both of you weren't deriving

1 income, how would you pay the rent?

2 A Like I said, any money that we had would go towards rent,  
3 otherwise there wasn't any money, we didn't pay rent.

4 Q Now, how was it you became a roommate of the defendant,  
5 Mr. Craig?

6 A I met him through a mutual friend.

7 Q What was that friend's name?

8 A Brian O'Leary.

9 Q And had you worked for him prior to becoming a roommate?

10 A Yes.

11 Q For how long a period of time?

12 A Not very long, maybe two or three jobs.

13 Q Did this Mr. O'Leary worked for AWT Associates?

14 A Yes, he did.

15 Q And how old were you during the time, the four-year  
16 period that you resided with the defendant, Mr. Craig?

17 A I think I was -- I just turned 20 or I was still 19, 23,  
18 24.

19 Q And when you left being the roommate of the defendant and  
20 relocated to Florida did you leave on good terms with the  
21 defendant?

22 A Yes.

23 Q Is it fair to say, sir, that the two of you weren't  
24 getting along in 1989 when you left?

25 MR. SEGAL: Objection. I think we got the answer

1 already.

2 THE COURT: No, he's entitled to the question.

3 A We had our fights and so forth.

4 Q Do you recall previously testifying, Mr. Craig, in March  
5 of 1992?

6 A Yes.

7 Q And do you recall me asking --

8 MR. SEGAL: Can we get a page and a line?

9 MR. KELLY: Line, page 15.

10 A I just read that in the room in the back and I did say  
11 that, but it wasn't like --

12 Q Since nobody knows what you're talking about, let me help  
13 clarify this. Is it fair to state that line 6 that I asked  
14 you about your reason or reasons for leaving Massachusetts to  
15 Florida, correct?

16 A I had no intention on leaving. I was just going to work.

17 MR. SEGAL: I think he should read the question and  
18 the answer.

19 MR. KELLY: I don't think Mr. Segal wants me to do  
20 that, because you have to read the previous question and I  
21 don't think Mr. Segal --

22 THE COURT: If he wants you to, go right ahead and  
23 read it.

24 MR. SEGAL: I'll let him summarize, that's fine.

25 Q Is it fair to say that I asked you some questions about

1 your reasons for leaving to Florida, Mr. Craig?

2 A Yeah, you did ask me questions about it.

3 Q And one of the first things you said to me to use your  
4 phrase was "we weren't getting along."

5 Do you remember saying that?

6 A Yes, I do.

7 Q I want to direct your attention, sir, to the month of  
8 September of 1986, do you recall something happening in the  
9 month of September 1986 as involves your then roommate,  
10 Mr. Trenkler?

11 A I couldn't say that -- I knew that it was in September of  
12 '86, but I know what you're talking about.

13 Q What do you understand me to be talking about?

14 A What I'm here for.

15 Q An explosion that took place in Quincy in that year?

16 A Yes.

17 Q You don't recall the specific month?

18 A I don't recall what date it was.

19 Q Do you remember what time of the year it was that this  
20 occurred, Mr. Craig?

21 A I -- it was in the fall.

22 Q When did you first learn about the fact that someone was  
23 interested in having some type of an incident occur. Let me  
24 rephrase that. Let me withdraw that question.

25 Did you become aware prior to the date of an

1 explosion that something was to occur? Did you learn about  
2 that in advance?

3 A I didn't know there was going to be an explosion any  
4 time.

5 Q You knew there was something going on prior to the  
6 incident in question, did you not?

7 A There was talk of revenge or something like that, but it  
8 was casual conversation.

9 Q Between who?

10 A Between Donna Shea and Alfred.

11 Q And were you present when any of these conversations  
12 about revenge took place?

13 A Yes, I was.

14 Q Where did it take place?

15 A I'm not sure, but probably Donna Shea's house or parking  
16 lot or something.

17 Q And in connection with any of those conversations,  
18 Mr. Craig, did anybody reference something called a "military  
19 simulator"?

20 A No, not right away. Something was introduced later on.

21 Q Were there a series of discussions about this topic  
22 between Mr. Shay and Mr. Trenkler that you were present at?

23 A Like I said, there was casual conversation where I was  
24 different or series.

25 Q Were there a series of these casual conversations?

1 A I'm sure there were, yes.

2 Q Do you have a present memory that there were more than  
3 one?

4 A I am sure, yes.

5 Q And at what point after how many such conversations do  
6 you recall a topic of a military simulator being raised?

7 A I don't recall. I just remember it being mentioned. I  
8 don't recall when or where.

9 Q Who mentioned it?

10 A It was introduced by a friend of Donna's. I don't recall  
11 if it was mentioned by her or by him or by someone else.

12 Q Do you recall Mr. Trenkler making any statements or  
13 remarks about this military simulator?

14 A Not really. He might have mentioned something that I  
15 wouldn't be able to remember.

16 Q Did Mr. Trenkler express any ideas involving this  
17 military simulator, sir?

18 A It was a simple 120 charge. He probably mentioned  
19 something about that 12 volt.

20 Q Call us what you recall him saying?

21 A I don't recall him saying anything specific.

22 Q What did you say about a 12-volt charge, what was that?

23 A A device was set off by a 12-volt charge as far as I  
24 know.

25 Q What else do you remember hearing?

1 A Something about the simplicity of setting off a 12-volt  
2 charge.

3 Q And who is talking when you heard this?

4 A Alfred and I don't know anybody else.

5 THE COURT: Please keep your voice up, Mr. Craig.

6 Q Go ahead. I'm sorry, Alfred and who else?

7 A I don't know if he would be talking to anybody else  
8 specifically.

9 Q Now, at some point, did you see this thing that was being  
10 discussed, this military simulator?

11 A I think I saw it once or twice, maybe.

12 Q Okay. And where were you when you saw it, sir?

13 A Probably in her apartment, Donna's apartment or in the  
14 parking lot.

15 Q Describe to us, what it looked like, as best you recall?

16 A I think it was oval shaped. It was white, 6 inches tall,  
17 it had caps on the top.

18 Q What was it made of, if you recall?

19 A Hard plastic, I don't know.

20 Q Did you see any wires?

21 A No. It was just connectors, I think.

22 Q Now, after there was this discussion and you had the  
23 opportunity to see this thing a couple of times, what happened  
24 next as it concerns your roommates Mr. Trenkler's involvement  
25 in this matter, if you recall?

1 A He purchased a remote control car and set up a 12-volt  
2 charge, and somehow affixed it to the simulator.

3 Q Now, you said he purchased a remote control car, were you  
4 with him when he did that?

5 A Not to my knowledge, no.

6 Q Did you see the remote control car?

7 A Yes, I did.

8 Q Do you know where he purchased it?

9 A Radio Shack, I think.

10 Q And once he purchased the remote control car, what did he  
11 do with it, Mr. Craig?

12 A Disassembled it and affixed it to the simulator.

13 Q Okay. Where did he do that?

14 A In Donna Shea's parking lot.

15 Q In her parking lot, he did not do that at your apartment?

16 A Not to my knowledge, no.

17 Q He didn't do that at the business of AWT Associates?

18 A No.

19 Q He didn't do that at his parents' garage?

20 A No, definitely not.

21 Q He did it at a parking lot?

22 A Yes.

23 Q Did you help him in this process of constructing this  
24 item, sir?

25 A Yes, I did.

1 Q What did you do?

2 A Maybe ripped off a piece of electrical tape here and  
3 there. I never actually saw the entire thing together.

4 Q What other component parts do you recall seeing other  
5 than the internal guts of this remote control car, Mr. Craig?

6 A Just a speaker magnet.

7 Q And can you describe this speaker magnet to us?

8 A It was round, probably six inches around.

9 Q And what color was it?

10 A Grayish.

11 Q And did it have anything affixed to it?

12 A I think it might have had a rubber outer coating on the  
13 outside, but nothing else to my knowledge.

14 Q Do you know where that speaker magnet came from?

15 A From a car stereo speaker.

16 Q Were you present when the defendant obtained that item?

17 A I think he already had it in his truck or in the car.

18 Q What, if anything, did the defendant say to you about  
19 where he acquired that item?

20 A He didn't say anything to me about acquiring the magnet.

21 Q Do you remember seeing any other components, wires,  
22 batteries, anything like that, what do you recall?

23 A There must have been a battery, but I don't recall.

24 Q Do you recall wires?

25 A It could have been wires, but I don't recall anything

1 specific.

2 Q Do you recall any kind of tape?

3 A Yeah, we used a gray electrical tape.

4 Q Is that what's known as duct tape?

5 A Yes.

6 Q What did you use that for?

7 A To tape everything together.

8 Q You say you never saw the finished product?

9 A Not together. I've seen all the products at one time,  
10 but I never saw them all together as one.

11 Q Now, who designed this thing you're describing to us,  
12 sir?

13 A There was no design. All is what you needed was a  
14 12-volt charge.

15 Q Whose idea was it?

16 A It was Alfred's.

17 Q Now, what was your understanding based on any discussions  
18 that you had had with the defendant that had occurred in your  
19 presence as to what this item, this device was going to be  
20 used for?

21 A It was just to scare somebody to --

22 Q Do you know where the item was supposed to be placed?

23 A It was supposed to be placed on the back of a truck, fish  
24 truck.

25 Q Okay. Were you asked to participate in that process?

1 A Yes, I was.

2 Q Did you agree to do so?

3 A No, I was afraid to get that far involved.

4 Q And so when you were asked, did you refuse?

5 A Yes.

6 Q I'm sorry, sir?

7 A Yes, I did.

8 Q Were you present when someone else affixed this device to  
9 the back of the fish truck?

10 A No, I wasn't.

11 Q Do you know how long it took your roommate Mr. Trenkler  
12 to acquire the components necessary to construct this thing  
13 that you described?

14 A They already had the simulator so all he had to do was  
15 get the remote control car.

16 Q Did he get it in a matter of an afternoon or did he take  
17 a few days?

18 A It was one day probably. It might have been two, but not  
19 to my knowledge.

20 Q When you built this thing in the parking lot or  
21 Mr. Trenkler built it in the parking lot, do you recall how  
22 long you were out there working?

23 A No, I have no idea how long it could have been.

24 Q Now, did there come a time -- strike that.

25 Do you know an individual by the name of Todd Leach?

1 A Todd Leach?

2 Q Todd Leach.

3 A It sounds familiar, but I don't think I'm aware of that  
4 person, no.

5 Q Do you recall my asking you back in March of 1992 the  
6 question -- I'm on page --

7 A I remember who he is now.

8 Q I'm sorry. You remember who he is now?

9 A Yeah.

10 Q Who is Todd Leach?

11 A He's Donna's sister's son, I think.

12 Q Donna Shea's nephew?

13 A Yeah.

14 Q And back in 1986, at the time this device was being  
15 constructed, do you know how old Todd Leach was?

16 A He was like nine or ten.

17 Q Was Todd Leach present to your memory at the time that  
18 Mr. Trenkler was in the parking lot constructing this device?

19 A Yes, he was running around there playing.

20 Q Do you know what, if any, role Todd Leach played in the  
21 operation of this speaker magnet that you had just described?

22 A No, not the speaker magnet as far as I knew. I also have  
23 that just laying around.

24 Q Do you understand Mr. Leach to have a role in the  
25 acquisition of any other components to this device?

1 A I think he might have gone to the Radio Shack with them,  
2 I'm not sure.

3 Q Okay. Were you present when that shopping trip was made  
4 at the Radio Shack?

5 A I was aware of it. I wasn't present.

6 Q You didn't go into the store yourself?

7 A No.

8 Q And did you have conversation with Al about the fact that  
9 Mr. Leach went with him to the Radio Shack?

10 A No, I didn't have conversations, no.

11 Q When you say you were aware of it, then, what do you  
12 mean, sir?

13 A I just remember somehow that he was with him.

14 Q By the way, was there anybody else present besides  
15 yourself and this Mr. Leach at the time that this device was  
16 constructed and assembled?

17 A Donna maybe and her sister might have been there. She  
18 probably wasn't aware of what was going on.

19 Q You mentioned at the outset that there was some talk of  
20 revenge. What was your understanding as to the basis of that  
21 discussion, why there was a need to have revenge?

22 A I guess this guy had got stiffed on or something. I  
23 don't know what the actual events were that happened.

24 Q Now, you were a roommate of Mr. Trenkler, did you  
25 understand that Mr. Trenkler knew this fellow from the Cape

1 Way Fish Company?

2 A I think I knew of him. I don't think he was a friend of  
3 his.

4 Q Was it your understanding that the defendant, your  
5 roommate, that had a problem with the fellow from the Cape way  
6 fish problem?

7 A No, he didn't have a problem with him.

8 Q Do you have any understanding about whether or not your  
9 roommate was supposed to receive anything for constructing  
10 this device such as money?

11 A I think he might have owed some money -- he might have  
12 owed Donna some money and that would get rid of the debt.

13 Q That was your understanding?

14 A As far as I knew.

15 Q Now, did there come a time when you had a discussion with  
16 your roommate, Mr. Trenkler, about the incident at the fish  
17 truck?

18 A We talked about it briefly, but just in casual  
19 conversation.

20 Q Directing your attention to the evening that you  
21 understood that this device actually exploded, do you have  
22 that evening in mind?

23 A Yes.

24 Q You've already told us that you didn't go out to the fish  
25 truck because you didn't want to be involved?

1 A Yes.

2 Q Is it fair to say that you had gone to bed, correct?

3 A Before he came home, to my knowledge, I was asleep.

4 Q You had gone to bed, Mr. Trenkler was not at home, do you  
5 recall what time it was that Mr. Trenkler returned home that  
6 night?

7 A That night, it would have to be later after 12 or  
8 something.

9 Q Okay. And when he returned home, did he wake you?

10 A Not to my knowledge, I don't remember, but I could have,  
11 I'm not sure.

12 Q Did you have a discussion with your roommate after he  
13 returned home that night?

14 A Like I said, I don't recall after that particular  
15 evening, but I know we did have a short conversation about it.

16 Q Is it fair to state, Mr. Craig, you had a discussion with  
17 your roommate, either that night or very early the next day  
18 about what had happened that night, correct?

19 A Yes.

20 Q And tell us what he told you, let's start -- let's break  
21 it down. What, if anything, did he tell about who affixed  
22 this device, if anyone, to this Cape Way fish truck?

23 A To my knowledge, he was the one that put it on the truck.

24 Q You tell us what you recall him telling you, did he tell  
25 you that he put it on the truck?

1 A Yes.

2 Q What did he tell you next he did after he put it on the  
3 truck?

4 A I think he told me that he forgot to take the cap off and  
5 the 12-volt.

6 Q Okay. So what happened next based on what he told you?

7 A He would have to go back and take the cap off because he  
8 it wouldn't go off otherwise.

9 Q Then what did he tell you next happened?

10 A He went around the corner towards this vehicle, and set  
11 it off.

12 Q Okay. Did he tell you where his vehicle was parked?

13 A He didn't tell me any specifics. He said he was around  
14 the corner and then --

15 Q Did he tell you where the fish truck was parked at the  
16 time?

17 A It was on the street on the young man's house.

18 Q Did he tell you how far his car was parked and where the  
19 truck was even though he may not have specifically told you  
20 where it was, did he tell you how far it was from the fish  
21 truck?

22 A He might have mentioned it, but I don't recall how far he  
23 was.

24 Q Do you have an understanding, based on discussions you  
25 had had with Mr. Trenkler, about how far he had to be away

1 from the remote control receiver in order for the transmitter  
2 to send the appropriate signal?

3 A It was a very inexpensive model so you wouldn't be able  
4 to go too far to set the charge up.

5 Q Do you recall having a discussion with him in which he  
6 told you he had to be about 60 yards away or inside of 60  
7 yards?

8 A I don't recall. I'm not sure that he would have to be at  
9 least that.

10 Q And what did Mr. Trenkler tell you about who detonated  
11 that device?

12 A He didn't say that he had detonated it. I don't think we  
13 talked about any specifics. I just assumed that he was the  
14 only one there, so.

15 Q Let me ask you, do you recall, in March 1992, page 25, I  
16 asked you the following question --

17 MR. SEGAL: Do you have a line?

18 MR. KELLY: Let's take it starting line 11, just to  
19 put it context, Terry, over to the beginning of the following  
20 page.

21 Q Tell me if you recall this question and answer,  
22 Mr. Craig:

23 "Question: When did you next hear anything about  
24 this particular object?

25 "Answer: Well, I had since gone to bed. I assume

1 before he had come home because I didn't know anything about  
2 it until the next day.

3 "Question: What happened the next day?

4 "Answer: He had just told me that it didn't do any  
5 damage, it was just was, just made a loud noise.

6 "Question: Did you understand by this discussion him  
7 to be suggesting that he in fact had first attached it to the  
8 truck?

9 "Answer: Yes.

10 "Question: And second, that he had actually  
11 detonated it?

12 "Answer: Yes.

13 "Question: What else did he tell you about that?

14 "Answer: He told me something about -- he mentioned  
15 something about the safety clip was attached when he first put  
16 it on there, so it wouldn't detonate.

17 "Question: And so he had to go back and do  
18 something?

19 "Answer: Yes.

20 "Question: What else did he tell you?

21 "Answer: That's about it.

22 "Question: Now, did you know from any of these  
23 discussions during the making of this process or making  
24 process or afterwards, how far he was able to be away from the  
25 device with the remote control before it would actually

1 detonate?

2 "Answer: The remote control was the one that would  
3 detonate it, and I'm sure it wouldn't be a very long distance  
4 that he could be away from it, no more than 60 yards; he  
5 couldn't go further than that."

6 Do you recall those questions and answers, Mr. Craig?

7 A Yes, I do.

8 Q And does that accurately restate the discussion you had  
9 with Mr. Trenkler, your roommate, the following day after this  
10 explosion?

11 A Yes.

12 Q And did he tell you, sir, that he was actually inside his  
13 vehicle at the time that he actually used the transmitter to  
14 send the remote control signal?

15 A I don't think that he mentioned anything about being in  
16 his car, no.

17 Q You just remember that he went back to his car that was  
18 parked around the corner?

19 A Yes.

20 Q Do you recall if he told you that there was anybody else  
21 with him at the time that he detonated this bomb?

22 A There was nobody else there.

23 Q Did he tell you where the truck was parked when he  
24 affixed the device to the truck?

25 A It was in front of the young man's house.

1 Q How did you know that?

2 A I had seen it earlier that day there.

3 Q Had you people driven by it?

4 A Yes, and it was on the way towards our apartment. We  
5 went by it several times a day.

6 Q Several times a day?

7 A Yes.

8 Q Do you remember making any specific trips to locate the  
9 truck that particular day?

10 A Not anything specific. We always drove in that area, you  
11 know.

12 Q Did Mr. Trenkler tell you what time he affixed that  
13 device to the truck?

14 A I don't think he gave me any specific time.

15 Q Do you recall within a couple of days after this  
16 incident, some police officers coming over to your apartment?

17 A Yes, I do.

18 Q Do you remember the names of any of those officers?

19 A No, I don't.

20 Q Do you remember a Detective Lanergan?

21 A They never really spoke to me, so I wouldn't know.

22 MR. KELLY: I have nothing further, your Honor.

23 THE COURT: Mr. Segal.

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Cross-examination by Mr. Segal

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Q Good afternoon, Mr. Craig. My name is Terry Segal, going to try to get you out of here by one.

I represent Mr. Trenkler.

AWT Communications, you and Al worked for that company, sir?

A Yes.

Q Weren't some of the projects putting up towers in Rhode Island?

A Yes, they were.

Q You put up transmission towers together?

A Yeah, we had rented some towers, yes.

Q And did your work over at Videocom at Dedham, putting in some dishes?

A Yes, we did.

Q The dishes are not the china in our house, but, I assume, these satellite dishes to receive signals?

A Yes, we did.

Q And you talked about Brian O'Leary. He did the carpentry work on some of those projects, didn't he?

A He was also involved in some of the other circumstances. He was a climber, also. He did a lot of carpentry work, yes.

Q From time to time, if Al was short of funds, did he occasionally rely on his parents for money?

A Yes, I'm sure.

1 Q And from what you could see, they were fairly affluent?

2 A Yes, they were.

3 Q I think you testified when Al came back after this device  
4 went off, he said it didn't do any damage to the truck; is  
5 that right?

6 A That is correct.

7 Q Just made a loud noise?

8 A Yes.

9 Q Didn't you understand that Donna Shea really asked him to  
10 do this. This wasn't his idea?

11 A Yes, Donna Shea did ask him to do it.

12 Q Wasn't it your understanding that she basically  
13 intimidated him to do it?

14 A She was a very intimidating girl.

15 MR. KELLY: A young lady, for the record.

16 Q I think she said he owed her some money, which was a sort  
17 of a leverage that she could use; isn't that fair to say?

18 A Yes.

19 Q Al really wasn't -- he was timid about doing this?

20 A Yes, he was.

21 Q And he had no intention of hurting anybody?

22 MR. KELLY: I would object to his intention.

23 THE COURT: Objection is sustained.

24 Q Do you understand that the police dropped the charges in  
25 this case?

1 A Yes, I did.

2 Q And Al said he wasn't proud of what he had done?

3 A I don't recall him saying that, but I know --

4 MR. KELLY: Objection.

5 THE COURT: The objection is sustained.

6 Q When the parts were purchased for this device, you  
7 weren't present, I take it?

8 A Not to my knowledge, no.

9 Q You never went on any trip to New Hampshire with this  
10 Todd Leach; is that fair to say?

11 A No.

12 Q Never went on any trip with Todd from the time you knew  
13 Al; is that right?

14 A No, not to my knowledge.

15 Q Now, this flash simulator, you described some sort of  
16 white cone. Did you understand that Donna Shea or one of her  
17 friends supplied that device?

18 A Yes, one of her friends. I don't know who it was.

19 MR. SEGAL: Thank you very much, Mr. Craig.

20 THE COURT: Anything else?

21 MR. KELLY: No, your Honor.

22 THE COURT: Thank you, Mr. Craig, you're excused.  
23 That's it for the morning?

24 MR. KELLY: That's it for the morning.

25 THE COURT: Members of the jury, we will now stop

1 until 9 o'clock tomorrow morning. You are now excused, with  
2 the usual admonition.

3 [Whereupon, the jury left the courtroom.]

4 THE COURT: All right. I'll see counsel.

5 Court is in recess. I wish to talk about to counsel  
6 about scheduling.

7 [Conference at the bench, as follows:

8 THE COURT: Mr. Segal, who is David McGarry?

9 MR. SEGAL: David McGarry is a resident of Plymouth,  
10 your Honor.

11 THE COURT: What do we need him for?

12 MR. SEGAL: Mr. Kelly, I believe, is going to put on  
13 some other residents in Plymouth. And he has some testimony  
14 in connection with one of the residents of Plymouth.

15 THE COURT: They're going to tell us what?

16 MR. SEGAL: I think he has --

17 THE COURT: Not what he has. What is McGarry going  
18 to tell us?

19 MR. SEGAL: One thing he's going to tell us that he  
20 was in the same cell with Mr. Trenkler for three or four  
21 months and Trenkler never said anything about this case, which  
22 is directly contradictory to what the Government will put on,  
23 a fellow who was with Mr. Trenkler for three days.

24 THE COURT: How can that come in?

25 MR. SEGAL: What Mr. -- Well, if the Government puts

1 on somebody --

2 THE COURT: The Government can put on evidence that  
3 you cannot. This is not tit for tat.

4 MR. SEGAL: Well, that is one point that would cast  
5 doubt on the fact that Mr. Trenkler would say voluntarily I  
6 built a bomb. He lived with the guy for three or four  
7 months. And the second point is, I think there's a  
8 possibility that the Government is putting on a witness named  
9 Mallick.

10 THE COURT: The Government is not putting on  
11 Mallick.

12 MR. SEGAL: All right.

13 THE COURT: YOU don't need McGarry, right?

14 MR. SEGAL: Well, I still think I need him for point  
15 one.

16 THE COURT: I don't believe it's admissible.

17 MR. KELLY: It's hearsay.

18 THE COURT: He can tell us what Mr. Trenkler he can  
19 put on evidence what Mr. Trenkler said to X, like Mr.  
20 Lindholm. But you cannot put on evidence about what  
21 Mr. Trenkler did or did not say to somebody else.

22 MR. SEGAL: I think I could put on evidence that he  
23 didn't say to this guy anything.

24 THE COURT: That's not probative of anything.

25 MR. SEGAL: You talk about inferences, and we're into

1 that around here. It seems to me you can draw an inference  
2 where he's living with a fellow for three or four months and  
3 doesn't say anything about the cases. It's awfully odd that  
4 in three days he talks to the other fellow.

5 THE COURT: That case you're offering it on the  
6 Lindholm's admissibility. So, it seems to me, that there are  
7 a number of reasons why that evidence doesn't come. So, I  
8 will not issue the writ of habeas corpus to bring him in.  
9 Save the state a trip.

10 Now, second, there is a motion in limine to exclude  
11 admission of EXIS computer evidence. I would like some  
12 response to the Government on that. You only got this, this  
13 morning.

14 When is this guy going to come in and testify about  
15 it?

16 MR. LIBBY: It was tomorrow -- I mean, your Honor,  
17 this has been flagged out for months.

18 THE COURT: I understand. And Mr. Segal was here  
19 when the guy testified during the earlier trial. Why are we  
20 getting it at this late date?

21 MR. SEGAL: The reason, and I don't fault Mr. Libby,  
22 as a result of our motion last week, Mr. Libby went out and  
23 found out --

24 THE COURT: The same motion would lie if you had the  
25 stuff.

1 MR. LIBBY: Absolutely, your Honor.

2 MR. SEGAL: I think there is a much different issue.

3 THE COURT: No, the best evidence is not an issue.

4 Because if the evidence is unavailable, then, there isn't best  
5 evidence. I mean, best evidence -- the whole rule disappears  
6 when the evidence is unavailable.

7 MR. LOPEZ: Your Honor, the reports that we requested  
8 last week are unavailable. Best evidence, with all due  
9 respect, does apply because the original investigative  
10 reports, there's been no representation that the original  
11 investigative reports upon which another report is filed, upon  
12 which another encoding form is layered, which eventually gets  
13 into the computer. There's been no representation that those  
14 original investigative reports do not exist.

15 If we're talking about --

16 MR. LIBBY: I'll tell you right now, they don't  
17 exist. There's no layer upon layer.

18 THE COURT: That's what we were talking about last  
19 week, in response to your motion. And as to that, the  
20 Government agreed, with respect to the seven incidents, to  
21 produce. And now they tell you it isn't there. And to the  
22 extent that it's a best evidence problem, if it's unavailable,  
23 the best evidence goes. To the extent you're talking about a  
24 hearsay problem, that's a problem that's existed from day one.

25 MR. LOPEZ: Your Honor, I believe you may be

1 misunderstanding the import of the investigative reports upon  
2 which I am referring.

3 THE COURT: I don't think so. There are reports made  
4 by the field out there where they've investigated a bombing,  
5 then there are encoding forms, and then it goes into the  
6 computer.

7 MR. LOPEZ: For example, let's take the ATF reports.  
8 Mr. Waskom, in this case, filed an EEO report. That is what I  
9 am calling an original investigative report. That is not the  
10 report that Mr. Waskom looks at and places into the computer.

11 THE COURT: Mr. Scheid.

12 MR. LOPEZ: Mr. Scheid. Mr. Scheid received yet  
13 another form which someone, we don't know, places from, for  
14 example, Mr. Waskom's EEO report. It is then put on to this  
15 reporting form, and then this reporting form is then put on to  
16 an encoding form, and that encoding form is then put into the  
17 computer. Now, we're talking three levels of hearsay here.

18 THE COURT: I don't want to argue this motion right  
19 now. I just would like to have a response to the motion from  
20 the Government of some kind to the motion has an opportunity  
21 -- not now.

22 MR. LIBBY: I will say right now, for the record,  
23 your Honor, so far as best evidence is concerned, absolutely,  
24 you're on the money.

25 Second, with respect to this hearsay --

1 THE COURT: Since I'm so wrong so much of the time.

2 MR. LIBBY: With respect to hearsay, your Honor, you  
3 get this motion three weeks into the trial, eight months after  
4 this has been flagged is absolutely inexcusable.

5 THE COURT: Maybe you can give me tomorrow morning  
6 something on the merits.

7 MR. LIBBY: I'll flag it for you. We're going to go  
8 business records and public records, and that's it.

9 MR. LOPEZ: We'll note our objection now.

10 THE COURT: Yes.

11 About scheduling, what else do we need to talk about  
12 with respect to scheduling?

13 MR. KELLY: I was going to -- I brought up the  
14 six-minute tape. I was going to take a few minutes to show  
15 it.

16 THE COURT: Because I have other things to do. I  
17 have a meeting with my court.

18 MR. KELLY: What the Government proposes to do is the  
19 following, we will open the morning with calling Mr. Hankard.  
20 We're trying to avoid that, he's a retired chemist. We need  
21 his report, obviously. We're bringing Mr. Hankard.

22 We're going to call Todd Leach.

23 THE COURT: He was the nine-year old at the time?

24 MR. KELLY: He was 11 or 12.

25 MR. SEGAL: He'll have him up to 17 by the time of

1 tomorrow morning. He was 11 at the time. This guy missed by  
2 two years.

3 MR. KELLY: We have Mr. Scheid and we have  
4 Mr. Waskom.

5 Then I was going to propose to show whatever excerpt  
6 we can agree on here, which I hope this is it.

7 We would, ideally, hope to recall Agent Leahy  
8 briefly, if the Court permits that.

9 What we have left, literally, for Wednesday, which  
10 will take us no more than two hours, is this Lindholm, the  
11 inmate, and Frank Foley, and that's the Government's case. We  
12 will be finished with our case by, I think, 11 o'clock,  
13 Wednesday morning.

14 THE COURT: By the recess, for sure.

15 THE COURT: My recollection is Mr. Foley's testimony  
16 is not all that long.

17 MR. KELLY: It's about 30 minutes. And frankly, your  
18 Honor, partly in the interest of time and partly because I  
19 know we've imposed on you many times, we're prepared to forgo  
20 recalling Mr. Plant. We really are interested in two things.  
21 One is Mr. Leahy's one five-minute piece of testimony, and  
22 this six-minute tape.

23 THE COURT: Okay. Now, what's the possibility of  
24 getting this case to the jury preferably on Tuesday, hopefully  
25 on Monday, before Thanksgiving?

1 MR. SEGAL: Think -- I think, I assume Mr. Kelly  
2 rests at 11.

3 THE COURT: You have half a morning on that day.

4 MR. SEGAL: And Tuesday of next week.

5 THE COURT: One of the things I'm considering is  
6 asking the jury whether, in order to get it done by  
7 Thanksgiving, they wouldn't mind sitting on the holiday this  
8 week. I'm prepared to do that. If -- I think it is more  
9 important to get it to the jury before Thanksgiving and in  
10 adequate time before Thanksgiving so they're not going to rush  
11 to a verdict, in order to get home for Thanksgiving. And I  
12 think it would be terrible to have a recess of five days --

13 MR. SEGAL: I understand.

14 THE COURT: -- during deliberations.

15 MR. SEGAL: Here's my problem. We've told witnesses  
16 to be available Wednesday and then,, Friday. I'm worried that  
17 some people might have made plans.

18 THE COURT: The jury might not be able to do it  
19 anyway, I'm prepared to ask them. And my bet is that they  
20 will rearrange their lives to do it, if that's the choice.

21 THE COURT: I haven't asked Ms. Walker, either.

22 MR. SEGAL: Your Honor, I never thought that was a  
23 possibility, so I told witnesses Wednesday or Friday.

24 MR. SEGAL: I understand. I didn't think of it  
25 until --

1           MR. SEGAL: I know I have to be ABLE to get  
2 witnesses. My sense is, and I want to sit down with a fine  
3 tooth comb, but if I start Wednesday --

4           THE COURT: You will finish.

5           MR. SEGAL: And forgetting Thursday and put in Friday  
6 and then Monday and Tuesday, I think by the following Monday  
7 or Tuesday, I'd say Tuesday morning, I'll be through. I don't  
8 know how much Mr. Kelly will have on rebuttal.

9           When do you want it to go to the jury?

10          THE COURT: Preferably, at the latest, I would like  
11 to have arguments and charge on Tuesday, in order to have the  
12 jury have Tuesday and Wednesday to deliberate. Because if we  
13 get it to the jury on Wednesday, there is a good likelihood  
14 that they will try to get to a verdict, be home for  
15 Thanksgiving.

16          MR. SEGAL: You're going to run into the same problem  
17 on Wednesday's deliberation.

18          THE COURT: Well, but at least we will have given  
19 them a chance to review the evidence. The absolutely best  
20 would be to give it to them on Monday, and then we would have,  
21 hopefully, no problem. Obviously, if they're hung, they're  
22 hung.

23          MR. SEGAL: I see that as a -- I see finishing  
24 Monday. I don't know how many witnesses Mr. Kelly has.

25          THE COURT: Leave out his. I want to know about

1 yours.

2           Anyhow, think about it. Let's talk about it  
3 tomorrow. And before the jury comes, let me know. Because  
4 I'm inclined to ask the jury, in order to get it done before  
5 Thanksgiving, if it would not be okay for them to sit on  
6 Thursday. I'm prepared to sit the whole day on Thursday, if  
7 necessary.

8           MR. SEGAL: Are you saying --

9           THE COURT: Then we would certainly get it done.  
10 Is the defendant going to testify?

11          MR. SEGAL: No.

12          MR. SEGAL: My problem is simply trying to get these  
13 witnesses.

14          THE COURT: Maybe you can make some inquiries today  
15 to find out if enough would be available to make that  
16 worthwhile, assuming the jury can do it.

17          MR. SEGAL: Let me give you a report on that.

18          THE COURT: And Mr. Libby, you will be prepared to  
19 give me something on the merits, tomorrow.

CERTIFICATE

We certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

\_\_\_\_\_  
James E. McLaughlin

\_\_\_\_\_  
Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Thomas D'Ambrosio, resumed (by Mr. Libby)			2	
(by Mr. Segal)				8
Michael Cody, sworn (by Mr. Kelly)	11			
(by Mr. Segal)		25		
Dennis Healy, sworn (by Mr. Kelly)	26		97	
(by Mr. Segal)		79		
William Lanergan, sworn (by Mr. Libby)	99			
(by Mr. Segal)		125		
Robert F. Craig, sworn (by Mr. Kelly)	129			
(by Mr. Segal)		153		

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
50	(See Clerk's Notes.)		66
60			67

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

10 Twelfth Day of Trial

13 APPEARANCES:

14 For the Government:

15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston, MA 02109.

18 For the Defendant:

19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
21 210 Commercial Street, Boston, MA. 02109.

22 Courtroom 3  
23 Federal Courthouse  
24 Boston, Massachusetts

25 November 9, 1993

Computer-Aided Transcription

P R O C E E D I N G S

[Whereupon, the jury entered the courtroom.]

THE COURT: Good morning. Please be seated.

We had not finished with Mr. Craig, had we?

MR. SEGAL: We did.

THE COURT: We're on to the next witness?

Who is the next witness?

MR. LIBBY: That's correct, the next witness, the  
United States calls Mr. Francis Hankard.

Francis Hankard, sworn

Direct Examination by Mr. Libby

Q Good morning, Mr. Hankard.

A Good morning.

Q Mr. Hankard, will you tell us where you live, sir.

THE COURT: Could we have his full name, please?

Q Spell your last name for the record, your full name.

A Francis R. Hankard, H A N K A R D.

Q And where do you reside, sir?

A I live at 131 Clinton Road, east Lynn.

Q Are you presently employed full-time, sir?

A Full-time, no.

Q You're retired from a full-time position?

A Yes.

Q What position was that, sir?

A When I was retired, I was chief of the crime laboratory

1 of the Massachusetts Department of Public Safety.

2 Q And how long -- and when did you retire, sir?

3 A I retired in January of 1989.

4 Q When did you begin your work in the Commonwealth's crime  
5 laboratory, sir?

6 A I had begun working in the crime laboratory in 1950.

7 Q And at the time of your retirement, what was your  
8 position in the crime lab?

9 A I was the chief the laboratory.

10 Q What were your duties and responsibilities as chief of  
11 the laboratory, please, sir, as regards to investigations?

12 A As to regards to what?

13 Q As regards to investigations, criminal investigations?

14 A Oh, my basic duties were to supervise the other chemists  
15 and also to make examination in connection with explosives and  
16 explosive devices.

17 Q Are you a chemist, sir?

18 A Yes.

19 Q Do you perform forensic chemist duties?

20 A Yes.

21 Q Over the course of your nearly 40 years with the  
22 Commonwealth crime laboratory?

23 A That is true.

24 Q Will you tell us your educational background, please.

25 THE COURT: Any objection to his qualifications?

1 MR. SEGAL: No.

2 Q Mr. Hankard, you have you a bachelor's degree in  
3 chemistry from Northeastern?

4 A That is true.

5 Q A masters in chemistry from BU?

6 A That is correct.

7 Q Now, you've also received advanced training from the FBI  
8 Bomb School at Quantico, Virginia?

9 A Yes.

10 Q Your duties and responsibilities included over those  
11 nearly 40 years, sir, examinations of debris from explosives,  
12 scenes of explosive incidents, correct?

13 A Examinations of explosives and debris from scenes, yes.

14 Q And you've testified in court, sir, before?

15 A Yes.

16 Q More than a couple of dozen times?

17 A Yes.

18 Q About how many times?

19 A Oh, at least 400 times.

20 Q Now, directing your attention, Mr. Hankard, to 1986, you  
21 were the chief, were you the chief of the crime lab at that  
22 time?

23 A I was the assistant chief of the crime lab.

24 Q Where is the Commonwealth's crime laboratory located,  
25 where was it located in 1986?

1 A It was located at the State Police headquarters, 1010  
2 Commonwealth, Boston.

3 Q And at that time, sir, how many chemists were assigned to  
4 the laboratory?

5 A There were approximately 25 chemists assigned at that  
6 time.

7 Q And you were the assistant chief?

8 A Yes.

9 Q And you're conducting these examinations and your duties  
10 as forensic chemists pursuant to some statutory authorization,  
11 sir?

12 A That is true.

13 Q And you worked in conjunction with the State Fire  
14 Marshal's Office?

15 A We assisted the Office of the State Fire Marshal, yes.

16 Q So in a sense, you were required by law then to examine  
17 and file reports of forensic analysis with respect to your  
18 findings from explosive incidents occurring in the  
19 Commonwealth of Massachusetts?

20 A That's true.

21 Q All right.

22 Now, briefly with respect to your office practice,  
23 that is the lab office practice and procedures followed with  
24 respect to examinations and reports of examinations of  
25 forensic analysis, back in 1986, will you tell us, please,

1 typically how an examination, a forensic examination was  
2 conducted in 1986?

3 A Of what?

4 Q Of any debris that was submitted to the lab for analysis,  
5 particularly with respect to how it initially came into the  
6 office. When it came into the office, what was done, sir, was  
7 it given an investigation or file number?

8 A Evidence delivered to the laboratory was assigned a case  
9 number entered in the log book, packaged properly, marked with  
10 the laboratory number and the scene from which the case was  
11 derived, placed in the evidence room until examined by the  
12 chemist.

13 Q When you say the scene, do you mean the time and location  
14 of the particular explosive incident?

15 A Yes, the information on the package would indicate the  
16 location and the lab number.

17 Q Now, with respect to specifically a forensic examination  
18 of this debris, resulting from any explosion, particularly  
19 gross and microscopic analysis, will you tell us, please, what  
20 the chemist typically had available before him or her to do  
21 that, perform that analysis?

22 A Referring to the type of equipment?

23 Q Yes.

24 A A gross examination involved the use of measuring devices  
25 such as rulers, tape measures, scales, balances, microscopic

1 examination, in other words, to see small particles, you used  
2 low powered, high powered microscopes. And we also had  
3 available to us various instruments to conduct instrumental  
4 analysis.

5 Q Now, the chemist assigned to perform these examinations,  
6 sir, would the chemist typically be taking notes as to with  
7 she saw or served?

8 A That is a method of examination. The chemist examines  
9 the evidence by the methods described, and then he will make  
10 notes of what he sees for further incorporation in the  
11 report.

12 Q And those observations would include such things as the  
13 size of the materials observed, the color, the shape, things  
14 of that nature?

15 A Yes, the physical appearance of the materials, among  
16 other things.

17 Q Now, after that examination is done, and typically the  
18 chemist assigned has these notes, what then takes place with  
19 respect to the notes, please?

20 A Having gathered all the information from the examination,  
21 the chemist who prepared a written report which is given to  
22 one of the secretaries to be typed in.

23 Q Then what takes place after the report is typed, please?  
24 Typically?

25 A Prior to sending the report out, the report is reviewed

1 by the chemist who made the report for accuracy; and after  
2 that is done, the report is forwarded to the law enforcement  
3 officers interested in the evidence.

4 Q Does the chemist assign who actually conducted the  
5 examination sign off on it in any respect?

6 A We -- always in that laboratory, the chemist that  
7 examined the evidence, always signs the report.

8 Q Now, with respect to the real evidence, that is, the  
9 debris which is chemist assigned has examined, you say that if  
10 it arrives at the laboratory and it's secured, it is bagged  
11 and secured in the laboratory while this examination is  
12 ongoing; is that correct?

13 A Bagged and marked at the time of submittal, during the  
14 examination or at the conclusion of the examination it is  
15 bagged, returned to the evidence room for preservation.

16 Q And does it remain in the evidence room throughout  
17 forever?

18 A No. Thank goodness.

19 Q Approximately how many such examinations would the crime  
20 lab undertake in a given year, sir?

21 A Well, in the arson laboratory alone where I worked for  
22 many years, I did roughly 600 fires a year, and 200 explosive  
23 cases and fireworks.

24 Q So, typically what would happen after a certain period of  
25 time with respect to the actual evidence debris?

1 A No, initially when the report was sent out, enclosed with  
2 the report was a form, which asked the investigating officer  
3 to come and get their evidence or tell us what to do with it.  
4 It is called a release form.

5 Q Now, back to the actual -- that release accompanies the  
6 actual report issued by the examining chemist; is that right?

7 A Yes, it goes to the chief investigating officer.

8 Q All right. That report of examination that's typed up  
9 and submitted to the chemist typically is reviewed by the  
10 chemist, for completeness and accuracy before he signs it?

11 A That's true.

12 Q Now, I believe you mentioned that the original report is  
13 sent to the chief investigating officer of the matter; is that  
14 right?

15 A Yes.

16 Q And file copies to whom, sir?

17 A It depends on the case.

18 Q Other concerned law enforcement personnel?

19 A Yes. The other law enforcements agencies, deputy  
20 sheriffs, fire investigators.

21 Q Does the crime laboratory maintain its own file reports,  
22 sir?

23 A Yes.

24 MR. LIBBY: If I may approach, your Honor?

25 THE COURT: Yes.

1 Q I show you what's been marked -- now, Mr. Hankard, let me  
2 show you what's been marked for identification for the moment  
3 anyway, Government's Exhibit 39, please.

4 A 3-page document, typewritten and ask you with  
5 respect to the final page here, do you recognize the signature  
6 block, sir, appearing at the bottom of that report?

7 A Yes, I do.

8 Q Whose signature block is it?

9 A That's mine.

10 Q Do you recognize the signature appearing above that  
11 signature block, sir?

12 A Yes, that is my signature.

13 Q Is that a fair and accurate depiction of your signature?

14 A That is my signature.

15 Q Now, sitting here today, sir, do you recall having issued  
16 at one time a report of examination both gross and microscopic  
17 with respect to an explosive incident occurring in Quincy,  
18 Massachusetts, on or about September 1, 1986?

19 A I recall putting out a report with regard to the  
20 incident, yes.

21 Q Now, today, sitting here today before the jury and  
22 without referring to this report, sir, do you recall each and  
23 every detail of that examination?

24 A No, I do not.

25 Q Have you exhausted your memory as to that matter, sir?

1 A Yes. As far as detailed recollection, I have none.

2 Q Did you at one time, sir, have an understanding as to  
3 what you observed during that examination?

4 A Oh, yes.

5 Q And did you at or near the time of those observations  
6 reduce your observations to writing?

7 A Yes, I did.

8 Q Did you reduce those observations completely and  
9 accurately at the time?

10 A Yes.

11 Q Is this exhibit, sir, Government's Exhibit 39, that  
12 writing that we've been talking about?

13 A Yes, it is.

14 Q Was that report, sir, Government's Exhibit 39 prepared in  
15 conformity with your general office practice as you described  
16 for the Court and jury, and pursuant to state authority as  
17 you've also described?

18 A Yes, it was.

19 Q Was it the general practice of the crime laboratory to  
20 generate reports such as this, Government's Exhibit 39?

21 A Yes.

22 Q Same questions with respect to Government's Exhibit 38,  
23 Mr. Hankard. First directing your attention to the top of  
24 that report, do you see those three initials?

25 A Yes, I do.

1 Q Are they your initials?

2 A Yes.

3 Q And towards the bottom, sir, this is a poor quality copy,  
4 would you direct your attention to the very bottom and do you  
5 see anything there representing your initials as well?

6 A No, it is the remains of my initials.

7 Q What do you recognize Government's Exhibit 38 to be,  
8 please?

9 A That's a release form sent out by the laboratory at the  
10 time of the case before it was issued.

11 Q Was this report prepared, sir, in conformity with the  
12 general office practices and pursuant to state statutory  
13 authority also described?

14 A You mean the release or the report?

15 Q This release?

16 A Yes, the release was, yes.

17 Q And was it the general practice of the state crime lab to  
18 prepare and issue release forms such as Ex. 38?

19 A It certainly was.

20 MR. LIBBY: Your Honor, the government would offer  
21 both Exhibit's 38 and 39 in evidence.

22 THE COURT: You may read them to the jury, but they  
23 don't come into evidence as I read the rule.

24 MR. SEGAL: That's my point, your Honor. It seems to  
25 me it is 803 --

1 THE COURT: Under what are you offering?

2 MR. LIBBY: Both, your Honor, recorded recollection,  
3 records of regularly conducted activity and public record.

4 If I may be heard, I have Third Circuit authority.

5 THE COURT: Why doesn't it come in as a public  
6 record?

7 MR. SEGAL: Could we discuss this at the bench, I was  
8 look at 803(5).

9 THE COURT: Under (5) it is read to the jury, why  
10 doesn't it come in as a public record?

11 MR. SEGAL: May I have look at that rule for a  
12 second, your Honor?

13 THE COURT: 8. (Pause.) B.

14 MR. SEGAL: Law enforcement personnel.

15 THE COURT: I will admit it, your objection is  
16 noted. Exhibits--

17 THE CLERK: 38 and 39, your Honor, Government's  
18 Exhibit 38 and 39.

19 **[Government's Exhibit 38 and 39 entered in evidence.]**

20 Q Now, Mr. Hankard's, finally, at the time that you issued  
21 your report, Exhibit 39 and the release form 38, at the time  
22 were you familiar with the defendant, Alfred Trenkler?

23 A No.

24 Q Did you know anything about him at that time?

25 A I did not.

1 Q Did you know any details with respect to the 1986  
2 explosion in Quincy insofar as identifying the responsible  
3 individual was concerned?

4 A No, I did not.

5 MR. LIBBY: I have nothing further. Thank you,  
6 Mr. Hankard.

7 THE COURT: Mr. Segal, any questions?

8 MR. SEGAL: Yes.

9 Cross-examination by Mr. Segal

10 Q Good morning Mr. Hankard. My name is Terry Segal. I  
11 represent Mr. Trenkler.

12 I would like to show you what's been marked in  
13 evidence as Government's Exhibit 39 so I can ask you a couple  
14 of questions on it.

15 At the time, in your years with the state lab, isn't  
16 it fair to say you've done about 8,000 examinations in  
17 explosion cases. I think you said about 200 a year?

18 A Examinations or cases?

19 Q Well, let's take examinations.

20 A Oh, more than that. We discount cases. I would say  
21 roughly a hundred a year for 40 years, 4000.

22 Q Reading Government's Exhibit 39 which is this 3-page  
23 report, you read it, I take it before coming here today, am I  
24 right?

25 A Oh, yes.

1 Q But that didn't refresh your recollection as to this  
2 particular exam, is that fair to say?

3 A No, I remember the case. I do not remember the details.

4 Q And did you recall doing the exam in that case, sir?

5 A Oh, yes.

6 Q All right. Now, I noticed on Exhibit 39, it indicates  
7 that the, it says examination of material in connection with  
8 explosion of truck in driveway at 295 Willard Street, Quincy  
9 on September 1, 1986.

10 Do you see that at the top?

11 A Yes.

12 Q All right. Then the next sentence says: "On October 17,  
13 1986 Explosive Technician Leo Voigt of the Department of Fire  
14 Prevention delivered to this laboratory a sample of debris  
15 which had been removed from the scene of the above explosion."

16 Do you see that sentence, sir?

17 A It says the division of fire prevention, but outside of  
18 that, that's fine.

19 Q He's since passed away?

20 A That is true.

21 Q In your years at the lab, is it unusual that somebody  
22 would bring in the debris about six weeks after the  
23 explosion?

24 A It depends on -- no, it is not unusual. It happens. It  
25 depends on what the officer involved was doing between the

1 time he picked up the evidence and the time he came to the  
2 laboratory.

3 Q Isn't it probably the better practice to try to get the  
4 evidence to the laboratory as close to the incident as  
5 possible?

6 MR. LIBBY: Objection, your Honor.

7 THE COURT: The objection is sustained.

8 Q When you were at the laboratory, sir, you were a forensic  
9 chemist; is that correct?

10 A That is true.

11 Q Looking at the Exhibit 39, is there anything in that  
12 exhibit that tells us where the device was placed on the  
13 truck?

14 MR. LIBBY: Objection, your Honor.

15 THE COURT: What's the objection? As I understand  
16 it, you've offered the exhibit as the exhibit in evidence.  
17 Why cannot he not cross-examine about its content.

18 MR. LIBBY: The report of examination and his duties  
19 as a forensic chemist is going beyond the scope of this  
20 witness's -- the reason we called this witness. With respect  
21 to the report of the gross and microscopic analysis, that's  
22 it.

23 THE COURT: He's asking about the details of the  
24 examination and which is -- and the examination itself is now  
25 in evidence through the report.

1 MR. LIBBY: That's right. I believe the question had  
2 to do with the scope of the investigation.

3 THE COURT: No. It had to do with what's in the  
4 report, I believe.

5 Q My questions was there anything in the report that tells  
6 us where the device was placed on that truck in Quincy?

7 A No. It says on at the top of the report.

8 Q It says "on truck"?

9 A Yes.

10 Q Now, I think on the first page, the report talks about  
11 simulator flash artillery, low 84H 008, do you see that?

12 A I see it, it is an M or H. I think it is an H, yeah.

13 Q And that's -- is that a distinguishing mark on an M 21  
14 device, is that something you find on the device or that the  
15 report found?

16 A Yes. Yes. This is a military pyrotechnical device.

17 Q And let me just read that paragraph, it's A three of the  
18 exam.

19 Six partially blackened pieces of approximately four  
20 and a half inch long by two inches diameter, white plastic  
21 tube which had a wall thickness of about one eighth of an inch  
22 and was labeled in black "simulator flash artillery: Low 84H  
23 008."

24 Q Did I read it correctly?

25 A Yes.

1 Q All right.

2 So that according to the report, the writing on that  
3 device was clearly able to be picked up?

4 A Oh, yes, legible.

5 Q And that writing was simulator flash artillery low 84 H  
6 008?

7 A That is true.

8 Q Looking at the last page of the report, sir, I'd like to  
9 turn to that section you talked about that says circular  
10 magnet.

11 I'd like to read to you that section E.  
12 "Circular magnet, an approximately 4 and 7/16th inch diameter  
13 by one half inch thick circular magnet which had a four and  
14 3/16th inch diameter by 1/8th thick steal plate on each  
15 circular surface.

16 In other words, that was as a result of the  
17 examination that you found that?

18 A That's true.

19 Q "The exposed surface of one plate had been covered with  
20 superimposed layers of two-inch wide aluminum colored tape."  
21 Did I read that correctly?

22 A Yes.

23 Q From your report is there any way telling whether the  
24 tape was used to help put the magnets against the truck or the  
25 vehicle?

1 A No, the report does not indicate the purpose of the  
2 tape.

3 Q So there is nothing in the report that can help us tell  
4 us what the purpose of the tape was?

5 A Oh, no.

6 MR. SEGAL: Thank you very much, sir.

7 THE COURT: Anything else, Mr. Libby?

8 MR. LIBBY: Nothing, thank you.

9 THE COURT: Thank you Mr. Hankard, you are excused.

10 THE WITNESS: Thank you.

11 THE COURT: Who's next?

12 MR. KELLY: Your Honor, the United States calls Todd  
13 Leach.

14 Todd Leach, sworn

15 Direct Examination by Mr. Kelly

16 THE CLERK: Please be seated and spell your name for  
17 the reporter.

18 THE WITNESS: Todd Leach, L E A C H.

19 Q Where do you reside, Mr. Leach?

20 A Ossipee, New Hampshire.

21 Q With whom do you reside at that location?

22 A My girlfriend, Jenna Knight.

23 Q How old are you, Mr. Leach?

24 A Seventeen.

25 Q Are you still in school?

1 A No, I'm taking my GED.

2 Q Can you tell us how far you went into school, Mr. Leach?

3 A 9th grade.

4 Q Did you drop out of school in the 9th grade?

5 A I dropped out of school, yes.

6 Q And do you have any plans to go back to school or did you  
7 say I were you were trying to obtain a GED?

8 A Yes.

9 THE COURT: You have got to say yes or no because the  
10 reporter can't take down when you just nods your head,  
11 please.

12 Q Can you tell us --

13 THE COURT: What was your answer?

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 Q You told us that you're living in Ossipee, New  
17 Hampshire. Where are you from originally, Mr. Leach?

18 A Weymouth.

19 Q Okay. And when you left school in the 9th grade, where  
20 were you attending school, sir?

21 A Hull High.

22 Q Mr. Leach, are you working at the present time?

23 A Part-time.

24 Q What kind of work do you do, sir?

25 A I help a quadriplegic.

1 Q When does that mean?

2 A I put him to bed and get him out bed and make him  
3 breakfast and stuff like that.

4 Q And that's up in New Hampshire?

5 A Yes.

6 Q Mr. Leach, are you related to a woman by the name of  
7 Donna Shea?

8 A Yes.

9 Q And how are you related to her?

10 A She's my aunt.

11 Q Mr. Leach, do you know an individual by the name of  
12 Alfred Trenkler?

13 A Yes.

14 Q How long have you known, Mr. Trenkler?

15 A I'd say most of my life.

16 Q And do you recall how old you were when you first met  
17 him?

18 A About six, seven, around that.

19 Q And how did you first meet him, sir?

20 A Through my Aunt Donna.

21 Q And what was your relationship with Mr. Trenkler over the  
22 period of five years or so after you met him?

23 A It was just like a family friend.

24 Q Do you see the Alfred Trenkler that you know in the  
25 courtroom here this morning, Mr. Leach?

1 A Yes.

2 Q Would you point him out for us, please?

3 A Right there (indicating) with the stripped tie.

4 MR. KELLY: For the record the witness had identified  
5 defendant.

6 THE COURT: Yes.

7 Q Mr. Leach, I want to direct your attention back to the  
8 fall of 1986, and am I not correct, sir, that you would have  
9 been about age 10 or 11 at that time?

10 A Yes.

11 Q What year were you born, sir?

12 A 1975.

13 Q Okay. Do you recall an incident involving an explosion  
14 in Quincy that took place back around that time, the fall of  
15 1986?

16 A Yes.

17 Q And do you recall some of the things that happened  
18 leading up to that incident? I'm going to ask you specific  
19 questions, that's a general question. Do you have some memory  
20 of some things that happened prior to some explosion? I'll  
21 ask you specific questions, not asking to recount everything?

22 A Yes, yes.

23 Q Do you have a memory of some things that happened within  
24 a month, say, before the incident? All right. I'm going to  
25 withdraw that question because I confused you. Let me start

1 again.

2           You told us that you met the defendant through your  
3 Aunt Donna Shea, back in the fall of 1986, did you spend any  
4 time with the defendant while your aunt was not around?

5 A     Yes, sometimes I would go to the store, yes.

6 Q     Okay. And in and around this time frame that we're  
7 talking about the fall of 1986, how frequently would you see  
8 or spend time with the defendant without the presence of your  
9 aunt, for example?

10 A    I don't know. I go to the school a couple of times a  
11 week maybe.

12 Q    Did you know what, what business or employment  
13 Mr. Trenkler was in at that time?

14 A    I know that, I met him at Donna -- him and my Aunt Donna  
15 were in business together.

16 Q    And what field -- do you understand my question? What  
17 field were they in?

18 A    I think they were put up satellite dishes.

19 Q    Back in the fall of 1986, did you ever meet the  
20 defendant's roommate?

21 A    Yes.

22 Q    And what was his name, if you recall it?

23 A    Bob.

24 Q    And can you just describe what he looked like?

25 A    Probably six one, blond hair.

1 Q Was he heavy or thin?

2 A Thin.

3 Q Now, Mr. Leach, how if at all did you help the defendant  
4 acquire parts or components to build something back in the  
5 fall of 1986? What was the first thing you remember?

6 A I remember taking a speaker magnet from a speaker.

7 Q Now, who asked you to get this speaker magnet?

8 A Al.

9 Q Al Trenkler?

10 A Al Trenkler.

11 Q And at the time he asked you to do this, did you know  
12 what the speaker magnet was going to be used for?

13 A No.

14 Q Where were you when the defendant asked you to obtain a  
15 speaker magnet?

16 A In the parking lot of my house in Weymouth.

17 Q When you say the Weymouth projects, did you live in the  
18 public housing of some kind?

19 A Yes.

20 Q Tell us what you remember about this incident?

21 A I remember I was on my way to the store with Al. He  
22 asked me to run over and get some magnet out of a speaker that  
23 was in the corner parking lot. There was much trash in the  
24 corner parking lot.

25 Q Did he spot something, was your understanding?

1 A Yes, he had those speakers and he told me to run over,  
2 get the magnet out of it and rip it apart.

3 Q Did he tell you how to go about doing that, obtaining the  
4 magnet from this speaker?

5 A Just to rip that speaker apart and there's a magnet on  
6 the back and bring it to him.

7 Q Did you know that speakers had magnets in the back of  
8 them at the time?

9 A No.

10 Q Tell us what you did?

11 A I went over and smashed the speaker apart and ripped the  
12 magnet off the back part of it and gave it to Al.

13 Q How long did it take you to break apart the speaker and  
14 disassemble the magnet?

15 A A couple of minutes.

16 Q And who else, if anyone, assisted you in this process of  
17 tearing apart of the speaker to get the magnet?

18 A Nobody.

19 Q Who else was with you or the defendant when you spotted  
20 this speaker by the trash?

21 A I think Bob was.

22 Q And can you describe for us the speaker to us, how big  
23 was that?

24 A I think this big.

25 Q You're holding, for the record, with your hands about?

1 A A couple of feet, just stereo speaker.

2 Q Was it made of wood?

3 A Wood. Yes, fake wood.

4 Q Fake wood?

5 A Yes.

6 Q Some kind of veneer, do you know that means?

7 A No.

8 Q Stick with fake wood.

9 Can you describe the speaker for us, the -- describe  
10 the magnet for us, the one you had pulled out of the back of  
11 the speaker. Can you describe it for us?

12 A It was just a round silver magnet like this size.  
13 (indicating).

14 Q Again, trying to keep the record clear, can you tell us  
15 how many inches across this magnet was?

16 A Six maybe.

17 Q Okay. How thick was the magnet?

18 A Probably about an inch at most.

19 Q What color was the magnet?

20 A Silver, it had black on it.

21 Q Okay. When you say it had black on it, what do you mean?

22 A It had black around the edges, like rubbery stuff.

23 Q Some sort of ring on the outside?

24 A Yes.

25 Q And was it circular?

1 A Yes.

2 Q Okay. Now at the time after you pulled the speaker out  
3 of the, the magnet out of the back the speaker, did you give  
4 it to anyone?

5 A I gave it to Al.

6 Q Okay. And at the time you did that, did you have any  
7 conversation with him about what the magnet was going to be  
8 used for?

9 A No.

10 Q Okay.

11 What was the next involvement you recall having, in  
12 connection with these circumstances, sir?

13 A I remember going to a Radio Shack.

14 Q And when did you do that, Mr. Leach?

15 A A couple of days after or something.

16 Q And why did you go to Radio Shack?

17 A To get some wires and parts and stuff.

18 Q And who brought you to Radio Shack?

19 A Al.

20 Q What Radio Shack would you go to, if you recall?

21 A One in Quincy.

22 Q And had you ever been to this store, this Radio Shack  
23 store in Quincy before?

24 A No.

25 Q Before this occasion?

1 A No.

2 Q Had you ever been to any Radio Shack before this  
3 occasion?

4 A Not that I know of.

5 Q Okay. How did you get there? You lived in Weymouth,  
6 right?

7 A Yes.

8 Q How did you get to the Radio Shack store in Quincy?

9 A Al.

10 Q And did he have a vehicle of some kind?

11 A Yes.

12 Q Was there any one else in the car when you made the drive  
13 from Weymouth to Radio Shack?

14 A I think Bob was, pretty sure Bob was.

15 Q Bob, the roommate?

16 A Yes.

17 Q And when you arrived at the Radio Shack store in Quincy,  
18 Mr. Leach, tell us what happened?

19 A Al gave me a list and told me to go in and read off the  
20 list if I couldn't read it or whatever, to get the stuff, and  
21 then I went in and I couldn't read all of stuff off and  
22 understand what it said, so I handed it to guy. And then Al  
23 came in.

24 Q What did you understand was written on the list?

25 A Parts and pieces.

1 MR. SEGAL: I'll object. The hearsay basis, his  
2 understanding what's on that list unless it is generically.

3 THE COURT: The list was given to him also, he  
4 testified, by the defendant. He may testify.

5 Q At this time when you were age 10 or 11, were you able to  
6 read?

7 A Yes.

8 Q Did you attempt to read the piece of paper with the list  
9 on it?

10 A Yes. Yes, I think so.

11 Q What did you understand the things listed on the piece of  
12 paper to be?

13 A Just parts, electronic parts and stuff.

14 Q Where did Mr. Trenkler wait with the car while you went  
15 into the store initially?

16 A Outside the store.

17 Q Okay. And how long were you inside the store before  
18 Mr. Trenkler came in?

19 A A few minutes.

20 Q Okay.

21 And you say you had some trouble when you got inside  
22 the store? Tell us what happened when you went inside the  
23 store with your list?

24 A I don't know if I could read it or not.

25 Q So what did you do, if anything, with the piece of paper?

1 A I just handed it to guy.

2 Q Okay.

3 And what happened next after you handed the list of  
4 paper to the guy?

5 A I think Al came in after that.

6 Q What is the next thing you remember?

7 A Al started talking to the guy.

8 Q Just tell us what you heard.

9 A They were just talking about what kind of parts he  
10 needed, and the guy asked Al jokingly if he was making bomb;  
11 it was just jokingly.

12 Q And how did the defendant react what the clerk joked with  
13 him about making a bomb?

14 A Just, you know, like, I think he said, yes, almost joking  
15 around.

16 Q Now, were you aware at the time that you went into this  
17 Radio Shack store in Quincy that the defendant was, was  
18 acquiring parts to build a bomb?

19 A No.

20 Q I'm sorry?

21 A No.

22 Q Did there come a time when you became aware that, that he  
23 was trying to build some type of an explosive device?

24 A I kind of thought, you know, like, when the guy asked if  
25 he was making a bomb, I kind of wondered about the magnets and

1 the parts.

2 Q Is that the first time you had those kind of thoughts?

3 A Yes.

4 Q By the way how long were you inside the Radio Shack store  
5 that particular day?

6 A Ten, ten, maybe 15 minutes.

7 Q Were there any other customers inside the store at the  
8 time?

9 A No, not that I know of.

10 Q To your memory, did the defendant get all parts he needed  
11 that day?

12 A I think so.

13 Q Do you recall any of the things he purchased?

14 A No.

15 Q Now, during this same time frame, Mr. Leach, in the fall  
16 of 1986, do you remember anything about a remote control car?

17 A I remember Al playing with a remote control car in the  
18 parking lot.

19 Q What parking lot are you referring to, sir?

20 A The projects parking lot in Weymouth.

21 Q And did you participate in any manner in the acquisition  
22 of that remote control car?

23 A No.

24 Q Do you know when that item was purchased?

25 A No.

1 Q Do you know where the item was purchased?

2 A No.

3 Q You have to speak up.

4 A No.

5 Q Okay. Did you have an understanding at the time you saw  
6 this little toy car in the parking lot as to what it was going  
7 to be used for?

8 A No.

9 Q Did you have any discussion with the defendant at any  
10 time what the remote control car was going to be used for?

11 A No.

12 Q Do you have any memory, sir, of any discussion about any,  
13 any rigging of the remote control car that might be necessary  
14 in construction or whatever they were building?

15 A I remember Al saying something to Bob about it, that it  
16 should only go forward or it should only go in reverse or  
17 something like that.

18 Q And did you understand what that meant, at the time?

19 A No.

20 Q Now, Mr. Leach, were you present at any time when this  
21 device was being assembled or constructed?

22 A I think I saw it when I was in the back the car.

23 Q And how many times do you recall seeing this thing? How  
24 much different times do you recall seeing whatever it was that  
25 they were building?

1 A Twice.

2 Q Okay. And describe what you recall seeing, sir. The  
3 first time, for example?

4 A I just remember Al holding the magnet with some little  
5 boxes or whatever was on it. I couldn't really explain it.  
6 Just, I remember a little black box and a little whiter and  
7 gray box, like a rectangular box or something. It was a long  
8 time ago.

9 Q You say boxes. What were these boxes made of, if you  
10 recall?

11 A It was plastic.

12 Q And how big were they, if you're able to tell us?

13 A One was maybe this big (indicating), and a little  
14 smaller.

15 Q For the record, you're holding your hands about how far  
16 across, sir?

17 A Six inches.

18 Q And there was a second box of some kind?

19 A Yes, just a smaller one, maybe three, four inches.

20 Q Now, do you remember seeing any wires?

21 A I think I remember seeing some wires.

22 Q Do you remember seeing any batteries?

23 A No.

24 Q Do you remember seeing any kind of switches or electrical  
25 parts of any kind, switches, things that go on and off?

1 A No.

2 Q Do you know what solder is?

3 A Yes.

4 Q Did you ever see any solder?

5 A Yes, I think I saw solder.

6 Q What do you remember about that?

7 A I don't know, I just, it is in my head I saw solder. I  
8 can't, you know, explain exactly.

9 Q Do you remember seeing any light bulbs or bulbs, lamps?

10 A I remember seeing a little, teeny light bulb that went on  
11 when he flipped the switch and went off when he turned it off,  
12 or whatever.

13 Q And did you have an understanding of what was happening  
14 when the light bulb came on, what if anything they were doing,  
15 for example?

16 A I think all they were doing is hitting the switches.

17 MR. SEGAL: Objection to what "I think," your Honor.

18 THE COURT: Tell us what you remember seeing.

19 THE WITNESS: I just remember seeing the light switch  
20 on and off.

21 Q Okay. And who was fiddling with this thing with the  
22 light switch on or off?

23 A I think Al was showing Bob something.

24 Q Do you remember seeing any tape of any kind?

25 A I think I remember seeing duct tape.

1 Q What color was it?

2 A Gray, I think.

3 Q And what was the tape used for, if you know?

4 A I think to put the magnet on something. I'm not  
5 positive.

6 Q Do you remember hearing any discussion about something  
7 called a flash simulator?

8 A Yes.

9 Q And who did you hear mentioning that item?

10 A I heard a few people, You know, Al, my aunt, my mother's  
11 boyfriend Dave, my mother.

12 Q And at the time did you know what a flash simulator was,  
13 sir?

14 A No.

15 Q What did this thing look like? Did you ever see it?

16 A Not that I know of.

17 Q Now, Mr. Leach, did you ever have the opportunity to see  
18 this device when it was completely or almost completely  
19 constructed or almost finished?

20 A I'm not sure. I don't know what it looked like when it  
21 was all the way done.

22 Q What was last time you recall seeing it? What was  
23 happening to it when, if anything, when you last saw it?

24 A I think it was when the light was switched on and off.

25 Q Did you see it at any time when this tape that you

1 described was being, was being added to it?

2 A I think that was the first time.

3 Q Okay?

4 A When I saw the duct tape.

5 Q Can you tell us the last time that you saw this device,  
6 what it looked like, describe what you remember seeing, how  
7 big was it, what color was it, those kinds of things?

8 A I couldn't really describe it but something like this big  
9 (indicating).

10 Q You have to be --

11 A 12 inches, something.

12 Q You remember something being about 12 inches across?

13 A Yes.

14 Q How thick do you remember it being? You can show us with  
15 your hands?

16 A Four inches maybe (indicating).

17 Q Is that --

18 A One part box, and there was other parts on it, too.

19 Q When you say four inches, too, are you taking into  
20 account this magnet?

21 A Yes. I'm talking about the magnet. The magnet and  
22 altogether (indicating).

23 Q You told us the magnet was an inch?

24 A Yes, I would say an inch.

25 Q Where was the magnet as it concerned the other portion of

1 this thing you saw? Where was the magnet?

2 A It was on the bottom from what I saw.

3 Q On the bottom?

4 A Yes.

5 Q What color was thing when you last saw it in this kind of  
6 form?

7 A Mostly black with some white.

8 Q Did you ever pick it up?

9 A No.

10 Q So you don't know how heavy it was?

11 A No.

12 Q Did this thing look like a big ball of tape, or did it  
13 have some shape to it? And if so, describe what you recall  
14 the shape to be?

15 A I'd say the shape was more like rectangle than a ball of  
16 tape.

17 Q More rectangle than a ball of tape?

18 A Yes.

19 Q And was there anything sticking out of the tape that you  
20 recall?

21 A No, not that I remember.

22 Q Now, over what period of time do you remember these  
23 events occurring, in terms of buying certain things or things  
24 being assembled, how long a time are we talking about?

25 A Oh, maybe a week.

1 Q And did there come time, Mr. Leach, based on any  
2 discussions you had with the defendant or you overheard the  
3 defendant having with others that you gained an understanding  
4 of what was going to occur with this device, if anything?

5 MR. SEGAL: Well, I object to that.

6 THE COURT: He may have the question, to the extent  
7 that he's seeking to elicit the defendant's own statements.

8 MR. KELLY: That's what I'm asking.

9 Q Based on anything you heard the defendant say or  
10 overheard the defendant say to others, did you gain an  
11 understanding of what this thing was going to be used for?

12 A I heard, I think, my aunt Donna and Al with somebody down  
13 in my aunt's cellar, or where she used to live, something  
14 about putting it by the gas tank. Something. I don't  
15 remember if it was a car.

16 THE COURT: Even if there were statements by  
17 Ms. Shay, they are admissible, to the extent they were made in  
18 the presence of the defendant.

19 Q Did there come a time based on anything that you had the  
20 defendant say to you or you over heard the defendant say, in  
21 which you learned or understood why this device needed a  
22 magnet?

23 MR. SEGAL: I object.

24 THE COURT: He may tell us what if anything he heard  
25 from the defendant or somebody else saying in the presence of

1 the defendant.

2 A I heard somebody say that they put it underneath by the  
3 gas tank.

4 Q Now, Mr. Leach, were you present at any time when this  
5 device was actually attached to some vehicle?

6 A I don't remember. I'm not sure if I just heard so many  
7 times that I thought it might have been about there; I don't  
8 remember.

9 Q What's your best memory today as to whether or not you  
10 were present when this device was attached to any vehicle?

11 A My best memory, probably I wasn't there.

12 Q Were you present when, when this item was exploded or  
13 detonated, if you recall?

14 A I'd say the same thing, I'm not -- best memory would be  
15 that I wasn't there.

16 Q And do you recall, Mr. Leach, if anyone got in trouble  
17 for these series of events we've been talking about?

18 A Yes, I think Al got in trouble, my grandmother told me.

19 MR. KELLY: I have no further questions -- excuse me  
20 one second.

21 (Pause.)

22 Q Mr. --

23 MR. KELLY: I was reminded of a couple of points I  
24 overlooked.

25 Q Mr. Leach, did you have any discussions at any time with

1 the defendant or overhear any discussions in which the  
2 defendant participated after the explosion about some of the  
3 things that had taken place?

4 A No.

5 Q So, no one had ever told you anything about, say, the  
6 nature of any damage that was caused, things like that?

7 MR. SEGAL: I object.

8 THE COURT: He may have the question.

9 THE WITNESS: Not that I can remember.

10 Q You don't recall any discussions specifically with  
11 Mr. Trenkler?

12 A No.

13 Q Whether there was any harm to some place or things like  
14 that?

15 A No, no.

16 MR. KELLY: I have nothing further.

17 THE COURT: Mr. Segal, you may cross-examine.

18 Cross-examination by Mr. Segal

19 Q Good morning, Mr. Leach. My name is Terry Segal, I  
20 represent Mr. Trenkler.

21 A Hi.

22 Q In September 1986, you were, you were either ten or  
23 eleven?

24 A Yes.

25 Q If I suggest to you the incident took place in the early

1 morning hours of 2 a.m., on September 11th, at that age aren't  
2 you usually in bed at that time?

3 THE COURT: Can you speak up a little bit?

4 He wants to know whether you would have been up at  
5 2 clock in the morning, I think.

6 Q Do you recall being outside your house in September  
7 anytime after midnight?

8 A No.

9 Q Okay. I take it, your mother probably wanted you home in  
10 bed by 10 clock when you were eleven-years old; isn't that  
11 fair to say?

12 A I would say so.

13 Q Sorry?

14 A Yes.

15 Q Are you aware there's a reward in this case?

16 A No, not that I know of. I don't know. I've heard talk  
17 about but. Not about me getting a reward or anything like  
18 that.

19 Q All right.

20 I think you told us these events -- you're how old  
21 now?

22 A 17.

23 Q So that they took place a long time ago; isn't that fair  
24 to say?

25 A Yes.

1 Q And your memory as to some of them, such as the  
2 description of the device, probably isn't that good today;  
3 isn't that fair to say?

4 A Somewhat, yes.

5 Q Donna Shea, she's your aunt?

6 A Yes.

7 Q Do you understand that she asked Mr. Trenkler to make  
8 this device?

9 MR. KELLY: Objection.

10 THE COURT: The objection is sustained. The jury  
11 will disregard it.

12 MR. SEGAL: Thank you, sir.

13 I have no further questions.

14 THE COURT: Do you have anything else, Mr. Kelly?

15 MR. KELLY: Yes, your Honor, I do

16 Redirect Examination by Mr. Kelly

17 Q Mr. Segal asked you about a reward.

18 Has anybody promised you any kind a reward for being  
19 here to testify Mr. Leach?

20 A No.

21 Q Have you and I ever discussed anything about a reward?

22 A No.

23 Q Have you discussed anything about a reward with any agent  
24 in this case?

25 A No.

1 Q Mr. Segal asked you about your memory.

2 Do you recall some of the things that we have talked  
3 about this morning, do you feel comfortable you recall some of  
4 the things you described, such as the magnet and some of these  
5 other things?

6 A Yes.

7 MR. KELLY: I have nothing further.

8 THE COURT: Anything else?

9 MR. SEGAL: Just one moment, your Honor.

10 Recross-examination by Mr. Segal

11 Q Mr. Leach, do you remember today what sort of car  
12 Mr. Trenkler was driving in 1986?

13 A No.

14 MR. SEGAL: Thank you, I have no further questions.

15 THE COURT: Thank you, Mr. Leach, you are excused.  
16 Who is next?

17 MR. LIBBY: Your Honor, the United States calls an  
18 intelligence research specialist, Steven Scheid. We also  
19 require a little bit of time to set up.

20 THE COURT: How much time?

21 MR. KELLY: Five minutes.

22 THE COURT: Are you suggesting we take a recess?

23 MR. SEGAL: I wonder while, maybe we can talk about  
24 some of the issues relating to his testimony, while they are  
25 being set up.

1           THE COURT: I guess we will take a recess; that is.  
2           You'll take a recess.

3           Whereupon, the jury left the courtroom.]

4           THE COURT: I have a motion concerning this matter.  
5           Do I need to hear argument?

6           MR. SEGAL: I'll defer to Mr. Lopez. I have another  
7           issue on this matter but I would like to wait.

8           MR. LOPEZ: Your Honor, at this stage, prior to this  
9           point in time, we've had some evidentiary hearings,  
10          specifically with respect to whether or not this evidence  
11          could come in for purposes of 404 404(b). At one point in  
12          the testimony, your Honor indicated that the rules of evidence  
13          did not apply to that particular proceeding with respect to  
14          the 404 404(b) hearing. However, today, we're talking about  
15          real in-court testimony.

16          And it's our position, your Honor, that the EXIS  
17          computer and the information contained within that computer is  
18          nothing more and nothing less than totem pole hearsay. There  
19          will be no showing here that it is a -- that the requirements  
20          for the business records exception under the hearsay rule will  
21          be established by Mr. Scheid. There will not be any testimony  
22          here from Mr. Scheid saying that there is some reason why the  
23          original investigative reports are not available and have  
24          never been made available to us.

25          There will be no testimony here from Mr. Scheid

1 authenticating the accuracy of this computer system. But more  
2 importantly, we're talking about the accuracy of the contents  
3 of the documents which at some point in time were presumably  
4 presented to either Mr. Scheid or someone else. Those reports  
5 were then put on to a reporting form or, conversely, put on to  
6 an encoding form. None of those documents have been made  
7 available to us. And as a result, quite frankly, this  
8 computer evidence is nothing more than trial by hearsay.

9 More importantly, your Honor, this evidence is  
10 absolutely critical, in the sense that what it purports to  
11 show is that by using a computer, the government has been able  
12 to narrow down out of 14,000 bombings in the United States,  
13 Guam, Hawaii, Puerto Rico, to two bombs that are so similar  
14 that they point to the defendant Mr. Trenkler.

15 Your Honor, it is absolutely essential that this  
16 hearsay not be admitted at this trial. It is hearsay. There  
17 will be no exception that can be maintained here or, or a  
18 foundation. The foundation for the admission of this hearsay  
19 will be lacking. And thus, at this point in time, your Honor,  
20 we suggest that it is incumbent upon you to prohibit the  
21 admission of this hearsay, so that we do not have trial by  
22 hearsay in this case, your Honor.

23 Thank you, your Honor.

24 MR. LIBBY: Briefly, the Court's is well familiar  
25 with Mr. Scheid's expected testimony. All the reports and all

1 the records involved here. Frankly, your Honor, all of  
2 Mr. Lopez's arguments cut to weight, as opposed to  
3 admissibility.

4 As far as authentication, Mr. Scheid is the guy. He  
5 is EXIS. He has been since its inception. He can speak to  
6 all the authentication concerns the Court may have with  
7 respect to the process or system used here which is laid out  
8 in the government's brief. He can also speak to the encoding  
9 forms. We're talking about seven incidents which are  
10 resultant here, your Honor. Those are, the one, the end  
11 queries as we go through the process, the various numerical  
12 results from the EXIS data base. We have those documents,  
13 your Honor, reflecting the numbers which are on the chart.

14 The Court has seen the chart before, showing 14,000  
15 bombings, 2500 some-odd bombings involving cars and trucks and  
16 so on and so forth. That's tab -- that's presented to your  
17 Honor at the back of the Court's submission, made this  
18 morning. These are the queries. These are the printouts that  
19 Mr. Scheid will be speaking to as the predicate for these  
20 figures you see on the chart here. These will be admitted in  
21 evidence as generated pursuant to the EXIS query process which  
22 Mr. Scheid has extensively detailed for the Court on two  
23 occasions.

24 Your Honor, and as an aside, the defense saw this  
25 case as it was originally tried in both preparation at trial,

1 months ago, and we get this on the eve of Mr. Scheid's  
2 expected testimony. Now, I understand the information with  
3 respect to the encoding forms and the underlying incident  
4 report forms as maintained by Mr. Scheid at EXIS were sought.  
5 We didn't determine until Friday afternoon they were weren't  
6 available. They are routinely destroyed after a year.

7 So far as originals are concerned, your Honor, the  
8 rules of evidence provide for that. He may testify as to  
9 their contents.

10 As far as hearsay is concerned, your Honor, as the  
11 government sets out, and in its submission, clearly they come  
12 in as records of regularly conducted activity. This deals  
13 with thousands of incidents, as Mr. Scheid has testified, over  
14 the scope of the EXIS jurisdiction. There can be absolutely  
15 no claim that this massive data has somehow been manipulated  
16 or skewed in some way so as to engineer a result pointing it  
17 to Mr. Trenkler. It is entirely objectively based, your  
18 Honor, all of this information. We go through excruciating  
19 detail how this information is encoded, how it is maintained,  
20 how it is retrieved. All of the defense arguments cut to  
21 weight, as opposed to admissibility.

22 Finally, your Honor, you will see, and Mr. Scheid has  
23 testified as to the standardized routine procedures he follows  
24 in each case where he sets up a new investigation number,  
25 inputs the information and maintains it for later querying.

1 All of that, your Honor, can be admitted in this case, not  
2 only through records of regularly conducted activity, which by  
3 definition the EXIS fits, but also under the catch-all  
4 provision, your Honor.

5 Each of those matters set forth on pages 6 and 7 of  
6 the governments's brief, where essentially the evidence is  
7 offered as to a material fact, it is more probative on the  
8 point for which is offered than any other evidence than the  
9 proponent can procure through reasonable efforts, and the  
10 general rules of interest and justice would be best served by  
11 its admission.

12 In this respect, your Honor, whatever questions they  
13 may have with respect to completeness and accuracy, that cuts  
14 to weight, not admissibility. The record in this case, which  
15 has been twice proffered before the Court, is extensive as to  
16 all of the indicia of reliability and trustworthiness, both  
17 with respect to the system; and as result, we respectfully  
18 request it be admitted.

19 THE COURT: The defendant's motion to exclude the  
20 admission of the EXIS computer evidence is denied.

21 I do believe it is hearsay. And while I have some  
22 doubts about its admissibility under -- as a business record,  
23 given that the hearsay objection goes to the underlying  
24 records which are not the sort of thing that it the business  
25 records exception is normally designed to cover, I do believe

1 that it comes in under the catch-all phrase. It is, these  
2 materials are used, as I understand the evidence, by law  
3 enforcement authorities on a regular basis; they rely on  
4 them. And based on the evidence I have heard now in two  
5 trials, I believe it to be sufficiently reliable so that it  
6 should come in.

7 I also note that I would regard it as unfair to raise  
8 this issue at this point in the trial, where the government's  
9 entire case has been based in part on this. So, for that  
10 additional reason, the motion is denied. But primarily, it is  
11 denied because, although hearsay, it is admissible under  
12 section 24, 803.

13 We will take a brief recess while you set up. Your  
14 objections is of course noted.

15 MR. SEGAL: One other point, your Honor, when it does  
16 come in, would you, I request we get a 404(b) limiting  
17 instruction in connection with Scheid's testimony and  
18 Mr. Waskom's.

19 THE COURT: I don't understand what you want me to  
20 tell the jury?

21 MR. SEGAL: Well.

22 THE COURT: I mean, what, how am I limiting it?

23 MR. SEGAL: The rules talks about evidence of other  
24 actions not admissible to prove the character of a person.

25 THE COURT: Oh, oh, oh, oh, oh, oh.

1           MR. SEGAL: Propensity or conformity therewith. I  
2 think there should be some limitation.

3           THE COURT: Well, what I would tell the jury is that  
4 this is being offered, not to show that just because  
5 Mr. Trenkler did something like this once, he would do it  
6 again. However, it is to show that he knows how to make  
7 bombs, that, and perhaps on the intent, since there -- I mean,  
8 do you really want me to tell the jury that?

9           MR. SEGAL: Maybe we can sit down and talk about it,  
10 because I think...

11          THE COURT: I will not give the jury a limiting  
12 instruction until you give me a script and I can review it. I  
13 mean, it seems to me, a limiting instruction in this case may  
14 just conceivably more harmful to the defendant than helpful;  
15 however, if you want me to I'll give it.

16          MR. SEGAL: Let us try to draft something.

17          THE COURT: Thank you.

18          MR. KELLY: While we're here, at some point, if  
19 possible, at the close of business, I did show the tape to  
20 Mr. Segal and Mr. Lopez. And since the government is resting  
21 sometime tomorrow morning, I want to gauge that issue, maybe  
22 see you five minutes at the end the day.

23          THE COURT: Sure. You want me to look at the six  
24 minutes or whatever?

25          MR. KELLY: Unless Mr. Segal agrees that we redacted

1 out 45 minutes and which cut it down to.

2 THE COURT: Do you agree to the admission into  
3 evidence of the five minutes?

4 MR. SEGAL: No.

5 THE COURT: Well, then, I either need have to look at  
6 it or I need to have the portions of the transcripts that is  
7 in there; I don't care, either way.

8 Let's take two minutes while you set up, and we'll  
9 bring the jury down.

10 [Recess.]

11 [Whereupon, the jury entered the courtroom.]

12 THE COURT: Please be seated.

13 THE COURT: Members of the jury, I'm sorry, our  
14 timing was off this morning. I checked, and your goodies had  
15 not yet arrived. So, we will hear this witness, and then we  
16 will take a coffee break recess. The coffee will remain hot,  
17 I think.

18 How long will you be, about a half hour?

19 MR. LIBBY: I would say 30 to 40 minutes, your Honor.

20 THE COURT: All right. Maybe we'll stop as soon as  
21 the direct is over.

22 MR. LIBBY: Thank you, your Honor.

23 May I proceed?

24 THE COURT: Yes.

25 We haven't sworn the witness.

1 THE CLERK: Would you please spell your name for the  
2 record.

3 THE WITNESS: Steven B. Scheid, S C H E I D.

4 Stephen B. Scheid, sworn

5 Direct Examination by Mr. Libby

6 Q Good morning, Mr. Scheid?

7 A Good morning.

8 Q What do you do for a living, sir?

9 A I'm an intelligence research specialist.

10 Q For whom, sir?

11 A With the Bureau of Alcohol, Tobacco & Firearms.

12 Q And where is your present duty station?

13 A I work in Washington, D.C.

14 Q At what building?

15 A I work in the ATF's headquarters building.

16 Q How long have you been an intelligence research  
17 specialist with the ATF?

18 A Since October of 1977.

19 Q And generally speaking, what does your role as an  
20 intelligence research specialist entail?

21 A I do analytical work on bombing and arson investigations  
22 that ATF investigates.

23 Q What when you say analytical work, what does mean?

24 A We do it by way of a computer.

25 Q A computer data base?

1 A A computer data base.

2 Q Very briefly, Mr. Scheid, would you give us a thumbnail  
3 sketch of your educational background?

4 A I have a A.S. in business administration from Northern  
5 Virginia Community College. I have extensive training through  
6 the International Association of Bomb Technicians and  
7 Investigators. And I've had some analytical courses at the  
8 John Jay College in New York City.

9 Q And you have been with the ATF as an intelligence  
10 research specialist since when?

11 A Since 1977.

12 Q Do you have any specialized training in that role, sir?

13 A Yes, I've attended several conferences and training,  
14 conferences in that field.

15 Q With respect to computer data base management?

16 A Yes. And I've some college courses in data base  
17 management.

18 Q What you were you doing before you joined the ATF, sir?

19 A I was a teletype operator for the Navy Department in the  
20 communication center.

21 Q And before that, sir?

22 A I was a parts dispatcher for Boeing Aircraft Company and  
23 a weapons mechanic for the United States Air Force.

24 Q Now, from 1977 on, sir, have you been involved primarily  
25 with respect to a single computer data base?

1 A Yes, I have.

2 Q What is the name of that data base?

3 A It's ATF's Explosives Incident Data Base, EXIS for short.

4 Q EXIS?

5 A Yes, E X I S.

6 Q Thank you.

7 And will you tell us, please, sir, what the  
8 objective, the purpose of the EXIS data base is?

9 A The data base is to give investigators and bomb  
10 technicians investigative leads throughout an investigation.

11 Q And what does the EXIS data base consist of, generally,  
12 please?

13 A Target information and device components of devices.

14 Q Resulting from what, sir?

15 A From ATF investigations, as well as other investigations  
16 that other state, federal and local law enforcement agencies  
17 get involved in.

18 Q How long has this data base been in existence?

19 A Since 1975.

20 Q Is it a continually evolving data base?

21 A Yes, it is.

22 Q It derives from what?

23 A It derives from different reports that ATF generates,  
24 forensic reports, our timely KASR reports, our reports of  
25 investigation, and various other state and federal and local

1 law enforcement agency reports.

2 Q It breaks down these explosives incidents into little  
3 bite-sized species?

4 A Yes.

5 Q Allows the investigators in the field to see if there's  
6 any trend or pattern developing between two or more bombings?

7 A That's correct.

8 Q What is the geographical scope of the EXIS data base?

9 A All the states, including Guam, Puerto Rico, the Virgin  
10 Islands, and the District of Columbia.

11 Q And the starting date, please, for the data base, when  
12 did it begin to accumulate this information?

13 A 1975.

14 Q And I believe you testified that you began your duties as  
15 an intelligence research specialist in 1977?

16 A That's correct.

17 Q Since that time, sir, who has overseen and maintained the  
18 operation and accumulation of information from the field with  
19 respect to the EXIS computer data base?

20 A I am the only person that does that.

21 Q Before you, sir, was there any one that did that?

22 A There were some other people before I was.

23 Q Since you have come on, sir, has your service with the  
24 EXIS data computer data base been uninterrupted?

25 A It's been uninterrupted, yes.

1 Q Will you tell us, please, the different kinds of  
2 operations that are involved with the EXIS data base, the  
3 three types of operations?

4 A We have the data input, maintenance of the data, as well  
5 also the retrieval of information.

6 Q Let's take these one at a time.

7 With respect to input, that is, putting information  
8 into the data base; is that right?

9 A Yes.

10 Q Will you tell us, please -- and this has to do with  
11 explosives incidents occurring in the geographical scope you  
12 just described?

13 A Yes.

14 Q Will you tell us, please, the sources to which the EXIS  
15 data base looks for this information?

16 A It looks from -- has the ATF KASR report, forensic lab  
17 reports from ATF, as well as the FBI's Bomb Data Center  
18 report, and other federal, state and local law enforcement  
19 reports.

20 MR. LIBBY: If I may approach, your Honor?

21 THE COURT: Yes.

22 Q With respect to, with respect to Government's Exhibit  
23 61 B and 61 C for identification, first, sir, 61 B, do you  
24 recognize that form?

25 A Yes, I do.

1 Q What is that, please?

2 A That's the FBI's Bomb Data Center Explosives Incident  
3 Report.

4 Q And secondly, Government's Exhibit 61 C, what form is  
5 that, sir?

6 A This is ATF's KASR report.

7 Q That's a preprinted form?

8 A Yes, sir, it is.

9 Q Are they both preprinted forms?

10 A Yes.

11 Q The purpose, sir?

12 A Is to report explosive incidents.

13 Q Now, with respect to your sources of information, you  
14 testified that the ATF provides these forms?

15 A Yes.

16 Q Filled out, completed by investigating officers; is that  
17 right?

18 A Yes.

19 Q The same with the FBI?

20 A Yes, that's correct.

21 Q Do you take any additional steps, sir, with respect to --  
22 strike that.

23 Do you understand that both the ATF and the FBI on  
24 occasion investigate bombings?

25 A Yes, they do.

1 Q With respect to the FBI, now, beyond receiving reports  
2 such as that marked, I believe, 61 C, do you take any further  
3 steps in connection with apprising yourself as to FBI bomb  
4 data?

5 A Yes, I do.

6 Q Do you do anything else?

7 A I use their forensic lab reports.

8 Q Do you take any further steps? Do you visit them for  
9 forensics?

10 A Yes, I do.

11 Q Will you explain that to the Court and jury.

12 A Yes, approximately two to three weeks a year, I go down  
13 to the Bomb Data Center and retrieve information on bombing  
14 incidents that ATF does not investigate is not involved in, in  
15 order to get that information, bring it back to ATF and put it  
16 into our bomb data computer system.

17 Q Now, you do that incident by incident, sir?

18 A Yes, sir, I do.

19 Q And do you complete a preprinted form incident by  
20 incident?

21 A Yes, sir, I do.

22 Q And as you leave -- and do this annually?

23 A Yes, I do.

24 Q As you leave the FBI Bomb Data Center, you're satisfied  
25 you have all information bearing on each and various incidents

1 under investigation?

2 MR. LOPEZ: Objection.

3 THE COURT: As to the form?

4 He's leading.

5 Q Would you tell us typically, sir, did you say you do this  
6 annually?

7 A Yes, I do.

8 Q As you leave the FBI Bomb Data Center, sir, will you tell  
9 us, please, what information you have in your possession as  
10 leave, typically, in each year?

11 A I have the FBI's bomb data report that I gather the  
12 information from. I take information from that form and  
13 transpose it to ATF's form for the data entry. And I'm able  
14 to look at any of the forms that they have. There's other  
15 forms attached to some of their FBI Bomb Data Center reports.

16 Q And you say that you spent two to three weeks of an  
17 uninterrupted time doing this?

18 A It is one or two days at a time, but it takes a total of  
19 two to three weeks to get this information.

20 Q Other than the ATF and FBI, sir, I believe you testified  
21 to look to the EXIS data base to both state and local sources;  
22 is that right?

23 A Yes.

24 Q And what, typically, ARE types of state law enforcement  
25 sources for this information?

1 A I receive reports from different law enforcement agencies  
2 who are charged with investigating incidents.

3 Q Right. So far as the states are concerned, what  
4 authorities do you commonly receive information of this type  
5 from?

6 A The Kentucky State Police, New York City, St. Paul,  
7 Minneapolis.

8 Q Other than particular cities, sir, do you receive reports  
9 from state police, state fire marshal offices?

10 A And county police.

11 Q Okay.

12 Now, as you received this information, Mr. Scheid,  
13 throughout this period of time, do you use anything to  
14 expedite the inputting process with respect to the individual  
15 bits of information you get from each of these incidents?

16 A Yes, I do.

17 Q What do you use?

18 A I use the EXIS data base code sheet.

19 Q Let me show you what's been marked Government's Exhibit  
20 61 A.

21 THE CLERK: Excuse me, Mr. Libby, I have something  
22 else as Exhibit 61. I have a 3-page report of Detective  
23 Lanergan which was marked for identification yesterday.

24 Could we make it 63 A, B, and C.

25 MR. LIBBY: That's fine.

1 Q I show you what's now marked 63 A for identification --  
2 [Government's Exhibits 63 A, B, and C entered in  
3 evidence.]

4 MR. LIBBY: Thank you, Pam.

5 Q -- and ask you if you recognize that?

6 Would you take a moment to look through it.

7 A Yes, these are the codes that I use to put the  
8 information into the data base.

9 MR. LIBBY: Your Honor, at this point, the government  
10 has made some exemplar copies of the code book, if we can  
11 briefly pass copies to the jury so they can follow along.

12 THE COURT: No objection?

13 MR. LOPEZ: No objection.

14 Q Now, without spending too much time on this, Mr. Scheid,  
15 and understanding it is somewhat dry material, would you tell  
16 us, please, what this code book is for?

17 A We use this code book to insure that all the information  
18 about an explosive incident is put into the data base and it  
19 is put in correctly.

20 Q All right. Now, when you, when you do this, will you  
21 tell us, please, the different types of major categories of  
22 information that we're dealing with here?

23 A Some of the major categories are target information,  
24 location of target, device components, manufacturers of device  
25 components, as well as the city, the state.

1 Q And you abbreviate these pieces of information with an  
2 abbreviation system that's what these codes are?

3 A Yes, sir.

4 Q All right.

5 Now, will you tell us, please, between the incident  
6 reports that you personally are reviewing, correct?

7 A Yes, sir.

8 Q Anyone else review these reports for purposes of this?

9 A No, sir.

10 Q Between the incident report and the actual information  
11 being inputted into the data base, do you transfer that  
12 information and encode it?

13 A Yes, I do.

14 MR. LIBBY: If I may approach, your Honor.

15 Q 63 D, a one page preprinted form, Mr. Scheid, and I ask  
16 you if you recognize that?

17 A Yes, I do.

18 Q What is that, please?

19 A This is the explosive incident work sheet. This is a  
20 work sheet that I fill out for the data entry person to put  
21 into the computer system.

22 Q And would you tell us, please, basically, what types of  
23 information that entails?

24 A It entails the investigation number, the date of the  
25 incident, the type of incident, the victim's name, city,

1 state.

2 Q Rather than reading it, does state the particular pieces  
3 of information relating to each incident that comes to your  
4 attention?

5 A As to whether it is a bombing, attempting bombing?

6 Q Yes.

7 A And target information?

8 Q Right.

9 A Device components, the manufacturer?

10 Q Back to investigation number, please, what does that  
11 mean?

12 A The investigation number is a number that's assigned by  
13 the investigative agency to track a particular incident.

14 Q Does the EXIS data base assign a particular incident, a  
15 particular identifier?

16 A Yes, it does.

17 Q And will you tell us, please, what happens after that  
18 assignment is made of that number? Does it stay with the  
19 data --

20 A It stays with that incident throughout its entire  
21 lifetime.

22 Q All right.

23 So, now you have the incident reports in front of  
24 you, you have your code book in front you have, and now you  
25 have the -- we'll this Exhibit 63 D, the encoding form?

1 A Yes, sir.

2 Q What then takes place, sir, with respect to the encoding  
3 form?

4 A The information is put on the data input form. And then  
5 it's either inputted by myself or by a data entry person.

6 Q Now, does the EXIS data base come equipped with any kind  
7 of internal quality control to insure that the codes, code  
8 book, and your encoding form information is correct?

9 A Yes, it does. There are built-in edit checks.

10 Q What does that mean?

11 A That means you cannot put in invalid code for a state or  
12 a component or a manufacturer.

13 Q For example?

14 A For example, the State of Massachusetts.

15 Q That was the example you can't put a component in a state  
16 column?

17 A That's correct.

18 Q And so forth?

19 A Yes.

20 Q Now, typically, sir, in the course of a years since 1977,  
21 since you have been doing this, how many such encoding forms,  
22 how many such incidents do you feed into the EXIS data base?

23 A I do about 4000 incidents a year.

24 Q And the type of information that you're encoding here, is  
25 that information which is provided to you specifically

1 relating to each of these bombing incidents?

2 A That's correct.

3 Q Now, with respect to maintenance of the EXIS data base,  
4 would you explain to us, sir, is there a means by which you  
5 maintain this information?

6 A Yes, it is a typical data base that is housed at our  
7 headquarters building. And there is a back-up done once a  
8 week. And the storage of the tapes are taken off --site for  
9 storage in case of a fire or some other type of catastrophe.  
10 So, the system is backed up on a weekly basis.

11 Q Is there a means by which the EXIS data base may be  
12 updated, the information as to any particular investigation?

13 A Yes. Initially, the information is put in. And as the  
14 investigation evolves, more information is derived, that  
15 information can be added to the system.

16 Q And you get into the system by that unique identifier  
17 number that you explained for us?

18 A Yes, the computer-generated line number.

19 Q And you do that in the course of your duties as an  
20 intelligence research specialist?

21 A Yes, I do.

22 Q Now, is there also means, sir, of retrieving this  
23 information in any particular respect?

24 A Yes, there is.

25 Q Will you please tell us generally how that is done?

1 A To retrieve information from the EXIS data base, you go  
2 into the query mode and the input --

3 Q Excuse me. Would you spell query for us, please?

4 A Q U E R Y.

5 Q Please continue.

6 A In the query mode, the explosive incident work sheet pops  
7 up, and you fill in the blanks of the information that you  
8 want to retrieve.

9 Q In other words, you're querying the entirety of the data  
10 base?

11 A Yes, that's correct.

12 Q For a particular feature?

13 A Yes.

14 Q Is there a means by which you can query more than one  
15 feature for the whole data base?

16 A Yes, there is.

17 Q How many features can you query the entirety of the data  
18 base at one time?

19 A I would say I've done as many as 12 different items at  
20 one time.

21 Q So, each time you add a new piece of information and  
22 you're asking the system to survey the entire data base to see  
23 how many incidents feature those same pieces of information?

24 A That's correct.

25 Q Every time you add one, it progresses, narrows the field

1 down; is that right?

2 A Yes, it does.

3 Q Okay. But every time you ask a query, where does the  
4 question to the data base go?

5 A It always goes back to the beginning. I have to query  
6 the whole data base.

7 Q Now, in connection with this matter, Mr. Scheid, at the  
8 Government's request, did you perform queries rest?

9 A Yes, I did.

10 Q And did those queries encompass all explosive incidents  
11 in the geographical scope of the EXIS data base?

12 A Yes.

13 Q And what was the, what was the relevant time period?  
14 What was the time period over which your queries took place,  
15 sir?

16 A Our queries started January 1st, 1979, and they went  
17 through December 31st, 1991.

18 Q So that was a period of time beyond the October 28th,  
19 1991, time frame; is that right?

20 A That's correct.

21 MR. LIBBY: One moment, your Honor.

22 (Pause.)

23 Q Let me show you what's mark Government's Exhibit 63 E,  
24 and ask you if you recognize those documents?

25 A Yes, I do.

1 Q What do you recognize them to be, please?

2 A These are the statistical information derived from each  
3 query that I did.

4 Q And at each stage of the query, as you described it, the  
5 cumulative features, that produces a numerical result of  
6 incidents bearing those common features?

7 A That's correct.

8 Q And you did that in connection with this matter; is that  
9 right?

10 A Yes.

11 Q In the manner in which you described for the Court and  
12 jury?

13 A Yes.

14 MR. LIBBY: Your Honor, the government would move  
15 Exhibit 63 E in evidence.

16 MR. LOPEZ: I object, your Honor.

17 THE COURT: The same objection, right? Same  
18 objection, right? The one made earlier, or is there an  
19 additional?

20 MR. LOPEZ: There are additional.

21 THE COURT: What are the objections?

22 MR. LOPEZ: Well, your Honor, for starters, this is  
23 the first notice I've received that these documents were  
24 intended by the government to be admitted. There was -- if we  
25 may approach?

1 THE COURT: No, just tell me what the objection is,  
2 in one word, hearsay or what?

3 MR. LOPEZ: Your Honor, that's a general objection.

4 THE COURT: That one is overruled. What else?

5 MR. LOPEZ: Just note my objection.

6 THE COURT: Noted.

7 **[Government's Exhibit 63 E entered in evidence.]**

8 Q At this time, Mr. Scheid, would there be anything to  
9 assist you in explaining to the Court and jury, the manner in  
10 which you performed these queries, at the government's  
11 request?

12 A Yes, there is.

13 Q Specifically, the schematic?

14 A Yes.

15 Q If the Court would allow Mr. Scheid to come down at this  
16 point.

17 **[Demonstration at jury box.]**

18 THE COURT: All right, let's go.

19 Q Directing your attention to Government's Exhibit 40,  
20 Mr. Scheid, can you tell us what that depicts generally?

21 A This depicts the different queries that I made of the  
22 EXIS data base.

23 Q Now, directing your attention to the first two lines  
24 below the caption here, sir, what is that we're referencing  
25 here?

1 A These are all the explosive incidents from January '79  
2 through December of '91, which equals total incidents of  
3 40,867 incidents that are in the data base available to  
4 query.

5 Q Would you tell us, please, what you mean by the term  
6 "explosive incident"?

7 A That's any explosive incident that involves explosives,  
8 such as bombings, attempted bombings, stolen, recovered.

9 Q Stolen, recovered what, sir?

10 A Devices, explosives throughout the United States, as well  
11 as Puerto Rico, Guam, the Virgin Islands, and D.C.

12 Q So we're -- explosives incidents is beyond those matters,  
13 beyond simple bombing and attempted bombings?

14 A That's correct.

15 Q Theft of dynamite, for example?

16 A Yes.

17 Q And the total incidents in the data base as of the time  
18 of your query, sir, was how many?

19 A 40,867.

20 Q Did you query the system, sir, to determine of those,  
21 that total number of explosive incidents, how many involved  
22 bombings and attempted bombings?

23 A Yes, I did. There were 14,252 bombings and attempted  
24 bombings in the data base at that particular time.

25 Q Now, in terms of attempted bombing, the data base

1 understands that to be what, sir?

2 A As a device that was placed on target but did not  
3 detonate or did not function.

4 Q All right. There is a 100 percent, parentheses, next to  
5 figure?

6 A Yes, that's the hundred percent that we base our queries  
7 on.

8 Q In fact, that is with respect to all bombings and  
9 attempted bombings, that is the base line?

10 A That's the base line for all bombings and attempted  
11 bombings.

12 Q What do you next query the next base, sir?

13 A The next query is all bombings and attempted bombings  
14 involving cars and trucks. And the results were 2,504  
15 incidents throughout the United States.

16 Q And does that translate into a percentage of all of the  
17 bombings and attempted bombing incidents, please?

18 A Yes, it is 18 percent of all the bombings and attempted  
19 bombings.

20 Q Now, these figures that we see here in red correspond to  
21 what your -- Mr. Scheid, they correspond, correspond to?

22 A To that exhibit.

23 Q 63 E?

24 A Yes, that's correct.

25 Q Please continue. What did you next query the system?

1 A Next query was all bombings and attempted bombings, cars  
2 and trucks, where the device was placed underneath the  
3 vehicle.

4 Q And the result there?

5 A The results were 428 incidents, which represented  
6 3 percent of the total 14,252.

7 Q And the next query that you performed, please?

8 A The next query was all bombings and attempted bombings,  
9 cars and trucks, devices placed under the vehicles, and a  
10 remote control-type device utilized.

11 Q The result there?

12 A The results with 19, and that was .1 percent of the total  
13 100 base line of 14,252 incidents.

14 Q So, over that period of time and in that geographical  
15 scope, as described, there were 19 incidents all bearing those  
16 features?

17 A That's correct.

18 Q What did you next query the system for?

19 A The next query was bombings and attempted bombings, cars  
20 and trucks, devices placed under the vehicle, remote control,  
21 and magnets.

22 Q And the results, please?

23 A There were seven bombing incidents with those  
24 attributes.

25 Q That translates to a percentage of what of the bombings

1 and attempted bombings?

2 A .05 percent.

3 Q Now, what were those seven incidents, please?

4 A The seven incidents was the bombing in New York, in 1980;  
5 Philadelphia, in 1985; Quincy, in 1986; Campbell in 1987.

6 Q Is that Campbell, California?

7 A Yes, it is.

8 Q Please continue?

9 A Norwich, Illinois, in 1987; Coral Gables in 1990, and  
10 Roslindale in 1991.

11 Q Those were the seven resultant incidents?

12 A Seven resultants.

13 Q Did you further perform any further analysis with respect  
14 to each of these seven incidents, sir?

15 A Yes, I did, I did a manual check.

16 Q When you say by "manual check," that's by reference to  
17 the actual?

18 A Seven incidents that were printed out.

19 Q Printed out by the EXIS data base?

20 A That's correct.

21 Q Did you bring that with here today?

22 A Yes, sir, I did.

23 MR. LIBBY: May I, your Honor.

24 Q And are these seven boards, those incidents you just  
25 depicted?

1 A Yes, they are.

2 Q Now, I'm placing up at the top area here, the Roslindale  
3 incident sir.

4 A Yes, that's correct.

5 Q October 28, 1991?

6 A That's correct.

7 Q We'll call that the subject incident, for purposes of our  
8 questioning.

9 A All right.

10 Q We also have --

11 Can everybody see these down at the bottom?

12 THE COURT: Everybody can see them, nobody can read  
13 them. But that's all right, you can tell us quickly what they  
14 are about.

15 MR. LIBBY: Point out particular attention your  
16 Honor.

17 Q Now, directing your attention here to 41 G, this is the  
18 Roslindale, Massachusetts bombing.

19 A That's correct.

20 Q Called subject incident, sir?

21 A Yes.

22 Q Would you tell us, please, just depict generally the  
23 remaining six incidents, what they correspond to in terms of  
24 location?

25 A This is the 1990 case in Coral Gables, Florida. This is

1 the 1980 case in New York City, New York; this one is the  
2 Philadelphia case, in 1985, Pennsylvania; this is the 1986  
3 case in Quincy, Massachusetts; the bottom one is the 1987 case  
4 in Norwich, Illinois, and the last one is the 1987 case in  
5 Campbell, California.

6 Q And these are the EXIS data base printouts which resulted  
7 from the query process you just described; is that right?

8 A Correct, that's the seven incidents.

9 MR. LIBBY: Your Honor, at this time the government  
10 would ask to have offered in evidence, 41 A through, I  
11 believe --

12 THE CLERK: G.

13 MR. LIBBY: G.

14 My continuing objection.

15 THE COURT: Your continuing objection is noted and  
16 noted and overruled, and they are now in evidence.

17 **[Government's Exhibit 41 A through G entered in**  
18 **evidence.]**

19 THE COURT: Do you have little ones of these?

20 MR. LIBBY: I believe we do.

21 THE COURT: You don't need them now. Let's just  
22 continue with the questioning. Coffee is waiting.

23 MR. LIBBY: Thank you.

24 Q Now, with particular, before we get started Mr. Scheid,  
25 with specific respect to this printout, that is, 41 C, the

1 Quincy 1986 bombing, sir?

2 A Yes, sir.

3 Q Will you tell us when that information was inputted in  
4 the EXIS data base?

5 A The Quincy, Massachusetts, incident was put into the data  
6 base after the Roslindale incident, in 1991.

7 Q So, it did not come to your attention in the normal  
8 course; is that right?

9 A That's correct.

10 Q What did you look to -- strike that.

11 Who put that information into the EXIS data base?

12 A Either myself or the data entry person.

13 Q And who encoded the information that went on, ultimately,  
14 ultimately went on the encoding form that we see here?

15 A I did that.

16 Q Anyone else?

17 A No one else does that.

18 Q What did you look at, sir, what were you reviewing when  
19 you placed the codes on the encoding form?

20 A For the Quincy, Massachusetts?

21 Q The Quincy bomb?

22 A Okay. That was done from the Massachusetts State Lab  
23 report.

24 Q All right.

25 Was anyone accompanying you or looking over your

1     shoulder or anyone directing you to put certain things in and  
2     leave certain things out?

3     A     No, sir.

4     Q     You did that -- do that as you input that information as  
5     would any routine incident matter?

6     A     That's correct.

7     Q     Now, at this stage, sir, did you -- do you have with you  
8     the markers?

9     A     Yes, I do.

10    Q     Did you undertake to determine whether there existed any  
11    features common between the subject incident, the Roslindale  
12    bombing, and the other bombings?

13    A     Yes, I did.

14    Q     First, with respect to --

15           THE COURT: I thought that's how he got there. He  
16    asked the computer to give him all having certain features.

17           MR. LIBBY: I'll rephrase it.

18    Q     Did you conduct further analysis, sir, to determine  
19    whether there were additional features beyond those that  
20    you've already testified to?

21    A     Yes, I did.

22    Q     Which were common between and among the incidents?

23    A     That's correct.

24    Q     Now, first, with respect to the subject incident, did you  
25    determine whether any of the other incidents featured duct

1 tape, for example?

2 A Yes.

3 Q And what are you doing there for the jury, please?

4 A I'm circling duct tape on the Roslindale.

5 Going to the Coral Gables.

6 Q You saw nothing on Coral Gables?

7 A Nothing on duct tape there.

8 Going to New York City, in 1980, there is no duct  
9 tape.

10 Going to the Philadelphia, in the 1985, no duct tape.

11 Q Let me stop you there, Mr. Scheid. I see something  
12 that's been written, appears to be in hand there?

13 A That's correct.

14 Q Who wrote that, please?

15 A I did.

16 Q And when did you write that in?

17 A I wrote that in after further evaluation of the 1985  
18 incident. I saw that solder was part of the device and was  
19 not put in there originally.

20 Q What information did you look to determine that, sir?

21 A A forensic lab report from ATF.

22 Q So, you conducted a further review?

23 A Yes, I did.

24 Q Was it typical of you to conduct further review of such  
25 incidents?

1 A Yes, it is.

2 Q After finding there was no solder present in your initial  
3 encoding, what did you do?

4 A The data base, you're able to update the incident.

5 Q But here, you did it in hand; is that right?

6 A That's correct.

7 Q Did you intentionally not put soldering into the data  
8 base?

9 A I did not intentionally not do it, no.

10 Q But you did it because you knew of this proceeding,  
11 right?

12 A That's correct.

13 Q So not to give anybody the misimpression that it was in  
14 originally?

15 MR. LOPEZ: Objection.

16 THE COURT: The objection is sustained.

17 Q Mr. Scheid, did you examine the Philadelphia incident as  
18 to duct tape?

19 A No duct tape.

20 Moving on to the 1986 case, at Quincy, Massachusetts,  
21 there is duct tape.

22 Q Going to the Norwich case, in 1987, there is no duct  
23 tape.

24 Going on to the 1987 case, in Campbell, California,  
25 there is no duct tape.

1 Q Now, did you further conduct a manual examination between  
2 and among these incidents with respect to soldering?

3 A Yes, I did.

4 Q Will you circle that subject incident, and please  
5 continue as you have with respect to the duct tape?

6 A Coral Gables, Florida, 1990, there is no solder.

7 New York City, 1980, no solder.

8 Philadelphia, 1985, there was solder.

9 1986, in the Quincy, Massachusetts, there was  
10 solder.

11 In Norwich, Illinois, 1987, there was solder.

12 In Campbell, California, in 1987, there was no  
13 solder.

14 Q Same question, sir, with respect to the presence as in  
15 the subject incident of AA batteries.

16 A Yes.

17 Q Were there any other incidents also featuring AA  
18 batteries?

19 A Coral Gables, Florida in 1990, there was.

20 In New York City, in 1980, there were batteries, no  
21 mention of the types of batteries.

22 In 1985, in Philadelphia, Pennsylvania, there were  
23 AA batteries.

24 In 1986, in Quincy, Massachusetts, there were  
25 AA batteries.

1           In Norwich, Illinois, in 1987, there were no  
2 AA batteries.

3           In Campbell, California, 1987, there were batteries,  
4 but no mention of the type of batteries.

5       Q     Just so the jury understands, the investigation number  
6 that you were talking about previously is this number up here  
7 on the left-hand corner?

8       A     That's correct.

9       Q     And we see numbers on the left-hand margin, sir, what are  
10 those?

11       A     These are the computer-generated numbers. And that's  
12 where the information resides in the storage of the computer  
13 system.

14       Q     So you access that line and revise the information?

15       A     Yes, you can change it; you can update it, add it, add  
16 information to it.

17       Q     Same question with respect to the presence of a toggle  
18 switch.

19            You saw this the subject incident right?

20       A     Yes, that's correct.

21       Q     1990, Coral Gables, there was no Toggle switch.

22            1980, in New York City, no toggle switch.

23            1985, in Philadelphia, Pennsylvania, there is a  
24 toggle switch.

25            In 1986, in Quincy, Massachusetts, there is a toggle

1 switch.

2 In Norwich, Illinois, in 1987, there is not.

3 In 1987, in Campbell, California, there is not a  
4 toggle switch.

5 Q Same question, sir, with respect to the presence as we  
6 see in the subject incident, the presence the magnets, did you  
7 conduct an analysis to determine whether magnets were present  
8 in the other incidents?

9 A Yes.

10 In 1990, in Coral Gables, Florida, there were  
11 magnets.

12 In 1980, in New York City, there were magnets.

13 In Philadelphia, in 1985, there were magnets but no  
14 -- did not designate what type of magnet.

15 In 1986, in Quincy, Massachusetts, there were round  
16 magnets.

17 In 1986, in Norwich, Illinois, there were magnets.  
18 Horseshoe shaped.

19 In 1987, in Campbell, California, there were  
20 horseshoe-shaped magnets.

21 Q Now, with respect to your references to round magnets and  
22 horseshoe-shaped magnets, does the EXIS code data base provide  
23 for particular discrimination of magnets?

24 A Yes, you can put in a descriptive.

25 Q A horseshoe is being different from circular or round?

1 A That's correct.

2 Q Did you conduct, finally, sir, an analysis as to whether  
3 any of these other incidents with respect to magnets  
4 specifically featured round magnets?

5 A Yes, I did.

6 Q And what did you determine?

7 A In Coral Gables, Florida, in 1990, they were reported as  
8 donut shaped. You would assume that they were round.

9 Q All right.

10 A The Cuban ambassador, in 1980, in New York City, the  
11 report that I had was that they were magnets. And I further  
12 checked with the Bomb Data Center, and they could not tell me  
13 what particular type of magnets they were.

14 Q Please continue.

15 A In 1985, magnets were reported but didn't tell what kind  
16 of magnets.

17 Q Which one are you talking about?

18 A 1985, in Philadelphia, Pennsylvania.

19 Q Thank you.

20 A In 1986, in Quincy, Massachusetts, they were reported as  
21 round magnets.

22 In 1987, in Norwich, Illinois, they were reported a  
23 horseshoe magnets.

24 And in 1987, in Campbell, California, they were  
25 reported as horseshoe magnets.

1 Q So, with respect to these seven incidents, which are the  
2 results of your cumulative query of the hundred percent  
3 bombings and attempt bombings, 14,252, all resulting in these  
4 seven incidents which we see here, sir?

5 A That's correct.

6 Q Of those seven incidents, which incidents, according to  
7 your further manual analysis, also featured deduct tape,  
8 soldering, AA batteries, toggle switch, and magnets that were  
9 round?

10 A The Roslindale subject bombing, the Quincy,  
11 Massachusetts, bombing, and that's it.

12 MR. LIBBY: Thank you.

13 I have nothing further, your Honor.

14 Thank you Mr. Scheid.

15 THE COURT: All right. We take the coffee break  
16 recess now, and then continue.

17 [Whereupon, the jury was excused.]

18 [Recess.]

19 THE COURT: Just so you know about scheduling: We  
20 will not sit on the holiday this week. We will come back on  
21 Friday. We will hear evidence on Monday and Tuesday of next  
22 week. We will not be here Wednesday, Thursday, and Friday. I  
23 anticipate that we will finish all the evidence on Monday  
24 morning at some point. In order to get the case to you, I am  
25 considering -- although we haven't finalized this yet because

1 I'm not exactly sure whether I can do it -- sitting through  
2 the morning and perhaps a little past one in order to be able  
3 to get the case to you on Monday, and then you would have  
4 lunch, and then after that begin your deliberations. And then  
5 if you do not have a verdict on Monday, you would come back  
6 Tuesday and continue your deliberations and again Wednesday,  
7 if you do not have a verdict. If you don't have a verdict by  
8 Wednesday, we will need to think about what to do, then comes  
9 Thanksgiving, and you will presumably go home and come back  
10 the following week to continue your deliberations.

11 I am trying to get the case to you as early as  
12 possible so you have as much time as possible before the  
13 holiday so you will not have to feel a rush to get a verdict  
14 in before the holiday. That's the last thing we want you to  
15 do. As it now looks, you will be here all day, Monday,  
16 Tuesday, and Wednesday before Thanksgiving or at least until  
17 you have a verdict. Also, for your information, I will stay  
18 as late as you wish to stay on Monday, Tuesday, Wednesday,  
19 understanding also that when you spend a day deliberating that  
20 you get tired, and that you may wish to go home by four or  
21 five o'clock in the afternoon, simply because you can't go on  
22 anymore. So that in essence is the schedule.

23 Mr. Lopez, you may cross-examine.  
24  
25

Cross-examination by Mr. Lopez

1  
2 Q Mr. Scheid, good morning.

3 A Good morning.

4 Q I am Mr. Lopez, as you know.

5 A Yes, sir.

6 Q Now, Mr. Scheid you are not a bomb expert, correct?

7 A That's correct.

8 Q And the purpose of the EXIS computer is not to identify  
9 the particular person who made a particular bomb; is that  
10 correct?

11 A Not exactly. It's --

12 Q Is the EXIS computer able to identify the particular  
13 person who made a particular bomb; is that correct?

14 A It can, yes.

15 Q It can. And that would be if through investigation there  
16 were other elements that indicated a particular person; is  
17 that correct?

18 A That's correct.

19 Q And if you're provided that information and you put it  
20 into the computer, then you can identify who made a particular  
21 bomb?

22 A That's correct.

23 Q My question is: With respect to making queries, if you  
24 don't have the name of a particular bomb maker, is the EXIS  
25 computer designed to be able to identify a particular bomb

1 maker?

2 A It's -- the EXIS database is able to provide the  
3 investigators with investigations that are similar to that  
4 particular device or that particular target.

5 Q It provides leads; isn't that correct?

6 A Yes.

7 Q As a matter of fact, the purpose of the EXIS computer is  
8 only to develop investigatory leads; isn't that correct?

9 A That's one of the functions, yes.

10 Q And the EXIS system only stores that information about  
11 explosive incidents which are investigated by ATF or reported  
12 to ATF; is that correct?

13 A That's correct.

14 Q Now, I want to focus on the requirement with respect to  
15 reports?

16 A Okay.

17 Q Is it true that no other federal agency is required by  
18 law to report bombing incidents to ATF?

19 A That's correct.

20 Q Is it true that no other state agency is required by law  
21 to report bombing incidents to ATF?

22 A That's correct.

23 Q Is it true that no local or city agency is required by  
24 law to report bombing incidents to ATF?

25 A That's correct.

1 Q Now, let me talk to you, focus merely on the forms that  
2 are used, and we've had a number admitted into evidence and I  
3 believe that they're before you now.

4 Now, is the same form used to report every incident  
5 to ATF?

6 A No, sir.

7 Q In fact, ATF has one form, isn't that true?

8 A That's correct.

9 Q And the FBI has another form, isn't that true?

10 A That's correct.

11 Q And the state agency has another form; isn't that  
12 correct?

13 A Yes.

14 Q And the local police departments have yet another form;  
15 isn't that correct?

16 A Yes.

17 Q Now, let me focus on the qualifications of the people who  
18 are providing these reports to ATF --

19 A Okay.

20 Q -- for a moment. Now, I believe you testified that you  
21 take information from reports and then using the coding form,  
22 you put that information on to a computer; isn't that correct?

23 A Yes.

24 Q Now, are the people who make these reports required to be  
25 bomb specialists?

1 A No.

2 Q Are the people who report these incidents required to  
3 have an electronics background?

4 A No.

5 Q Are the people who report these incidents required to  
6 have certain training?

7 A I would believe they would.

8 Q But not any particular training. There's no requirement  
9 that you can't make this report unless you have certain  
10 training; isn't that correct?

11 A I would think that it, if you were an investigator or a  
12 local law enforcement agency you would have investigative  
13 training as to investigating crimes regardless of what type  
14 they are.

15 Q That's an assumption that you're making; isn't that  
16 correct, Mr. Scheid?

17 A Yes, it's an assumption.

18 Q There's no requirement that before a person can send you  
19 a report about a bombing incident that he has to have a  
20 college education, is there?

21 A That's correct.

22 Q He doesn't have to have a high school education?

23 A That's correct.

24 Q He doesn't have to go to a bombing seminar; isn't that  
25 correct?

1 A That's correct.

2 Q Now, and these people who report are also not required to  
3 be a member of the International Association of Bomb  
4 Technicians, are they?

5 A That's correct.

6 Q As a matter of fact, the people who send in these reports  
7 aren't required to have any specific qualifications at all;  
8 isn't that correct?

9 A I can't answer that question.

10 Q Now, let's talk about the timing of the report. Are  
11 there any restrictions on when an incident has to be reported  
12 by?

13 A ATF, there is a requirement.

14 Q Is that within a month of the incident?

15 A I think it's within 24 hours. If we're going to  
16 investigate it, it has to be reported to headquarters within  
17 that time period.

18 Q Now, is there a requirement, let's say, with respect to  
19 the FBI, do they have to report a bombing incident to ATF to  
20 put on to the computer within 24 hours?

21 A I know of no such law or regulation.

22 Q Or any states or local agencies or any cities required to  
23 report a particular bombing incident to ATF within 24 hours of  
24 the bombing incident?

25 MR. LIBBY: Objection, your Honor. Earlier testimony

1 had to do with the requirement generally, now we're getting  
2 into the timing of the bomb --

3 Q Is there any requirement that the person who writes the  
4 report has to personally inspect the debris from the bomb?

5 A I don't know that.

6 Q And in fact, information can be added to the computer or  
7 removed from the computer at any time; isn't that correct?

8 A That is correct.

9 Q Now, again, focusing on the forms, are these reports that  
10 are submitted to you and you rely upon, are they signed under  
11 the pains and penalties of perjury?

12 A That I don't know. They are law enforcement reports from  
13 particular law enforcement agencies, and I would assume they  
14 fill out those forms correctly.

15 Q But unlike -- well, that's another assumption, unlike you  
16 who are here today testifying under oath, there's no similar  
17 requirement that the person who submits these reports are  
18 submitting them under oath; isn't that correct?

19 A That's correct.

20 Q And as a matter of fact, the reports don't even have to  
21 be signed by anyone; isn't that correct?

22 A Some of the reports are signed by individuals.

23 Q But some are not?

24 A Some are not.

25 Q So there's no requirement that they are to be signed;

1     isn't that correct?

2     A     ATF requires the releasing, the signature of the person  
3     releasing the information which is usually the person in  
4     charge of that particular division who signs the reports.

5     Q     How about the local and state agencies that you rely upon  
6     to record, to report information to you, are they required,  
7     required, to sign their reports before you rely upon them?

8     A     Some of the reports are signed by the investigators.

9     Q     So some are not?

10    A     That's correct.

11    Q     And you rely on them, in any event?

12    A     Yes.

13    Q     Now, let's talk about the time after which an incident is  
14    first reported to you, are you required to personally verify  
15    that the information contained in that report is accurate?

16    A     I take the information from that report. I take it as it  
17    stands.

18    Q     So in response to my question, you do not go out and  
19    verify that that information is accurate; is that correct?

20    A     That is correct.

21    Q     And are the people who make these reports, are they  
22    required to supplement the original report if any changes  
23    occur?

24    A     Yes, they do.

25    Q     Not whether they do, but are they required to?

1 A Well, in the course of an investigation from the time the  
2 crime happens until it goes to court or the case is closed,  
3 there are reports coming every week, every month, while the  
4 investigation is open, and they duly note any changes in the  
5 investigation as far as new leads that were developed, new  
6 information that was gathered.

7 Q I assume you're talking about ATF's reports and  
8 procedures; isn't that correct?

9 A That's correct.

10 Q I guess I should focus on the FBI. Is the FBI required  
11 to supplement their original report to ATF, if there's any  
12 change?

13 A No, they're not.

14 Q And are the people in the state and local agencies, if  
15 there's a change, let's say in a component, are they required  
16 to supplement their report to you?

17 A No.

18 Q And I think you may have already answered this, but it's  
19 my understanding that the investigation doesn't have to be  
20 complete before it's reported to you for purposes of putting  
21 it on to the EXIS computer; isn't that correct?

22 A That's correct.

23 Q It's ongoing at least with respect to ATF?

24 A Yes.

25 Q So, the possibility exists that the FBI, if they send you

1 a report in the early stages of the investigation, that there  
2 may be changes, and although they've sent you a preliminary  
3 report, they're not required to send you a complete report in  
4 the end of their investigation; is that correct?

5 A That's correct.

6 Q Now, if something is incorrect on the form, are the  
7 people who send these reports to you required to send you  
8 accurate information?

9 MR. LIBBY: Objection, your Honor.

10 THE COURT: To the requirement?

11 MR. LIBBY: No, the form of the question, is  
12 something wrong, it is required, it seems to me it's missing a  
13 step somewhere.

14 MR. LOPEZ: I don't know of any step.

15 THE COURT: If that's the objection, it's overruled.

16 THE WITNESS: Would you please repeat that question.

17 THE COURT: If somebody sent you erroneous  
18 information, is that person required to send you correct  
19 information when she or he realizes what he or she sent was  
20 wrong.

21 MR. LIBBY: That was my objection.

22 A If it's an ATF investigation, I will get that  
23 information. If it's not an ATF investigation, I will not get  
24 that information.

25 Q What about assumptions that are left off that form, is

1 the person who submitted the original report to you required  
2 to submit an additional report to make up for that omission?

3 A If it's an ATF case, I would assume that they would do  
4 that.

5 Q But the agents are not required to do that, are they?

6 A The agents are required to report their findings  
7 throughout the entire investigation.

8 Q But there is not a similar requirement for the FBI or the  
9 state and local agencies if something is omitted?

10 A I really can't answer that question. I don't know what  
11 their internal workings are.

12 Q Now, let's talk about maintaining the reports. Do you in  
13 Washington, D.C., maintain the original investigative report,  
14 and by that I mean, forensic reports, bomb data reports,  
15 chemist reports, those types of reports, in the umbrella of  
16 investigative reports. Do you maintain the original  
17 investigative reports of all bombings on the EXIS computer in  
18 your office?

19 A No, I don't.

20 Q Do you maintain these original reports in your building?

21 A No, I don't.

22 Q Now, the reporting forms that have been introduced into  
23 evidence -- I'm focusing only on the ATF report of the form,  
24 the KASR report. It's been introduced into evidence as  
25 Exhibit 63 B.

1           Are you required to maintain the reporting forms of  
2 the bombing incidents that have been investigated by ATF and  
3 reported to you on this ATF form at your office or in the  
4 building?

5       A     The KASR forms are kept for one complete year and the  
6 current year, and the field division level, they are put into  
7 storage after a certain amount of time. So all these original  
8 records are available to me through the field offices if I  
9 needed them.

10       Q     You're certain of that?

11       A     When the case is closed, the case goes to archives.

12               MR. LOPEZ: Your Honor, may we approach?

13               [Conference at the bench, as follows:

14               THE COURT: How many of the seven were ATF  
15 investigations?

16               MR. LOPEZ: Five.

17               MR. LIBBY: I'll take it at face value. I don't  
18 know. The question was: Field agents maintaining their  
19 repositories and their field offices archiving things. He has  
20 represented to me and I've represented to him and counsel that  
21 the underlying incident report forms on which the encoding  
22 forms were based, he keeps, he keeps for one year and then  
23 they're routinely disposed of because he does 4,000 of them a  
24 year. He's talking about something else entirely. That's the  
25 field office's archiving practices which he's aware of.

1 THE COURT: Okay. I can't find the motion.

2 MR. LOPEZ: Your Honor, I have another copy. Oh,  
3 which motion?

4 THE CLERK: Which motion do you want?

5 THE COURT: The motion that is the subject of this  
6 discussion, the motion to turn over the investigation reports.

7 MR. LOPEZ: I don't have that with me today, your  
8 Honor, but I specifically --

9 THE COURT: The question is, what did you ask for?

10 MR. LOPEZ: I asked for the KASR incident reports  
11 which I believe the witness testified are maintained  
12 somewhere.

13 MR. LOPEZ: That's a more recent motion, your Honor.

14 THE COURT: That's not the one.

15 MR. LOPEZ: Your Honor, perhaps in terms of  
16 expediency, perhaps we can deal with this at the end of his  
17 testimony. I'll reserve my right to continue.

18 MR. LIBBY: The question, as I understood it, which  
19 was colloquy Friday, before we broke, was what he looked to  
20 and what he did, once he looked through those things and how  
21 long he kept those documents in his office. He doesn't have  
22 room for 4,000 documents a year.

23 THE COURT: The question was whether you interpreted  
24 the motion correctly or whether Mr. Lopez is interpreting his  
25 own motion correctly, but it went beyond what Mr. Scheid got

1 but what ATF may have. I need to find the motion, I'll find  
2 it, but in the meantime we're going on --

3 MR. LOPEZ: Yes, thank you.

4 ... end of conference at the bench.]

5 Q Mr. Scheid, are the encoding forms also maintained at  
6 your office?

7 A Not for any length of time.

8 Q How long are the encoding forms maintained at your  
9 office?

10 A I would say at the present time I can go back maybe  
11 three, four months worth of reports in my office.

12 THE COURT: Excuse me, I found the motion. The  
13 Government is correct, and we will therefore go on.

14 MR. LIBBY: Thank you, your Honor.

15 Q Now, with respect to the encoding forms, now, these  
16 encoding forms are what you take -- you take information from  
17 an investigative report form or a reporting form and you put  
18 it on to an encoding form?

19 A That's correct.

20 Q What do you do with the encoding form after two or three  
21 months, or three or four months, I think you said?

22 A The information is inputted by myself or a data entry  
23 clerk, and then I keep those records for three or four  
24 months. And then I -- the information then is put into a  
25 shred box that he shredded.

1 Q So the seven incidents that we were dealing with earlier  
2 on your direct, the encoding form for those seven incidents no  
3 longer exist?

4 A That's correct.

5 Q And do the reporting forms for those seven incidents  
6 still exist, to your knowledge?

7 MR. LIBBY: Objection, your Honor, which reporting  
8 forms. We're making a distinction here.

9 MR. LOPEZ: The ATF reporting forms.

10 MR. LIBBY: That doesn't distinguish it for our  
11 purposes.

12 Q Okay. Mr. Scheid, would you look at Exhibit 63 B that's  
13 been introduced into evidence?

14 A Yes, that's the FBI's bomb data report.

15 Q Okay. Which one is marked ATF, the KASR?

16 A The KASR is marked 63 C.

17 Q Looking at 63 C, the KASR explosive arson incident report  
18 form?

19 A Yes.

20 Q Are those reports at least five of the seven involving  
21 ATF investigations?

22 A Yes.

23 Q Do they still exist today?

24 A I don't believe they do as far as I know in headquarters.

25 Q All right. Now, Mr. Scheid, I'm going to ask you to look

1 at this big number here.

2 THE WITNESS: May I step down?

3 Q And specifically, where it says "all bombings and  
4 attempted bombings," and there's a number there 14,252  
5 bombings, can you tell me how many of those 14,252 are just  
6 cars?

7 A No, I can't tell you that.

8 Q Can you tell me how many involved just trucks?

9 A No, I can't.

10 Q Magnets?

11 A Well, we -- from the 14,252 down to here with these  
12 parameters, yes, but not without having the computer available  
13 to make those queries, I could not do that.

14 Q So you can't tell me how many of the 14,252 bombings and  
15 attempted bombings used magnets; isn't that correct?

16 A Not without the computer.

17 Q How about round magnets, how many of those 14,252 used  
18 round magnets?

19 A I would have to use the computer again.

20 Q How about solder?

21 A I would have to go back and make a query of the database  
22 to make that --

23 Q Toggle switches?

24 A Same thing.

25 Q Duct tape?

- 1 A Same thing.
- 2 Q AA batteries?
- 3 A I'd have to make a query.
- 4 Q Remote control?
- 5 A I'd have to make a query.
- 6 Q Nine volt batteries?
- 7 A Same thing.
- 8 Q Electric blasting caps?
- 9 A That's correct. I'd have to make a query.
- 10 Q Futaba components?
- 11 A Yes.
- 12 Q Slide switches?
- 13 A Same thing. I'd have to make a query.
- 14 Q How about boxed containers?
- 15 A I'd have to make a query.
- 16 Q Wood?
- 17 A I'd have to make a query.
- 18 Q Dynamite?
- 19 A I'd have to make a query.
- 20 Q Battery snap connectors?
- 21 A I'd have to make a query.
- 22 Q So if I understand, you cannot tell me how common those
- 23 components are out of that 14,252 unless you make a query?
- 24 A That's correct.
- 25 Q And you didn't make a query in this case with respect to

1 those components; is that correct?

2 MR. LIBBY: Objection, your Honor.

3 THE COURT: What's the objection?

4 MR. LIBBY: He says he didn't make a query with  
5 respect to those components.

6 THE COURT: But it's a proper question. He can tell  
7 us whether he did or he didn't.

8 MR. LIBBY: I object to the form of the question. I  
9 believe his testimony was that he did indeed make a query with  
10 respect to each of those components.

11 MR. LOPEZ: I don't believe that was his testimony,  
12 your Honor.

13 THE COURT: Well, did you or did you not make a  
14 query.

15 THE WITNESS: I made those queries right here, your  
16 Honor.

17 Q Let me rephrase the question. You did not go into the  
18 database, pull up all bombings and attempted bombings, and say  
19 with the element or the component of battery snap connectors,  
20 you did not go in and query the computer as to how common  
21 battery snap connectors are in explosive devices; isn't that  
22 correct?

23 A That's correct.

24 Q And with respect to all the other items I listed, you did  
25 not query how many bombings involved those components; isn't

1     that correct?

2     A     That's correct.

3     Q     Now, let me get to the second query that says all cars  
4     and trucks, and for this I would also like to have the other  
5     chart.

6             Now, perhaps we can move this a little bit closer,  
7     your Honor.

8             THE COURT:   Not so close that the reporter has to  
9     move.

10            MR. LOPEZ:   All right, your Honor.

11            THE COURT:   And then Mr. Scheid, if you would stand  
12     on the other side of it that would help too.

13     Q     Now, Mr. Scheid, let me ask you a question:   This A U  
14     right there, does that, does that stand for automobile?

15     A     Yes, it does.

16     Q     So, it would be fair to say that the Roslindale incident  
17     involved a car; isn't that correct?

18     A     Yes.

19     Q     And if you look at this, you queried cars and trucks;  
20     isn't that correct?

21     A     Yes.

22     Q     Now, if you had queried just cars, would the Quincy  
23     incident have popped up?

24     A     No, it wouldn't have.

25     Q     And that's because, and correct me if I am wrong, the

1 Quincy incident involved a truck?

2 A That's correct.

3 Q So the only way that just focusing on cars and trucks  
4 that Quincy would pop up when you're looking at Roslindale is  
5 if you put in the query of both cars and trucks; isn't that  
6 correct?

7 A Yes.

8 Q Thank you, Mr. Scheid. You may resume the stand.

9 A (Witness complies.)

10 Q Now, Mr. Scheid, I think you have in front of you  
11 Mr. Hankard's report which has been marked as Exhibit No. 39?

12 A Yes, I have it.

13 Q And you also have the EXIS code book which I believe has  
14 been marked as Exhibit No. 63 A; is that correct?

15 A Yes.

16 Q Now, Mr. Hankard, I asked you to -- if I may just have a  
17 moment, your Honor.

18 I'd ask you to go to page, page 6, which of the EXIS  
19 code book which is marked Exhibit No. 63A, and it indicates a  
20 specific location on the top of that page?

21 A Yes, that is car length position -- 58 through 59, is  
22 that the page.

23 Q Sir, I'm going to ask you, there are some specific  
24 locations that are possible when putting information into the  
25 computer; isn't that correct?

1 A That's correct.

2 Q For instance, there's the third number down, "car seat,"  
3 that is specifically identifying that the bomb is placed on  
4 the car seat; is that correct?

5 A That's correct.

6 Q And dashboard is also there?

7 A Yes.

8 Q Engine block?

9 A Yes.

10 Q Glove compartment?

11 A Yes.

12 Q Starter?

13 A Yes.

14 Q Tail pipe?

15 A Yes.

16 THE COURT: Et cetera.

17 Q Et cetera, right. There's also an indication there of  
18 "gas tank"; isn't that correct?

19 A That's correct.

20 Q So if this device was attached to the gas tank, gas tank  
21 would apply, isn't that correct?

22 A That's correct.

23 Q But you didn't use the more specific locations in this  
24 particular case?

25 A That's correct.

1 Q You used under the vehicle; isn't that correct?

2 A Yes.

3 Q Now, I'm going to ask you to look at Mr. Hankard's report  
4 and I'm going to ask you -- I believe you testified that was  
5 the information that you relied upon when putting this  
6 information on the encoding sheet and then putting it into the  
7 computer; isn't that correct?

8 A Yes.

9 Q Can you tell me, did you rely on any other information?

10 A No, this is the only report I have.

11 Q Can you tell me where on that document it says that the  
12 device was under the vehicle. Would you agree with me, sir,  
13 that I represented to you, that it's not there?

14 A I'm reading it.

15 Q All right.

16 A Yes, it's not there.

17 Q Thank you. Now, that report also indicates that there  
18 was one magnet; isn't that correct?

19 A Yeah, it says a circular magnet.

20 Q All right. One magnet, not plural, but singular; is that  
21 correct?

22 A Yes.

23 Q Now, the computer isn't capable of distinguishing between  
24 magnets in the plural and magnet in the singular, is it?

25 A You can put in the computer the quantity amount if you

1 know that. If not, it remains an unknown.

2 Q And in fact, in the Quincy incident, it just is entered  
3 as "magnets" in the plural; isn't that correct?

4 A I believe if you look at the quantity, it's an unknown  
5 amount.

6 Q But when you did your query, you queried magnets and  
7 Quincy popped up?

8 A Yes, because it just takes it as a magnet whether it's  
9 plural or singular.

10 Q All right. And you would agree whether you queried  
11 magnet or magnets, it would pop up?

12 A Yes.

13 Q Now, besides the queries of car and truck under the  
14 vehicle and magnet, you also queried remote control?

15 A Yes.

16 Q Right down to the 7th incident; is that correct?

17 A Yes.

18 Q And then I believe on direct exam, you then further  
19 showed that there were five additional similarities between  
20 1991 and 1986 consisting of duct tape, soldering, AA  
21 batteries, a toggle switch and a round magnet; is that  
22 correct?

23 A That's correct.

24 Q Now, I'd ask you to step down again, and I'd ask you to  
25 focus on Roslindale.

1 (Pause.)

2 THE COURT: Enough. There's always logistical  
3 problems that we have to worry about.

4 Q Now, we've already talked about the difference, the  
5 component of car, the query of car. Roslindale involved a  
6 car; isn't that correct?

7 A Yes.

8 Q And Roslindale also involved Futaba components?

9 A Yes.

10 Q And Futaba also included an antenna?

11 A Yes.

12 Q And a Rockstar detonator?

13 A Yes.

14 Q And dynamite?

15 A Yes.

16 Q And nails?

17 A Yes.

18 Q And glue?

19 A Yes.

20 Q And a nine-volt battery?

21 A Yes.

22 Q A slide switch?

23 A Yes.

24 Q It was painted?

25 A Yes.

1 Q There was a magazine page?

2 A Yes.

3 Q And there was black electrical tape; is that correct?

4 A Yes.

5 Q Now, are any of those elements in the 1986 Quincy

6 incident? And I'll repeat them: Car --

7 THE COURT: Well, let him look?

8 A No car.

9 Q Futaba?

10 A No.

11 Q Antenna?

12 A No.

13 Q Rockstar detonator?

14 A No.

15 Q Dynamite?

16 A No.

17 Q Nails?

18 A No.

19 Q Glue?

20 A No.

21 Q Nine-volt battery?

22 A No.

23 Q Slide switch?

24 A No.

25 Q Paint?

1 A No.

2 Q Magazine page?

3 A No.

4 Q Black electrical tape?

5 A No.

6 Q Now, by my count, and I'll represent to you that those  
7 items -- the ones that are in 1991, but not in 1986, No. 12 --  
8 will you accept that for a moment?

9 A Yes.

10 Q Now, I'd like you to look at the 1986 chart and on that  
11 chart, and review to the 1991 to kind of speed this up a  
12 little bit too, your Honor. 1986 involves an M 21 simulator?

13 A That's correct.

14 Q And it also includes 26-gauge wire?

15 A Yes.

16 Q And a Tyco radio?

17 A Yes.

18 Q And a 6-volt battery?

19 A Yes.

20 Q And 22-gauge wire?

21 A Yes.

22 Q And black vinyl tape; isn't that correct?

23 A Yes, that's correct.

24 Q And that's six components that are not in the Roslindale  
25 computer chart; isn't that correct?

1 A That's correct.

2 Q Now, all told there are 18 components that when you add  
3 the components in Roslindale that aren't in Quincy, and the  
4 components in Quincy that aren't in Roslindale and when you  
5 add them together that comes out to 18; is that correct?

6 A Yes.

7 Q But the five that you've identified indicate to you that  
8 there's a match; isn't that correct?

9 MR. LIBBY: Objection, your Honor.

10 THE COURT: There's a match to what he asked for.

11 MR. LIBBY: I believe it was an opinion question as  
12 to whether there's a match. He just said the objectives were  
13 determined by common features, that's all.

14 THE COURT: Well, there are as many common features  
15 as he said there were.

16 Q Mr. Scheid, I'm just through with that for a moment. I'm  
17 just going to ask you to stand here just for a little while  
18 longer.

19 THE COURT: How much more do you have?

20 MR. LOPEZ: Just a few minutes, your Honor.

21 MR. LOPEZ: Madam clerk, what's the next number for  
22 identification for the exhibits?

23 THE CLERK: I don't think you had a 91. You do have  
24 a 92. Do you want to do this as 93 just to be safe.

25 MR. LOPEZ: 93 for identification.

1                   [Defendant's Exhibit 93 marked for identification.]

2       Q       I'm showing Defendant's Exhibit 93 for identification.  
3       Mr. Scheid, I'm going to ask you to look at what I've written  
4       down.

5                   Can everyone see this?

6                   MR. LIBBY: Can we have small copies of this for  
7       counsel or not?

8                   MR. LOPEZ: No, we don't. I'll take a photo of  
9       that.

10      Q       Now, I'm going to ask you to look at these computer  
11      queries, and I'm going to ask you if these computer queries  
12      can be made by the computer: Cars and trucks?

13      A       Yes.

14      Q       Under vehicle?

15      A       Yes.

16      Q       Remote control?

17      A       Yes.

18      Q       Magnets?

19      A       Yes.

20      Q       Round magnets?

21      A       Yes.

22      Q       Solder?

23      A       Yes.

24      Q       Toggle?

25      A       Yes.

- 1 Q Duct tape?
- 2 A Yes.
- 3 Q AA batteries?
- 4 A Yes.
- 5 Q Nine-volt batteries?
- 6 A Yes.
- 7 Q Electric blasting taps?
- 8 A Yes.
- 9 Q Toggle?
- 10 A Yes.
- 11 Q Slide switch?
- 12 A Yes.
- 13 Q Box?
- 14 A Yes.
- 15 Q Wood?
- 16 A Yes.
- 17 Q Explosive?
- 18 A What do you mean by "explosive"?
- 19 Q Commercial explosive, C E as an abbreviation?
- 20 A I would have to have like dynamite, I can't just do
- 21 explosives. I have to have --
- 22 Q You can do dynamite?
- 23 A I can do dynamite.
- 24 Q Why don't we put the initial D Y there for dynamite; is
- 25 that the code that you would try the computer?

1 A Yes.

2 Q All right. Single pole toggle?

3 A We can do toggle it's noted if it's a single pole, yes.

4 Q You'd have to do that manually?

5 A We'd have to query "toggle," and look at all the toggle  
6 switches and see which ones are single pole and double pole --

7 THE COURT: Would the counsel and the witness please  
8 not have a private conversation.

9 Q How about battery snap connectors?

10 A Yes.

11 Q Did you query that?

12 A Yes.

13 Q Let me ask you to look at Roslindale, and if you needed  
14 to look at your chart, I'll bring you over here. But there  
15 was a car?

16 A Yes.

17 Q Under a vehicle?

18 A Yes.

19 Q Remote control?

20 A Yes.

21 Q Magnet?

22 A Yes.

23 Q Round magnet?

24 A Yes.

25 Q Solder?

- 1 A Yes.
- 2 Q Toggle?
- 3 A Yes.
- 4 Q Duct tape?
- 5 A Yes.
- 6 Q AA batteries?
- 7 A Yes.
- 8 Q Nine-volt batteries?
- 9 A Yes.
- 10 Q Electric blasting caps?
- 11 A Yes.
- 12 Q Futaba?
- 13 A Yes.
- 14 Q Slide switch?
- 15 A Yes.
- 16 Q Box?
- 17 A Yes.
- 18 Q Wood?
- 19 A Yes.
- 20 Q Explosive?
- 21 A Yes.
- 22 Q Dynamite?
- 23 A Yes.
- 24 Q Single pole toggle?
- 25 A You would have to do the toggle and then do a hand

1 search.

2 Q Do you know if it was a single pole toggle?

3 A I'd say if you could do a query, yes you could --

4 Q Battery snap?

5 A Yes.

6 Q All right. Now, I'm going to ask you to make a number of  
7 assumptions, and just assumptions, all right, and I'm going to  
8 ask you if your computer would have popped up a different  
9 result if a certain number of assumptions are made, all right?

10 A I'm not sure I understand your assumptions.

11 Q I'm going to give you the assumption, and then you tell  
12 me whether or not you can answer me?

13 A Okay.

14 Q The computer query that was done was from January 1,  
15 1979?

16 A Yes.

17 Q Through December 31st, 1991?

18 A Right. The dates of the incidents --

19 Q All right. Assume, for the moment, that there was a  
20 device which was found in Hialeah, Florida on January 8th  
21 1980, all right?

22 Now, assume further that there was a car?

23 A I can't assume --

24 THE COURT: What was the answer? The reporter --  
25 neither the reporter nor I heard what the witness said.

1 MR. LIBBY: Would you please speak up?

2 A I cannot assume that the device was placed on a car  
3 because that incident is in the database, and it's in the  
4 database as a recovered device not as an attempting bombing or  
5 a bombing.

6 MR. LIBBY: And for that reason, your Honor, we move  
7 to have this portion of this chalk stricken and not used with  
8 this witness because it doesn't fall under the categories.

9 THE COURT: Well, that doesn't mean it should be  
10 stricken.

11 MR. LIBBY: He can't take these assumptions because  
12 he knows it to be factually inaccurate, your Honor.

13 THE COURT: That's what he's telling us. So the jury  
14 understands that it isn't in the particular, it -- the  
15 computer wouldn't spit it up because he has lodged it in the  
16 computer in a different category.

17 MR. LIBBY: Your Honor, he's asked him to assume a  
18 hypothetical, a Hialeah, Florida case which is contrary to  
19 this witness's understanding and fact, his personal knowledge  
20 and otherwise, which is simply contrary. Otherwise, it has  
21 no --

22 THE COURT: You certainly attack this witness's  
23 putting it in one place rather than another which is what he's  
24 doing.

25 MR. LIBBY: Your Honor, if I believe the witness's

1 very first response which neither the Court nor the reporter  
2 can pick up had something to do with where this device was  
3 found, Mr. Scheid can give his answer to that, I think it  
4 would clarify the situation. What did you first say, Mr.  
5 Scheid.

6 MR. LOPEZ: Wait a minute. Time out. I'm the one  
7 asking the questions, and I've asked --

8 THE COURT: He repeated what he said. Now, he tells  
9 us it is in a different database from the one that he needed  
10 in order to come up with this information that is before the  
11 jury, and I do believe that the defense is entitled to suggest  
12 it's in the wrong place.

13 MR. LIBBY: Your Honor, respectfully, what the  
14 witness first said in response to the question was not  
15 accurately restated. If Mr. Scheid could have an opportunity  
16 to restate his first answer to that question. He gave a  
17 specific understanding as to where the device --

18 THE COURT: Tell us what you said about the car.

19 THE WITNESS: I know for a fact that the device was  
20 found on the side of the road in Florida. I have no idea  
21 whether it was attached to a car, a bus, an airplane or a  
22 truck. I cannot make that assumption.

23 MR. LOPEZ: Fine, your Honor. I'll move on.

24 THE COURT: You put it in a different database.

25 THE WITNESS: I put it is as a recovered device which

1 I did not query because it was a recovered device.

2 MR. LOPEZ: That's fine, I'll move on.

3 Q So you're saying the category of car under vehicle are  
4 not applicable, am I correct?

5 A That's true, because I don't know. I don't know where  
6 the device is placed. In fact it was placed.

7 Q Assume it was a remote control device?

8 A Yes, that I do know.

9 Q Assume it had magnets?

10 A Okay.

11 Q Assume it was soldered?

12 A Yes.

13 Q Assume it had a toggle switch?

14 A Yes.

15 Q Assume it had AA batteries?

16 A Yes.

17 Q Assume it had nine-volt batteries?

18 A Yes.

19 Q Assume it had electric blasting caps?

20 A Yes.

21 Q Assume it was a Futaba system?

22 A Yes.

23 Q Assume there was a slide switch present?

24 A Okay.

25 Q Assume that it contained wood?

1 A Yes.

2 Q That there was an explosive?

3 A Yes.

4 Q And that there was a single pole toggle switch?

5 A Okay.

6 Q Now, because we eliminated it under car and under vehicle  
7 we changed this number to 12. But would you agree with me  
8 that there are a significant number of matches between the  
9 Roslindale incident and Hialeah, Florida?

10 MR. LIBBY: Objection, your Honor.

11 THE COURT: He may agree, but it's irrelevant.

12 Q Now, I'm going to ask you to make some further  
13 assumptions. And this is a report which I believe is reported  
14 as the "Cuban ambassador incident" which is right here on top  
15 which is marked as Exhibit No. 41 A; is that correct?

16 A Yes.

17 Q Now, assume for the moment that -- first of all, all this  
18 information is car?

19 A Yes.

20 Q That's under?

21 A Yes.

22 Q Under a vehicle?

23 A Yes.

24 Q Remote control?

25 A Yes.

1 Q Magnets?

2 A Yes.

3 Q Round magnets, that's not here, but assume for the moment  
4 that it involved brown magnets?

5 A Okay.

6 Q Assume for the moment it was soldered, although that's  
7 not here on your computer?

8 A That's correct.

9 Q Assume for the moment that it involved a toggle switch?

10 A Okay.

11 Q But that's not here?

12 A Right.

13 Q Assume that it had AA batteries?

14 A Correct.

15 Q Assume it had nine-volt batteries. Assume it had two  
16 electric blasting caps?

17 A Okay.

18 Q Assume it was --

19 A It has it on there.

20 Q Oh, and No. 6 delay, the two blasting caps were in fact  
21 No. 6 delay, just like Roslindale; isn't that correct?

22 A Yes, I believe so.

23 Q And assume Futaba components were used?

24 A Okay.

25 Q Assume a slide switch was present; a box was present;

1 wood was present; there was an explosive?

2 A Yes.

3 Q And?

4 A And C 4.

5 Q C 4, not dynamite but C 4?

6 A Yes.

7 Q There was a single pole toggle switch?

8 A Yes.

9 Q And that's not listed here?

10 A Correct.

11 Q And there were battery snap connectors?

12 A Okay.

13 Q Now, would you agree with me that there are more matches,  
14 assuming what I've asked you to assume between the New York  
15 Cuban ambassador incident on March 24th, 1980 then between the  
16 Quincy incident in 1986?

17 A Yes.

18 MR. LOPEZ: Thank you, Mr. Scheid.

19 THE COURT: That's it.

20 MR. LOPEZ: No, I just have a couple more questions,  
21 your Honor.

22 THE COURT: You said you'd be half an hour to 40  
23 minutes, you've now spent an hour.

24 MR. LOPEZ: Sometimes I lose track of time, your  
25 Honor. I'll just ask a couple more questions.

1 Q Mr. Scheid, was the information regarding the 1986  
2 incident added to the computer between September of 1986 and  
3 October 28th, 1991?

4 A No, it wasn't.

5 Q Was the 1986 Quincy incident added to the computer after  
6 October 28th, 1991?

7 A Yes, it was.

8 Q And then your query was done after that?

9 A Yes.

10 MR. LOPEZ: Thank you, Mr. Scheid.

11 THE COURT: Any redirect?

12 MR. LIBBY: Yes, your Honor, briefly.

13 Redirect examination by Mr. Libby

14 Q Mr. Scheid, although as counsel pointed out, with respect  
15 to these five of seven incidents that we have here on the  
16 board, they're ATF, right?

17 A Yes.

18 Q And they have a requirement to update and to respond  
19 within 24 hours and supplement thereafter; is that right?

20 A That's correct.

21 Q So that's five of these seven incidents; is that right?

22 A That's correct.

23 Q And notwithstanding no requirement by law to report on  
24 the part of state police, state fire marshals and otherwise,  
25 you encode how many different explosive incidents a year, sir?

1 A 4,000 a year.

2 Q Now, I believe you testified with respect to the FBI, in  
3 some respects you get directly from that incident reports,  
4 correct?

5 A That's correct.

6 Q By the close of a year you have visited them for the  
7 remainder; is that right?

8 A Yes.

9 Q With respect to the actual information, the forms of  
10 information that you get, do they include forensic reports,  
11 sir?

12 A Yes, they do.

13 Q These bits and pieces of components, and so forth, broken  
14 down piece by piece?

15 A Yes.

16 Q In large part most of the information you get involves  
17 forensic chemists reports, right?

18 A Yes.

19 Q With respect to Mr. Lopez's question to you about it  
20 being submitted under the pains and penalties of perjury, by  
21 law, are you aware of any incident in the 4,000 a year since  
22 you've been doing this in 1977 when you received any  
23 information from any law officer of any kind, anywhere in your  
24 geographical jurisdiction where you determined that the  
25 information being submitted to you was intentionally wrong?

1 A No.

2 Q Now, with respect to this Hialeah hypothetical that  
3 you're asked to assume here, we lined through "car" and then  
4 we lined through "under vehicle"?

5 A That's correct.

6 Q Is that meaningful when that happens with respect to a  
7 database query?

8 A Yes.

9 Q It just simply wouldn't come up, would it?

10 A Not the way I queried it.

11 Q So, reducing the number from 14 to 12 doesn't really tell  
12 the whole story, does it?

13 A No, it doesn't.

14 Q With respect to the magnets in that case, are you  
15 familiar sitting here today -- you see magnets listed here, as  
16 to the kind of magnets in that incident?

17 A I believe they were bar magnets.

18 Q What's a bar magnet look like?

19 A It is a rectangular shaped magnet.

20 Q The Cuban ambassador case, 1980?

21 A Yes.

22 Q ATF or FBI, sir?

23 A It's an FBI case.

24 Q And typically, what kind of bombing cases does the FBI  
25 get involved in?

1 A Terrorists bombings.

2 Q Was this a terrorist case?

3 A Yes, sir, it was.

4 Q Was there an arrest in that case?

5 A I do not know.

6 Q You're not aware of that?

7 A No, I am not.

8 THE COURT: Anything further?

9 MR. LOPEZ: Yes, your Honor.

10 Recross-Examination by Mr. Lopez

11 Q Was anybody required to supplement the information on the  
12 1986 Quincy incident like Mr. Libby's question with respect to  
13 ATF officers supplementing information. Was that required of  
14 the 1986 incident?

15 A No, it wasn't.

16 Q And have you ever in all of the entries that have been  
17 made into this computer, have you ever had a situation where  
18 there was a mistake that had to be corrected?

19 A Yes.

20 MR. LOPEZ: Thank you.

21 THE COURT: Thank you, Mr. Scheid. You are excused.  
22 Who is next?

23 MR. LIBBY: Mr. Thomas Waskom, your Honor. We're not  
24 going to complete his direct today.

25 THE COURT: Yes, but we have 23 minutes to start it.

1 MR. LIBBY: We do.

2 THE COURT: Call Mr. Waskom, please.

3 THE COURT: You will recall, members of the jury,  
4 that Mr. Waskom has been called before and they reserved to  
5 call him back on another topic, and they have the right to do  
6 this so he is recalled.

7 THE COURT: Mr. Waskom you were previously sworn in  
8 the course of this trial. You are still under oath, we  
9 therefore needn't swear you again.

10 THE WITNESS: Yes, your Honor.

11 THE COURT: You may proceed.

12 MR. LIBBY: Thank you, your Honor.

13 Thomas Waskom, recalled

14 Direct Examination by Mr. Libby

15 Q Good afternoon, Mr. Waskom.

16 A Good afternoon.

17 Q Welcome back. Sir, are you familiar with a term, as an  
18 expert bomb technician, an expert in the field of improvised  
19 explosives, are you familiar with the term "signature  
20 analysis"?

21 A Yes, sir.

22 Q What do you understand that term to mean, sir?

23 A The signature analysis is a learned appreciation of  
24 designed construction of explosive devices, personal touch,  
25 personal techniques of how something is built. By looking at

1 the componentry, at the device's construction itself, the  
2 individual's addition that's put into a device, on how it's  
3 actually put together physically by a person, you can extract  
4 from that information that shows the signature of one person  
5 doing that; that's my understanding.

6 Q So when you're looking at two or more improvised  
7 explosive devices, sir, it would reflect to you, an  
8 experienced bomb technician, whether there was something  
9 present in them to reflect that they were the handiwork of the  
10 same individual?

11 A Yes, sir.

12 Q And you testified that you looked at the componentry?

13 A Yes.

14 Q And the design features?

15 A That's correct.

16 Q And the individual technique of the assembly of those  
17 components?

18 A That is right.

19 Q And that is your understanding, sir, as to the -- whether  
20 that reflects a habit or a technique likely to be repeated?

21 A Yes, it's -- it's known that humans are people of habit.  
22 They tend to learn how to do something and continue doing  
23 that. They may make minor changes, but their basic skill  
24 level and what they've learned by doing things in the past  
25 reflect greatly on how they do something in the future.

1 Q Now, sir, how many different cases involving improvised  
2 explosive devices have you personally been involved in?

3 A I don't have an exact number. It would be well over a  
4 thousand.

5 Q And of those, sir, how many cases involved reconstructive  
6 efforts on your part, whether it be actually physically  
7 putting things together or sketching it out on the diagram?

8 A I would estimate 60 to 70.

9 Q And of those cases, sir, did you undertake in any of  
10 those cases to determine whether there was a potential,  
11 whether there appeared to be a signature between and among two  
12 or more of these devices?

13 A Not as common occurrence in --

14 Q Did you actually undertake to determine whether there was  
15 signature between several of these devices?

16 A I have in this case, and I have in one other case also.

17 Q And were you called to testify in that other case, sir?

18 A No, sir, I was not.

19 Q Would you tell us what that case was, please?

20 A That was what we identified as the Judge Lands case,  
21 series of bombings in Alabama and Georgia where evidence was  
22 examined, personal technique of construction was examined, to  
23 determine signature quality that could be extracted from one  
24 device in comparison to another device.

25 Q And did you participate in that case in that respect,

1 sir?

2 A I participated in forming my opinion. I participated in  
3 the construction, reconstruction of a mockup you might call of  
4 those devices.

5 Q And was there another E E O or bomb technician involved  
6 in that case, sir?

7 A Yes, sir, there was.

8 Q Were you ultimately called to testify in court on that  
9 matter?

10 A No, I was not.

11 Q So you did not testify in any respect in that manner; is  
12 that right?

13 A Not at all, sir, no.

14 Q Now, I believe you testified previously that you have in  
15 fact given expert testimony in court, correct?

16 A Yes, I have.

17 Q Both state and federal?

18 A That is correct.

19 Q And you qualified as an expert in the field of explosives  
20 generally and specifically with respect to improvised  
21 explosive devices?

22 A In improvised explosive devices.

23 Q Have you ever not been qualified, sir, as an expert when  
24 appearing in court?

25 A I have never not been qualified.

1 Q Thank you. Now, in addition to the -- those things that  
2 you spoke to previously regarding signature, componentry  
3 design features and individualized assembling techniques?

4 A Yes.

5 Q You also look to circumstantial matters, circumstances  
6 surrounding particular bombing incidents?

7 A Yes, there are several areas where information can be  
8 extracted or gleaned to show signature or the fact that one  
9 person constructed and planned two different scenarios.

10 Q So you looked beyond the real evidence of any particular  
11 bombing situation under the circumstances of the scenario,  
12 that has significance to you?

13 A It has significance and it would be improper not to look  
14 at all of the information that's available.

15 Q Now, sir, you've testified previously with respect to  
16 your findings regarding the Roslindale device, correct?

17 A That is correct.

18 Q And that was in some detail with respect to, with respect  
19 to the fusing circuit in that device, correct?

20 A That is correct.

21 Q Your Honor, ultimately I don't know if we're going to get  
22 to the point in the road here quite frankly. At some point  
23 we're going to be using larger chalks in front of the jury  
24 with some matters. With respect to these two schematics that  
25 is as far as we're going to get today?

1 THE COURT: Let's get as far as we possibly can.

2 Q Mr. Waskom, you've testified with respect to Government  
3 Exhibit 20 regarding -- if you could come down, please --  
4 regarding the details of the 1991 explosive device, correct?

5 A Yes, sir.

6 Q With respect to the something circuit?

7 A Yes.

8 Q The firing circuit outlined here in red?

9 A Yes.

10 Q And the main charge?

11 A Yes.

12 Q And you obviously brought something with you here today  
13 to assist you in describing for the Court today your findings  
14 and opinions with respect to the similar parts of the 1986  
15 explosive device in Quincy, Massachusetts; is that right?

16 A That is correct.

17 Q And that is Government Exhibit, please, the bottom  
18 right-hand corner?

19 A Government Exhibit 43.

20 Q Now, with respect to the 1986 explosive device, sir,  
21 would you tell us those things to which you looked in forming  
22 your opinions and conclusions?

23 A Again, in forming my opinion on the 1986, of course, the  
24 physical evidence was not there.

25 THE COURT: Mr. Waskom, the reporter need to hear

1     you?

2     A     The physical evidence was not available. It had been  
3     destroyed which is typical of evidence that has been kept for  
4     a period of time and apparently no reason to keep it further,  
5     the investigation on that particular item is finished. To  
6     form my opinion on the 1986, I had written reports. I had a  
7     lab report from the Massachusetts lab from Mr. Hankard. I had  
8     a typed statement type report from Mr. Lanergan, the police  
9     officer who investigated the 1986 bombing, and I also had  
10    handwritten notes from Mr. Lanergan where he was talking to  
11    the bomb builder himself, and the handwritten notes provide  
12    information as to how the device was constructed and how it  
13    was used. In looking at these reports --

14   Q     Did you look at anything beyond police officers, the  
15   Quincy report from Detective Lanergan, Mr. Hankard's crime lab  
16   report, Mr. Hankard's one page report, did you look at any  
17   others, for example, any affidavit?

18   A     That is correct, Mr. Denny Klein is an expert for the  
19   defense. I consider Mr. Klein an expert I've known him for  
20   many years, since 1980 at least.

21   Q     You looked at his affidavit in the course of forming one  
22   of your opinions?

23   A     That is correct.

24   Q     Would you keep your voice up, Mr. Waskom?

25   A     Yes, sir.

1 Q Now, with respect to the 1986 device, please, and perhaps  
2 just for purposes of clarity, if you could just keep the '86  
3 schematic up and leave this aside, the '91 aside for a moment,  
4 would you tell us, please, we have here outlined the yellow,  
5 is that a fusing circuit?

6 A Yes, it is.

7 Q And outlined in red is the firing circuit?

8 A The firing circuit, that's correct.

9 Q And the bottom left on Exhibit 43 is the main charge in  
10 that device, sir?

11 A Yes, sir.

12 Q First, with respect to the fusing circuit, please, would  
13 you tell us what made up the fusing circuit in 1986 device, in  
14 your opinion?

15 A The fusing circuit was described in very good detail and  
16 the chemist reports, Mr. Hankard's report. Mr. Hankard talks  
17 about black plastic, talks about the batteries, four batteries  
18 were recovered, AA batteries. One of the batteries was still  
19 with the battery pack itself.

20 It discusses the slide switch, the slide switch is  
21 the switch that comes with remote control systems, whether it  
22 be purchased at a hobby store or purchased in a form of a  
23 small car, toy car. A slide switch is common to the radio  
24 control system. He talks about a circuit board being  
25 involved, a circuit board is the actual receiver, the

1 electronic components mounted on a board to build a receiver  
2 portion itself.

3 He discusses blue plastic being found. It was not  
4 identified other than being blue plastic. And understanding  
5 how the device is built and understanding how it was meant to  
6 function, you need to know what's necessary to permit an  
7 explosive device to function. Well, one of the things that's  
8 necessary is a switch of some type. In the handwritten notes  
9 from Detective Lanergan, he talks about, he mentions a relay,  
10 a relay is a switch, an electrical switch.

11 Relays, in many cases, have blue plastic housing. To  
12 me that means something. Once I hear someone say there's a  
13 relay and I've got a written report from an expert, a chemist,  
14 he says he recovered blue plastic, I can look at those and  
15 have an understanding of what was there before it functioned.  
16 The antenna is part of a receiver system, a receiver like a  
17 radio in your car, like the TV set has to have an antenna for  
18 that signal that it is built to pick up, so I know from the  
19 reports that I examined, and thinking of what they looked at  
20 when they wrote the information they wrote, I know what was  
21 there. Those components were all recovered, and all came from  
22 the fusing system of the 1986 device.

23 Q Now, with respect to -- have you finish with the fusing  
24 system, sir?

25 A Yes, sir.

1 Q With respect to the firing system, would you outline for  
2 us please the components in your opinion in the firing system  
3 of the 1986 Quincy device?

4 A The firing system in the '86 device is typical of remote  
5 control devices, remote control devices have three sections:  
6 The fusing system which we just talked about, the firing  
7 system would be the second portion. The firing system is  
8 indicated by the red markings and shows connection of or  
9 relationship of components in that system. The firing system  
10 needs a couple of things. The firing system needs a power  
11 source. The two six-volt batteries were recovered and  
12 described in Mr. Hankard's report. In his report he talks  
13 about solder being present on the contacts of the batteries.  
14 It tells us how the builder put the thing together, what his  
15 level of knowledge was, his understanding of how to do  
16 something; so it reflects directly on the person who built  
17 it.

18 The toggle switch was recovered in the 1986 device.  
19 It was a double poled, double throw toggle switch which to a  
20 lot of people won't mean a lot. A switch is a switch. But  
21 switches have characteristics, they're made to do certain  
22 things. The toggle switch was recovered in the 1986 device.  
23 It was a double pole, double throw, which means that it had  
24 the ability of controlling two separate circuits. You could  
25 flip it up and turn one circuit on, the other circuits off.

1 You could flip it all the way down and make exactly opposite  
2 which one was on. The one at the top was off, the one at the  
3 bottom was on. You could put it in the middle position where  
4 the little leverage pointing straight out and both systems  
5 were turned off.

6 Now, the toggle switch that was in the '86 was this  
7 double pole, double throw, and had that ability, but it wasn't  
8 connected that way. They only use two terminals of the three  
9 that are on this toggle switch, which means he wasn't  
10 interested in controlling two circuits with it. He had one  
11 purpose in mind, and that was controlling one circuit and that  
12 was this firing circuit. A toggle switch didn't function the  
13 device. The toggle switch armed the device. It gave the  
14 device the ability to function once it was energized. That  
15 was the use of the toggle switch in the 1986.

16 The firing switch in the 1986 device was a relay. A  
17 relay can be a little confusing, but if you break it down and  
18 you look at what's in the relay, it's basically simple. It's  
19 very simple. Relay has two parts: It has an electrical  
20 magnet. An electrical magnet is an iron pour typically that  
21 has wires wound around. When you run electricity through  
22 those wires, it makes an electrical magnet. If you  
23 disconnect, so electricity is not running through those wires  
24 there is no electrical magnet, and there is no magnetic  
25 influence created. The other part of the switch is the

1       electrical contacts itself.

2               Now, those are all built within one housing. The  
3       contacts themselves are part of the firing circuit. The  
4       magnetic coil is part of the fusing circuit, even though  
5       they're in one housing. There's a small spring inside.  
6       There's three contacts inside the switch. Two of them are  
7       held firmly in place. One of them has the ability to move  
8       back and forth.

9               What tells it to move back and forth is, one, a  
10      spring that's holding it in the upward position; and two,  
11      whether or not the coil is energized. If the coil is  
12      energized and is an electrical magnet, it pulls that contact  
13      down and touches, the one posted at the bottom that's held in  
14      place. If the power is shut off to that electrical magnet,  
15      the spring pulls that contact back up and it makes the contact  
16      with the upper post. So the switch is made to control two  
17      circuits. They're either on or off. They both cannot be on  
18      at the same time. Only one. And what determines which one  
19      is, in this case, the remote control, the radio control system  
20      which would energize the coil.

21              The light bulb which is in the circuit, small, you  
22      might call it a flashlight bulb. It would be a good way on  
23      how to have an understanding on what it looked like. The  
24      flashlight, the bulb was described in Detective Lanergan's  
25      typed statements as he interviewed a person connected with the

1 1986 bombing. That person describes the circuit being tested  
2 with a light bulb. The light bulb was not recovered to my  
3 knowledge. It was not in the chemists reports. Understanding  
4 chemists and how they perform their job, if that light bulb  
5 had been part of the physical evidence, it would have been  
6 listed in his report. Because it's not listed in his report,  
7 it was not recovered. That doesn't mean it wasn't there, it  
8 means it wasn't recovered.

9 The third part, the final part of the 1986 device was  
10 the explosive section. In order to have a radio controlled  
11 explosive device you need three sections: Fusing, firing, and  
12 the explosive section itself, what actually causes or does the  
13 exploding. In the 1986 device, it would be what would  
14 technically be termed as an M 21 Hoffman device.

15 An M 21 Hoffman device is manufactured for the U.S.  
16 military. It's used in training to train U.S. military  
17 soldiers what they will hear, feel, and know to be part of the  
18 battle zone. And to do this, they want it as accurately and  
19 closely as it can be. The military produced a M 21 Hoffman  
20 device which simulates a tank gun firing it. It produces the  
21 sound and it produces the smoke. A lot of people will look at  
22 that and maybe think because it produces sound and smoke that  
23 it's not that bad. It explodes to produce this. It's not  
24 something that a person is going to have in their hand and  
25 do. If they put one in their hand and function it, they're

1 hand is going to be gone. It's going to take the hand off.  
2 It's an explosive device.

3 The initiator for an M 21 Hoffman device is built in  
4 at the factory. It's not something a guy puts in or assembles  
5 just prior to use. It comes in a package with a little  
6 plastic lid, and everything that's needed to initiate this  
7 explosive material is put in at the factory. All the  
8 individual has to do is take the cap off the top, a little  
9 plastic lid, there's two wires with a plugging connector at  
10 the end. He extends those wires and he plugs them into what  
11 is known as a fire set. The fire set is like the plug-ins on  
12 a light receptacle. They're what connects the explosive item  
13 to the switch that will cause it to function.

14 We know that the M 21 Hoffman device was there  
15 because of the lab report. He describes it in detail.  
16 There's only one simulator constructed in this manner that it  
17 could possibly be and that's an M 21 Hoffman.

18 THE COURT: Why don't we suspend here until tomorrow  
19 morning at 9 o'clock. Thank you very much.

20 [Whereupon, the jury left the courtroom.]

21 THE COURT: Court is in recess.

22 [Whereupon, the jury trial adjourned at 1 p.m. to be  
23 reconvened on November 10th, 1993.]  
24  
25

CERTIFICATE

We certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

\_\_\_\_\_  
James E. McLaughlin

\_\_\_\_\_  
Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Francis Hankard, sworn				
(By Mr. Libby)	2			
(By Mr. Segal)		14		
Todd Leach, sworn				
(By Mr. Kelly)	19		42	
(By Mr. Segal)		40		43
Stephen B. Scheid				
(By Mr. Libby)	52		123	
(By Mr. Lopez)		86		126
Thomas Waskom, recalled				
(By Mr. Libby)	127			

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
38,39	(See Clerk's Notes.)		13
63A,B,C			61
63E			69
41 A- G			75
<u>Defendant's</u>			
93	(See Clerk's Notes.)	112	

1. Paday - 117-1187

2. Vance - 28

13-1

112-14000-1000

97-56 y and

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CR 92-10369-Z

ZOBEL, D. J.

UNITED STATES OF AMERICA

v.

ALFRED TRENKLER

Thirteenth Day of Trial

APPEARANCES:

For the Government:

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Assistant United States Attorneys, Federal Courthouse,  
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For the Defendant:

Terry Philip Segal, Esq., Scott Lopez, Esq.,  
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210 Commercial Street, Boston, MA. 02109.

Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

November 10, 1993

Computer-Aided Transcription

P R O C E E D I N G S

[No jury present.]

THE COURT: I need to state for the record what I told Mr. Kelly on the phone last night because he needed to have information about the videotape. He had given me -- I lost it.

He had given me a copy of what they propose, what the government proposed to show of the Shay videotape on Channel 56, and I told Mr. Kelly -- because he needed to make the editing changes -- that I would allow it, except for one sentence in which Mr. Shay talks about how he's not violent. Because I know that to be untrue on other evidence that was elicited at the sentencing hearing. And I'm allowing it both as being state of mind evidence, and thus not hearsay, and hearsay evidence that is admissible as a statement, a declaration against penal interest and corroborated. Every one of the statements has substantial corroboration. And for that reason, I'm allowing it and your objection is noted.

MR. SEGAL: As previously stated.

THE COURT: Correct.

Here it is.

I guess we should make this part of the record, this highlighted portion of the transcript, and I've noted the portion that's out if you want to see it.

MR. SEGAL: There's also another proposal, the video

1 I would like to talk with now.

2 THE COURT: Well, the jury is on its way.

3 Let's bring the jury in, and we'll talk about it.

4 MR. SEGAL: It is in connection with Mr. Waskom.

5 [Whereupon, the jury entered the courtroom.]

6 THE COURT: Good morning, please be seated.

7 Mr. Waskom, again you remain under oath.

8 THE WITNESS: Yes, your Honor.

9 THE COURT: You may proceed.

10 MR. LIBBY: Thank you, your Honor.

11 Thomas Waskom, resumed

12 Continued Direct Examination by Mr. Libby

13 Q Good morning, Mr. Waskom.

14 A Good morning.

15 THE COURT: According to my reckoning you have about  
16 15, 20 minutes that you still need.

17 MR. LIBBY: We were talking along the terms of about  
18 a half hour. I'll move it as best I can.

19 Q Mr. Waskom, when we broke yesterday we were talking about  
20 the 1986 device?

21 A Yes, sir.

22 Q And specifically, I think the last thing you were talking  
23 about was the main charge there. This bottom left-hand  
24 corner, 1986 schematic.

25 And you say that is a what, sir?

1 A That's an M 21 Hoffman device, sir.

2 Q That's an artillery simulator?

3 A Yes, sir.

4 Q Is there anything in Mr. Hankard's, the assistant chief  
5 of the crime lab, is there anything in his report that  
6 specifically expressly describes or rather indicates that main  
7 charge was an M 21 Hoffman device, sir?

8 A There is nothing that says M 21 in his report, no, sir.

9 Q But you know it to be an M 21 Hoffman?

10 A Yes, I do.

11 Q How is that, please?

12 A By the description of the evidence that was recovered in  
13 Mr. Hankard's report. He very well describes the M 21.

14 MR. LIBBY: If I may your Honor, if Mr. Waskom could  
15 come down briefly for a second.

16 THE COURT: Are you going to keep him down?

17 MR. LIBBY: He's going to be down for a good  
18 portion.

19 THE COURT: Let's arrange it for whatever so he  
20 doesn't have to go back and forth.

21 MR. LIBBY: Perhaps if we could have Jim here.

22 [Demonstration at jury box.]

23 Q Now, Mr. Waskom, is there anything that would assist you  
24 in explaining to the jury how it is that you know what's  
25 described in Mr. Hankard's report is in fact an M 21 Hoffman

1 device?

2 A Yes, sir.

3 Q What is that, please?

4 A There is an M 21 type device here, that is an M 21 that's  
5 been taken apart to show the configuration and construction of  
6 that device.

7 Q All right. Now, briefly if you would, if you would take  
8 out that exemplar of the M 21 Hoffman device and explain,  
9 please, how it marries up, in your opinion, with Mr. Hankard's  
10 crime lab report?

11 A Yes. Mr. Hankard's lab report, in the first portion, has  
12 a paragraph that's entitle, Remains of Artillery Flash  
13 Simulator. The M 21 its considered to be an artillery flash  
14 simulator. In his description that follows he talks about a  
15 translucent plastic tube which means you can see partly  
16 through. It's not totally one color or another. It gives  
17 dimensions on it as approximately two and a quarter inches  
18 long and one and a half inches in diameter. An M 21 Hoffman  
19 device as it would come from the factory.

20 Q That's what you are holding in your hand, Exhibit 42?

21 A Yes, it would appear similar to this. A little cap on  
22 the top comes off. Underneath the cap would be some wire and  
23 a clip, and you would be looking down on a styrofoam plug.

24 If we take the M 21 Hoffman device apart, we find  
25 inside a translucent plastic cylinder, that is described in

1 dimension in the lab report. It also discusses about,  
2 discusses a chemical analysis that was done on this piece of  
3 plastic. On the inside of this piece of plastic, this is a  
4 little container that holds the explosive powder, the  
5 explosive mix that's inside the M 21. The explosive mix in M  
6 21 its called flash powder. Flash powder is an explosive  
7 material.

8 The identification of what was chemically recovered  
9 inside the device that was used in '86 its the same material  
10 that's inside the M 21.

11 It continues by describing brown and gray cardboard,  
12 a long -- they call it a tube, partially wrapped in pieces of  
13 fours inches long and one and three-quarter inch diameter  
14 brown and gray cardboard tube, having a wall thickness of one  
15 eighth inch. That cardboard tube, is packing material inside  
16 the M 21.

17 And this is the cardboard tube he's discussing. It  
18 is nothing more than a little housing inside to hold the  
19 components inside the M 21 very tightly in place so they don't  
20 shift around. If you peel the cardboard, it is brown and  
21 gray. He continues by talking about blackened pieces of white  
22 plastic tube and he gives the dimension as four and a half  
23 inches long by two inches in diameter. That black plastic --  
24 white plastic tube is the outer housing of the M 21 housing.  
25 It is white plastic and after an explosion, he's talking about

1 strips of plastics. It would have been blown apart. So he  
2 would have found strips that he could put together and say  
3 that is what this is.

4 He talks about inside or not one side of the white  
5 plastic pieces that were recovered. He calls longitudinal  
6 ribs, I believe, is his terminology, a little protrusions  
7 inside. And if we open up the M 21 Hoffman device, there's  
8 little ribs that run the full length of the plastic. Again,  
9 it is meant to help secure what is inside, in place, to show  
10 it won't shift.

11 Q Can we show those ribs to the jury, please.

12 A He continues by talking about a translucent disk. The  
13 translucent disk would be a portion of the little cylinder  
14 that holds the powder. It has a disk on the end. And after  
15 an explosion it is not unusual for this disk to be blown away  
16 and be similar to a round circle. And it is the disk that  
17 contains the powder in the M 21.

18 Finally, he talks about a two pronged plug, and he  
19 describes it as consisting of white plastic housing with two  
20 three-eighths inch long by 3/32nd inch diameter, cylindrical  
21 prongs. The prongs he describes as a prong being on one side,  
22 the white wire being on the other side.

23 That is what he's describing as the plug in connector  
24 that was put on at the factory, to allow the M 21 to be  
25 plugged into its proper housing for the military to use. If I

1 can pull a little cover off, that has two metal prongs.  
2 That's the prongs just mentioned in his report. It has the  
3 white plastic housing which basically surround the connections  
4 that connect the prongs to the white wire that goes to the  
5 initiator inside the M 21. There are very few pieces of  
6 ordnance that have similarity to this in construction and  
7 appearance.

8 Also in his report, wording that came off the  
9 components themselves, he states that the white plastic piece  
10 which will be the piece that's being passed around had writing  
11 on it. And that writing said simulator flash artillery:  
12 LOW 84H008.

13 "Simulator flash artillery" is terminology common to  
14 several simulators in the military. It doesn't specifically,  
15 that wording doesn't specifically say M 21. What says M 21 is  
16 the fact that the M 21 Hoffman device, as it appears here, is  
17 the only simulator in the military anywhere close to its  
18 construction in appearance. The other simulators in the  
19 military are typically, totally cardboard, a pull friction  
20 type ignitor, not electric, or very few in use in the military  
21 that are electric.

22 Q Go ahead.

23 A The only simulator that could have been described here,  
24 is an M 21. The last part of the written LOW 84H008 is what  
25 military would consider a lot number. A lot number is a

1 tracing number. It is an identification number. The lot  
2 number that was written on the device, was apparently partly  
3 obliterated. There should be three more numbers on it. What  
4 the numbers say to the military if they want to trace this  
5 item back or an item was found back it tells what factory made  
6 it and when it was made. And from that they can tell where it  
7 was shipped.

8 Q Is that all consistent with M 21 Hoffman, sir?

9 A Yes, sir, it is.

10 Q Is there a question, in your mind, about whether the 1986  
11 main charge was in fact an M 21 Hoffman?

12 A No question whatsoever.

13 Q I'll represent to you there is testimony in this case  
14 that the main charge in the 1986 bombing was akin to  
15 firecracker, a simple prank, where it wouldn't harm anyone.  
16 Having made that representation, sir; do you agree or disagree  
17 with that?

18 A I disagree with that.

19 Q Is there anything that you have available to demonstrate  
20 to the jury, please, your disagreement with it?

21 A There's a videotape of an M 21 Hoffman device.

22 MR. LIBBY: At this time, your Honor, we have a  
23 one-minute videotape which shows the effect of an M 21 Hoffman  
24 device placed underneath 55-gallon steel drum which simply  
25 shows the impact.

1 MR. SEGAL: I object and I would like to be heard on  
2 that.

3 [Conference at the bench, as follows:

4 THE COURT: What's your objection?

5 MR. SEGAL: Here's my objection. I saw this tape  
6 yesterday. Under 403(1), it is unfairly prejudicial.

7 THE COURT: Why?

8 MR. SEGAL: I'll tell you why. In the first place,  
9 Mr. Waskom has testified that this M 21 can blow off a hand.

10 THE COURT: Why is that prejudicial?

11 MR. SEGAL: One, I've cross-examined a lot of things,  
12 but I've never cross-examined a tape with somebody speaking on  
13 it.

14 MR. LIBBY: We deleted that.

15 MR. SEGAL: But more importantly, this shows a  
16 demonstration not on an M 21 under a truck, which is what the  
17 government's theory is in this case, this shows an M 21 under  
18 a barrel, being shot up. That has got nothing to do with this  
19 particular case. And they are doing the same thing that you  
20 permitted them to do with the transmitter, which was closer.  
21 You're taking something that's unrelated and trying to apply  
22 it. If they had done a demonstration under a truck, which is  
23 what this is all about, they claim, I can see it. But to take  
24 a barrel and shoot up a barrel, it implies that this thing is  
25 the next thing to the some rocket, and it is highly

1 prejudicial and it is completely irrelevant.

2 THE COURT: It's not irrelevant. The question is  
3 whether this is a device that can do harm.

4 MR. SEGAL: He can testify to that, and he has  
5 testified to it. So, it is also repetitive. He said, if you  
6 hold this in your hand you can blow off your hand. Then  
7 Mr. Libby said, well, there's been testimony it was a  
8 firecracker. I don't remember his testimony, but so what.

9 THE COURT: That seems to be the defendant's  
10 contention.

11 MR. LIBBY: It is.

12 THE COURT: Mr. Trenkler said it to the officers, and  
13 Cates testified that that's what Mr. Trenkler told him.

14 MR. SEGAL: He's already testified that this thing  
15 can blow off your hand, and he's demonstrated it. And now to  
16 have a demonstration of something completely unrelated to this  
17 case, a barrel; in other words, if they had demonstration of a  
18 barrel and a firecracker, I'll --

19 THE COURT: I understand your argument.

20 Why do we have it?

21 MR. LIBBY: Because, your Honor, it absolutely,  
22 directly meets their contention that it was a firecracker  
23 prank. Agent D'Ambrosio said Mr. Trenkler has testified that  
24 Trenkler told him it wouldn't harm anyone. It is in the  
25 record. We're entitled to show the impact this has in a

1 demonstrative way.

2 THE COURT: What is in this barrel?

3 MR. LIBBY: It's an empty barrel. Without any  
4 introductory remarks that Mr. Waskom made in the introduction  
5 of the tape. Mr. Waskom is going to say it was an empty  
6 55 gallon tank.

7 THE COURT: Why can't I look at this thing and play  
8 it later on?

9 MR. LIBBY: Well, it is that portion we go beyond and  
10 try to get the signature. .

11 THE COURT: That's all right.

12 MR. LIBBY: It simply shows it blowing up 20 feet in  
13 the air.

14 MR. SEGAL: It doesn't show a firecracker blowing up  
15 anything.

16 THE COURT: He has the floor.

17 MR. LIBBY: It absolutely meets their position, their  
18 contention head on. And he'll argue in closing they're two  
19 different things entirely. Firecrackers, a little prank. But  
20 this, your Honor, drives it home that we're not dealing with a  
21 firecracker and we're not dealing with a prank, and we're  
22 entitled to meet it.

23 MR. SEGAL: My point is, a fair demonstration would  
24 have been to take a cherry bomb or something else and actually  
25 put it under a barrel and see what happens there. Because a

1 cherry bomb probably could blow it up, too. It is highly  
2 unfair.

3 THE COURT: You can come back and show us that a  
4 little thing would do the same thing.

5 MR. SEGAL: Your Honor, we saw this tape yesterday  
6 for the first time. I'm not in the business of production. I  
7 think this is a trial by production, if you permit something  
8 that's so prejudicial --

9 THE COURT: I will allow it. Your objection is  
10 noted.

11 ...end of conference at the bench.]

12 THE COURT: The videotape is Exhibit what?

13 MR. LIBBY: I believe it is Exhibit 64, your Honor.

14 THE COURT: It is in evidence over the defendant's  
15 objection, and the objection is noted.

16 MR. SEGAL: Identification or?

17 THE COURT: It is for identification as a chalk, but  
18 the jury can look at it.

19 MR. SEGAL: The actual tape is not in evidence.

20 THE COURT: It is a chalk. It is a device to simply  
21 show you, to illustrate what the witness is telling you.

22 **[Government's Exhibit 64 marked for identification.]**

23 Q Very briefly, Mr. Waskom, describe what we're about to  
24 see, describe the layout for us what we're using?

25 A The explosive device being used is an M 21 Hoffman

1 device. The test, if you would call it a test, was performed  
2 in Indian Town Gap, a military reservation in Pennsylvania.

3 Q Would you point out for us and play the tape and identify  
4 for us, please, where the bomb was placed or where it was? Is  
5 there a freeze frame.

6 If we can stop the frame and show where the device  
7 was, is?

8 A The device is here.

9 Q We're about to see next is what, sir, demonstrating the M  
10 21 Hoffman?

11 A M 21 with a 55-gallon drum placed over the top of it.

12 Q How far away is the camera located from this?

13 A I would have to estimate, but several hundred feet.

14 THE COURT: It is an empty barrel, as I understand  
15 it.

16 THE WITNESS: That is correct, your Honor.

17 (Video played.)

18 A You can see the 55-gallon drum at the lower center  
19 portion of the screen.

20 Q Now, stopping the tape, please.

21 Mr. Waskom, is the M 21 Hoffman device available  
22 readily in a legitimate market?

23 A No, sir. There is no place that you can buy an M 21  
24 Hoffman device, to my knowledge.

25 Q Where, and for what use, is there exclusive use for M 21

1 Hoffman device?

2 A Yes.

3 Q What use is that?

4 A The exclusive use is to simulate a main gun firing on a  
5 military tank. It's a 120 millimeter gun which is a gun  
6 approximately this diameter.

7 Q For use in the military?

8 A That is correct.

9 Q Now, with respect to -- staying right where you are --  
10 with respect to the 1991 device, you testified I believe that  
11 the main charge there was ammonium dynamite?

12 A That is correct.

13 Q And roughly how much, what quantity of dynamite, please?

14 A We're estimating two to three sticks, half pound, so  
15 between a pound and a pound and a half of dynamite.

16 Q That's consistent with what, sir?

17 A It is consistent with the evidence at the scene, the  
18 crater that was left after the explosion, the distances that  
19 components were propelled, in addition to the size of the box,  
20 knowing how much it had the capability of holding and the  
21 injury to the bomb technician that was on it when it  
22 functioned.

23 Q And anything further, with respect to the distance that  
24 the matter was projected?

25 A Oh, by the distance, you can estimate how much force an

1 explosion is capable of and by that you can give an  
2 approximate to how far such an item could be propelled.

3 THE COURT: Are we not now repeating Mr. Waskom's  
4 earlier testimony?

5 MR. LIBBY: No, your Honor, I'm not going to get into  
6 that.

7 Q I want you to assume, Mr. Waskom, two to three sticks of  
8 dynamite contained in an improvised explosive device attached  
9 to the undercarriage of the 1986 Buick, would describe for the  
10 jury, please, the impact of initiation of detonation of that  
11 charge, the impact upon the automatic automobile and driver,  
12 please?

13 A The initial explosion would blow a hole in the base of  
14 the underneath side of the car, approximately a foot in  
15 diameter, maybe a little larger. The pressure coming off of  
16 this explosive material functioning, would propel anything  
17 close to it away from the explosion. As this pressure came  
18 up, it would blow the hole in the bottom of the car, producing  
19 many fragments from the bottom metal material of the car  
20 itself, in addition to the magnets that were on top of the  
21 device between the explosive and the car, those would also be  
22 propelled. They would be propelled in an upward direction,  
23 straight up underneath the seat where the driver would be.

24 These propelled fragments would go through the seat,  
25 possibly through the person sitting in the seat and through

1 the roof. As the explosion occurs and this pressure builds  
2 inside the vehicle, it was vented into the vehicle when it set  
3 this hole, it would blow the windows out of the vehicle; and  
4 in all probability, it would take the roof off the vehicle.  
5 It is a possibility that the front support beams holding the  
6 roof together would hold, if they held it would definitely  
7 buckle the roof. It is a good chance that those supports  
8 would be ripped apart and it would peel the top of the roof  
9 off.

10 Q The driver, sir?

11 A The driver, if the driver was there, and had all of these  
12 fragments coming straight into him at a distance of  
13 approximately a foot and a half at the most, he would have  
14 little or no chance of surviving the explosion.

15 Q Now, sir, is this difference between the main charge in  
16 the '86, M 21 Hoffman, and the 1991 dynamite, sir, is the  
17 difference in the main charge, itself, present any obstacles  
18 to you in arriving at a signature opinion, sir?

19 A No, sir, it doesn't.

20 Q Why not?

21 A Because the main charge that is used in a bomb is  
22 obtained for a reason. A person decides what they want to do,  
23 and that will dictate what they need to perform that  
24 function. In this case, in the 1986 device, the device was  
25 not intended to totally destroy a vehicle. It wasn't intended

1 to hurt anyone from the reports I read. It was intended to  
2 cause a disturbance, put fear in another person.

3 The 1991 device, with the material that was there,  
4 the way it was set up, was intended to get a person. So  
5 whoever built the device, would get the materials he needed to  
6 do the job he wanted to do.

7 Q Once having made that decision, chosen for example an M  
8 21 Hoffman device or a dynamite, once that choice is made are  
9 there other forensic matters which necessarily follow,  
10 associated with that choice?

11 A Yes, sir, there are.

12 Q What differences are those?

13 A The M 21 Hoffman device, when it is made at a factory has  
14 the explosive material in it. It has the initiator inside.  
15 It has the wiring coming out of the explosive housing, going  
16 to the two-prong plug. This is all assembled at the factory,  
17 a soldier out in the field does not put anything together.  
18 The only thing he has to do is take the little clip off the  
19 end that protects the two prongs and plug it into his  
20 initiator. The dynamite, on the other hand, has to have a  
21 detonator a blasting cap for it to function. These blasting  
22 caps, when you order a stick of dynamite you don't get a  
23 blasting cap with it. You have to order this separately. So  
24 the builder would need to be aware of what materials were  
25 needed to function what he had.

1 Q Is the presence of blasting caps in the '91 device and  
2 the absence of blasting caps in '86 present any obstacle to  
3 you in forming your signature opinion?

4 A No, sir.

5 Q All right. Now, Mr. Waskom, having in mind the 1986  
6 device, as you testified, the 1991 device as you testified, do  
7 you have an opinion based upon your training, your education,  
8 your experience, your long experience as a bomb technician and  
9 explosives enforcement officer and your expertise in the field  
10 of improvised explosives, do you have an opinion as to the  
11 presence or absence of any signature linking of the 1986  
12 device with the 1991 device?

13 A Yes, sir, I have.

14 Q What is that opinion?

15 A It is my opinion that the materials used in the 1986 and  
16 the materials used in the 1991 show one person built both  
17 devices.

18 Q Do you have something here that would assist you in  
19 explaining that to the jury?

20 A Yes, sir, I do.

21 THE COURT: Can you arrange it in such way that the  
22 witness is speaking toward the reporter. That is that he  
23 stands on the right side from your perspective of the drawing  
24 rather than the left if that is possible.

25 Members of the jury, the reporter has probably the

1 most difficult job in the courtroom.

2 He can never -- his attention can never flag or hers,  
3 can't blow her nose, and if he can make his or her life in  
4 some way easier then we should do that.

5 THE COURT: Not only that, but he has to hang around  
6 in the afternoons because we don't finish at one. We keep  
7 going all day.

8 The trial life is unbelievably difficult for the  
9 reporter.

10 Q Would you tell us, please, sir, the basis for your  
11 opinion, so far as forensic similarities are concerned between  
12 the two devices?

13 A Yes, sir, from the evidence that was analyzed, the  
14 forensic evidence in the 1991 and the 1986, I discovered that  
15 wires were twisted, soldered and taped. That information that  
16 comes from the chemist's report. It also comes from the  
17 chemist's report on the 1986 device. And it is also in an  
18 affidavit by Mr. Denny Kline, identifying twisting, soldering  
19 and taping.

20 Q Mr. Kline is the defendant's expert?

21 A That is correct.

22 Q Is there any photograph here that would assist you in  
23 explaining that to the jury?

24 A The twisting and soldering and taping in the evidence  
25 that was found coming from the 1991 device as is photographed

1 here, shows what was recovered at the scene. And it shows the  
2 wires coming together, shows the solder, shows the tape, and  
3 in a blowup of it, it shows where the tape was at for a period  
4 of time when the device was constructed.

5 Q Please continue.

6 A The second item I took into account, was that the devices  
7 were affixed with round magnets. There were many types of  
8 magnets that were available. Typically, horseshoe magnets are  
9 kind a typical shape form. There are little flat magnets for  
10 refrigerators, and there are round magnets also. Round  
11 magnets are fairly unusual. You don't go to a store or a  
12 hardware store and see large round magnets for sale. I've  
13 never seen large round magnets for sale at any hardware  
14 store.

15 I know they use these magnets when they manufacture  
16 speakers. In the 1986 report, it discusses a speaker magnet.  
17 It is consistent with the large round magnet. In the 1991  
18 device, material recovered at the scene, were large fragments  
19 of large round magnets. We also in, in hearing information  
20 from the officers on the scene, Mr. Shay, Sr. we know that  
21 there were two large round magnets on the device in '91.

22 The next thing that I looked at is the components  
23 were taped with duct tape. Basically, they were bundled  
24 together in both devices. In the 1986 device the fusing  
25 system was wrapped in duct tape. In the 1991 device, the

1 explosive material and blasting caps were held together with  
2 duct tape. That's a personal thing that a person does. I've  
3 never seen it in any book where they, there are several books  
4 that tell people how to build bombs. I've never seen it in  
5 any book where it tells them to wrap the components in tape or  
6 bundle materials in tape. So that's the personal touch of the  
7 person that's building the device.

8 The next item I looked at was a toggle switch being  
9 used in the firing circuit.

10 The toggle switch is just an on-and-off switch, a  
11 very simple switch compared to other switches. It was used in  
12 the 1986 device, and it was used again in the 1991 device.  
13 They weren't both the exact same switch. But it shows the  
14 person's knowledge, how he builds something, what his base of  
15 knowledge is to perform the functioning he wants to perform.

16 The toggle switch -- although I can't say that they  
17 have never been used in other devices are unusual in remote  
18 control devices. Remote control devices in themselves are  
19 unusual.

20 I also looked at the fact that the devices were  
21 affixed to the undercarriage of a vehicle. In the 1986  
22 device, it was placed underneath the truck. In the 1991  
23 device, they were placed underneath a car. That shows the  
24 mindset of a person that's building the device. He's done  
25 something once and it worked for him. And when he does it

1 again, he remembers that: This is what I did and it worked.  
2 So this is how I need to do this. That's the mindset of the  
3 builder.

4 I also looked at small lamps being used to test the  
5 circuitry. Small lamps were used in the 1986 device, and is  
6 in written statements, stating that the circuit was tested.  
7 In the 1991 device, small lamps were purchased at Radio  
8 Shack. The purpose of these small lamps in conjunction with  
9 the device, is to test the circuit. He did it in '86. He's  
10 going to do it in '91.

11 And last the devices were designed to function by  
12 remote control, radio remote control. Radio remote control is  
13 a type of explosive device that we encounter in the United  
14 States. Some people will try to say that it is just a group.  
15 But it is not a group. Radio remote control devices in the  
16 United States in themselves are very unusual. We do find  
17 some. But compared to the thousands of others, there are very  
18 few that are radio remote control. This is what I used to  
19 determine the signature of the two devices.

20 Q That's with respect to forensic similarity, sir?

21 A That is correct.

22 Q Is it within your expertise, sir, and your competence as  
23 a bomb technician and explosives enforcement officer to also  
24 take into consideration in forming your signature opinion, the  
25 circumstances surrounding separate bombing incidents?

1 A Yes, sir.

2 Q In other words, the circumstantial evidence other than  
3 the real evidence?

4 A That is correct.

5 Q All right.

6 Mr. Waskom, let me ask you to make the following  
7 assumptions, please, as to circumstantial similarities.  
8 First, that each device was the product of a conspiracy;  
9 secondly, that the builder utilized another individual to  
10 purchase electrical components; third, that the target  
11 vehicles were operated by a person with ties to a member of  
12 the conspiracy, other than the builder; fourth, that the  
13 devices were placed within ten miles of each other; fifth and  
14 finally, that the devices were designed to be affixed to the  
15 undercarriage of the respective target vehicles.

16 I want you to make those assumptions for me, please,  
17 sir. First, I ask you if you consider these matters to be  
18 significant?

19 A Yes, sir, very much so.

20 Q How are they significant to you, sir?

21 A They are significant because they show the thoughts of  
22 the builder. How he does things. What he, what his  
23 observation is of how to accomplish something. The fact that  
24 the devices were the product of a conspiracy -- it is my  
25 understanding in both cases -- that's what a person does, it

1 is the way in a sense the builder separates himself from the  
2 crime by going through other people.

3 Q Do you see that here in these assumptions, sir?

4 A Yes, sir. We also -- we can connect that directly with  
5 having some one, a second person, go in and purchase the  
6 components. It is a second thing that he is separating  
7 himself from the act itself.

8 Q That's in the act of purchasing?

9 A In the act of purchasing.

10 Q Is that consistent with any of the other assumptions I've  
11 asked you to make, sir?

12 A Yes, that's consistent with a couple of others. One part  
13 of the conspiracy, two, the fact that the device, the builder  
14 built the device for a person who used it in connection with a  
15 third person. So in each of these, purchasing and the fact of  
16 he's doing it for a second person to get a third person, shows  
17 his distance from the actual explosion, his way of distancing  
18 himself.

19 Q Now, sir, do you have an opinion, sir, based on your  
20 training, education, experience and expertise, as to whether  
21 the individual who designed and constructed the 1986 Quincy  
22 improvised explosive device is the same person who designed  
23 and constructed the 1991 Roslindale device; do you have an  
24 opinion, sir?

25 A Yes, sir, I have.

1 Q What is that opinion?

2 A It is my opinion that the person who designed and  
3 constructed the '86 device was the same person who designed  
4 and constructed the 1991 device.

5 Q On what generally, sir, do you base that opinion?

6 THE COURT: On what he just told us.

7 MR. LIBBY: That's precisely it, your Honor.

8 Q Does that include forensic similarity the circumstantial  
9 similarity that you've just explained?

10 A Yes, sir, it does.

11 Q Sir, is there any question in your mind, as to your  
12 opinion linking the two devices?

13 A No, sir, none whatsoever.

14 MR. LIBBY: I have nothing further. Thank you, your  
15 Honor.

16 THE COURT: Members of the jury, I need to caution  
17 you about one thing. When counsel ask an expert -- and I may  
18 have told you this before -- ask an expert to make certain  
19 assumptions, you need to be very careful because if the  
20 opinion is based on certain assumptions, and you find that the  
21 assumptions are not in accordance with the facts as you find  
22 them then the opinion is of no use to you.

23 Did I explain this to you before? So here one of the  
24 assumptions is the fact the ultimate issue you will have to  
25 determine was there a conspiracy? That is for you to decide.

1 And if you find that there was not a conspiracy, then part of  
2 the basis of the opinion falls away, so you need to be very  
3 careful when you are deliberating on your verdict to make sure  
4 that the assumptions on which the opinion is based, are in  
5 accordance with the facts as you will determine them to be.

6 (Pause.)

7 Cross-examination by Mr. Segal

8 Q Good morning, again, Mr. Waskom.

9 A Good morning, sir.

10 Q Since joining the ATF, your duties as an explosives  
11 enforcement officer are basically look at the way a bomb is  
12 put together and reconstruct it in the most logical way; is  
13 that fair to say?

14 A That would be a portion.

15 Q Okay. And you joined ATF in 1990, 91?

16 A 1990, sir.

17 Q Mr. Waskom, this incident in Roslindale, in 1991, is this  
18 the first case you testified in court on the issue of  
19 signature?

20 A Yes, sir, it is.

21 Q And prior to this case, you never been formally requested  
22 to make a signature comparison; isn't that correct?

23 A Prior to this case, I worked one other case as far as  
24 signature was concerned; I did not testify. A formal written  
25 request to make an identification, no.

1 Q You didn't write any written report in this case in  
2 connection with your signature identification; isn't that fair  
3 to say?

4 A That is fair to say.

5 Q And wouldn't you agree with me, your function hasn't been  
6 specialized in signature comparisons?

7 A No, we, we, as far as I know, there is no person that  
8 specializes in that alone.

9 Q All right.

10 Now, I think you told us you were involved,  
11 yesterday, in the case of the Judge Vance bombing; am I  
12 correct?

13 A Yes, sir.

14 Q V A N C E?

15 A I believe that's correct.

16 Q All right. You were not called to testify in that case;  
17 am I correct?

18 A That is true.

19 Q That case involved five different bombings; isn't that  
20 correct?

21 A Yes, sir.

22 Q There was a 1972 bomb, am I right?

23 A Yes, sir.

24 Q And there were four other bombings in 1989; am I  
25 correct?

1 A Four other bombings or attempted bombings, yes, sir.

2 Q By the way, in 1989, you were still with the military; am  
3 I right?

4 A In 1989, that is correct.

5 Q So, you weren't involved in the Judge Vance case while  
6 you were in the military?

7 A No, not as far as evidence collection.

8 Q Now, that particular case involved five pipe bombs?

9 A Each device contained a pipe bomb, yes.

10 Q And each device contained a typed extortion letter in the  
11 bomb; isn't that right?

12 A I don't know that each device contained that.

13 Q How many do you recall contained it, from your work on  
14 the case?

15 A To my knowledge, three, but it's been a while.

16 Q Could it have been five?

17 A Yes, sir, it could have been.

18 Q Now, each device was mailed during the Christmas holiday  
19 season; isn't that correct?

20 A As far as when they were mailed, I don't know, sir.

21 Q Do you recall whether it was mailed during a heavy mail  
22 season?

23 A Yes, sir, I believe it was.

24 Q And each device had an anti-open switch; in other words,  
25 when you opened the lid on the package, it caused it to

1 explode; isn't that fair to say?

2 A Yes, sir, that is.

3 Q And each device in the Judge Vance case had string and  
4 paper clips used to initiate the bomb; isn't that fair to say?

5 A Yes, sir.

6 Q And each device had flashlight bulbs as initiators?

7 A Had flashlight bulbs that started the initiator.

8 Q Those were very singularly unique features in that  
9 situation of those five bombs; isn't that correct?

10 A The fact of using string as the force of the physical  
11 pull to initiate a mail bomb is not that unique, sir, no.

12 Q No, I meant all the factors I've outlined.

13 A If you put everything together to include additional  
14 information about the devices, they were very unique, yes.

15 Q And that was a joint ATF/FBI investigation; am I right?

16 A Yes, sir.

17 Q And Tom Thermon from the FBI lab testified on the  
18 signature issue at the trial in that case; isn't at that fair  
19 to say?

20 A I believe that is correct, yes.

21 Q I think you testified you knew, you knew of Denny Kline;  
22 is that correct?

23 A Yes, I do.

24 Q And you know he's a recognized explosives expert with FBI  
25 background?

1 A Well, I can't say what other people recognize him as, I  
2 take him to be very knowledgeable, yes.

3 Q Isn't it fair to say, this term signature, we're talking  
4 about, is based upon forensic similarities between two  
5 devices?

6 A That is the primary way, yes.

7 Q In your opinion, is a bomb signature like a handwriting  
8 signature in that it has some singularly unique features?

9 A I don't know that there is anything that's exactly like  
10 the signature quality in an explosives device. I think you  
11 could say it is similar, yes.

12 Q We all write certain ways in a distinctive way that  
13 people can read and identify, is that fair to say?

14 A That's fair to say, yes.

15 Q And you'll agree that each bomb maker has his own  
16 personal way of making a bomb, is that fair to say?

17 A I think so, yes.

18 Q And wouldn't you agree that bomb makers usually assemble  
19 the same components in the same way in each bomb?

20 A Not necessarily, no.

21 Q Doesn't the term bomb signature to you, Mr. Waskom, mean  
22 putting the bomb together in an individually unique or  
23 distinctive way?

24 A It means putting a device together using methods, using  
25 techniques that come from one individual.

1 Q The term signature implies something that's very  
2 personally distinctive, as similar to handwriting, am I right?

3 A I guess you could accept that it way, yes.

4 Q Now, let me go back to the '86 incident. I think you  
5 told us the reports you relied on were the 3-page typewritten  
6 report from Detective Lanergan, am I right? Is that one of  
7 them?

8 A Yes, sir.

9 Q His handwritten notes, am I right?

10 A Yes, sir.

11 Q And Mr. Hankard's forensic report?

12 A Yes, sir.

13 Q All right.

14 It's fair to say you didn't rely on Officer  
15 Turowska's report from the Quincy PD?

16 A I believe you showed me that report one other time. And  
17 I do think I had seen that report, I don't have a copy of it  
18 presently, though.

19 MR. SEGAL: Let me mark his report for identification  
20 as the next exhibit.

21 Q Let me show you the report. And this is the 3-page  
22 report of Officer Turowska of September 1, 1986. And I'll  
23 make sure we catch up with the record on -- we'll call that  
24 Defendant's Exhibit 94 for identification.

25 **[Defendant's Exhibit 94 marked for identification.]**

1 Q Now, I showed you that report at a prior hearing, do you  
2 recall, sir?

3 A Yes, sir, I do.

4 Q And do you recall testifying that you didn't rely on that  
5 particular report in connection with your examination with  
6 your work in this case?

7 A I don't know that I stated it that way.

8 Q Well, let me direct your attention to --

9 THE COURT: Well, what is the question? Are you  
10 trying to impeach him with a prior inconsistent statement? We  
11 haven't got the statement yet. He hasn't told us this time  
12 around whether he did or he didn't.

13 Q My question, sir, is isn't it fair to say you didn't rely  
14 on Officer Turowska's report in connection with forming your  
15 conclusions about the '86 device?

16 A I believe my statement before was I may have seen his  
17 report. I believe it is true that I did state that I did not  
18 rely on his report. And at present I do not think I have a  
19 copy myself of this report, yes, sir.

20 Q So you will agree with me you didn't rely on his report  
21 in connection with your conclusions of the '86 device; is that  
22 right?

23 A Yes, sir.

24 Q Now, looking at the other two reports that -- three  
25 reports that we talked about, the Hankard report and the

1 Lanergan reports which are just for identification, let me  
2 just show you a copy of the Hankard report which is  
3 Government's Exhibit 39. And then -- that's one of the  
4 reports you relied on?

5 A Yes, sir.

6 Q And then Exhibit 61, which is the Lanergan typed report,  
7 that's another report you relied on; isn't that correct?

8 A That's correct.

9 Q And the, the other exhibit, I'm sorry, the number is next  
10 to me, the one-page report from Lanergan, Officer Lanergan,  
11 you also relied on this, sir?

12 A Yes, sir.

13 Q In any of those reports is there any mention of where the  
14 device was affixed in 1986 to the truck?

15 MR. LIBBY: Your Honor, the government will stipulate  
16 there is no reference in any of those reports.

17 Q I think you told us, Officer-- I'm sorry -- Mr. Waskom,  
18 that the M 21 if you hold it in your hand and it goes off it  
19 could blow off your hand; is that correct?

20 A Yes, sir.

21 Q If I held a cherry bomb in my hand and set it off,  
22 wouldn't that cause similar damage?

23 MR. LIBBY: Objection, your Honor.

24 THE COURT: Oh, I'll allow that.

25 A Yes, sir. A cherry bomb would also cause similar damage

1 to the hands.

2 Q Mr. Waskom, let's start with the fusing system between '91  
3 and '86. You state that both devices were designed and built  
4 to function by remote control; is that correct?

5 A Yes, sir. Radio remote control.

6 Q Are both the remote control or radio control components  
7 in these two devices the same?

8 A When you say the same, do you mean exactly the same?

9 Q Yes.

10 A I would say no, they are not exactly the same.

11 Q What kind of radio control system was used in the '91  
12 device?

13 A The '91 device used a Futaba hobby car remote control  
14 system.

15 Q And can you identify for us the specific Futaba  
16 components used in 1991?

17 A I believe the receiver was an S 148. The --

18 Q I don't --

19 A I'm sorry.

20 Q I don't mean model number. I just meant types of  
21 components. Was there a receiver? Was there a battery pack?

22 A Yes, sir. The system consisted of a four AA battery  
23 pack, wiring connecting it to a slide switch, wires connecting  
24 that to a Futaba receiver, and wires connecting that to a  
25 Servo motor.

1 Q And there was a built-in antenna in that too?

2 A The antenna is part of the receiver, yes, sir.

3 Q Are Futaba components purchased or made so that all you  
4 have to do is plug in the units together?

5 A Yes, sir.

6 Q Is any special skill required for this assembly?

7 A I would guess you would need to read the instructions.  
8 I'm not sure what special skill would be required to plug the  
9 components in.

10 Q All right. Can't you buy these Futaba components at  
11 hobby shops?

12 A Yes, sir, you can.

13 Q And from your knowledge, don't they come with assembly  
14 instructions?

15 A Yes, sir, they do.

16 Q What kind of radio control system did the '86 device  
17 have?

18 A The '86 device had four AA batteries in a battery pack,  
19 connected with wire to a slide switch, connected with wire to  
20 a receiver circuit board and then connected on to a relay.

21 Q And weren't the components from a Tyco remote control  
22 car?

23 A Yes, sir, they were identified as being from Tyco.

24 Q And they had been removed from the body of the toy car  
25 and placed in the '86 device?

1 A Yes, sir.

2 Q And does this Tyco system come with a slide switch,  
3 built-in battery pack and antenna and AA batteries?

4 A It is my understanding the car comes equipped with that,  
5 yes.

6 Q Does this system come with a Servo motor and horn?

7 A To my knowledge, no.

8 Q Would you say that a certain degree of electronics  
9 knowledge was required to alter the Tyco system to make it  
10 work as a remote control device in '86?

11 A It would take some knowledge of electrical components,  
12 yes.

13 Q More so than to assemble the readily assembled parts from  
14 the Futaba system in '91?

15 A Of the Futaba system itself it would take somewhat more.

16 Q Did both fusing systems have an arming on/off slide  
17 switch?

18 A Both fusing systems had a slide switch. I do not  
19 consider it to be an arming switch.

20 Q Did both systems have four AA battery packs?

21 A They had a battery pack for -- containing four AA  
22 batteries, yes.

23 Q Isn't it true that the slide switches and the battery  
24 packs come with the fusing system?

25 A I think you asked if the slide switch and the battery

1 pack come with the fusing system?

2 Q Yes.

3 A They are in the fusing system section, yes.

4 Q So, the builder doesn't really have to personalize those  
5 to put them into the device, isn't that fair to say?

6 A I would say no. He would not need to.

7 Q Wouldn't you agree that the two fusing systems are  
8 systems are not so unique components for a radio control  
9 device?

10 A You'll have to restate that. I'm not sure I heard what  
11 you said.

12 Q Would you agree with me, sir, that the two fusing  
13 systems, these two devices, are not unique components for a  
14 radio controlled device?

15 MR. LIBBY: I object to the form of the question,  
16 your Honor. Unique components?

17 THE COURT: I think the question is whether they are  
18 unique for signature purposes; is that what you're asking?

19 MR. SEGAL: Distinctive type components, yes. We're  
20 on signature.

21 MR. LIBBY: First he was talking fusing systems and  
22 then he's talking components.

23 MR. SEGAL: Well --

24 Q Would you agree that the two fusing systems are unique --  
25 are not unique -- well, let me strike that.

1           There are two fusing systems in these, right?

2     A     Yes, sir.

3     Q     Is there anything particularly unique about them?

4     A     As far as being unique in connection with radio  
5     controlled devices, no.

6     Q     Okay. They are the type of things that you buy sort of  
7     off the shelf, isn't that fair to say?

8     A     Well, you would buy the Futaba off the shelf. It would  
9     take some disassembly for the Tyco toy car.

10    Q     And wouldn't you agree with me that the maker of these  
11    two devices didn't personalize each fusing system?

12    A     To my knowledge, I don't know that I can say that he  
13    personalized each of the systems.

14    Q     Would you agree, after looking at the two fusing systems,  
15    that they don't contribute to signature identification in this  
16    case?

17    A     I do not agree with that.

18    Q     Did both receivers in the fusing systems have an antenna?

19    A     Yes, sir.

20    Q     Did the '91 device use the antenna that was built in?

21    A     To my knowledge, yes, sir.

22    Q     Was the -- was that antenna altered in any way?

23    A     Not to my knowledge, no, sir.

24    Q     Was the antenna in the '86 device original or altered?

25    A     That I do not know.

1 Q There's nothing in the report that would indicate to you  
2 the '86 device antenna was altered by connecting two wires  
3 together?

4 A Not to my knowledge, no.

5 Q Let's move on to the explosive.

6 Did both devices contain an explosive, Mr. Waskom?

7 A Yes, sir.

8 Q Were the explosives the same?

9 A No, sir.

10 Q What type of explosive was used in '91?

11 A 1991 chemist report says ammonium dynamite.

12 Q Was the wrapper from the dynamite recovered?

13 A No, sir, it was not. Not the factory wrapper.

14 Q In your opinion, based on your examination in this case,  
15 wasn't the dynamite wrapper removed in '91 so that  
16 investigators couldn't trace the identity of the bomb?

17 A That would be an opinion on my part but, yes, that would  
18 be the reason for removing the factory dynamite wrapper.

19 Q Would you agree that's probably why it was removed?

20 A Yes, sir, I think so.

21 Q What type of explosive was used in '86? Was it an M 21?

22 A M 21 Hoffman device, sir.

23 Q And the M 21 has a paper wrapper or label with  
24 identifying numbers on it; is that correct?

25 A The original, there are several models. There is the

1 upgraded M 21. the initial M 21 which is on the table had it  
2 pressed in ink on the plastic. Later they went to a paper  
3 label.

4 Q All right.

5 Now, from your examination of Mr. Hankard's report  
6 was the wrapper with identifying information removed from the  
7 M 21 that was used in the '86 device?

8 A I believe that in Mr. Hankard's report, Mr. Hankard  
9 states that the markings were on the plastic. It was not on a  
10 paper wrapper that could have been removed.

11 Q So, his report indicates that he was able to find the  
12 language on the debris simulator flash artillery low, 84 H  
13 008, am I right?

14 A L O W, it's not necessarily should not be pronounced as  
15 low. They are individual characters as far as tracing or lot  
16 number.

17 Q But -- oh. L O W is probably a misprint. It should have  
18 been lot there?

19 A No, L O W is correct. But each letter stands for  
20 something. It's not intended to be the word "low."

21 Q But the point is he was able to find some very  
22 distinctive markings left on the the debris that indicated it  
23 was a simulator flash artillery, right?

24 A Yes, sir.

25 Q Do you consider the removing of the wrapper from the

1 dynamite in '91 and not removing the identification from the M  
2 21 in '86 a similar or different personal method?

3 MR. LIBBY: Objection, your Honor.

4 THE COURT: What's your objection?

5 MR. LIBBY: He's testified that it was on plastic  
6 that was not able --

7 THE COURT: He's entitled to ask about it.

8 MR. LIBBY: Your Honor, he's assumed something that's  
9 contrary to the witness's testimony.

10 THE COURT: Well, the witness will tell us.

11 Q Let me-- I'll be happy to--

12 THE COURT: Do you remember the question, Mr. Waskom.

13 THE WITNESS: Yes, your Honor, I do.

14 THE COURT: Could you answer it, please?

15 A The markings were on the plastic housing in the 1986  
16 device. And they had not been removed. The wrapper in my  
17 opinion on the 1991 device had been removed to prevent the  
18 markings on the stick of dynamite from being found. To me  
19 this is consistent with an individual who made a mistake once,  
20 and it became very apparent to him so he didn't make the same  
21 mistake twice.

22 Q So do you consider it significant that in '86 the person  
23 left the markings on there and in 1991 took them off?

24 THE COURT: Well, I think he just answered that  
25 question.

1 MR. SEGAL: Okay.

2 Q Can the M 21 cause as much damage as two or three sticks  
3 of dynamite, sir?

4 A No, sir.

5 Q Did both -- did both devices have a means for detonating  
6 or initiating the explosive?

7 A Both devices had a means for initiating the explosive,  
8 yes.

9 Q Were they the same, sir?

10 A No, sir.

11 Q What was used to detonate the dynamite in '91?

12 A Two electric blasting caps, sir.

13 Q I think you previously testified that priming the  
14 explosive with two detonators has been used by the military;  
15 is that correct?

16 A That is a technique that has been taught in the past by  
17 the military, yes.

18 Q And have you seen in your experience, sir, other homemade  
19 bombs that used two detonators dual prime before?

20 A I don't know that I have seen other devices. I will say  
21 that there probably are some other devices.

22 Q Based on your experience in looking at a number of bombs,  
23 is it fair to say that the '91 method of using two detonators  
24 suggests knowledge and possibly even some training in the use  
25 of explosives?

1 A It is hard to answer as a yes or a no. If I may explain  
2 a little bit?

3 Q Well, let me ask this and then Mr. Libby I'm sure will  
4 help us out.

5 But I think you say you're familiar with cases where  
6 two detonators have been used; is that right?

7 A Well, I wouldn't say familiar. I am sure that there are  
8 a couple of other cases where that could have happened, yes.

9 Q And you're familiar with cases with two detonators dual  
10 prime before; is that right?

11 A I would have to say yes.

12 Q And doesn't that indicate some training in the use of  
13 explosives and priming explosive main charges?

14 A It would, it would indicate some knowledge level, yes.

15 Q What did the '86 device use as an initiator?

16 A Well, it was an electrical system that was functioned an  
17 electric match that ignites, quick fuse that ignites the  
18 exploding powder inside. All that is built at the factory.

19 Q That's basically called a built-in quick match?

20 A You could phrase it that way, yes.

21 Q Is that means of initiation the same as the means of  
22 initiation in '91?

23 A Well, both are electrical but other than that there are  
24 several differences.

25 Q Mr. Waskom, did both devices have a toggle switch?

1 A Yes, sir.

2 Q Were both toggle switches wired into the firing circuit?

3 A It is my belief that they were, yes.

4 Q And can you be absolutely sure that toggle switch used in  
5 the '86 device was placed in the firing circuit?

6 A Can I be absolutely sure? I can be sure that there is no  
7 other logical place to put it but I cannot be absolutely sure.

8 Q Okay. You're saying simply that that would be the most  
9 logical place to put the toggle switch in '86?

10 A I'm saying that it would be the most logical place mainly  
11 because of the relay, by using a relay which is a very  
12 sensitive switch, it would be almost inconceivable not to have  
13 some type of an on/off switch in that firing circuit.

14 Q By the way, you never saw the debris of the '86 device;  
15 am I right?

16 A That is true.

17 Q You have not spoken to anybody who saw the debris; isn't  
18 that correct?

19 A I think that is correct, yes.

20 Q Did you speak to Mr. Hankard?

21 A No, sir. Not to my knowledge.

22 Q Okay.

23 Mr. Waskom, is it possible the toggle switch in '86  
24 could have been wired into the fusing circuits to back up the  
25 slide switch?

1 A It would be totally illogical but I can't say it is  
2 impossible.

3 Q Were the toggle switches in these two devices the same  
4 kind of toggle switches?

5 A When you say "the same kind," would you explain that a  
6 little bit?

7 Q Sure.

8 Didn't the '91 device use a single pole toggle  
9 switch?

10 A Single pole, single throw, yes.

11 Q And the '86 device used a double throw toggle switch?

12 A Double pole, double throw, yes.

13 Q And additionally they were made by different  
14 manufacturers; isn't that correct?

15 A Yes, that is correct.

16 Q What was the function of the 1991 device's toggle  
17 switch?

18 A In the 1991 device, the toggle switch energized the  
19 firing circuit and caused the initiation of the exploding  
20 charge.

21 Q What was the function of the 1986 toggle switch in your  
22 opinion?

23 A It is my opinion that the toggle switch that was in the  
24 1986 device was in the firing circuit but it was not the  
25 specific switch that energized the circuit for the purpose of

1 firing. It was a safety switch that was in the firing circuit  
2 to prevent accidental firing while it was being constructed.

3 Q So it served a different function in '86 than in '91; is  
4 that fair to say?

5 A It is fair to say, yes.

6 Q How is the '91 toggle switch turned on?

7 A The 1991 device, the toggle switch being in the firing  
8 circuit, it was shifted from the off position to the on  
9 position by the servo horn.

10 Q How was the, in your opinion, how was the toggle switch  
11 in the '86 device turned on?

12 A It is my opinion that the toggle switch in the 1986  
13 device would have been turned on by hand, manually.

14 Q Is that a safe way to activate the firing system?

15 A After you tested the circuit, it should be safe, yes.

16 Q All right. In your opinion would an experienced bomb  
17 maker activate the firing circuit that way?

18 A It's been my experience that bomb makers do that every  
19 day.

20 Q As an experienced bomb expert, Mr. Waskom, if you were to  
21 make these two devices, which method of using the toggle  
22 switch would you select?

23 MR. LIBBY: Objection.

24 Q The method in '91 or '86?

25 THE COURT: Say that again. Which method what?

1 Q This method of using the toggle switch would you select,  
2 the method used in '86 or '91?

3 MR. LIBBY: I'll object.

4 THE COURT: The objection is sustained.

5 Q Was there a separate battery pack source -- I'm sorry.

6 Was there a separate battery power source in both  
7 firing circuits?

8 A When you say a separate, are you meaning two power  
9 systems in both devices?

10 Q Yes.

11 A Yes, there was.

12 Q Did the '91 and '86 devices both use the same type of  
13 batteries?

14 A The '91 device and the '86 device both used AA batteries,  
15 four each, in the fusing circuit. In the firing circuits one  
16 used -- the '91 used five 9-volt batteries connected in  
17 series. In the 1986 device, it used two 6-volt batteries  
18 connected in series.

19 Q So it's fair to say that there was a different number of  
20 batteries used in each device?

21 A Yes, sir.

22 Q And a different voltage or batteries also?

23 A Yes, sir.

24 Q Were the batteries connected into the electrical circuit  
25 in the same way in both devices?

1     A     The 1991 device had snap connectors that fit on to the  
2     snap connectors at the top of the 9-volt battery and that  
3     those wires were soldered into the circuit. The 1986 device  
4     had two 6-volt volt batteries which to my knowledge there is  
5     no housing clip box, anything to that is made to hold those.  
6     The wires were soldered directly to the terminals on the  
7     battery.

8     Q     But there were no battery snap connectors in the '86  
9     device from what you could learn, isn't that right?

10    A     There were none that were found to my knowledge, and  
11    there would be no reason for any.

12    Q     What kind of wire was used in the '91 device, sir?

13    A     I'm not sure that I understand. When you say what kind  
14    of wire, you mean copper wire?

15    Q     Well, was there wire from the Futaba components?

16    A     Yes, sir, there was.

17    Q     Wire from the battery snap connectors?

18    A     Yes, sir.

19    Q     Leg wires from the two detonators?

20    A     Yes, sir.

21    Q     The antenna wire which is part of the receiver?

22    A     Yes, sir.

23    Q     Aren't these, these wires, wires that come connected to  
24    the individual Futaba components?

25    A     Yes, sir.

1 Q What kind of wires were you used in the construction of  
2 the '86 device based upon your examination?

3 A In the 1986 device, there was white wire which comes from  
4 the M 21 Hoffman device, there was gray wire and I believe  
5 blue wire.

6 Q Were there also some scrap wires?

7 A Depends on what your terminology or your identification  
8 of scrap wire is.

9 Q Well --

10 A There was some shorter sections of wire that had been  
11 connected together.

12 Q Was the antenna wire apparently fabricated in the '86  
13 device?

14 A That I do not know, sir.

15 Q How were the three ends of wire connected in the '91  
16 device?

17 A The three ends of wire in the '91 device, which would  
18 have been the wiring and the firing circuit itself, were  
19 twisted, soldered and taped except for the connection with the  
20 two yellow wires which comes from the detonators and they were  
21 twisted and taped.

22 Q And the tape -- they were secured with black tape, is  
23 that fair to say?

24 A Well, the term "secured" wouldn't be a good term.  
25 Secured means it is held in place and it would indicate maybe

1     against the wall or up against the box. They were insulated  
2     with tape.

3     Q     Were all of the wires in the '91 device connected in the  
4     same way?

5     A     All of them in the '91 device.

6     Q     Yes.

7             THE COURT: Well, he just gave us the exception.

8     Q     What wires were not connected by twisted, soldering and  
9     taping?

10            THE COURT: He just told us.

11            MR. SEGAL: I'm sorry if I missed it.

12     A     In the 1991 device -- if it is okay, your Honor?

13            THE COURT: Go ahead.

14            THE WITNESS: The wires that were not connected by  
15     twisting, soldering and taping would have been the two yellow  
16     wires coming from the detonators. They were twisted and  
17     taped.

18     Q     In your opinion, why weren't the leg wires connected by  
19     twisting, soldering and taping in '91?

20     A     In my opinion, on the connection of wires in the 1991,  
21     it's very rare to ever see blasting cap wires soldered. To my  
22     knowledge there is no school anywhere that teaches or even  
23     brings up the subject of soldering blasting cap wires.

24            There is I guess an inherent fear of having a  
25     blasting cap and heat involved with that blasting cap itself.

1 Although in actuality it's not, it's not as dangerous as  
2 people might think. There is really little or no danger  
3 there. The difference being the final connection that is made  
4 in a device, once you make the final connection for the  
5 device, it has the capability of functioning. To make a final  
6 connection, and then take the time to solder that connection  
7 and take the time to tape over that connection, which was done  
8 in this case in the 1991, would expose the person to something  
9 that he had ready to go off. And it would not typically be  
10 done that way.

11 Q In your opinion, would an experienced bomber or somebody  
12 with your experience solder connect the detonator wires?

13 A Would an experienced bomber?

14 Q Yes.

15 THE COURT: Are those the wires he just explained?  
16 When you say "detonator wires," what do you mean? The ones he  
17 just talked about?

18 Q Is that what we're talking about, the detonator wires?

19 A I believe we're talking about detonator wires.

20 Q Would somebody experienced, would they do it that way?

21 A I don't know that a person with a lot of experience would  
22 twist, solder and tape the detonator wires in. I would not  
23 think he would do that if he was experienced.

24 Q In your opinion doesn't the manner of connecting the  
25 detonator wires in the '91 device suggest a more knowledgeable

1 understanding of explosives than the manner of connecting in  
2 '86?

3 MR. LIBBY: I object, connecting in '86. That  
4 presumes there were leg wires in '86.

5 MR. SEGAL: I think I said detonator wires.

6 Q Can you answer my question?

7 A Not specifically because there was not what you would  
8 term a detonator in the '86.

9 Q Was the antenna used in the '91 device improvised or part  
10 of the Futaba receiver?

11 A It was part of the Futaba receiver and to my knowledge it  
12 had not been improvised or modified.

13 Q From what you could gather about the '86 device was the  
14 antenna used in the '86 improvised or part of the system?

15 A I do not know the answer to that. It would be part of  
16 the system because a remote control receiver in order to  
17 function would have an antenna that would have been installed  
18 at the factory. But whether it had been modified, I do not  
19 know.

20 THE COURT: Let's stretch for a moment.

21 May I see counsel, please.

22 (Pause.)

23 THE COURT: All set? You may proceed.

24 Q Let's talk about the container in 1991.

25 Did the '91 device use a container to conceal the

1 bomb? I mean a wooden box.

2 A I don't know of a wooden box or a plastic container. Are  
3 we talking in '91?

4 Q Right.

5 A The '91 did have a wooden box, yes, sir, as is on the  
6 table there.

7 Q Thank you.

8 That's -- in your reconstruction, that's this box  
9 right here (indicating) that I'm holding up?

10 A Yes, sir.

11 Q Didn't you say previously, Mr. Waskom, that this wooden  
12 box was constructed with plywood painted black and secured  
13 with nails and superglue?

14 A I don't know that I said that, but, yes.

15 Q All right. And didn't you characterize this container as  
16 being well made, even professionally done?

17 A I would say it was well made, yes.

18 Q Didn't that suggest to you that the maker of this box had  
19 some skill, better than average skill in woodworking?

20 A Well, I would say a person who did a good job of putting  
21 a wooden construction of some type together would have some  
22 knowledge of it, yes.

23 Q From your investigation, how was the '86-- was the '86  
24 device concealed in a similar container?

25 A If you're asking a similar container meaning a wooden

1 container, no, sir, not to my knowledge.

2 Q I think you told us the '86 was wrapped in duct tape; am  
3 I right?

4 A Parts of the '86, yes, sir.

5 Q And are you basing that on page 3 of Mr. Hankard's report  
6 where he talks about a circular magnet? And I'd ask you to  
7 look at page 3 of his report.

8 Let me direct you to that sentence. It says, "The  
9 exposed surface of one plate had been covered with  
10 superimposed layers of two-inch wide aluminum colored tape?

11 A Yes, sir.

12 Q All right.

13 Isn't it possible that tape was used to assist to  
14 help the magnet adhere to the vehicle?

15 A Put tape on the magnet to help it adhere to the vehicle?

16 Q Right.

17 A I don't think so, no, sir.

18 Q But you can positively say that the '86 device was  
19 wrapped in duct tape; can you, sir?

20 A I'm trying to think of where I've seen that. It is  
21 written that components -- let's see if I can remember which  
22 components of the device.

23 Q If you want to look at the three reports you relied on?

24 A Yes, if I may.

25 Q Sure. I think it maybe Officer Lanergan's handwritten

1 notes.

2 A It is described here somewhat, yes.

3 Q He just says certain components, the receiver, batteries  
4 and relays were wrapped together with duct tape; right?

5 A Yes, sir.

6 Q Not the whole device, am I right?

7 A That's true.

8 Q In '91 the whole-- what was wrapped in duct tape? The  
9 dynamite?

10 A Yes, sir. And with, containing the two detonators.

11 Q You stated both the '91 and '86 devices used round  
12 magnets; is that right?

13 A Yes, sir.

14 Q Is that particularly unique to place bombs on automobiles  
15 using round magnets?

16 A I do not know of -- I'll have to take that back. I saw a  
17 report lately. Other than the report I've seen within the  
18 last day or so, I do not know of any other remote control  
19 device that has used round magnets to affix it to anything.

20 Q How many magnets were used in the '91 device?

21 A To my knowledge, the '91 device had two large round  
22 magnets and approximately 12 smaller round magnets.

23 Q So there were two different types of magnets in '91?

24 A Yes, sir.

25 Q 12 button magnets and two ring donut magnets, is that

1 fair to say?

2 A That's my understanding.

3 Q Were any speaker magnets used in '91?

4 A I do not know that the two large ceramic magnets are not  
5 speaker magnets. Speaker magnets -- I don't know what  
6 actually identifies a magnet as being a speaker magnet other  
7 than you taking it off the speaker. They use magnets when  
8 they produce speaker magnets. At what point they become  
9 speaker magnets, I don't know.

10 Q From your examination though could you tell in '91  
11 whether the magnets had been ripped off a speaker?

12 A The '91 device used circular magnets that were made of  
13 the same material as speaker magnets. They also had a light  
14 coating of adhesive on one side which would be consistent with  
15 speaker magnets. But whether or not can I say they were  
16 speaker magnets, no, I can't.

17 Q From what you could see, though, a speaker magnet was  
18 used in '86; is that correct?

19 A Speaker magnet, the terminology is specifically used in  
20 the reports and appears one wise with the metal plates and I  
21 would say it is probably correct.

22 Q How was the black tape used in both devices, Mr. Waskom?

23 A The black tape in the 1986 device, to my knowledge, was  
24 used to insulate connections. In the 1991 device, it was used  
25 to also insulate connections and as a wrapping of the

1 explosive material.

2 Q How was the duct tape used in your opinion in the '86  
3 device?

4 A In the '86 device, it is my opinion that the duct tape,  
5 from reading the report, that the duct tape was used to bundle  
6 components together.

7 Q And when we're talking about duct tape, we're talking  
8 about tape like this; is that right? Is this duct tape?

9 A It appears to be.

10 Q You can buy that fairly commonly, is that fair to say?

11 A Yes, sir.

12 Q From your experience, is using duct tape in the  
13 construction of bombs unusual?

14 A Not necessarily unusual to use duct tape.

15 Q Have you ever used duct tape in making bomb training aids  
16 or encounter duct tape in the devices you observed?

17 A I have encountered duct tape in pipe bombings and other  
18 devices, yes.

19 Q Would you agree that the use of duct tape and black  
20 electrical tape in the construction of a homemade bomb is not  
21 unique to a particular bomb maker?

22 A I would say just the fact that it is used is not a unique  
23 part.

24 Q Was white electrical tape used in the '91 device?

25 A I believe they called it white plastic tape in the '91

1 device, yes, sir.

2 Q Was white plastic tape used in the '86 device?

3 A It's not reported anywhere that I know of so I would say  
4 no, probably not.

5 Q So that's another difference between the two?

6 A You could say that in addition to the '86, I don't know  
7 whether you want to call it a difference. I guess so.

8 Q Were adhesives used in the construction of the '91 bomb?

9 A Yes, sir.

10 Q What was that? Was that superglue or crazy glue?

11 A It is identified as superglue I believe in the chemist's  
12 report.

13 Q Were adhesives used in the '86 device from your  
14 investigation?

15 A I don't know of adhesives that were specifically used,  
16 no, sir. Other than those that came with the speaker  
17 magnets.

18 Q You indicate that two lamps were used to test the  
19 circuitry of the devices; is that correct?

20 A In the devices?

21 Q Yes. I think you that told us in your testimony, you  
22 said that one of the elements here is that there was a test  
23 lamp used in each case; am I right?

24 A That is my opinion, yes.

25 Q Is that a unique technique for a bomb maker?

1 A To use a test lamp to test the circuit, I would say  
2 that's not specifically unique.

3 Q And isn't this method of testing, from your experience,  
4 mentioned in many of these underground bomb manuals?

5 A I don't know if it is mentioned or not. I don't recall  
6 it being mentioned but it very well could be.

7 Q From the '91 device, did ATF recover any small lamps or  
8 holders for small lamps at the crime scene?

9 A No, sir, not to my knowledge.

10 Q So you can't say with certainty that the maker in '91  
11 used a small lamp to test the circuitry, isn't that fair to  
12 say?

13 A If you're asking if I know that it is a fact, no, I do  
14 not know that that is a fact.

15 Q You're basing that opinion on the fact that at time the  
16 toggle switch was purchased on October 18th, 1991, a small  
17 lamp was also purchased at the same time; isn't that fair to  
18 say?

19 A I'm basing it on that part and also the fact that testing  
20 the circuit in a device of this type could very easily use a  
21 small lamp to do the testing.

22 Q But that's really a theory on your part, isn't it; there  
23 is no real evidence?

24 A It is an opinion on my part.

25 Q Okay. And if somebody was knowledgeable in electronics,

1 would you expect them to test the circuit with an ohm meter as  
2 opposed to a lamp?

3 A No, sir.

4 Q From what you can gather in the report about the Quincy  
5 incident, was there any remains of small lamps that were found  
6 at the scene?

7 A I would have to look at the report again to be sure but I  
8 don't think so.

9 Q From your experience of the '91 device and the '86  
10 device, were the only two bombs ever made that were the  
11 product of a conspiracy?

12 A I'm sure that's probably not the only two that were ever  
13 made, no, sir.

14 Q From your experience were the '91 and '86 bombs the only  
15 two that were designed to be affixed to the target vehicle?

16 A You're asking if I think these two devices are the only  
17 two ever built to be affixed to a vehicle? The answer would  
18 be no.

19 MR. SEGAL: You can bring your chart over, just one  
20 second.

21 (Pause.)

22 Q Can you see this, Mr. Waskom, or maybe I can move it  
23 back.

24 A That would be fine, sir.

25 Q Now, looking at these forensic similarities, assume there

1 was no evidence to show that small lamps were used to test the  
2 circuitry in '91. Would that change your opinion about  
3 signature in this case, sir?

4 MR. LIBBY: Objection, your Honor. Assumes there is  
5 no evidence contrary to the evidence in the case.

6 THE COURT: Well --

7 MR. LIBBY: I don't care if I phrases it assume that  
8 no one has assigned any belief to that and that simply  
9 eliminate that from the equation. To say there was no  
10 evidence --

11 THE COURT: Well, the question was assume there is no  
12 evidence they were used. The evidence, as I understand it,  
13 and the opinion of the expert is based on the fact that some  
14 were purchased. And he therefore opines that they were used.  
15 And here it's being asked that it was not used.

16 MR. LIBBY: Which is not really his opinion that it  
17 was used.

18 THE COURT: Well, if he's being asked to -- I think  
19 this is a proper question. You may answer it if you can.

20 A Okay. You're asking me to assume that I had no knowledge  
21 of bulbs in the '91?

22 Q No, that wasn't my question, sir.

23 I ask you to assume that there was no evidence that  
24 anyone used the bulbs purchased on October 18th, '91 to test  
25 the circuit in '91. Assume that.

1           My question is: Would that change your opinion about  
2           signature in this case?

3           A     It would confuse me to assume that there was no evidence  
4           that they were used when that's my opinion when I know that  
5           they were purchased.

6           Q     I understand they were purchased. The point is, sir, I  
7           think you testified that no remains of those two test bulbs  
8           were found at the crime scene; is that right?

9           A     That is true.

10          Q     I understand what your opinion is. I'm saying assume  
11          there is no evidence to indicate that those test lamps that  
12          were purchased were used to test the system.

13               MR. LIBBY: Note my objection, your Honor.

14               THE COURT: Your objection is noted. I think the  
15          witness has told us he can't answer it.

16          Q     Would that change your opinion on signature, sir?

17          A     If I understand the question correctly, I don't think it  
18          would. I'm not sure that I understand the question correctly.

19          Q     Well, let me try another one. Assume the evidence is in  
20          1991 that the builder did not utilize -- assume the evidence  
21          in '91 is that -- let me try it this way.

22               Assume there is no evidence that the builder utilized  
23          another person to purchase electrical components for him in  
24          '91.

25               THE COURT: The objection is sustained.

1 MR. LIBBY: Thank you.

2 MR. SEGAL: He's made an opinion based upon certain  
3 assumptions and I think I'm entitled to --

4 THE COURT: Right. The objection to that question is  
5 sustained. Your objection to the ruling is noted.

6 Q Let's try it this way: If the evidence indicates that  
7 the components were not wrapped in duct tape, would that  
8 change your opinion?

9 A If the evidence indicated that the components were not  
10 wrapped in duct tape?

11 Q Right. To the two devices.

12 MR. LIBBY: Your Honor, --

13 THE COURT: Which components and which device?

14 MR. SEGAL: Components in both devices he's  
15 testified.

16 MR. LIBBY: I'll object.

17 THE COURT: No, the objection to that -- may I see  
18 counsel, please.

19 [Conference at the bench, as follows:

20 THE COURT: I ruled out question of the purchase in  
21 '91 because that evidence is coming on the tape. And there  
22 is evidence in the case, there is evidence on this tape, that  
23 is, on the videotape that will be heard in which Mr. Shay  
24 talks about purchasing and that he did it. There is some  
25 suggestion he did it at the behest of somebody else so that's

1 enough for him to opine on that and because there is such  
2 evidence in the case, it is inappropriate to say that it  
3 wasn't there.

4 And similarly the question that you just asked about  
5 duct tape, the record is full of evidence about the fact that  
6 it was wrapped in duct tape. So, I mean, just to say that  
7 assume it isn't there --

8 MR. SEGAL: I suggest that two interpretations can  
9 come from the record, that based on the Hankard report, that  
10 it wasn't wrapped in duct tape, that the duct tape was simply  
11 used to help affix the magnets to the automobile. And that  
12 there is no evidence in '86 it was wrapped in duct tape, that  
13 the whole device was.

14 THE COURT: It's not clear to me why you are asking  
15 these questions since I've already explained to the jury  
16 that they have to find the facts accord with the assumptions.

17 MR. SEGAL: Okay.

18 ...end of conference at the bench.]

19 THE COURT: You may proceed.

20 Q You agree with me that in those three reports you have  
21 about '86, there's no mention of where the device was affixed  
22 to the vehicle? Is that fair to say?

23 A I will agree that that is not mentioned in the three  
24 reports that I have here.

25 Q Mr. Waskom, don't you agree with me there is no

1 singularly unique feature in each of these two bombs?

2 Do you understand my question?

3 A Yes, I do. I was waiting for more of the question.

4 Q Go ahead. I've finished.

5 A It is my opinion that signature quality is not  
6 specifically hinged on one small thing. I have to take into  
7 account everything.

8 Q But my question is, can you identify in this particular  
9 case a singularly unique feature that's found in both these  
10 devices that assists you -- that enables you to make a  
11 signature?

12 MR. LIBBY: And I'll object, your Honor, unless we  
13 can have a definition of singularly unique.

14 Q Do you understand what that term means?

15 A Not your interpretation.

16 Q Let's go back to the Judge Vance (ph.) Bomb. There was  
17 some singularly unique features. There were five bombs --

18 THE COURT: Some singular unique feature or one?  
19 When you say singular, that's suggests to me one.

20 MR. SEGAL: All right.

21 Q You are familiar with certain bombing cases where there  
22 is a singularly unique feature that permits somebody to make a  
23 signature comparison, am I right?

24 A I would say yes.

25 Q In certain terrorists' cases the bombers leave alligator

1 clips twisted in a certain way in a bomb, something like that?

2 A It is my understanding on this particular case, some were  
3 twisted. The majority were twisted a certain way, others  
4 weren't.

5 Q This case the Bureau was investigating now of this unique  
6 bomber who sends bombs to universities, are you familiar with  
7 that case?

8 A Somewhat, yes.

9 Q They've identified a singularly unique feature in all  
10 those bombs; isn't that right?

11 A I would have to say yes.

12 Q And that feature is what?

13 A Your Honor, I don't know if it is proper to put that --

14 Q Well, just what I'm seeing in the paper.

15 THE COURT: To the extent that the witness is unable  
16 to sort out what is read in the paper and what he knows  
17 professionally, I will not require him to answer what he may  
18 know professionally.

19 Q What I read in the paper was that each of these --

20 MR. LIBBY: Objection, your Honor, to what counsel  
21 read in the paper.

22 Q Haven't you found cases where there are singular unique  
23 features like initials R C in each bomb that help make a  
24 signature?

25 A I would say that's true.

1 Q But you'll agree there is no one such singularly unique  
2 feature when you compare these two devices; is that fair to  
3 say?

4 A To me the circular magnets, large circular magnets are  
5 extremely unique. I've never seen circular magnets of that  
6 type in conjunction with the other evidence on anything else  
7 I've ever worked on.

8 Q Is there any other singularly or is that the singularly  
9 unique feature that you can see in this case? The circular  
10 magnets?

11 A I think you're asking me to say what is the one point. I  
12 do not have one particular point. I have to take into account  
13 all of the materials.

14 Q All right.

15 Mr. Waskom, you reconstructed in very great detail  
16 the 1991 device. Isn't that fair to say?

17 A I think so, yes, sir.

18 Q What I'm holding in my hands as Government Exhibit 5 is a  
19 very painstaking reconstruction?

20 A Yes, sir.

21 Q You never saw the '86 device, right?

22 A Other than the mockup that Mr. Kline presented.

23 Q Right. You never spoke with anybody that saw it?

24 A That is correct.

25 Q All right.

1           You're aware that the debris from the device wasn't  
2       turned into the lab until six weeks after the incident, isn't  
3       that fair to say?

4       A     I believe you mentioned that at one other time, yes.

5       Q     And it's on the Hankard report?

6       A     As far as the dates, yes.

7       Q     Does the Hankard report say the incident was September  
8       1st and he didn't get the debris until October 17th, if you'll  
9       look at the first page?

10      A     Yes, it says September the 1st, 1986, in connection with  
11      the explosion. Date of the explosion October 17th which was  
12      the date it was carried over and delivered I guess.

13      Q     And according to that report it was delivered by Mr.  
14      Voight who has since passed away?

15      A     Yes. From your experience, is that unusual to deliver  
16      debris to the lab six weeks after an explosion?

17           THE COURT: Objection sustained.

18      Q     Did the fact that you couldn't look at the '86 device or  
19      talk to anybody who saw the '86 device hinder in any way your  
20      ability to make a signature identification in this case?

21      A     No, sir, I don't think so.

22      Q     All right.

23           You never built a mockup of the '86 device, isn't  
24      that fair to say, sir?

25      A     That is.

1 Q And isn't the reason you didn't build it because it was  
2 so different from the '91 device?

3 A No, sir, that's not the reason.

4 MR. SEGAL: Thank you very much, Mr. Waskom.

5 MR. LIBBY: I do have redirect, your Honor. I'm  
6 happy--

7 THE COURT: Why don't you just do it within the next  
8 five minutes and then we can take a recess.

9 MR. LIBBY: I will have at least eight or nine  
10 significant matters. And I will try to be lickety-split, your  
11 Honor, with the witness. I can't give the Court any  
12 reference --

13 THE COURT: We'll take the recess. And we'll think  
14 about how much time he really does need.

15 [Whereupon, the jury was excused.]

16 THE CLERK: Court is in recess.

17 [Recess.]

18 THE COURT: You may proceed.

19 MR. LIBBY: Thank you, your Honor. I can now tell  
20 you the United States has nothing further for Mr. Waskom.

21 THE COURT: Thank you, Mr. Waskom, you are excused.  
22 Who is next?

23 MR. LIBBY: We now call Peter Turowska to the stand.  
24  
25

1                   Peter Turowska, sworn

2                   THE CLERK: Please be seated and spell your name for  
3 the reporter.

4                   THE WITNESS: It's Peter Turowska, T U R O W S K A.

5                   MR. LIBBY: Thank you, your Honor.

6                   Direct Examination by Mr. Libby

7           Q     Good morning, sir. Where do you reside?

8           A     City of Quincy.

9           Q     And what do you do for work, please?

10          A     Police patrolman for the City of Quincy.

11          Q     How long have you been with the City of Quincy Police  
12 Department?

13          A     Ten years.

14          Q     Now, are you married, sir?

15          A     Yes.

16          Q     Children?

17          A     Yes.

18          Q     Directing your attention to September of 1986, sir, were  
19 you employed by the City of Quincy Police Department at that  
20 time?

21          A     Yes, I was.

22          Q     And will you tell us, please, what shift you worked at  
23 that time?

24          A     I was working the 12:35 to 7:50 a.m.

25          Q     Do you have a partner?

1 A Yes.

2 Q His name?

3 A Francis Bonds (ph.)

4 Q At that time -- directing your attention to the 1st of  
5 September 1986, sir, the early morning hours, do you recall  
6 what day of the week that was?

7 A Yes.

8 Q What day was that?

9 A It was Monday.

10 Q In the early morning hours, did you receive notification  
11 by way of radio with respect to an explosion in the vicinity  
12 of 295 Willard Street, Quincy, please?

13 A Yes, I did.

14 Q And when you received that notification what did you do?

15 A We went to that location.

16 Q And what did you see generally as you got there, please?

17 A There was a large truck parked in the driveway.

18 Q Was it a residential area?

19 A Yes, residential area.

20 Q Will you tell us how far the truck was parked from the  
21 house, please?

22 A Approximately 15 feet.

23 Q Was there lighting available as you approached?

24 A There was a street light there and a house had an outside  
25 light on.

1 MR. LIBBY: If I may approach, your Honor?

2 THE COURT: Yes.

3 Q I show you two photographs, Officer Turowska, marked  
4 Government's Exhibit 65 A, and 65 B. First 65 A, do you  
5 recognize what's depicted there, please?

6 A Yes, I do.

7 Q What is that, please?

8 A That's a picture of a vehicle that's parked in the  
9 driveway and several Quincy police officers on the scene, the  
10 owner of the truck and the deputy fire chief.

11 Q And what was the company on the truck, please?

12 A Capeway Fish Market.

13 Q Directing your attention to 65 B, please, do you  
14 recognize what's there, please?

15 A Yes.

16 Q What is depicted there, please?

17 A That's a picture of the truck along with Leo Voight from  
18 the state marshal's office.

19 Q Do these photographs 65 A and 65 B fairly and accurately  
20 depict the scene that evening as you recall it, sir, on the  
21 1st of September 1986?

22 A Yes, it does.

23 MR. LIBBY: Move these in evidence, Your Honor.

24 THE CLERK: Excuse me, Mr. Libby. We already have an  
25 Exhibit 65 from the Government. Could we make that 66 A and

1 B.

2 MR. LIBBY: Certainly.

3 MR. KELLY: What was 65? I'm sorry.

4 THE CLERK: That's the transcript of the press  
5 conference I told you about.

6 MR. KELLY: Oh.

7 MR. LIBBY: Move 66 A and B into evidence.

8 THE COURT: They may be so marked.

9 [Exhibit 66A and B entered into evidence.]

10 Q Now, directing your attention to Exhibit 65 B, I believe  
11 you testified that's a picture of Mr. Voight, Leo Voight  
12 underneath the vehicle?

13 A That's correct.

14 Q Could you tell us, please, what he was doing underneath  
15 the vehicle?

16 A He was exhibiting the undercarriage.

17 Q Is that him with the flashlight there?

18 A Yes, it is.

19 Q And there is also a large utility lamp as well?

20 A Yes. That was brought by the fire department.

21 Q What is the significance, please, of the undercarriage,  
22 that portion of the undercarriage of the vehicle that you see  
23 in 65B?

24 A He's examining where it was believed the bomb had been  
25 attached to the undercarriage of the vehicle.

1 Q Okay. And did you see Mr. Voight later that evening?

2 A Yes.

3 Q And what was he doing during the evening?

4 A He had examined the undercarriage and picked up the  
5 debris that was left.

6 Q Did you see Mr. Voight leave with the debris?

7 A Yes.

8 MR. LIBBY: If I may publish these, your Honor?

9 THE COURT: Yes.

10 MR. LIBBY: I have nothing further. Thank you,  
11 Officer.

12 THE COURT: Any cross?

13 MR. SEGAL: Briefly.

14 Cross-examination by Mr. Segal

15 Q Good morning, Officer. My name is Terry Segal. I think  
16 we've spoken already?

17 A Yes.

18 Q Did you write a report that day?

19 A Yes, I did.

20 Q Would you take a look at what's been marked as  
21 Defendant's Exhibit 94 for identification. Is this the report  
22 you wrote, sir?

23 A Yes, it is.

24 Q And do you have a recollection today whether you saw any  
25 visible damage on the truck that morning?

1 A I don't recall seeing any damage, no.

2 Q In other words, you didn't see any damage?

3 A No, I didn't see no damage.

4 Q There's no damage to the truck?

5 A Not that I could see, no.

6 Q Thank you -- just one second. I think I'm all set. To  
7 your knowledge, did Mr. Voight -- strike that.

8 This photo that we got today, who is that -- is that  
9 you, Officer, looking at the back of the truck?

10 A No, it's not.

11 Q Who is that?

12 A I believe that's Sergeant Casey.

13 Q Does that photo fairly and accurately reflect the scene  
14 on that morning of September 1st?

15 A Yes.

16 MR. SEGAL: I would like to offer that photo also in  
17 evidence.

18 MR. LIBBY: No objection.

19 THE COURT: You do object?

20 MR. LIBBY: I have no objection, your Honor.

21 MR. SEGAL: We'll make it the defendant's next  
22 exhibit in evidence, 95.

23 **[Defendant's Exhibit 95 entered into evidence.]**

24 THE COURT: Anything else?

25 MR. SEGAL: Just a moment, your Honor.

1 (Pause.)

2 Q About how long after the explosion did you get to the  
3 scene, Officer?

4 A From the time we were dispatched, probably within two to  
5 three minutes.

6 Q And how long after that did Leo Voight get to the scene?

7 A I don't recall. I don't recall.

8 Q When you left the scene of this explosion, was he still  
9 at the scene?

10 A No, I believe we were all cleared at the same time or  
11 roughly the same time, as far as I recall.

12 Q And he left with you?

13 A No, he didn't leave -- we left at the same time but he  
14 didn't leave in my cruiser, no.

15 Q And to your knowledge, you didn't see him take any debris  
16 from the scene; did you?

17 A Yes, I did. He took the debris from the scene.

18 Q Put it in his trunk, did you see him do that?

19 A I don't know where he put it in his vehicle.

20 Q And this was September 6th?

21 A Yes, sir.

22 MR. SEGAL: Thank you, sir.

23 THE COURT: Thank you, Mr. Turowska. You're  
24 excused.

25 Who is next?

1 MR. KELLY: Your Honor, before we call our next  
2 witness, the United States would like to offer a stipulation  
3 which has been agreed to by the parties which we would like to  
4 mark as Government's Exhibit 67 if I could pass it up to the  
5 Court for your review first.

6 (Pause.)

7 THE COURT: If you agree, I agree.

8 MR. KELLY: I would request the Court's permission to  
9 read it to the jury.

10 For the record I'm reading Government's Exhibit 67.

11 "The parties to this action hereby stipulate as  
12 follows: The defendant Alfred Trenkler was indicted on  
13 Wednesday, December 16th, 1992 and arrested later the same  
14 day, agreed and stipulated by counsel."

15 We would offer this.

16 And the United States calls as its next witness David  
17 Lindholm.

18 William David Lindholm, sworn

19 Direct Examination by Mr. Kelly

20 THE CLERK: Please be seated and spell your name for  
21 the reporter.

22 THE WITNESS: My name is William David Lindholm,  
23 L I N D H O L M.

24 Q Good morning. How old a person are you, Mr. Lindholm?

25 A I'm 43 years old.

1           THE COURT: Would you speak up a little bit and move  
2 closer to the microphone, please.

3       Q     Again, sir, how old are you?

4       A     I'm 43 years old.

5       Q     And what is your current marital status, sir?

6       A     I'm divorced.

7       Q     What is your educational background, Mr. Lindholm?

8       A     I graduated Milton High School in 1968 and I attended  
9 college in Charlestown, Boston University and Suffolk  
10 University for approximately four years, from 1968 to  
11 approximately 1972.

12      Q     Were you raised in Milton, Mr. Lindholm?

13      A     Yes, I was.

14      Q     Mr. Lindholm, are you incarcerated at the present time,  
15 sir?

16      A     Yes, I am.

17      Q     And what offenses were you convicted of that led to your  
18 incarceration?

19      A     I was convicted of a marijuana conspiracy charge and in  
20 1983 a tax evasion charge.

21      Q     And when you say that, for failure to file an income tax  
22 return for the year 1983?

23      A     Yes.

24      Q     You weren't convicted in 1983?

25      A     No, I wasn't.

1 Q Please keep your voice up as much as possible, sir.

2 A Right.

3 Q When were you convicted of the marijuana and tax offense,  
4 sir?

5 A In December of 1990.

6 Q And what sentence was imposed upon you at that time?

7 A I received a 97-month sentence.

8 Q And what is your approximate release date, if you know?

9 A Approximately some time in 1997.

10 Q Mr. Lindholm, how long were you in the marijuana  
11 business, sir?

12 A From approximately 1969 until 1988.

13 Q And would you describe for us the general nature of your  
14 activities in this regard?

15 A I was a wholesaler and I traveled to Florida and the  
16 southwest, in Texas and Arizona.

17 Q You brought in wholesale quantities of marijuana to be  
18 resold in New England; is that fair to say?

19 A Yes, I did.

20 Q Were you ever involved in selling cocaine?

21 A Never.

22 Q Or heroin?

23 A Never.

24 Q Or any other substance besides marijuana?

25 A Never.

1 Q Other than the convictions that you've just described,  
2 have you been convicted of any other crimes, Mr. Lindholm?

3 A No.

4 Q Have you ever been involved in any crimes of violence?

5 A No.

6 Q Mr. Lindholm, between 1969 and 1988, while you were in  
7 the marijuana business, did you have any other outside form of  
8 employment?

9 A No.

10 Q And how, if at all, was your conviction for failure to  
11 file an income tax return in 1983 related to your marijuana  
12 dealings, sir?

13 A Would you repeat that question, please?

14 Q How, if at all, was your conviction for failure to file  
15 an income tax return related to your marijuana dealings?

16 A Well, I couldn't report the income I made from selling  
17 marijuana to the IRS or that would have triggered an  
18 investigation, so --

19 Q Is it fair to state that the majority, if not all of your  
20 income, for the year of 1983 was from the sale of marijuana?

21 A Yes.

22 Q And you didn't declare that to the IRS?

23 A I did not.

24 Q And during the same time frame 1969 to 1988 did you have  
25 any business dealings with banks or mortgage companies, sir?

1 A Yes, I did.

2 Q And in these dealings did you declare to these financial  
3 institutions that the primary source of your income was the  
4 sale of marijuana?

5 A No, I did not disclose that.

6 Q And in those instances when you had financial  
7 transactions with such entities, what would you tell them, for  
8 example, when you were applying for a loan?

9 A I told them I was a fine art broker.

10 Q As of 1992, Mr. Lindholm, where were you serving the  
11 prison sentence that was imposed upon you, sir?

12 A At the beginning of 1992 I was Big Spring, Texas, FCI.

13 Q This is a federal penitentiary, sir?

14 A No, it's a federal correctional institute.

15 Q Okay. And is it fair to state that sometime in that year  
16 1992 you were brought back from Texas to Massachusetts to be  
17 questioned about other matters relating to or arising out of  
18 your own conviction; is that fair to say?

19 A Yes.

20 Q I want to direct your attention to the date of Thursday,  
21 December 17th, 1992, and ask you whether you were brought into  
22 this courthouse on that particular day?

23 A Yes, I was.

24 Q And after you were finished with your commitments that  
25 day, where were you taken that evening?

1 A To Plymouth County Jail.

2 Q And is that also known as the Plymouth House of  
3 Correction?

4 A Yes.

5 Q And had you ever been to that location prior to December  
6 17th, 1992?

7 A No.

8 Q Where were you placed when you first arrived at that  
9 institution?

10 A I initially went into the intake area and I was there  
11 until approximately midnight getting processed.

12 Q And were you moved after that to some other location  
13 within the facility?

14 A Yes, I was.

15 Q Where were you moved to, sir?

16 A To the orientation unit.

17 Q And that was at about midnight?

18 A Yes.

19 Q Would you describe this orientation unit for us, please?

20 A It's one general dormitory study type living area in  
21 approximately -- I would say approximately 22 bunk beds in  
22 this area, and a shower area and a bathroom area at one end of  
23 the living unit.

24 When I initially went there, it was very  
25 overcrowded. It was very noisy. The lights are on 24 hours a

1 day. There are two different sets of lights. They would turn  
2 one set down late in the night. There would be always one set  
3 that was on, so it's not a comfortable environment.

4 Q What was the noise level in that particular room?

5 A It was pretty excessive.

6 Q And how large a room are we talking about in relation to  
7 this courtroom, sir?

8 A It was -- the whole area was probably the length between  
9 this wall and this wall. And width wise, it was maybe from  
10 this wall to approximately here (indicating) in that  
11 direction.

12 MR. KELLY: And for the record, we're in Judge  
13 Zobel's courtroom. You first pointed to the long walls, one  
14 of which was on the window side, and in the second description  
15 you were pointing to the back wall behind your Honor and out  
16 to a location just in front of your clerk.

17 Q How many inmates were in this area, Mr. Lindholm, when  
18 you first arrived on Thursday night, December 17 or the early  
19 morning hours of December 18th?

20 A Probably around 44. It was fully occupied, all the beds  
21 was occupied at that time.

22 Q What was the breakdown of this group of inmates in terms  
23 of race or ethnic background?

24 A It was generally divided between Hispanic and black  
25 individuals. There was probably approximately four Caucasian

1 males, me included in that number.

2 Q Now, how were you feeling physically when you arrived at  
3 that location that evening in the orientation unit?

4 A I had a cold and a sore throat and a temperature.

5 Q Now, during the course of that first evening, did you  
6 meet an individual by the name of Alfred Trenkler?

7 A Yes, I did.

8 Q And do you see the Alfred Trenkler that you met at that  
9 time in the courtroom here this morning, sir?

10 A Yes, I do.

11 Q Would you point him out for us, please?

12 A He's seated next to the woman with a navy blue sportscoat  
13 on.

14 MR. KELLY: Your Honor, may the record reflect that  
15 the witness identified the defendant?

16 THE COURT: Yes.

17 Q Mr. Lindholm, tell us what happened that evening and how  
18 you first met the defendant?

19 A I was having a difficult time sleeping that evening. And  
20 I couldn't sleep at all because of the noise and being in a  
21 new environment and not feeling very well. And I got up and I  
22 went to the bathroom end of the unit and moistened a towel to  
23 put on my forehead because I wasn't feeling very well.

24 After that, I still couldn't sleep and I observed  
25 Alfred Trenkler sitting at a, picnic table which would be the

1 best characterization. It was a table with four seats around,  
2 and they're welded in each position.

3 Q And where was this table located within the room?

4 A At the entrance end of the unit. And he was sitting  
5 there by himself.

6 Q And did you go over to the table?

7 A Yes, I did.

8 Q And what, if any, conversation was there at that time  
9 between you and the defendant that evening?

10 A Nothing noteworthy. It could best be characterized as  
11 just incidental conversation.

12 Q Small talk?

13 A Right.

14 Q Now, did you remain in the orientation unit the following  
15 day, Friday, December 18th?

16 A Yes, I did.

17 Q By the way, how long did you remain in this unit until  
18 you were transferred out?

19 A Until the following Monday at 12 o'clock noontime.

20 Q And how many other inmates remained in that unit for the  
21 entire weekend?

22 A To the best of my recollection I would say -- well, most  
23 definitely 6 or 7.

24 Q So the large number of 40 or so somehow filtered out?

25 A Into the general population where they were released on

1 bail.

2 Q Now, what about the defendant? Was the defendant around  
3 the orientation unit during the daytime hours on Friday,  
4 December 18th?

5 A No, he wasn't.

6 Q And what was your understanding of where he was?

7 A That he came back to Boston for a bail hearing or an  
8 arraignment hearing, some type of hearing in front of a  
9 magistrate.

10 Q And he returned later that day?

11 A Yes, he did.

12 Q And did the defendant remain in this orientation unit  
13 with you throughout the weekend, sir?

14 A Yes, he did.

15 Q What, if any, contact or conversation with the defendant  
16 did you have that evening, Friday night, December 18th, sir?

17 A I spoke to him again that evening.

18 Q Was it again pretty much small talk, sir?

19 A Yes, it was.

20 Q On this time on Friday night did you make any  
21 observations about how the defendant was getting along in the  
22 unit?

23 A He was having some slight difficulty with some of the  
24 other inmates.

25 MR. SEGAL: Objection to the relevance of that, your

1 Honor.

2 THE COURT: I don't know if it's relevant or not.  
3 I'll take it de bene.

4 Q Go ahead, sir. Had you finished your answer?

5 A Yes. Some of the inmates were asking him to clean  
6 himself up a little bit.

7 Q I want to direct your attention to the following day,  
8 sir, Saturday, December 19th, did you have contact or  
9 conversation with the defendant on that day?

10 A Yes, I did.

11 Q Would you tell us what you first recall that day, sir?

12 A Well, the unit went down for breakfast Saturday morning,  
13 and the Hispanic inmates tend to sit with themselves and the  
14 black inmates tend to sit with themselves, and I sat with  
15 Mr. Trenkler and ate breakfast.

16 Q Did you have a conversation at breakfast, sir?

17 A Yes, I did.

18 Q What did you discuss?

19 A We -- it came to my attention that he was from Milton,  
20 the Town of Milton and I also was from the Town of Milton. I  
21 grew up in Milton and we discussed being from Milton.

22 Q And based on these discussions what, if anything, did it  
23 appear that you and the defendant have in common, sir?

24 A Well, he informed me that he attended Thayer Academy and  
25 Milton Academy. And my father when he was a young man

1 attended Thayer Academy and Milton Academy and Brown and Brown  
2 University. And we talked, you know, about Thayer Academy and  
3 Milton Academy. And we also, he also brought to my attention  
4 that he lived on White Lawn Avenue, and I lived on White Lawn  
5 Avenue approximately 1961 to 1962, for one year.

6 Q Did you discuss that fact?

7 A We discussed that, and I asked him about what happened to  
8 the people that owned the property that my mother and I lived  
9 at. He told me that, to the best of his recollection he then,  
10 Mrs. Dunning and son (ph.) were both deceased at that time.

11 Q What, if any, relationship did you have with the  
12 defendant at this time on Saturday, December 19th?

13 A We started to -- I characterize -- we started becoming  
14 more familiar with each other. It was sort of like a male  
15 bonding process.

16 Q Was there any discussion between you and he about your  
17 own experience with the criminal justice system?

18 A Yes, there was.

19 Q Is it fair to state, Mr. Lindholm, that you offered the  
20 defendant some free advice on a number of matters based on  
21 your own experience and your own understanding of the law?

22 A Yes, I did.

23 Q Now, had you gone through a full trial of your own  
24 charges?

25 A Yes, I did.

1 Q And the discussions that you had with the defendant  
2 reflect some of your own opinions or feelings about the trial  
3 process?

4 A Yes.

5 Q Can you give us an example, give us an example of what  
6 you discussed in this regard?

7 A Well, we discussed how it's beneficial for a defendant to  
8 actively participate in his own defense strategy during the  
9 trial.

10 Q And things of that nature?

11 A Correct.

12 Q Selection of counsel?

13 A Correct.

14 Q Now, in this regard, sir, what if any questions, did you  
15 ask the defendant about the evidence or about the case against  
16 him?

17 A We talked about the fact that -- well, he actually  
18 related to me that he felt that this was a somewhat  
19 circumstantial case against him.

20 Q Was there any discussion of electronic surveillance, for  
21 example?

22 A Yes, there was.

23 Q What was the discussion, as you recall it?

24 A I asked him if he thought there was a wire tap or filming  
25 or any kind of electronic surveillance of him relating to this

1 indictment.

2 Q And how did he respond?

3 A He felt pretty assured that there was not.

4 Q Now, at this point on Saturday the 19th of December, did  
5 the defendant tell you that he was not guilty of the charges,  
6 that he was innocent of the charges?

7 A Yes, he did.

8 Q Let's turn to the following day, Sunday, December 20th,  
9 did you have continued contact with the defendant on Sunday?

10 A Yes, I did.

11 Q And what, if any, conversation do you recall having on  
12 sun about a person by the name of Thomas Shay, Jr.?

13 A Well, he, Mr. Trenkler stated to me that he couldn't  
14 understand why Mr. Shay would be implicating him in this case.

15 Q What else did he say? Did you ask him any questions, for  
16 example? Did you ask him any questions about whether or not  
17 Mr. Shay would testify?

18 A Yes, I did.

19 Q And how did you respond, sir?

20 A He stated that he did not think that Mr. Shay would  
21 testify against him or on behalf of the Government, and I told  
22 him that I was most fortunate that that would be very damaging  
23 to his position if Mr. Shay did testify.

24 Q Did the defendant tell you how or where he met this  
25 Mr. Shay?

1 A Yes, he stated that he met Mr. Shay at a bus stop across  
2 from WBCN studio near the Fenway Park Drive area in Boston.

3 Q Did he say how long he had known him?

4 A He stated that he knew him approximately two years.

5 Q At some point in this conversation, Mr. Lindholm, did you  
6 become aware of the defendant's sexual orientation?

7 A Yes.

8 Q And what was your understanding, sir?

9 A I believe that Mr. Trenkler was gay.

10 Q And what was your understanding based upon?

11 A His conversations with me about his relationship with  
12 Mr. Shay.

13 Q And what, if anything, else did the defendant tell you  
14 about himself during the course of your conversations on  
15 Sunday during the day, hobbies, interests, and the like?

16 A He told me that he was -- well, he informed me that he  
17 graduated from Wentworth Institute, and he was very  
18 technically oriented, engineering oriented, that he was in the  
19 process of receiving a contract at the time for an electronic  
20 project. I mean he was -- he was pretty up beat about that.

21 Q Was there any discussion about surveillance equipment?

22 A Yes. We talked about surveillance equipment, and me  
23 being in the business I was once in, and there was something  
24 about that.

25 Q Again, you have to keep your voice up, sir?

1     A     I'm sorry, being in the business that I was once in, I  
2     knew something about surveillance equipment and we spoke about  
3     how it is easier to require antisurveillance equipment in  
4     Europe and in the United States.

5     Q     And this is something that he said?

6     A     Yes.

7     Q     Now, where were these conversations that you had been  
8     describing taking place?

9     A     Some of these conversations were taking place during  
10    breakfast lunch and dinner and other conversations were taking  
11    place during the day in our housing unit.

12    Q     And were there other people around during the course of  
13    these conversations?

14    A     There were people in the unit, but there weren't other  
15    people privy to our conversations.

16    Q     And how would you be able to segregate yourself from the  
17    other four or five inmates that were there in the unit?

18    A     We would walk towards the end of the unit where there was  
19    a wall approximately four or five feet in height that  
20    segregated the bathroom end of the unit from the living end of  
21    the unit, and there wasn't anybody really around that area.

22    Q     Now, was there further discussion with the defendant on  
23    Sunday, about the charges or the evidence charges against him?

24    A     Yes.

25    Q     And what, if anything, did the defendant say to you about

1 Radio Shack?

2 A He stated that it was -- the Government had knowledge  
3 that some components were purchased from a local Radio Shack  
4 distributor, a retailer.

5 Q And what was the conversation about that as best you  
6 recall?

7 A I stated that it was rather careless that anybody that  
8 might be involved in building a device such as this would go  
9 to their local Radio Shack retailer and purchase this type of  
10 equipment as opposed to going out of state or out of New  
11 England.

12 Q And how did the defendant respond?

13 A He mentioned the fact, yes, that was an accurate  
14 observation, and it was regrettable.

15 Q Now, was there any conversation at this time on Sunday  
16 about the defendant's involvement with an earlier explosive  
17 device in 1986?

18 A Yes, there was.

19 Q What do you recall him saying?

20 A He talked about this event that took place in 1986, and  
21 he stated that the device that he built in 1986 was by no  
22 means as powerful as the device that was built when this later  
23 event took place.

24 Q When was this discussion about the 1986 bomb. When on  
25 Sunday was this raised, if you know?

1 A This was raised in the late afternoon, early evening.

2 Q And directing your attention to that evening, Sunday  
3 night, December 20th, did you continue to have conversation  
4 with the defendant at that time?

5 A Yes, I did.

6 Q And did that conversation continue to touch on this  
7 incident of the 1986 bomb?

8 A Yes, it did.

9 Q Can you describe the setting of the conversation on  
10 Sunday night, December 20th, where were the two of you?

11 A We were at the end of the orientation unit near the  
12 bathroom and --

13 Q And was anyone else around?

14 A No.

15 Q Were you speaking in loud audible voices?

16 A No, we weren't.

17 Q And what do you recall about the conversation on Sunday  
18 night?

19 A He was very cool towards, you know, what we were talking  
20 about.

21 MR. SEGAL: I object to characterization. I think he  
22 can say what he said, but --

23 THE COURT: Tell us what he said, please.

24 THE WITNESS: All right.

25 A He ... He was very concerned and --

1 MR. SEGAL: I object.

2 THE COURT: As best as you can, Mr. I  
3 what he said, please.

4 THE WITNESS: All right.

5 A At one point he stated, well, even if I did build a bomb,  
6 I did not place it on the car.

7 Q What happened next?

8 A Then he paused for a moment and said, so, I built the  
9 bomb. I built the bomb. I don't deserve to die or spend the  
10 rest of my life in prison for building this device.

11 Q Were those the defendant's words as best as you can  
12 recall them?

13 A Yes.

14 Q What else were you discussing at or about the same time  
15 you made those statements. For example, was there any  
16 conversation of the two Boston bomb squad officers that you  
17 recall?

18 A Yes, there was, after he made those statements.

19 Q Tell us what he said?

20 A He stated that the two bomb squad officers were foolish  
21 and negligent for not wearing body armor at the time that they  
22 were examining this device, and in essence that it served them  
23 right for what happened to them. It wasn't his fault.

24 Q Did he display any sadness or remorse?

25 A None.

1 Q What was his demeanor at the time, sir?

2 A He was very cold, calculating and disparaging towards the  
3 officers.

4 Q Now, after he made the statement about "I built the bomb,  
5 but I don't deserve to die for that," what, if any, advice did  
6 you offer him, sir?

7 A I told him that he should not repeat that statement to  
8 anybody else he might encounter. It could potentially be very  
9 damaging to him.

10 Q What, if any, further discussion did you have on Sunday  
11 night about the topic of remote control, as I remember?

12 A We talked about C 4 explosives and mercury switches and  
13 remote control devices. We -- he stated, I asked him what he  
14 thought the distance would be for a remote control switch in  
15 terms of activating the device, and he thought it would be  
16 approximately be 50 yards in distance.

17 Q 50 yards?

18 A Correct.

19 Q What, if any, conversation did you have Sunday night  
20 about this fellow Shay, Jr. Did you have any further  
21 conversation about him?

22 A Yes. Yes, he did.

23 Q And what do you recall?

24 A At one point he stated that he thought that Mr. Shay was  
25 HIV positive, and --

1 Q What else do you remember him saying?

2 A He was, he made a number of remarks about Mr. Shay in a  
3 jealous vein.

4 Q What was his demeanor during this part of the  
5 conversation?

6 A He would get slightly emotional at times when he  
7 discussed Mr. Shay, and his relationship with Mr. Shay.

8 Q Did he express any observations about Mr. Shay's  
9 technical capabilities that you recall?

10 A Well, I was in a -- on Thursday, December 17th, I was in  
11 a lockup with Mr. Shay in this courthouse, and I was with him,  
12 with some other people for I would say about -- well, I would  
13 say one hour in time. And after observing him, I stated to  
14 Mr. Trenkler that I didn't think that Mr. Shay was capable of  
15 putting batteries in a flashlight. And he agreed with me in  
16 terms of his lack of technical ability.

17 Q The defendant agreed with your statement?

18 A Yes.

19 Q Now, during this conversation on Sunday night, did you  
20 offer the defendant any further advice or insights about the  
21 trial of his case?

22 A Yes, I did.

23 Q What was the conversation, if you recall it, sir?

24 A I spoke to Mr. Trenkler about the result of  
25 President-elect Clinton's forthcoming administration, and I

1 made the observation to him that I thought that a new Attorney  
2 General would replace a number of U.S. attorneys around the  
3 country and that this U.S. Attorney's office would be one of  
4 them that would have a new U.S. Attorney. And with that, I  
5 also stated that I thought that some assistant U.S. attorneys  
6 here, and in other offices around the country, probably would  
7 be leaving for other positions in private practice.

8 Q What did Mr. Trenkler say, if anything, at that time?

9 A He stated to me that he had some information that you,  
10 Assistant Attorney Paul Kelly, would be leaving this office to  
11 pursue some other legal career, since you had been practicing  
12 as an U.S. Attorney here.

13 Q What else did he say?

14 A He had a definite dislike for you.

15 MR. SEGAL: Well, I'm going to object, your Honor.  
16 It seems to me what he said, we're into opinion now, aren't  
17 we?

18 THE COURT: That's what he said.

19 Q Tell us what he said?

20 A He stated that you were an insidious prosecutor, and that  
21 you -- that he had an enormous dislike for you personally.

22 Q Mr. Lindholm, what if any agreements do you have with the  
23 United States Government?

24 A None whatsoever.

25 Q Has anyone offered you any promises, rewards, or

1 inducements for testifying or providing information in this  
2 case, sir?

3 A No.

4 Q Have you and I ever discussed that subject?

5 A No.

6 Q Have you discussed that subject with any federal agents  
7 or officers?

8 A No, I have not.

9 Q Is it fair to state, Mr. Lindholm, that you would have  
10 preferred not to have been involved in this matter?

11 A Yes.

12 Q So, tell us, sir, why are you here, what are your reasons  
13 for testifying?

14 MR. SEGAL: Objection.

15 THE COURT: What's the objection?

16 MR. SEGAL: I don't see why it's relevant.

17 THE COURT: Well, it may go to the issue of  
18 credibility, and I'll allow it on that.

19 Q What are your reasons for testifying, sir?

20 A Well, I think that this was a tragic event that happened  
21 here; and I think that Mr. Trenkler related to me that he had  
22 absolutely no remorse at all for having hurt two police  
23 officers that were involved.

24 Since I have been incarcerated, I have come to  
25 realize that the sole function of prison is not just

1 punishment. I think rehabilitation is important for an  
2 individual. And I think, when I talk about rehabilitation, I  
3 mean rehabilitation of a person's values in terms of how they  
4 live one's life and the decisions they make, knowing the  
5 difference between what's wrong and what's right, what's  
6 illegal and legal.

7 And I thought, think, I've determined that I think I  
8 am correct in doing what I'm doing today, and I think there's  
9 a correct -- it was a correct thing for me to do to be here to  
10 relate to the Court what I know about what happened and what  
11 statements he made to me about what happened.

12 Q When is the last time you saw or had any contact with the  
13 defendant Alfred Trenkler?

14 A The last time I saw Alfred Trenkler was that Monday that  
15 I left the orientation unit at approximately at noon.

16 Q December 21st, 1992?

17 A Correct.

18 MR. KELLY: Nothing further.

19 THE COURT: You may stretch.

20 (Pause.)

21 **Cross-examination by Mr. Segal**

22 Q Good afternoon, Mr. Lindholm. My name is Terry Segal. I  
23 represent Mr. Trenkler.

24 Let me give you a copy of what I marked Defendant's  
25 Exhibit 109 D for identification which is the statement that

1 was taken by the Government from you in this case.

2 Can you recognize that document as the statement  
3 describing the events you've just testified to?

4 A Yes.

5 THE COURT: This is the 302 or his statement?

6 MR. SEGAL: No --

7 MR. KELLY: It's an investigative report. It's not a  
8 302, but it's a 3270, the equivalent of it.

9 Q If you want to refer to this statement at any time in  
10 answering questions, that's fine.

11 THE COURT: Well, why don't we have some questions  
12 and why don't you put that thing down for the moment, Mr.  
13 Lindholm, and we will proceed.

14 (Witness complies.)

15 Q Let's go to Friday evening, Mr. Lindholm. That's when  
16 you first -- I think you told us you started talking with  
17 Mr. Trenkler early Friday morning; is that right?

18 A Right, right after he came in Thursday evening, that's  
19 correct.

20 Q Then Friday evening he came back from court and started  
21 speaking with him; is that right?

22 A Yes.

23 Q Is it fair to say that during the course of a weekend  
24 certain inmates would recognize Mr. Trenkler and tell him to  
25 read the newspapers which the guards have supplied to the

1 unit?

2 A Yes.

3 Q And that in one of the conversations Mr. Trenkler wanted  
4 to know how you knew where he was from and you said you had  
5 read about it in the newspapers?

6 A Yes, and I --

7 Q All right. I take it his arrest was the subject of  
8 intense newspaper coverage those days; is that right?

9 A It was in the newspaper.

10 Q And did you recall -- did you read the papers about the  
11 case?

12 A I read one paper while I was there, the Herald.

13 Q Down in Plymouth?

14 A Yes.

15 Q Did you read any up on the 17th while you were up here?

16 A No.

17 Q What date did you come in and meet with the U.S.  
18 Attorneys, was that December 17th?

19 A Yes.

20 Q Let me show you the Boston Herald article of December  
21 17th, 1992, which is Defendant's Exhibit 98 for ID. Is that  
22 the Herald article you read down in Plymouth over the weekend  
23 about this case?

24 A No, I don't believe it is.

25 Q Do you recall reading that particular article I showed

1     you?

2     A     No, I don't.

3     Q     Let me show you the Herald article of Friday, December  
4     18th, 1992, Defendant's Exhibit 92. Do you recall reading  
5     that particular article?

6             THE CLERK: Excuse me, Mr. Segal. The defense  
7     already has a 92.

8             MR. SEGAL: I'm sorry, I apologize. 99. I  
9     misspoke.

10    A     I don't recall reading this article either.

11    Q     Let me show you the Herald article of December 19th,  
12    1992, Defendant's Exhibit 100 for identification.

13             Do you recall reading that particular Herald article  
14    over the weekend while at Plymouth?

15    A     I believe I read -- I might have read this article. Yes,  
16    I think I did read this article in Plymouth.

17    Q     Showing you the Globe article of February 18th of 1992,  
18    Exhibit 108 A for identification.

19             MR. KELLY: What's the date of that? Excuse me.

20             MR. SEGAL: December 18th, 1992.

21    Q     Do you recall reading that article while at Plymouth,  
22    sir?

23    A     No, I don't.

24    Q     Let me show you the Globe article of December 20th, 1992,  
25    Defendant's Exhibit 96 for identification.

1           Do you recall receiving -- reading that article at  
2     Plymouth over the weekend?

3     A     No, I don't. The only newspaper that was in Plymouth at  
4     the time was the Herald.

5     Q     I take it there was much discussion among the inmates  
6     about the -- Mr. Trenkler and these articles that were in the  
7     paper; is that right?

8     A     No, it was not.

9     Q     Do you recall the guards telling Mr. Trenkler that the  
10    papers had stories about him in the case?

11    A     Yes.

12    Q     Mr. Lindholm, from 1972 to 1992, didn't you live at 174  
13    Brush Hill Road in Milton?

14    A     No, I did not. That was my legal address. I was a  
15    registered voter in Milton and my mother resided at that  
16    address. I lived in Cohasset and on Beacon Street in Back  
17    Bay.

18           MR. SEGAL: Can I have just a minute, your Honor?

19           (Pause.)

20    Q     The house you lived on -- you said from 1961 to 1962 you  
21    lived on White Lawn Avenue; isn't that correct?

22    A     Yes, with my mother.

23    Q     And that was at No. 22 White Lawn?

24    A     I was 11 years old at the time. I can't exactly remember  
25    the numerical address. It could have been. The house is

1 owned by the Dunn family.

2 Q Let me show you the town records of Milton, the official  
3 residents list for those years. And would you tell us, look  
4 at those and tell us where you're listed for those years on  
5 White Lawn Avenue?

6 THE COURT: Is this a residents list?

7 MR. SEGAL: Yes.

8 THE COURT: They don't list 11-year olds; do they?

9 MR. KELLY: And I would object. I mean, he said the  
10 house was owned --

11 THE COURT: To the extent that it's designed to help  
12 him refresh his recollection, he can use it for that purpose.

13 MR. KELLY: Can we ask yes or no, whether it helps to  
14 refresh his recollection?

15 THE COURT: Yes. Does it help you to remember the  
16 number on White Lawn Avenue?

17 Q Do you see the --

18 A Well, the --

19 Q Let me ask you this. Do you see either you or your  
20 mother listed on that residence list for --

21 THE COURT: You may answer that yes or no.

22 A No, I don't.

23 Q And is this the voting registration list of Milton for  
24 1972 to '92 that lists you at Brush Hill Road, Defendant's  
25 Exhibit 108 D?

1 A Yes.

2 Q But, in fact, you didn't live at that address during all  
3 those years; isn't that fair to say?

4 A Not during all those years.

5 Q But it's your testimony here today that you did, in fact,  
6 live on White Lawn Avenue for one year, from '61 to '62?

7 A It probably was, yes, it was under one year in time. It  
8 was approximately ten months to the best of my recollection.  
9 They have an apartment in their house.

10 MR. SEGAL: As to the article he's identified  
11 reading, your Honor, the newspaper article, I move the  
12 admission of that particular article under 801(c), not for the  
13 hearsay purpose but I'd like to heard on that.

14 MR. KELLY: Objection.

15 THE COURT: He's acknowledged he read it.

16 MR. SEGAL: Well, I think based on that I'm entitled  
17 to admit it. I would like to be heard on that issue.

18 THE COURT: Well, we can deal with that later. We'll  
19 mark it for identification and then we can argue about whether  
20 it comes into evidence or not.

21 Which number is it, 99? 96?

22 MR. SEGAL: I'll check.

23 (Pause.)

24 MR. SEGAL: I believe it's 99.

25 THE COURT: So 99 --

1                   [Defendant's Exhibit 99 marked for identification.]

2       Q     Is this the article you recall reading, Mr. Lindholm?  
3       You said there was one that you recall reading.

4       A     I believe it was the Saturday Herald.

5       Q     The Saturday Herald.

6                   (Pause.).

7                   MR. SEGAL: Well, we'll get to Saturday.

8                   THE COURT: Do you have any other questions?

9                   MR. SEGAL: Yes.

10                  THE COURT: Well, let's keep asking them.

11                  MR. SEGAL: I have the Saturday article, your Honor.  
12       We'll have it marked, your Honor.

13       Q     Didn't you tell, Mr. Trenkler over that weekend that you  
14       had offered to help any inmate incarcerated on federal  
15       charges?

16       A     In terms of advice, yes.

17       Q     Let me ask you this, didn't you state that you always  
18       disliked the federal government, being a product of the 60s,  
19       and that you would offer help to any inmate who was  
20       incarcerated on federal charges?

21       A     I stated that I had had an adversarial relationship with  
22       the federal government due to the business of selling  
23       marijuana for all those years. I was, I would say I would  
24       characterize it as an adversarial relationship.

25       Q     Well, would you look at page 3 of the written statement

1 which is exhibit --

2 MR. KELLY: I would object.

3 THE COURT: The objection is sustained unless you  
4 tell me what you're going to do with this.

5 MR. SEGAL: I would ask if that refreshes his  
6 recollection.

7 THE COURT: Well, he hasn't exhausted his  
8 recollection. He's told us what he said.

9 Q Mr. Lindholm, isn't it fair to say you're familiar with  
10 the federal criminal process?

11 A Yes.

12 Q And that you were offering Mr. Trenkler help based upon  
13 your familiarity with the process?

14 A Yes.

15 Q And you had been through a drug trial; is that right?

16 A Yes.

17 Q Investigation?

18 A Yes.

19 Q Appeal?

20 A Yes.

21 Q Didn't you drop, dismiss the appeal of your criminal  
22 conviction on December 5th -- strike that.

23 Don't you recall dismissing your federal criminal  
24 appeal on December 15th, 1992?

25 A Yes, I did.

1 Q Okay. And that's two days before you came down to Boston  
2 here? Let me get the sequence.

3 You were serving up in Northampton, am I right?

4 A Yes.

5 Q All right. Did you have a court-appointed lawyer for  
6 that appeal?

7 A Yes, I did.

8 Q You dismissed that appeal on December 15th, 1992; is that  
9 correct?

10 A Yes, I did.

11 Q You came -- you were here in the building on December  
12 17th, 1992; is that correct?

13 A Yes.

14 Q All right. You were here meeting with the U.S. attorneys  
15 on an unrelated matter to this case, right?

16 A Yes.

17 Q And weren't you relating on a matter relating to  
18 cooperating with them in a drug investigation?

19 A Umm --

20 Q I'm sorry. I couldn't hear you, sir.

21 A Could you repeat the question, please.

22 Q Weren't you here in the building December 17th, 1992 to  
23 meet with the U.S. Attorneys in connection with cooperating  
24 with them on a drug investigation?

25 A I would characterize it as a debriefing of my past

1 dealings.

2 Q And you understood that the information from that  
3 debriefing would assist them in possibly indicting other  
4 people for drug activities; isn't that fair to say?

5 A No.

6 Q You were trying to be honest and cooperative with them in  
7 response to their questions; isn't that fair to say?

8 A Yes.

9 Q And the questions related to drug activities, isn't that  
10 fair to say?

11 A Yes, old drug activities.

12 Q Old and new drug activities, drug activities; am I right?

13 A Yes.

14 Q And aren't you going to be a witness soon in a drug case  
15 here in this courthouse?

16 A Absolutely not.

17 Q Isn't it fair to say you gave the U.S. Attorney's Office  
18 on December 17th, 1992 information about other people who had  
19 been involved with you in drug activities?

20 A Yes, it was not new information, no. But I did.

21 Q My question was wasn't new versus old. You gave them  
22 information about other people involved with you in drug  
23 activities, isn't that fair to say?

24 A Yes.

25 THE COURT REPORTER: Hold it one second.

1 (Pause.)

2 THE COURT: All right. Proceed.

3 Q You understood, sir, from your familiarity with the  
4 criminal justice system you had been sentenced to that  
5 97-month term in August of 1991; isn't that fair to say?

6 A Yes.

7 Q You understood that after one year goes by in that  
8 sentence, the only way your sentence could be reduced is if  
9 you supply new information to the Government; is that correct?

10 A Yes.

11 Q Now, you understood that on December 17th when you were  
12 meeting here with the U.S. Attorney's Office; am I right?

13 A Yes.

14 Q And you understood that when you were down in Plymouth  
15 over the weekend, the 18th, 19th and 20th; isn't that fair to  
16 say?

17 A Yes.

18 Q All right.

19 Didn't you tell Mr. Trenkler over that weekend that  
20 his case could set a precedent?

21 MR. KELLY: Your Honor, I would object to this line  
22 of questioning.

23 THE COURT: What's the objection?

24 MR. KELLY: I need to show the Court something in  
25 order to point it out.

1 THE COURT: Time to stretch.

2 [Conference at the bench, as follows:

3 MR. KELLY: Mr. Segal wants to ask about the topic of  
4 the first paragraph which discusses the death penalty, and  
5 since the subject of punishment is not a matter for the jury  
6 and I think the reference to death penalty which is not in  
7 this case would be unduly unfair and prejudicial.

8 MR. SEGAL: Here's my point. What I'm trying to do  
9 also is to show that at the time this man is meeting with him,  
10 all these subjects that are listed, such as this one, are in  
11 the public domain in the newspaper.

12 THE COURT: The penalty wasn't.

13 MR. SEGAL: In those articles. It's right in those  
14 articles.

15 MR. KELLY: She acknowledged reading one.

16 THE COURT: If you get into this I'm going to tell  
17 the jury this is not a death penalty case, and there's no  
18 possibility of a death penalty in this case.

19 MR. SEGAL: I understand that.

20 MR. KELLY: That was my concern.

21 ... end of conference at the bench.]

22 THE COURT: You may proceed.

23 Q Do you recall stating to Mr. Trenkler over that weekend  
24 that his case could set a precedent in the First Circuit?

25 A Yes.

1 Q And that you told Mr. Trenkler there were only two other  
2 death penalty cases in which he was familiar?

3 A That I was familiar with.

4 Q Right.

5 THE COURT: Members of the jury, this is not a death  
6 penalty case. There is no possibility of the death penalty in  
7 this case. So you needn't be concerned about that.

8 Q Didn't you also tell Mr. Trenkler, sir, over that  
9 weekend, that it's possible to win a case but still lose it?

10 A That's a little oversimplified, but, yes.

11 Q Well, let me be more direct.

12 I direct your attention to page 4 of the statement --

13 THE COURT: Well, no, if you don't direct attention  
14 to the statement, you may have the question.

15 MR. KELLY: Objection.

16 Q And didn't you mean by that you had won a couple of  
17 counts at the trial and yet the judge took all that conduct  
18 into consideration at sentencing and gave you 97 months; is  
19 that fair to say?

20 A What I talked to Mr. Trenkler about was upward  
21 departures, sentencing issues.

22 Q Tell us what you meant by-- tell us what you explained to  
23 him about upward departures.

24 MR. KELLY: I would object, your Honor.

25 MR. SEGAL: I think his knowledge --

1 THE COURT: How is it relevant?

2 MR. SEGAL: I submit his knowledge of the legal  
3 system is very relevant in this case, your Honor.

4 THE COURT: We have established that he has some  
5 knowledge of the legal system but the arcane and intricate  
6 businesses of the sentencing guidelines I don't believe are  
7 going to get into it.

8 Q I think your testimony was on December 20th, when you --  
9 strike that.

10 On December 20th, he professed his innocence; do you  
11 recall that?

12 A Yes.

13 Q You told him his biggest problem was the '86 incident, do  
14 you recall telling him that?

15 A I recall telling him that that was a serious problem that  
16 he had, that it could be viewed as a prior bad act.

17 Q And that it would taint him in the eyes of the jury, do  
18 you remember saying that?

19 A Yes.

20 Q Didn't he tell you that he had a Cousin over at Fidelity  
21 that was going to refer you to a high tech company for work?

22 A He stated to me that he had a Cousin that from time to  
23 time gave him referrals for his skills with electronics.

24 Q And that this person was over at Fidelity?

25 A Yes.

1 Q And did he mention the name of the person?

2 A No.

3 Q And that Mr. Trenkler said he had a bright future; is  
4 that fair to say?

5 A He was very optimistic about his monetary future.

6 Q And that over the weekend he said he was innocent and he  
7 lamented the fact, he lamented over why Shay was doing this to  
8 him. Did he say this to you?

9 A Yes, during some of the weekend he did.

10 Q Okay. Now, you were with Mr. Shay, Jr. on the 17th in  
11 the lockup here; is that right?

12 A Yes.

13 Q You were both in the same cell?

14 A Yes, with six or seven other people.

15 Q And you had some discussion with him?

16 A No.

17 Q You didn't learn anything about this case from the time  
18 you were in the cell with Mr. Shay?

19 A No.

20 Q I'm sorry, I couldn't hear you?

21 A No.

22 Q You never discussed C 4 explosives?

23 MR. KELLY: Objection to anything he said. He said  
24 he didn't talk about any of that.

25 THE COURT: He said he didn't talk about it, although

1 the question is not otherwise improper except for the fact  
2 that the witness had already answered it.

3 Q Now, in the 20 years that you were involved in selling  
4 drugs, sir, isn't it fair to say you didn't file any tax  
5 returns?

6 A That's correct.

7 Q And it's fair to say that you had income in those 20  
8 years for drug activity, am I right?

9 A Yes.

10 Q And you also had income from your work as an art dealer;  
11 is that fair to say?

12 A Yes.

13 Q You bought and sold artwork?

14 A Yes.

15 Q But didn't there come a time, sir, when you had some tax  
16 returns prepared for you?

17 A Yes.

18 Q And the purpose of having the returns prepared wasn't to  
19 file them, was it?

20 A No.

21 Q It was to go to a bank or some banks and get loans; isn't  
22 that correct?

23 A I was purchasing real estate at the time, and the loans  
24 to my best understanding were given to me on the equity I had  
25 and not based on my tax returns. They were necessary to

1 complete the package.

2 Q All right. Aren't these two tax returns for '83 and '84  
3 the returns that you had prepared to complete the package in  
4 connection with the loans you were getting?

5 A Yes.

6 Q So you took those tax returns for 1983 and 1984 and went  
7 to some lending agency to get loans; isn't that fair to say?

8 A To banks, yes.

9 Q How many banks did you go to to get loans?

10 A In what year?

11 Q Well, let's take, in connection with the 1983 return, how  
12 many times did you use the 1983 return to get a loan from a  
13 bank, sir?

14 A Would you like me to name the instances specifically or  
15 just --

16 Q Well, give us numbers first?

17 A Five or six.

18 Q Do you remember the name of those institutions you went  
19 to with the 1983 tax return?

20 A Yes.

21 Q All right. What are those, please?

22 A Equitable Mortgage, Nantucket Savings Bank, East Weymouth  
23 Savings Bank, U.S. Trust, Beacon Hill Mortgage.

24 Q Now, on each of those occasions, sir, you submitted a  
25 false statement to a bank, didn't you?

1 MR. KELLY: Your Honor, I think he's answered that  
2 question three or four times.

3 MR. SEGAL: I don't think so.

4 THE COURT: He told us on the record he had done it.

5 MR. SEGAL: I don't think he said specifically that  
6 he took a tax return that he hadn't filed and went to a bank,  
7 and now I'm going to go through these banks.

8 MR. KELLY: He can ask the question --

9 THE COURT: We're not going to go through a bunch of  
10 banks. Did you do that?

11 THE WITNESS: Yes.

12 Q And you knew each time you took that tax return which  
13 hadn't been filed and submitted to a bank that was a false  
14 statement. You knew that, sir?

15 A Yes.

16 Q You knew it was a crime to do that, isn't that fair to  
17 say?

18 A Yes.

19 Q And the same thing for the '84 tax return, you had it  
20 prepared so you could convince some bank you had prepared it,  
21 you had filed it, right?

22 A Yes.

23 Q In fact, you never filed the '84 return, right?

24 A Correct.

25 Q But you went to five lending institutions and said here's

1 my tax return, I need the loan, give me the loan, right?

2 A Yes.

3 Q And on five different occasions, on ten occasions, you  
4 committed a crime in connection with applications to banks;  
5 isn't that correct, sir?

6 A Well, the mortgage companies are banks, but yes, sir.

7 Q On ten different occasions you misrepresented to  
8 different lending institutions whether they were banks or  
9 mortgage companies that you had filed a tax return when in  
10 fact you hadn't filed it; isn't that correct, sir?

11 A That's correct.

12 Q From your observations of Mr. Trenkler, didn't he appear  
13 to be a very intelligent person?

14 A Yes, he's -- I believe him to be an intelligent person.

15 Q Do you recall being known by the nickname of --

16 MR. KELLY: Objection, your Honor. Objection to  
17 nicknames.

18 THE COURT: Objection sustained.

19 MR. SEGAL: If I may have just a moment, your Honor.

20 (Pause.)

21 Q In connection with those, you were in the drug business,  
22 how long 20 years?

23 A From 1969 to 1988.

24 Q You had to bring in a lot of drugs without getting caught  
25 in those years; isn't that right, sir?

1 A Marijuana, yes.

2 Q And you devised ways to bring it in in a surreptitious  
3 manner so that the authorities couldn't catch you?

4 A Yes.

5 Q You figured out how to fly below the radar --

6 THE COURT: Whatever, he's agreed that he was  
7 surreptitious and a drug dealer.

8 (Mr. Kelly stands.)

9 Q And for 20 years you were pretty successful in bringing  
10 in that marijuana without getting caught; isn't that fair to  
11 say?

12 A Yes.

13 Q And how much in terms of tonnage do you think you brought  
14 in during those years?

15 MR. KELLY: Objection, your Honor.

16 THE COURT: Sustained.

17 Q You were convicted of bringing in 50 pounds, am I right,  
18 on one instance?

19 A Substantive count, 50 pounds.

20 Q Now, you told us you have no cooperation agreement with  
21 the United States; is that correct?

22 A None whatsoever.

23 Q You've been involved in other matters with them in  
24 connection with that December 17th interview; isn't that  
25 correct? You said they debriefed you down here?

1 A Right.

2 Q You were in the courthouse, right?

3 A Yes.

4 Q And you were debriefed in connection with drug activity,  
5 isn't that correct?

6 MR. KELLY: Objection, we've gone through this.

7 THE COURT: The objection is sustained. That's  
8 repetitive.

9 MR. SEGAL: All right.

10 Q Mr. Lindholm, you have about what, 50 months on the  
11 sentence. I can't hear you?

12 A Yes, 50 months.

13 Q And don't you hope somehow that your testimony here will  
14 be taken into account in connection with that sentence?

15 A No.

16 Q Don't you hope your debriefing, the debriefing you've  
17 been having -- by the way, how many other times did you meet  
18 at the U.S. Attorney's office on debriefing?

19 MR. KELLY: Objection, your Honor. It has no  
20 relevance.

21 THE COURT: I think it does.

22 Before or since?

23 Q Since December 17th, 1992, was that the first time you  
24 were in the office for a debriefing on your drug activities?

25 MR. KELLY: Your Honor, the Government will stipulate

1 that that was the last time since December 17th, 1992 that  
2 he's been debriefed on a drug activity.

3 MR. SEGAL: My question was: Was it the first time?

4 Q Were you brought up here prior --

5 THE COURT: Let him answer the question.

6 Q Do you understand my question, sir?

7 A Would you repeat it, please.

8 Q Yeah. Was December 17th, 1992, the first time that you  
9 were debriefed on your drug activities by the U.S. Attorney's  
10 Office or some agency of the federal government?

11 A No.

12 Q Weren't you debriefed up in Springfield a couple of  
13 times?

14 A Twice.

15 Q What were the dates of those times?

16 THE COURT: What is the relevance of that,  
17 Mr. Segal?

18 MR. SEGAL: To show that there is an incentive to  
19 testify here to help there.

20 MR. KELLY: Your Honor --

21 THE COURT: No, the objection is sustained.

22 Q Do you feel you've been rehabilitated by now, sir?

23 A I feel I'm in the recovery process. Yes, I feel that I  
24 know the difference between right and wrong.

25 Q And that the -- you don't want any benefit for the

1 testimony you're giving here today; is that fair to say?

2 A I'll go on the record to say that I'm not going to ask  
3 for any benefit, rewards, inducements any time in the future.

4 Q If I gave you a piece of paper right now, would you say I  
5 won't seek any benefit for the testimony?

6 MR. KELLY: Objection, your Honor.

7 THE COURT: It is on the record.

8 MR. SEGAL: Thank you. I don't have anything else.

9 MR. KELLY: I just have one question.

10 Redirect examination by Mr. Kelly

11 Q Mr. Segal asked you the question: Over the weekend the  
12 defendant told you that he was innocent, and you said during  
13 some of the weekend, and you didn't get a chance to finish  
14 your answer, would you finish your answer, please?

15 A Yes, later on Sunday evening, he, Mr. Trenkler did admit  
16 to me that he built the bomb that fatally killed the police  
17 officer and injured the other police officer.

18 MR. KELLY: I have nothing further.

19 Recross Examination by Mr. Segal

20 Q And your testimony is that you were only with him for  
21 three days and then you left, Friday, Saturday and Sunday?

22 A Friday, Saturday and Sunday, and part of Monday.

23 Q And in that period of time you said all these things,  
24 correct?

25 A Yes.

1 Q And you agree you never met him before that weekend,  
2 isn't that fair to say?

3 A Never.

4 MR. SEGAL: Thank you, sir.

5 THE COURT: Thank you, Mr. Lindholm, you are  
6 excused. Who is next?

7 MR. KELLY: Your Honor, the Government has -- well, I  
8 won't state that. Given the time that's left, the Government  
9 would request the opportunity to play a six-minute video tape  
10 for the jury at this time.

11 THE COURT: Go ahead.

12 MR. KELLY: And the Government will rest its case in  
13 the first 45 minutes of Friday morning.

14 Your Honor, we have one, one other short witness, no  
15 more than two.

16 THE COURT: Why don't you call the witnesses you told  
17 me you had.

18 MR. KELLY: We would call Officer Foley. And then  
19 the only issue, your Honor, that remains open has to do with  
20 Agent Leahy other than that. We thought we would get through  
21 it. We didn't realize it was going to take quite so long.

22 MR. KELLY: Your Honor, does this require any  
23 introduction from the Court'.

24 THE COURT: Are you telling me?

25 MR. KELLY: It might be helpful to try to explain to

1       them what this is.

2               THE COURT: Members of the jury, what you're about to  
3       see is a small excerpt of an interview given by Mr. Thomas  
4       Shay, Jr. to a reporter from Channel 56. These are excerpts  
5       of that interview -- I don't remember the date.

6               MR. KELLY: October 17th, 1992.

7               THE COURT: That's the date.

8               (Videotape played.)

9               MR. KELLY: That's the end of the tape, your Honor.

10              (Discussion off the record.)

11              THE COURT: Members of the jury, I was talking to the  
12       lawyers about scheduling. Would it be possible for you to sit  
13       until 4 o'clock on Friday, that is the day after tomorrow? Is  
14       there anybody who has a problem, Ms. Pinella, you also have at  
15       that problem. How late could you stay on Friday? What I'm  
16       trying very much to do is to finish with the evidence next  
17       Tuesday so that we can in fact have a charge on Monday. I,  
18       unfortunately, as far as I know, have things, lots of things  
19       booked on Monday and Tuesday afternoon of next week. And as I  
20       told you, I'm unavailable on Wednesday, Thursday, and Friday,  
21       which I'm trying very hard to find some extra time in order to  
22       make sure that we can get the case to you on the Monday before  
23       Thanksgiving. How late can you stay Ms. Pinella beyond 1?

24              THE JUROR: Two.

25              THE COURT: How about, Ms. Mitchell?

1 THE JUROR: I could make changes.

2 THE COURT: But you cannot Ms. Pinella.

3 THE JUROR: If you have to, you have to.

4 THE COURT: I told you you would be sprung at 1  
5 o'clock every day. I'm trying to figure out if it's possible  
6 on this one day to keep going so we can be sure to finish the  
7 case at a reasonable time. If it's a problem, it's a problem.

8 THE JUROR: It's a problem. But if it has to be, it  
9 has to be I can't change it. I just won't be there.

10 THE COURT: What is the nature of the engagement?

11 THE JUROR: It's a convention of the Massachusetts  
12 Nurses Association. I'm the vice president.

13 THE COURT: You have to be there.

14 THE JUROR: It's a yearly business meeting and it  
15 starts --

16 THE COURT: When does it start?

17 THE JUROR: It starts at 2:15.

18 THE COURT: I'll ask the cafeteria to send us food so  
19 we won't die of starvation so we can sit until 2. We'll start  
20 at 9 and sit until 2 and we'll start again the following  
21 Monday. Thank you.

22 I will see you at 9 on Friday and maybe we can have a  
23 list of witnesses sometime before then. Thank you.

24 [Whereupon, the jury left the courtroom.]

25 MR. SEGAL: Your Honor, there's still one motion

1 pending on a potential witness that I submitted, the motion in  
2 relation to Mr. Flynn. I think I sent you a memo on that.

3 THE COURT: Oh, yes. I think it very unlikely that  
4 Mr. Flynn will testify. I have it here somewhere.

5 [Whereupon, the jury trial ended at 12:59, to be  
6 reconvened at 1 p.m.]

7 CERTIFICATE

8 I certify that the foregoing is a correct  
9 transcription of my computer-aided stenographic notes of the  
10 proceedings in the above-entitled matter.

11 \_\_\_\_\_

12 \_\_\_\_\_

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Thomas Waskom, resumed (By Mr. Libby)	3			
(By Mr. Segal)		27		
Peter Turowska, sworn (By Mr. Kelly)	71			
(By Mr. Segal)		75		
William David Lindholm, sworn (By Mr. Kelly)	78		124	
(By Mr. Segal)		107		124

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
64	(See Clerk's Notes.)	13	
66A,B			74
<u>Defendant's</u>			
94			32
95			95
99		108	

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Fourteenth Day of Trial

11  
12  
13 APPEARANCES:

14 For the Government:

15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

17  
18 For the Defendant:

19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
21 210 Commercial Street, Boston, MA. 02109.

22  
23 Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

24  
25 November 12, 1993

Computer-Aided Transcription

P R O C E E D I N G S

1  
2 THE COURT: There are a couple of motions, one of  
3 them is left over from last week having to do with Mr. Flynn.  
4 I will not allow Mr. Flynn to testify, as a matter of  
5 discretion, if nothing else.

6 While the evidence as represented would contradict  
7 Mr. Brown's testimony it does so on a collateral, albeit  
8 important issue. Unlike Hudson, this is not a case where the  
9 contradicting testimony goes directly to the guilt or  
10 innocence of the defendant. So the motion for Mr. Flynn to  
11 appear is denied.

12 There is a motion to exclude certain persons  
13 concerning Mr. Foley's testimony. What's your position on  
14 that?

15 MR. KELLY: I would oppose the motion, your Honor.  
16 I've spoken with the family, and I don't see a problem.

17 THE COURT: There wasn't a problem the last time, I  
18 do not intend to --

19 MR. SEGAL: The only concern I had just Friday there  
20 was some reaction which was understandable.

21 THE COURT: I did not -- I must confess I did not  
22 notice any reaction, and I am generally like a hawk on these  
23 things. The family understands that the jury is not to be  
24 influenced in any way. The motion is denied.

25 The motion to strike Mr. Cody, I will need to read.

1 I haven't read it yet. We will bring the jury down.

2 [Whereupon, the jury entered the courtroom.]

3 THE COURT: Good morning, please be seated.

4 Call your next witness, please.

5 MR. KELLY: Your Honor, as its final witness, the  
6 United States calls Francis Foley, please.

7 THE COURT: Members of the jury, I thank you again  
8 for your willingness to sit until 2 o'clock today. What I've  
9 done is ask the cafeteria to send up a sandwich or so at  
10 12:30. We will take a break around 11. And we will also take  
11 a break around 12:30. Both of them as brief as possible and  
12 you won't starve at least.

13 THE CLERK: State your name.

14 THE WITNESS: My name is Francis Foley.

15 THE COURT: You may proceed.

16 Francis Foley, sworn

17 Direct Examination by Mr. Kelly

18 Q Where do you reside, Mr. Foley?

19 A West Roxbury.

20 Q And what is your marital status, sir?

21 A I'm divorced.

22 Q Do you have any children, Officer Foley?

23 A Yes, I have four children, three daughters and a son.

24 Q And how old a person are you, sir?

25 A 51 years old.

1 Q Mr. Foley, did you ever serve in the United States  
2 military?

3 A Yes. I spent four years in the Air Force.

4 Q And you are not working at the present time; is that  
5 correct?

6 A That's correct.

7 Q And is it fair to say, Officer Foley, that you are  
8 permanently disabled from your occupation as a police officer?

9 A Yes.

10 Q What police department did you work for, Officer Foley?

11 A The Boston Police Department.

12 Q And when did you first join the Boston Police  
13 Department?

14 A In May of 1967.

15 Q Sir, could you please give us a chronological description  
16 of your background with the department from 1967 forward.

17 A When I graduated from the academy in 1967 I was assigned  
18 to station 9 over in Roxbury where I spent three years in  
19 station 9. I then transferred to station 4 down in the South  
20 End, where I worked down there for approximately five, five  
21 years. At that time, I transferred up to the mounted unit,  
22 the horse patrol, and I spent approximately ten years on the  
23 mounted unit. From that point I went into the bomb squad.

24 Q Do you remember what year it was when you joined the  
25 Boston Bomb Squad?

1 A 1986.

2 Q Officer Foley, are you what is known as a certified bomb  
3 technician?

4 A Yes.

5 Q And could you describe for us, sir, your training in the  
6 field of explosives?

7 A The first year that the bomb squad, I went to seminars  
8 and training within the unit itself and in 1980, '87, I went  
9 to Huntsville, Alabama, to an FBI school to become a certified  
10 bomb technician. After graduating from Huntsville, Alabama, I  
11 attended different seminars along the East Coast and in  
12 Canada, and out in Arizona.

13 Q In the five or six years that you were a member of the  
14 Boston Bomb Squad, approximately how many calls did you  
15 respond to that involved actual explosive devices?

16 A Probably 50, 60.

17 Q And what types of devices are we talking about?

18 A There were mostly -- there were pipe bombs, there was a  
19 lot of military ordnance, commercial explosives.

20 Q Mail bombs?

21 A Yes, some, yes.

22 Q Prior to this incident of that we're about to talk about,  
23 Officer Foley, had you ever responded to the scene of a remote  
24 control explosive device?

25 A No.

1 Q Did your training as an explosives technician include a  
2 cover remote control devices?

3 A Yes.

4 Q Directing your attention to the month of October, 1991,  
5 Officer Foley, can you tell us, sir, how many officers were  
6 there on the Boston Police Bomb Squad?

7 A There were 12 officers, one supervisor. And I believe at  
8 the time there were ten technicians, the other two hadn't gone  
9 to school yet.

10 Q And did the bomb squad officers typically work in pairs?

11 A Yes.

12 Q Would you tell us, sir, in terms of when the bomb squad  
13 officers works in this fashion as partners, what are the  
14 different responsibilities that the two partners have  
15 responding to an incident?

16 A Okay.

17 It was generally, it was decided amongst ourselves  
18 that whoever drove that day would be the officer that handled  
19 the device itself. That would make the decisions and work on  
20 the device. The other officer was, did the administrative  
21 work and handled the radio, that type of thing, and assisted  
22 the other technician.

23 Q Did the partners change these responsibilities from time  
24 to time?

25 A Yes. If we had worked in, and if my partner had had a

1 device that day and it was a second call, with another device  
2 then, you know, it would only be fair that I would take my  
3 turn at it. That's how we would do it.

4 Q Officer Foley, what shift were you working in the month  
5 of October of 1991?

6 A I was on days.

7 Q And you know Officer Jeremiah Hurley, do you not?

8 A Yes.

9 Q What shift was Officer Hurley in the same month, October  
10 1991?

11 A Jerry was on days also.

12 Q And during that same time frame, how often were you  
13 paired with Officer Jerry Hurley on a weekly basis?

14 A We worked four-day shifts, and I would work two of the  
15 four days with Jerry.

16 Q And over what period of time, how many months or years  
17 did you work with Officer Hurley in this fashion?

18 A Since I went into the bomb squad.

19 Q How long was Officer Hurley on the bomb squad, if you  
20 know?

21 A I think he was up there a year or maybe a year and a half  
22 before I was assigned there.

23 Q And had you worked with Officer Hurley prior before  
24 joining the bomb squad, sir?

25 A Yes, we were on the mounted unit together.

1 Q Was Officer Jerry Hurley's training in the field of  
2 explosives comparable to your own?

3 A Yes.

4 Q Was Mr. Hurley also a certified bomb technician, to your  
5 knowledge?

6 A Yes, he was.

7 Q Officer Foley, I want to direct your attention to the  
8 date of October 28th, 1991, sir. Were you paired with Officer  
9 Jerry Hurley at that time?

10 A Yes.

11 Q And on that particular day, can you tell us, sir, which  
12 of the two of you were serving as the technician and which was  
13 serving in this administrative function?

14 A I was doing the administrative work, Jerry was the -- he  
15 was driving the vehicle, he was the technician.

16 Q And did you receive a call that particular day, Officer  
17 Foley, around the middle of the day?

18 A Yes, we did.

19 Q And from whom did you receive the call?

20 A From the police dispatcher.

21 Q Please describe the call for us?

22 A We were told to respond to 39 Eastbourne Street in  
23 Roslindale to meet a police -- a police officer relative to an  
24 object in the driveway.

25 Q Upon receiving the call, what did you do, sir?

1 A We drove to 39 Eastbourne.

2 Q And what means of transportation did you use?

3 A A Ford Bronco.

4 Q Now, is this particular vehicle equipped with the  
5 necessary tools and equipment and gear that a bomb technician  
6 such as yourself would use?

7 A No.

8 Q What type of gear or equipment would you have had with  
9 you in this vehicle when you responded to the 39 Eastbourne  
10 Street?

11 A Just the regular police equipment, our walkie-talkies,  
12 our weapons, flashlights. Just regular -- that you would have  
13 in a regular police car.

14 Q And how were you and Officer Hurley dressed that day when  
15 you went out to this scene?

16 A We wear black fatigues, utility uniforms.

17 Q Does the Boston Police Bomb Squad have a larger fully  
18 equipped vehicle?

19 A Yes, we do.

20 Q And would you describe for us, sir, the circumstances  
21 under which that vehicle gets called out to the scene of  
22 suspicious devices or bombings?

23 A Yes. We receive around 600 calls a year so it is a very  
24 large vehicle, and it pulls the bomb pot behind it. So it's  
25 not feasible to take it with us on all our calls. We go out

1 and we evaluate the situation, and then we determine if we're  
2 going to, where we're going to go with that and we'll go back  
3 and get the equipment and secure the area and get the bomb  
4 pot. It is a very large truck.

5 Q Officer Foley, tell us what happened when you first  
6 arrived at 39 Eastbourne Street in Roslindale on that  
7 particular day?

8 A When we arrived at the scene, we were met by Sergeant  
9 Creavin and Officer Denise Kraft. And we were told that there  
10 was an object that they wanted us to examine.

11 Q And did they tell you where the object was located?

12 A Yes. It was, it was up in the driveway underneath the  
13 vehicle.

14 Q And prior to walking up the driveway to examine this  
15 object, were you provided with any information by either of  
16 the two patrol officers or anyone else in front of the house?

17 A Yes. Mr. Shay come out, I believe come out of the house  
18 or anyway, the first time I was talking to him, he had stated  
19 to me that he had, he had found the object, the object had  
20 been ripped off the bottom of his car and that he had had it  
21 for a day or a day and a half and at one point he thrown it in  
22 the rubbish. And then he had taken it at a later point and  
23 placed it underneath the motor vehicle.

24 Q What happened after you received this information from  
25 Mr. Shay?

1 A We went up to the area where he directed us to where the  
2 device was.

3 Q When you got to that location of the driveway, what did  
4 you do, if anything?

5 A My attention was drawn to the motor vehicle. Jerry had a  
6 bad back so I, I leaned, I bent down, looked under the car and  
7 where I saw the object.

8 Q How many vehicles do you recall being in the driveway of  
9 this address on that day?

10 A There was two vehicles, a large truck and this gray old  
11 car, a GTO.

12 Q And where was this object when you first observed it,  
13 Officer?

14 A On the left front underneath of the left front fender.

15 Q You say because your partner had a bad back you knelt  
16 down. What happened next?

17 A I observed what appeared to be a block of wood. And it  
18 looked like there was black, electrical tape, rolls of  
19 electrical tape on top of it.

20 Q And did you move the object at that point, Officer?

21 A Yes.

22 Q Tell us what you did?

23 A I picked, I picked the object up. And when I did, I felt  
24 some weight to it. And so I, you know, I realized then it  
25 wasn't, it still looked like electrical tape but it was

1 heavy. And I took it out from under the car and I placed it  
2 about two feet, two or three feet away from the from the car.  
3 I placed it down.

4 Q So you felt some weight. Are you able to approximate how  
5 much the item weighed?

6 A I would say three or four pounds.

7 Q And roughly, how far did you actually have to move it  
8 from the point A to where you placed it down, sir?

9 A About three feet.

10 Q And how far off the ground had you actually lifted it to  
11 move it to that location?

12 A Just a matter of inches.

13 Q Were you concerned about moving the item, Officer?

14 A No.

15 Q Why was that?

16 A Well, Mr. Shay, he had explained to us he had had it for  
17 period of time. And he had moved it on at least two  
18 occasions. We weren't concerned about a time, time on it  
19 because he had had it a day and a half. So I wasn't concerned  
20 about it being on the time or we weren't concerned about  
21 antidisturbance switches, because he had been handling it and  
22 moving it around so that wasn't a concern of ours either.

23 Q What is an antidisturbance switch, sir?

24 A Well, sometimes when ohm people make bombings they will  
25 put switches in there to -- if you pick it up, it will

1     detonate, a Mercury switch or a trembler switch or a pressure  
2     switch or a pressure release switch if you move it a certain  
3     way or you attempt to open it, it will detonate.

4             MR. KELLY: Your Honor, if I may approach the  
5     witness, please.

6             THE COURT: Yes. Officer, Foley, I place before you,  
7     sir, what has been marked identification as Exhibit No. 4,  
8     sir, does that item on the table before you resemble the  
9     object that you saw that day in the driveway, that you just  
10    described?

11    A     Yes, yes, it does.

12    Q     Is it similar in size?

13    A     I remember it as being a little larger than this.

14    Q     Is it similar in color?

15    A     Yes.

16    Q     You say you saw what appeared to be rolls of black  
17    electrical tape?

18    A     Yes.

19    Q     Did what you observe appear similar to the object you see  
20    on the surface of that item before you, sir?

21    A     Yes, it does.

22    Q     If you can take a moment, Officer, and lift that item  
23    that's on the table before you, can you tell us whether the  
24    item you lifted that day in October 28th was heavier or  
25    lighter than that object?

1 A I would say it is almost the say weight as I remember.

2 Q Now, Officer Foley, as a bomb squad officer that has now  
3 placed this object into the open, what are you looking for in  
4 making your preliminary evaluation?

5 A Well, I would be looking for wires or a power source or  
6 some type of switch.

7 Q After making some initial observations, what happened  
8 next, sir?

9 A Well, I had just made a cursory observation of it and  
10 Jerry was going to examine it. So, I took Mr. Shay and the  
11 two officers and directed them away from the, from the device  
12 at the to the end the driveway.

13 Q And once you brought these people to the end the  
14 driveway, what happened then?

15 A Well, I had started to interview Mr. Shay as to, to get  
16 the information for my report.

17 Q And where was your partner, Officer Hurley, while you  
18 were conducting this interview?

19 A He was up at the device between the two trucks, he was  
20 out of my sight.

21 Q Can you tell me, sir, how long you were separated from  
22 Officer Hurley before you rejoined him in the rear of the  
23 driveway?

24 A Approximately, about five minutes.

25 Q Tell us about the discussion that you had with Mr. Shay

1 during that five-minute period near the mouth of the  
2 driveway?

3 A Oh, I was getting the information about the name and why  
4 he thought that, that there possibly could have been a bomb.  
5 He was, he was excited. He had told me that he had been in  
6 litigation with a company out in Dedham, I believe. He said  
7 that they had placed, a device in a barrel which it turned out  
8 he said was an M 80 and detonated, and then he had a hearing  
9 loss, and that he was suing them for a sum of money and he  
10 thought they may have been responsible for this.

11 Q During the course of this discussion, did he show you  
12 anything?

13 A Oh, well, yes, he showed me a gouge in the driveway where  
14 he said that device had come off the bottom of his car.

15 Q And did he walk you to some location, sir?

16 A Yes.

17 Q And what, if anything, did you observe?

18 A I saw like a gouging or dip in the grassy area in the  
19 driveway.

20 Q Sir, if I can show you what's been previously introduced  
21 as Government's Exhibit 10 C, can you point out for us  
22 approximately where you recall making this observation?

23 A (indicating).

24 Q Can you describe it, perhaps for the record,  
25 whereabouts?

1 A Just as, as you get over the peak in the hill going up  
2 the driveway.

3 Q And again, if you can point for us, please?

4 A Right in this area (indicating).

5 Q You're pointing to the kind of grassy strip?

6 A Yes.

7 Q Thank you, sir.

8 Do you remember anything else about the conversation  
9 with Mr. Shay before you returned to rejoin Officer Hurley?

10 A Just that, you know, he was, he was very concerned and I  
11 told him that we would take care of it whatever it was.

12 Q After the conversation was over sir, what did you do?

13 A Well, I went, I went back up to Jerry to see if he needed  
14 my assistance, anything, if he thought that we should go to  
15 get the big truck or sometimes one technician will go up and  
16 make observations that maybe he sees something that the other  
17 technician doesn't see.

18 Q And what was Officer Hurley doing when you returned back  
19 to this location between the two vehicles?

20 A He was on his knees, over the device.

21 Q And where did you go to at that point?

22 A I went up, I stopped about four feet away from Jerry.

23 Q Now, is there a fence you recall in that area of the  
24 driveway?

25 A Yes.

1 Q Where was the fence in relation to where you stopped?

2 A It was behind me. I don't know, six to eight feet.

3 Q Was there any conversation at that point between you and  
4 Officer Hurley?

5 A Jerry said to me that he thought he saw a switch.

6 Q And what did you do?

7 A I knelt down, and I started to put -- as I was putting my  
8 glasses on, I observed what an object, I said to Jerry, is  
9 that a servo?

10 Q And what is a servo, Officer Foley?

11 A It is an arm that's used on a remote control.

12 Q And did you receive some training that led you to have an  
13 understanding of what a servo was?

14 A Yes.

15 Q And when you made this remark to your partner, can you  
16 tell us perhaps using the object before you, what portion of  
17 the object were you looking at when you made that  
18 observation?

19 A Of this object?

20 Q Right. Can you show us?

21 A This little box.

22 Q You saw something in around the little box?

23 A Yes, yes.

24 Q Tell us what happened at that point when you made that  
25 observation, what happened next, sir?

1 A As soon -- I mean I saw it. My attention was fixed on  
2 that, and as I said it, I saw the arm moving.

3 Q And as the arm moved what, if anything, happened sir?

4 A Well, I -- there was a detonation.

5 Q And Officer, do you have any memory of the explosion?

6 A Yes.

7 Q What do you remember?

8 A There was a ball of fire in my face, and white, a white  
9 smoke.

10 Q Did you hear any sound?

11 A Yes, there was -- it was like a -- it wasn't a loud  
12 explosion like you would hear under a train. It was like a  
13 muffled sound. It was inside, it wasn't like outward.

14 Q Describe what happened then, sir?

15 A Apparently, I was thrown against the fence, because I was  
16 propped up. My back was, I was sitting propped up against the  
17 fence.

18 Q What do you recall?

19 A That I -- I was sitting there I thought the left side of  
20 my face was gone. I had my hand, I had my left-hand up to my  
21 face. My right arm -- I couldn't, I couldn't lift my arm.  
22 And my -- both my legs, I felt warm wetness on both of my  
23 legs.

24 Q You were conscious at this time?

25 A Yes.

1 Q Did you know how badly you were hurt, Officer?

2 A Yes, I thought I was dying.

3 Q Was your partner Officer Hurley conscious at the time,  
4 sir?

5 A Yes.

6 Q Were you able to tell how badly he was hurt?

7 A Yes. I saw he was --

8 Q Is it fair to say you knew his injuries were serious,  
9 yes.

10 A Yes, yes.

11 Q Was there conversation between you and he at that point,  
12 sir?

13 A Yes. Jerry was, was calling -- he wasn't screaming. He  
14 was yelling out for people to stay away, that there could be a  
15 secondary device. Which I was kind of surprised that, you  
16 know, that he was so astute, that that was -- part of our  
17 training a lot of times they will plant a small device to  
18 attract you to the area. And then when you set it off, and  
19 then when people arrive at that area, they will set off a main  
20 charge. And that's what Jerry's concern was, that there was a  
21 secondary device there.

22 Q How many minutes passed before anyone came back to the  
23 scene why you and Officer Hurley were located?

24 A It was a couple of minutes. They were staying away, and  
25 I finally said no, come up, to come up.

1 Q And during this period of time, sir, and after the  
2 arrival of the patrol officers, did you continue to converse  
3 with Officer Hurley?

4 A Yes. He was concerned for me. He was asking me about  
5 his was I all right. Or were there other people, he was  
6 asking how Frank was. He was speaking a lot of his family.

7 Q Sir, at any point, did you believe you were you were  
8 going to lose consciousness?

9 A I was afraid that I was going to lose consciousness, and  
10 I kept fighting it because I thought if I had passed out that  
11 I was going to die so I just kept fighting.

12 Q Officer, how long were you hospitalized following this  
13 incident, sir?

14 A Just over two-weeks.

15 Q Can you describe, sir, the physical injuries that you  
16 sustained in this explosion?

17 A Let me see, yes, I lost my left eye. I lost some  
18 significant hearing in my left ear. Both my legs I received  
19 trauma to, both my thighs, my hips, I had some graphs done on  
20 them, just above my knee. My right arm, I didn't know for a  
21 period of time -- about a week or so -- whether I was going to  
22 lose that. They had, they had to keep it open. There was  
23 debris in there, and they had removed the nerves in my hand to  
24 try to stop the infections. I had about three operations, and  
25 finally they closed up my arm and that was it.

1 Q And did you take any stitches during the course of your  
2 hospitalization or treatment?

3 A A few hundred, yes.

4 Q You have your right eye, is that correct, Officer?

5 A Yes.

6 Q Do you have any problems or difficulty with your right  
7 eye, Officer Foley?

8 A Yes, I have pressure on my right eye. I take medication  
9 three times a day for that. And they monitor it once a month.

10 Q Officer, do you have any other difficulties resulting  
11 from this explosion other than the physical injuries that you  
12 just described?

13 A Well, I go to the Boston Police -- so I go there once a  
14 week and I talk to other officers who have been in similar  
15 situations. That helps me to deal with it. My children have  
16 a more -- two of my daughters have a little difficult time  
17 dealing with it.

18 Q Is it fair to say, Officer Foley, that in addition to  
19 being your partner, that Officer Foley was a close friend?

20 A Jerry, yes.

21 Q Officer, if you recall Hurley was a close friend?

22 A Yes, he was.

23 MR. KELLY: I have nothing further.

24 MR. SEGAL: I have no questions.

25 THE COURT: Thank you, Mr. Foley, you are excused.

1           The government rests.

2           MR. KELLY: Your Honor, the United States rests.

3           THE COURT: I have a motion. You may proceed with  
4 your witnesses.

5           MR. SEGAL: May I have just one moment? Can I ask  
6 two minutes to go outside.

7           THE COURT: We'll stretch.

8           (Pause.)

9                       Joseph Pelphrey sworn

10                      Direct Examination by Mr. Lopez

11           THE CLERK: Please be seated and state your name for  
12 the record.

13           THE WITNESS: Joe Pelphrey.

14   Q     Good morning, Mr. Pelphrey. Would you spell your last  
15 name?

16   A     P E L P H R E Y.

17   Q     Are you employed, Mr. Pelphrey?

18   A     Yes.

19   Q     By whom?

20   A     The First Church of Christ Scientist in Boston.

21   Q     And how long have you been employed in that position?

22   A     Thirteen years.

23   Q     And what is your present position?

24   A     I'm the manager for security and safety services.

25   Q     And could you please describe your responsibilities.

1 A I'm responsible for the public and employee safety and  
2 property protection at our 13-acre international headquarters  
3 complex.

4 Q And specifically where, where is First Church of Christ  
5 Scientist located?

6 A It is located in the East Fenway section of Boston,  
7 adjacent to the Prudential Center.

8 Q Now, Mr. Pelphrey, does the First Church of Christ  
9 Scientist have a procedure for monitoring access to church  
10 buildings?

11 A Yes.

12 Q And could you describe generally, what procedures are  
13 followed?

14 A Yes, we have a badge system.

15 Q And could you describe this badge system for full-time  
16 employees, if any?

17 A Yes, once hired, the full-time employee receives an  
18 employee badge, a long-term employee badge.

19 Q And can you describe the badge procedure for a visitor?

20 A Yes, if the visitor wishes to gain access to the  
21 buildings for -- to the business buildings for the visit on  
22 church business, then that person comes to our, one of our  
23 reception desks and we issue the visitor badge.

24 Q Now, at the time a visitor's badge is issued, is anything  
25 done, is anything else done in conjunction with issuing that

1 badge?

2 A Yes. When the visitor comes to the desk, we check with  
3 the department or the individual being visited, and confirm  
4 that this is a legitimate church business visit. Then we will  
5 make a record of the visitor's name, the time of the visit,  
6 where the visitor is going, the name of the individual being  
7 visited, and we will issue a temporary visitor badge.

8 Q Now, once a badge is issued to a visitor, does that  
9 visitor have to sign out when they are leaving?

10 A No, they don't. But they must turn in the temporary  
11 badge that had been issued.

12 Q All right.

13 MR. LOPEZ: Your Honor, if I may approach the  
14 witness?

15 THE COURT: Yes.

16 Q Now, Mr. Pelphrey, I show you what's been marked as  
17 Exhibit 110, and I ask you if you recognize it?

18 A I do.

19 Q And what is it?

20 A This is a copy of one of our badge, temporary badge logs,  
21 from one of our locations.

22 Q And which location is that?

23 A This would be the broadcasting's center main lobby  
24 reception desk.

25 Q And how do you know that?

1 A I know that by the names -- excuse me, by the departments  
2 that are listed as being visited.

3 Q Now, next to you is another document that's been marked  
4 as Defendant's Exhibit 111, and I ask you if you recognize  
5 that?

6 A I do.

7 Q And what is that?

8 A This also is a badge log temporary badge log from the  
9 broadcasting center main lobby reception desk.

10 Q And how do you know that, sir?

11 A Again, by the departments being visited and by an  
12 indication in the upper right corner indicating that  
13 location.

14 Q Now, were these documents prepared by an employee of the  
15 church?

16 A Yes.

17 Q And did the church employee have a responsibility to  
18 write down this information?

19 A Yes.

20 Q And did the employee have knowledge of the information at  
21 the time it was written?

22 MR. KELLY: Your Honor, I have no objection to its  
23 admissibility.

24 THE COURT: They may be marked as Defendant's  
25 Exhibits 110 and 111.

1                   [Defendant's Exhibit 110 and 111 entered in  
2 evidence.]

3       Q     Now, directing your attention to the second page of  
4 Exhibit No. 110, and I ask you looking at that page, do you  
5 see the names Peter Cataldo, the name Peter Cataldo?

6       A     I do.

7       Q     And what other name is right below that?

8       A     David Fardy.

9       Q     And the next name?

10      A     It's the name Nurdan.

11               MR. LOPEZ:  If I can just have the witness highlight  
12 those names.

13      Q     Now, could you tell me what date is next to these three  
14 names?

15      A     October 17th.

16      Q     And is that October 17th, 1991?

17      A     Yes.

18      Q     And this was, this log was for the broadcasting center?

19      A     That's right, broadcasting center main lobby for the  
20 whole building.

21      Q     Incidentally, which building was Bill McNamara's office  
22 located at in October of 1991?

23      A     In the broadcasting center.

24      Q     Now, directing your attention to the second exhibit,  
25 which has been introduced into evidence as Exhibit No. 111, do

1 you see the same names on that particular log those names  
2 Peter Cataldo, Fardy and Nurdan?

3 THE COURT: Can you help the witness? Do you know  
4 where they are?

5 THE WITNESS: I'm just reviewing all the names. I do  
6 not see them.

7 Q You do not see them. All right. Where was the date on  
8 this particular log?

9 A This is October 18, 1991.

10 Q Now, is your name on that log?

11 A Yes.

12 Q Could you highlight where your name is on that log?

13 A (Witness complies.)

14 Q Can you explain why your name is on that log?

15 A This page serves for visitors as well as for employees.  
16 On that day I forgot to bring my, my long-term employee badge  
17 and was issued a temporary badge.

18 Q So even though you are in charge of security, when you  
19 didn't bring your badge, you had to be signed in; is that  
20 correct?

21 A That's right.

22 MR. LOPEZ: Now, if I may approach the witness again,  
23 your Honor.

24 THE COURT: More of the same?

25 MR. LOPEZ: Yes, your Honor.

1 THE COURT: Any more beyond that?

2 MR. LOPEZ: A master security log.

3 (Pause.)

4 MR. KELLY: I have no objection.

5 MR. LOPEZ: Defendant's Exhibit 112, dated October  
6 17th, 1991 -- Defendant's Exhibit 113, Friday October 18th;  
7 master security log for October 19th Defendant's Exhibit 114;  
8 Monday October 28th, 1991, Defendant's Exhibit 115.

9 [Defendant's Exhibits 112, 113, 114, 115 entered into  
10 evidence.]

11 Q Now, Mr. Pelphrey, can you look at the exhibits I just  
12 put before you, and can you describe what they are?

13 A These are copies of what's been called what is our master  
14 security log, records of actions taken by our security  
15 officers.

16 Q And what, what exactly is the purpose of that log?

17 A The purpose is to show, for example, when we have  
18 unlocked a door that is normally kept locked and we have let  
19 in a person who might need to go into that area, authorized.

20 Q And who performs functions that ultimately end up on that  
21 log?

22 A The security officer himself.

23 Q Is this master security log applicable to the entire  
24 13-acre complex?

25 A Yes.

1 Q Now, directing your attention to the second page of the  
2 log for October the 17th, which would be Exhibit No. 112; is  
3 that correct?

4 A Yes -- no -- yes 112.

5 Q On the second page there is a circled item, do you see  
6 that?

7 A Yes.

8 Q Can you explain what that circled item, what the  
9 notations there mean?

10 A Yes. This shows that at 9:35 a.m. on that date one of  
11 our security officers let in to through an unlocked, through a  
12 locked door, an employee of ARCOM, a contractor named Nordan  
13 Caydes.

14 Q And the name ARCOM is written down there, also?

15 A Yes.

16 Q Why is ARCOM listed?

17 A It's our common practice to list both name the contractor  
18 and the firm.

19 MR. LOPEZ: Your Honor, if I may pass that out among  
20 the jurors.

21 THE COURT: Do you have questions about the other  
22 ones?

23 MR. LOPEZ: Yes, I do, your Honor.

24 THE COURT: Let's move it.

25 MR. LOPEZ: I would like to --

1 THE COURT: Go ahead.

2 Q Now, can you look at the next document that's been dated  
3 October the 18th, and that will be Exhibit No. 113?

4 A Yes.

5 Q And is there any listing for the name ARCOM on that  
6 document anywhere?

7 MR. KELLY: The government will stipulate there  
8 isn't.

9 Q How about the next document which has been marked 114?

10 A Yes.

11 Q Dated October the 19th, 1991?

12 A Yes. I do see references on the second page.

13 Q All right.

14 And what do they reference?

15 A These show our security officers letting in ARCOM to  
16 secure areas and letting them back out of other secure areas.

17 Q All right.

18 Now, is there any special procedure for a long-term  
19 contractor that the church employs?

20 A Yes. If the department so requests, we will issue a  
21 long-term badge to that contractor.

22 Q Now, when you say the department, is there, does an  
23 employee have to request for an individual to obtain a  
24 long-term contractor's badge?

25 A Yes.

1 Q And usually how long does a long-term contractor have to  
2 work at the church's complex to be considered for a long-term?

3 A It should be over five days.

4 Q All right. Now, is there any particular form or  
5 procedure that's followed for the issuance of a long-term  
6 contractor's badge?

7 A Yes. We do have a form that is prepared, filled out by  
8 the requesting department.

9 Q And once a long-term contractor's badge is issued, does  
10 that particular contractor have to sign in when he's entering  
11 the premises?

12 A No.

13 Q What if he brings employees with him?

14 A Yes, if those employees do not have long-term badges  
15 themselves, presuming you mean employees of the contractor,  
16 then these must be signed in, these employees.

17 Q I show you what's been marked as Defendant's Exhibit 116,  
18 and it's stipulated that that will be introduced into  
19 evidence, your Honor.

20 THE COURT: All right.

21 [Defendant's Exhibit 116 entered in evidence.]

22 Q I ask if you recognize that form?

23 A I do.

24 Q What is that form?

25 A It's one of our contractor badge request forms.

1 Q Now, can you just briefly describe what information is  
2 placed on that form prior to the issuance of one of these  
3 long-term contractor's badges?

4 A The name of the contractor and the company, the  
5 requesting department, the starting date when they would like  
6 the badge, the ending date of that badge, the buildings into  
7 which the contractor should be granted access, in terms of the  
8 badge, and the hours in which the building, the contractor  
9 should be able to go.

10 Q Now, if a person had been issued a long-term contractor's  
11 badge, let's say, for the broadcasting center, but not  
12 anywhere else, if wanted to enter, let's say, the  
13 administration building what if any procedure would be  
14 followed?

15 A Well, a request would have to come from the department or  
16 he, the contractor, would have to contact our security staff  
17 to be let into that building, and that request would have to  
18 be approved by the employee in the department.

19 Q Now, if there was access to more than one location, then,  
20 if the person wanted to enter those locations only, he would  
21 not be required to sign in; is that correct?

22 A That's correct.

23 Q Now, did you conduct -- well, let me ask you a  
24 different --

25 Is there any other log that, that would have to be

1 signed by the long-term contractor once he's issued a badge?

2 A Yes. If the long-term contractor would like to have a  
3 key that he himself could carry, in order to get into a locked  
4 area, he would have to sign a key log.

5 Q All right.

6 And did you conduct a search of your key log record  
7 for the month of October 1991 pursuant to a subpoena that I  
8 issued to you in this case?

9 A Yes.

10 Q And did you find a key log for the month of October?

11 A I did not.

12 Q Do you know where it is?

13 A I don't know where it is.

14 MR. LOPEZ: Your Honor, I, at this time, I ask that  
15 these other documents be published.

16 I have no more questions, your Honor.

17 THE COURT: Mr. Kelly?

18 MR. KELLY: Briefly, your Honor.

19 Cross-examination by Mr. Kelly

20 Q Good morning Mr. Pelphrey, are you here this morning,  
21 sir, pursuant to a subpoena?

22 A Yes.

23 Q And you looked for this thing called a key log, and there  
24 is no such document that you were able to find?

25 A That's right.

1 Q Now, you mentioned that there was a couple of incidents  
2 on this form where ARCOM was listed.

3 Do you know what kind of work this outfit, ARCOM, was  
4 doing at the Christian Science Church?

5 A I only know that they were doing something in  
6 relationship to our broadcasting operation.

7 Q Do you know how long they were there working at the  
8 church?

9 A I don't have firsthand knowledge as to exactly how long  
10 they were there. A number of, a number of, a number of weeks.

11 Q A number of weeks.

12 In this general time frame we're talking about, the  
13 middle part of October of 1991?

14 A Yes.

15 Q Okay. On any of the documents that you just looked at,  
16 sir, that are now being shown to the jury, did you see the  
17 name Trenkler on any of those documents?

18 A No, I didn't.

19 Q Do you know a Mr. Trenkler?

20 A Pardon me?

21 Q Do you know a Mr. Trenkler?

22 A I have not met Mr. Trenkler.

23 Q One of those documents you pointed out, there was a name  
24 Nurdan.

25 Do you know if the name is a first name Nurdan or a

1 last name?

2 A I don't know.

3 Q Sir, did you have do you have any personal knowledge of  
4 the facts or circumstances relating to a bombing that took  
5 place in Roslindale, Massachusetts on October 28th, 1991?

6 A No.

7 MR. KELLY: I have nothing further.

8 THE COURT: Anything else, Mr. Lopez?

9 MR. LOPEZ: No, your Honor.

10 THE COURT: Thank you, Mr. Pelphrey, you're excused.  
11 Who's next?

12 MR. LOPEZ: Scott Davis, your Honor.

13 THE CLERK: Please remain standing, and raise your  
14 right hand.

15 Please be seated, and state your name.

16 THE WITNESS: Scott Davis, D A V I S.

17 THE COURT: You may proceed.

18 Scott Davis, sworn

19 Direct Examination by Mr. Lopez

20 Q Please spell your last name.

21 A D A V I S.

22 Q By whom are you employed?

23 A First Church of Christ Scientist.

24 Q How long have you been employed in that position?

25 A About 19 years.

1 Q What is your present position?

2 A Senior buyer in the purchasing department.

3 THE COURT: Senior what?

4 THE WITNESS: Buyer.

5 Q Can you briefly describe your responsibilities as a  
6 senior buyer?

7 A I purchase goods and materials and services for the First  
8 Church of Christ Scientist and the Christian Science  
9 Publishing Society.

10 Q Are part of the your responsibilities to meet with  
11 potential vendors?

12 A Yes, they were.

13 Q And directing your attention to early September 1991,  
14 around September 3rd, did you meet with a vendor known as  
15 ARCOM?

16 A Yes, I did.

17 Q And which representatives of ARCOM did you meet with?

18 A Al Trenkler and Richard Brown.

19 Q Do you see Mr. Trenkler in the courtroom today?

20 A Yes, I do.

21 Q Could you point him out.

22 A (Indicating).

23 MR. LOPEZ: May the record reflect he's identified  
24 Mr. Trenkler?

25 THE COURT: I guess so, I didn't see it.

1 Q Mr. Davis can you describe Mr. Trenkler?

2 A Yes, he's the gentleman sitting in the middle with....

3 MR. LOPEZ: May the record indicate...

4 THE COURT: Yes.

5 Q What was the purpose of your meeting on that September  
6 3rd?

7 A To give him the purchase order for the work they were  
8 going to be doing for us and the check that was required.

9 Q And --

10 THE COURT: Mr. Davis, could move a bit closer to the  
11 microphone and move it a bit closer to you, please.

12 Thank you.

13 Q Do you know for which work?

14 A This was for installing a mast on the administration  
15 building.

16 Q Do you know who requested the purchase of that mast?

17 A It came down from the TV engineering department, Bill  
18 McNamara.

19 Q And on September 3rd, 1991,, did you execute a purchase  
20 order?

21 A Yes, I did.

22 Q Now, directing your attention to September, later in  
23 September, September 25, did you meet with Al Trenkler again  
24 to execute another purchase order?

25 A Yes.

1 Q And do you know what this purchase order was?

2 A That was to install the antennas on the mast.

3 Q And was this work also requested by Mr. McNamara?

4 A Yes, it was.

5 MR. LOPEZ: If I can just have a moment, your Honor.

6 Q Mr. Davis, I ask you to look at what's been marked as  
7 Defendant's Exhibit 118, and I ask you if you recognize it?

8 A Yes, I do.

9 Q And what is it?

10 A This is the purchase order to fabricate and install  
11 antenna mount.

12 Q And the date is September 3rd?

13 A Yes, it is dated September 3rd.

14 Q And I ask you to look at what's been marked as  
15 Defendant's Exhibit 119, and I ask you what that is?

16 A This is the purchase order that was issued to install the  
17 microwave dishes on the mounts.

18 MR. LOPEZ: Your Honor, the government has no  
19 objection to the admission.

20 MR. LOPEZ: I ask they moved into evidence.

21 [Defendant's Exhibits 118 and 119 entered in  
22 evidence.]

23 Q Did you personally prepare these?

24 A Yes, I did.

25 Q Purchase orders?

1 A Yes, I did.

2 Q Now, directing your attention to the September 3rd  
3 purchase order, can you tell me what the contract price for  
4 that was?

5 A \$10,300.

6 Q And what was the starting date, again?

7 A The start date was September 3rd, '91.

8 Q And delivery date?

9 A By October the 4th.

10 Q All right. And directing your attention to the September  
11 25th purchase order, what was the contract price with respect  
12 to that purchase order?

13 A 27,406.

14 Q And the start date?

15 A 9/25/91.

16 Q And the delivery date?

17 A End of October.

18 Q So, would it be fair to say that these two contracts  
19 totalled approximately \$38,000?

20 A Right.

21 Q And they were entered into in September and agreed to be  
22 completed by the end of October 1991?

23 A Yes.

24 Q And were these jobs completed?

25 A To my knowledge, yes.

1 MR. LOPEZ: Your Honor, I just ask that these  
2 purchase orders be published.

3 THE COURT: Do you have any other questions?

4 MR. LOPEZ: I do not, your Honor.

5 THE COURT: Do you have any questions, Mr. Kelly.

6 MR. KELLY: No, I have no questions, your Honor.

7 THE COURT: Thank you, Mr. Davis, you are excused.

8 THE COURT: Who is next?

9 MR. SEGAL: Mark Romboli.

10 THE CLERK: Please raise your right hand.

11 State your name, and spell your name.

12 THE WITNESS: Mark David Romboli.

13 Mark David Romboli

14 Direct examination by Mr. Segal

15 Q Mr. Romboli, where do you live, please?

16 A 63 Nezrella Drive, Brockton, Massachusetts.

17 Q How are you employed, sir?

18 A I am corporate controller of Draka USA Corporation.

19 THE COURT: Of what?

20 THE WITNESS: Draka, D R A K A, USA Corporation.

21 Q Where is that corporation located, please?

22 A The corporate office is located in Norwood,  
23 Massachusetts.

24 Q And what is the business Draka Corporation, please?

25 A We are specialty wire and cable manufacturers.

1 Q Do you have an accounting degree, sir?

2 A Yes, I do.

3 Q In what year?

4 A From Bethany College in 1976.

5 Q During the 1970s and 1980s, sir, how were you employed?

6 A I was employed by company by the name of Sporta Corp. I  
7 was their corporate controller when they went out of business  
8 in 1989.

9 Q In the fall of 1991, were you doing freelance accounting  
10 and bookkeeping work, sir?

11 A Yes, I was.

12 Q And did you have occasion in that -- in September or in  
13 the fall to meet with Mr. Brown and Mr. Trenkler?

14 A Yes, I did.

15 THE COURT: What year is this?

16 MR. SEGAL: 1991.

17 By the way, can you identify Mr. Trenkler here in  
18 this courtroom?

19 A Yes, he's sitting right there.

20 Q Is he seated next to somebody?

21 A He is seated next to the girl, right here.

22 Q Do you recall what the purpose of your meeting with  
23 Mr. Trenkler and Mr. Brown was in the fall of 1991?

24 A Yes, it was the initial meeting I had with them to  
25 discuss services I could provide to them in helping them to

1 establish ARCOM Communications, their financial and business  
2 services.

3 Q Did there come a time -- do you keep a daily plan or a  
4 diary, sir, to reflect your business activities?

5 A Yes, I do.

6 Q And do you keep that in the course of your regularly  
7 conducted business activity?

8 A Yes.

9 Q And is it in the regular course -- was it in the regular  
10 course of your business activity in October 1991 to keep such  
11 a diary?

12 A Yes.

13 Q And what was the purpose of that diary, business?

14 A The purpose was to keep a record of my time and  
15 activities that I was performing for our clients, so I could  
16 bill out my hours.

17 Q And pursuant to a subpoena, did you bring your daily plan  
18 for the month of October 1991?

19 A Yes, I have.

20 MR. SEGAL: I'd ask -- well, I'd asked that three  
21 pages be admitted into evidence at this time, your Honor.  
22 October 11th, 17th, and 18th.

23 MR. KELLY: I'd have to look at them.

24 MR. KELLY: No objection.

25 THE COURT: What is the exhibit number?

1           MR. SEGAL: I think 120 would be October 11th;  
2 Defendant's Exhibit 121 would be October 17th; and Defendant's  
3 Exhibit 122 would be October 18th.

4           **[Defendants' Exhibits 120, 121, and 122 entered into**  
5 **evidence.]**

6 Q       Would you turn to the original of Defendant's Exhibit  
7 120, which is your daily plan for October 11th, 1991.

8 A       Yes.

9 Q       Looking at -- and do you have the original with you, sir?

10 A       Yes, I do.

11 Q       All right.

12           Looking at your daily plan for October 11th, 1991,  
13 does it reflect any meeting with anybody from ARCOM on that  
14 date?

15 A       Yes, I met with Rich Brown to discuss with him initially  
16 services I could provide, setting up the books and the  
17 records, my fee schedule. Also shows that I spent  
18 approximately two hours at the ARCOM office in Weymouth. And  
19 I went over there to try to put together some of their records  
20 of invoices and receipts and disbursements.

21 Q       Now, does that record indicate whether you set up another  
22 meeting with Mr. Brown subsequent to October 11th, 1991?

23 A       Yes, I had a meeting set up with Mr. Brown on October  
24 17th.

25 Q       Would you turn to your daily plan for that day, which is,

1 I believe, Defendant's Exhibit 120.

2 A Yes.

3 Q I'm sorry, 121.

4 Are you now looking at your daily plan for October  
5 17th, 1991, sir?

6 A Yes.

7 Q Keeping your voice up just a little bit --

8 THE COURT: What's THE question Mr. Segal?

9 Q Does it reflect whether you had any meeting at ARCOM on  
10 that day, sir?

11 A It reflects that i was scheduled to have a meeting with  
12 ARCOM, but Mr. Brown did not show up that day.

13 Q Does the diary indicate whether you physically went to  
14 ARCOM on October 17th?

15 A Yes, it does. It shows I was there for approximately an  
16 hour, waiting outside, and there was no show.

17 Q Do you recall whether you set up a meeting with Mr. Brown  
18 for the next day?

19 A Yes, I was finally able to get a hold of him on the phone  
20 later on that day, I set up a meeting with him again for the  
21 18th.

22 Q All right.

23 Now, turning to your diary entry for October 18th,  
24 1991, which is Defendant's Exhibit 22, did you in fact go to  
25 ARCOM on that day, sir?

1 A Yes, I did.

2 Q Was Mr. Brown there when you got there?

3 A No, he was not.

4 Q Who if anybody from ARCOM was present when you arrived at  
5 that place on October 18th?

6 A When I arrived nobody was present. I waited for  
7 approximately a half hour, 40 minutes. No one showed up. I  
8 made a phone call on my credit card, my calling card from  
9 AT&T, to Mr. Brown's answering service, trying to get a hold  
10 of him. I waited for a while longer, then Mr. Trenkler showed  
11 up after that.

12 Q Can you give us an estimate of what time, what time  
13 Mr. Trenkler arrived?

14 A I would say it was sometime between 11:40 and noon.

15 Q After Mr. Trenkler arrived, did you have any discussion  
16 with him, sir?

17 A Yes, I did.

18 Q Without giving us the conversation, what was the subject  
19 matter of that discussion?

20 A The business records and general discussions as to how to  
21 run the business and, you know, insurance and other types of  
22 things like that, how they should set up and run their  
23 business.

24 Q Does your daily plan entry for October 18th reflect  
25 exactly what went on that day at the company?

1 A Yes, it does.

2 Q What does the entry say?

3 A It says that I reviewed invoices and cash disbursements  
4 with Al. T. Its says I had discussions with Al. T. on various  
5 points ranging from setting up the company, business plan,  
6 financial operations, bank accounts, et cetera.

7 MR. SEGAL: Your Honor, may I publish a copy of that  
8 particular exhibit to the jury. I have larger copies.

9 THE COURT: Sure.

10 Q Now, Mr. Romboli, looking at your daily plan for October  
11 18th, 1991, can you tell what time you left ARCOM that  
12 particular day?

13 A In the vicinity of 2 clock.

14 Q All right. And what's the basis for that statement,  
15 sir?

16 A Based on my records, I'm indicating as to approximately  
17 how long I was there.

18 Q Let me show you a blown-up version of Defendant's  
19 Exhibit 122, which is the daily plan, can you point out to me  
20 what lines you're referring to that reflect that?

21 A This here. (Indicating).

22 Q You're pointing to a line that goes from 11 to some time  
23 after 2; is that it?

24 A The vicinity of two, yes.

25 Q All right. So, what's your best estimate as to what time

1 you left that particular day?

2 A My best estimate is probably 2 clock, give or take. I  
3 can't guarantee the time that I actually left.

4 Q And after you finished talking to Mr. Trenkler, did you  
5 leave the premises?

6 A Yes.

7 Q You didn't stay to speak with anybody else?

8 A No, I don't believe Mr. Brown ever showed up that day,  
9 and there was no reason for me to talk to anybody else at the  
10 place.

11 Q Do your -- do you recall the physical condition of ARCOM  
12 as you saw it on October 18th, 1991?

13 A The place was being fixed up. They were trying to get it  
14 ready to open up. It was being painted. There was a lot of  
15 working going on, carpentry work, et cetera. Those were the  
16 type of stuff going on.

17 Q Did you notice anybody working on the premises in that  
18 activity?

19 A Yes.

20 MR. KELLY: I would just object to the leading. He  
21 can tell us what he said.

22 Q What if anything did you see in connection with that work  
23 at ARCOM on that day?

24 A There were other people working there, painting, et  
25 cetera, physical things to the premises.

1 Q I think you told us on that day, you made a phone call to  
2 try to locate Mr. Brown; is that correct?

3 A That's correct.

4 Q And pursuant the subpoena, did you bring your records  
5 from AT&T for that day?

6 A Yes, I did.

7 Q Can you identify what I've marked as Defendant's Exhibit  
8 123?

9 A That is the phone call I made at 11:36 in the morning,  
10 from Weymouth to Mr. Brown's answering service, which I guess  
11 is in Lexington.

12 Q I've showed you a copy. I take it, you have the original  
13 document?

14 A Yes, I do.

15 MR. SEGAL: I'd ask that the original be admitted  
16 into evidence as Defendant's Exhibit 123 and that the  
17 originals of the other three entries -- I was using a copy --  
18 be admitted. They are in evidence.

19 THE COURT: Do you care whether they are a copy or an  
20 original?

21 MR. SEGAL: I would like the originals in, but at  
22 some point we'll take them out. I'd like the originals in.

23 MR. KELLY: Well, your Honor, I don't see any reason  
24 to deprive this man of records. I'm happy with copies.

25 THE COURT: AT what point would you want to

1 substitute copies for the originals?

2 MR. SEGAL: After the conclusion of the case, your  
3 Honor.

4 THE COURT: We'll borrow your originals, Mr. Romboli,  
5 and we will be sure to return them to you. That is, I say "we  
6 will," it is up to Mr. Segal to make sure that they are  
7 returned. He's under order to return them.

8 [Defendants' Exhibit 123 entered in evidence.]

9 Q In connection with your services for ARCOM, during the  
10 month of October 1991, did you have occasion to send the  
11 company a bill?

12 A Yes, I did.

13 Q And do you recall when you sent that?

14 A The bill, somewhere around the first of November.

15 Q Let me show you, I represent to you that this is the  
16 original, sir, Defendant's Exhibit 124, and ask if you can  
17 identify that particular document?

18 A That is my invoice to ARCOM.

19 Q Is that the for the month of October?

20 A Yes.

21 Q And that reflects?

22 A Including November 1st.

23 Q All right.

24 MR. SEGAL: I'd ask that that particular document be  
25 admitted into evidence at this time.

1 MR. KELLY: No objection.

2 THE COURT: No objection.

3 [Defendant's Exhibit 124 entered in evidence.]

4 MR. SEGAL: Just a moment, your Honor.

5 Thank you, Mr. Romboli, I have no further questions.

6 THE COURT: Mr. Kelly, any questions?

7 MR. KELLY: Yes, your Honor.

8 Cross-examination by Mr. Kelly

9 Q Mr. Romboli, do you still have the bill for services up  
10 there with you?

11 A Yes, I do.

12 Q That's Exhibit No. 124.

13 Is that what it says on it?

14 A Yes.

15 Q Okay. Now, sir, you told us that on -- when you left  
16 this meeting with Mr. Brown on October 11th, you scheduled a  
17 second meeting to happen on October 17th. And that is  
18 reflected on this diary page, October 17th, Exhibit 121, but  
19 nobody showed?

20 A That's correct.

21 Q You hung around for an hour and a half, did you?

22 A I'm not sure exactly whether it was an hour, an hour and  
23 a half. Somewhere in that vicinity.

24 Q Do you have a copy of the diary page up there?

25 A Yes, I do.

1 Q The entry on the diary page does say Advanced Research  
2 Comm., 1.5 hours (parens) no show.

3 Does that say: Today, no show today?

4 A No show, looks like 6.5 hours to date.

5 Q Oh, 6.5 hours to date. I'm sorry, sir. No show, in any  
6 event, 1.5 hours?

7 A Yes.

8 Q Between an hour to an hour and a half, you waited for  
9 these guys on the 17th, and they did not show?

10 A That is correct.

11 Q Now, you didn't give away that time, as an accountant,  
12 financial person, did you? You wanted to be compensated for  
13 loss of time?

14 A Yes.

15 Q And did you at some point, sir, factor that hour, hour  
16 and a half, into the bill for services that sent to these  
17 fellows on November 1st, 1991?

18 A I not sure at this point. Looking at my invoices and  
19 going back and trying to reconcile the hours, I may have short  
20 myself some billable time.

21 Q I see.

22 A I can't guarantee at this point.

23 Q Looking at the, at the bill itself, there is no entry for  
24 October 17th, is there, sir?

25 A No, there isn't.

1 Q Is it possible, sir, that you -- or is likely, let me say  
2 that, is it likely that you simply added that time from  
3 October 17th and dated it October 18th?

4 A It is possible.

5 MR. SEGAL: Objection.

6 THE COURT: Tell us what if anything you did about  
7 that time that you were waiting, if you know?

8 Q Go ahead, sir.

9 A Pardon?

10 THE COURT: Tell us you what if anything you know  
11 about how you treated that time on your bill.

12 THE WITNESS: I'm not really sure at this point in  
13 time. Well, two years later, I can't say what I did. I may  
14 have shorted myself some time. I can't reconcile how many  
15 hours.

16 Q You may have shorted yourself some time, you may have  
17 also written it into the 18th, correct?

18 A It is possible.

19 Q Now, you say you made an appointment for the following  
20 day when they failed to show on the 17th. Was it your  
21 practice, Mr. Romboli, when you made an appointment, you  
22 pulled out the diary page, and then you wrote in: I'm  
23 supposed to see Mr. Rich Brown at 11 clock?

24 A Yes.

25 Q So, for example, on the column we're looking at on the

1 18th, that was, that was probably, on the left-hand side of  
2 the column, it was probably written in on the 17th when you  
3 made the appointment?

4 A Probably.

5 Q Then there's this kind a squiggly line that goes down.  
6 What does that indicate, sir?

7 A That would indicate the approximate time I was there.

8 Q Okay.

9 Now you told us, sir, that your memory was that  
10 Mr. Trenkler showed up some time between 11:40 a.m. and  
11 12 clock p.m.?

12 A I'm estimating, yes.

13 Q Your best estimate was that he left around 2 clock?

14 A Approximately, yes.

15 Q And you had no further business at that location?

16 A That's correct.

17 MR. SEGAL: Objection, I don't think he said  
18 Mr. Trenkler left. I think Mr. Romboli left.

19 MR. KELLY: I'm sorry. I didn't mean to. Excuse me.

20 Q What was it you testimony --

21 A I left, I would say, somewhere in the vicinity of  
22 2 o'clock.

23 Q I'm sorry.

24 You left the some time sometime in the vicinity, give  
25 or take, with what five --

1 A 15 minutes. I would say 15 either way either way.

2 Q Between 1:45 and 2:15, you could have left?

3 A Yes.

4 Q How much time did you bill them for that particular day,  
5 October 18, if you know, Mr. Romboli?

6 A At least two hours.

7 Q Okay. And that reflects what you just told us, that you  
8 he showed up some time between 11:40 and 12, and you left some  
9 time between 1:45 and some time shortly after two?

10 A Right.

11 Q And so the other entry there for the 18th was either  
12 bookkeeping you did back at your own office of 1.5 hours or  
13 was it 1.5 hours from the previous day?

14 A Yes.

15 Q Now, you sent, you sent a bill for your services for that  
16 month that you described for \$817.50?

17 A That's correct.

18 Q Was that bill paid, sir?

19 A I only received \$272.50 of that.

20 Q Is there still some amount of money outstanding?

21 A \$545.

22 Q Somebody still owes that money?

23 A That is correct. They sent me a check for another 270,  
24 250; it bounced. The third installment was never paid. I had  
25 several letters that I sent to Mr. Brown certified, which I

1 have no reply to.

2 Q Are you here voluntarily, today, Mr. Romboli?

3 A I'm here because I was subpoenaed by the defense. I'm  
4 not here voluntarily.

5 MR. KELLY: I have nothing further.

6 MR. SEGAL: Nothing at all.

7 Thank you.

8 THE COURT: Thank you, Mr. Romboli, you are excused.  
9 Who is next?

10 MS. SHARTON: Robert Davidson.

11 THE CLERK: State your name, and spell you last  
12 name.

13 THE WITNESS: Robert Davidson, D A V I D S O N.

14 Robert Davidson, sworn

15 Direct Examination by Ms. Sharton

16 Q Good morning, Mr. Davidson.

17 A Good morning.

18 Q Where do you live, sir?

19 A In Brockton, Massachusetts.

20 Q Are you married?

21 A Yes, I am.

22 Q What is your educational background?

23 A I have a business degree from Pennsylvania State  
24 University and am currently working on my masters degree to  
25 business.

1 Q Where do you work currently?

2 A I work for a company called Tessco, Incorporated,  
3 T E S S C O. They are based in Baltimore, Maryland.

4 Q What does Tessco do?

5 A Tessco is a worldwide distributor of communications  
6 products, including two-way radio equipment, cellular  
7 telephone accessories, satellite-based equipment. Mostly in  
8 the accessory business.

9 Q To whom do you distribute those products?

10 A We distribute to anyone needing and requiring the  
11 installation materials or that type of equipment. So, it is  
12 anywhere from a small company requiring installation aids to a  
13 large self-maintaining end-user, such as Boston Edison, Boston  
14 Police, and your small mom- and-pop-type shops that just  
15 require antennas and accessories for doing installations.

16 Q What is your position at Tessco?

17 A I'm currently in the customer development area, and I'm  
18 in the process of setting up an office here in Boston, and,  
19 eventually, setting up offices for them worldwide. We're in  
20 the process of growing, growing the company, the company, so  
21 it is a big part of that whole operation.

22 Q How long have you been with Tessco, Mr. Davidson?

23 A Well, I merged my business with them in May of this  
24 year. So since May.

25 Q And what did you do prior to merging with Tessco?

1 A I owned my own business, called Davidson Distributing  
2 since 1990.

3 Q What sort of company was Davidson Distributing?

4 A The same company that Tessco is involved, just on a much  
5 smaller basis. Davidson Distributing was a distribution  
6 company for sale of telephone products, two-way radio  
7 equipment, satellite communications equipment, but I did it on  
8 a much small smaller basis. I was basically regional, where  
9 Tessco is a nationwide or worldwide company.

10 Q Where was Davidson Distributing located?

11 A We were in Weymouth, Massachusetts.

12 Q And where in Weymouth?

13 A It is the Route 3 Industrial Park, which is kind of in  
14 the Weymouth-Braintree line area.

15 Q When you had your company, Davidson Distributing, did you  
16 have a store front location or an office?

17 A It was an office. It was an industrial park, where my  
18 office was located. And so, it was strictly an office park  
19 type of situation.

20 Q And how did you distribute the goods to your customers?

21 A Primarily, we shipped products out by UPS and by common  
22 carrier. In other words, we box the products up and ship them  
23 out. UPS would come every day, about 4 clock, and pick up  
24 products. And we also, for local customers, we had pickups,  
25 and sometimes I'd go out and drop products off to various

1 customers.

2 Q All right. And in 1991, sir, who were Davidson's  
3 customers?

4 A We had about 200 customers, all, you know, various types  
5 of businesses.

6 Q Would you give us some examples?

7 A Yes, I mentioned some of them before. We had a lot  
8 self-maintaining end-users, like, Boston Edison, Boston  
9 Police, Public Service of New Hampshire, Connecticut police.  
10 Also, you know, for various small companies which you probably  
11 wouldn't have heard of, Comtronics, and communications type  
12 companies that sell two-way radio equipment.

13 Q And of those approximately two hundred customers, how  
14 many would come into your place of business per week,  
15 approximately? This is in 1991.

16 A Not more than two, three maybe per week, at most.

17 Q Mr. Davidson, do you know Alfred Trenkler?

18 A Yes, I do.

19 Q Do you see him here in the courtroom, today?

20 A Yes, right here.

21 Q The gentleman in the navy blue blazer?

22 A Yes.

23 Q How do you know Mr. Trenkler?

24 A As a customer, you know, buy products from my company.

25 Q In 1991 was ARCOM one of your customers?

1 A Yes, they were.

2 Q And in general, how did you distribute goods to ARCOM?

3 A Since ARCOM was fairly close in Weymouth, they were that  
4 far from my office, either be a drop-off situation, where I  
5 would go drop off products to them or they would come and pick  
6 up products from my company.

7 Q Okay. In 1991, sir, did Mr. Trenkler ever come to your  
8 place of business to pick up goods?

9 A Yes, he did.

10 Q Okay. On how many occasions? We're talking 1991.

11 A All can I remember, one time.

12 Q And, sir, when was that?

13 A On October 28th, 1991.

14 Q Okay. How is it that you are able to pinpoint that  
15 particular date, sir?

16 A Well, it is basically because I don't have that many  
17 pickup customers. And I remember on that specific time of his  
18 coming to my office because it was a Friday, on October 25th,  
19 I had dropped parts to them, and I just remember that specific  
20 time of them coming into my office.

21 Q I would like to show you, sir, what's been marked as  
22 Defendant's Exhibit 110?

23 MS. SHARTON: Your Honor, may I approach?

24 THE COURT: Yes.

25 Q Sir, I'd ask you if you could identify that document,

1 please?

2 A Yes, I can. It is an invoice from my business, Davidson  
3 Distributing.

4 THE CLERK: Ms. Sharton, I already a Defense Exhibit  
5 110.

6 MS. SHARTON: 123.

7 THE CLERK: You also have a 123.

8 MS. SHARTON: 125.

9 Q Mr. Davidson, you identified Defendant's Exhibit No. 125  
10 as a receipt from your place of business.

11 A Correct.

12 Q Could you tell us the date on that receipt?

13 A October 28th, 1991.

14 Q Okay. Who is the customer?

15 A ARCOM, Quincy, Massachusetts.

16 Q Does that exhibit also indicate whether it was a pickup  
17 or a drop off?

18 A It was a pickup.

19 Q Okay. Okay. Do you keep in that record in the ordinary  
20 course of business, sir?

21 A This is the standard invoice that we generate the day the  
22 customer's to pick up or that we deliver products to customers  
23 or that UPS comes and picks up.

24 Q Is it your regular practice to keep those invoices?

25 A Yes, it is.

1 MR. LIBBY: No objection.

2 THE COURT: 125 is in evidence.

3 [Defendants' Exhibit Defendant's Exhibit 125 entered  
4 in evidence.]

5 Q Sir, I'd also like to show you Defendant's Exhibit 126,  
6 and ask you if you can identify this, sir.

7 Yes, this a check made out to my company for the  
8 parts that were picked up on that day.

9 Q Sir, is this the original check?

10 A Yes, it is.

11 MS. SHARTON: Your Honor, I'd also like to move  
12 Defendant's Exhibit 126 to be admitted into evidence.

13 MR. LIBBY: No objection.

14 THE COURT: What was the date of that?

15 THE WITNESS: October 28, 1991.

16 [Defendant's Exhibit 126 entered in evidence.]

17 Q And that was a check made out to Davidson Distributing?

18 A A check made out to Davidson Distributing for \$32.50.

19 Q From?

20 A From ARCOM, Advanced Research Communications.

21 Q What is the amount that shows up on the receipt for  
22 October 28th from your business?

23 A \$32.50 from my Invoice 3688.

24 Q Okay.

25 Sir, is that October 28th visit to Davidson

1 Distributing the only time Mr. Trenkler had been to your place  
2 of business to pick up goods at that point in time?

3 A Yes, in that general time frame, that's all I can  
4 remember him coming to pick up products.

5 Q Having seen the receipt and the check, do you have an  
6 independent memory of that visit from Mr. Trenkler on October  
7 28th, 1991?

8 A Well, yes, I do, because the week before I dropped off  
9 some products to their company in Weymouth. And I remember it  
10 because of the fact that a week before I dropped off, what is  
11 called, a crimp tool and some odd products that they used for  
12 their business, some antennas. And I just remember that day  
13 specifically of them coming, like, the next Monday and I had  
14 noticed that antenna that I dropped off on Rich Brown, who was  
15 Al's partner, on his car; and then, also, the crimped tool  
16 which Al used for the business section. I kind of just talked  
17 to him about the crimp tool, you know, how to use it, that  
18 type of thing.

19 Q Is there any other reason you remember that particular  
20 visit?

21 A Well, just normally, I just remember kind of showing Al  
22 how the crimp tool worked. And I remember the various -- the  
23 crimp tool has a couple of die sets on it used to crimp  
24 connectors on to pieces cable. And I just remember that I  
25 sold it to him the before and, then, that day I just remember

1 talking about how it worked, you know, if you he liked it,  
2 that type of thing. So that visit does sort of stick out in  
3 my mind that way.

4 Q Mr. Brown was with him, you said?

5 A Yes, he was.

6 Q Did they give you anything that day?

7 A Well, I remember specifically going out to their car,  
8 Rich Brown's car was a Continental, and, A, looked at the  
9 antenna installation he had done on his car because I just  
10 remembered that very specifically because he replaced that  
11 antenna with an antenna they he had purchased from one of my  
12 competitors in Reading, Massachusetts. So I was kind of proud  
13 that one of my products was on the vehicle. And then, also,  
14 at that time I remember they had given me one of their ARCOM  
15 T-shirts that they had made up; they gave me one of the  
16 T-shirts at that time.

17 Q On October 28th, 1991, sir, how long were Mr. Trenkler  
18 and Mr. Brown at your place of business?

19 A I would estimate about an hour, in that vicinity.

20 Q Are you able to pinpoint at all a time frame within that,  
21 -- which that meeting would have taken place?

22 A To the best of my memory, it was sometime in the early  
23 afternoon between 1 to 2, 2:30, maybe, at the latest.

24 Q How is it, sir, that you are able to pinpoint that time  
25 for us?

1 A It is based on, A, my business practices and, B, making  
2 my deposits for the day. Because this check was dated the  
3 28th and it wasn't deposited until the 29th. So, I know that I  
4 made my deposit that day earlier, about noontime to 12:30. So  
5 it would have been right after that that they would have come  
6 in to pick up the products.

7 MS. SHARTON: I have nothing further, your Honor, and  
8 I ask that these these exhibits be published at this time.

9 THE COURT: Yes.

10 MR. LIBBY: I would like to use them before we  
11 publish them.

12 Cross-examination by Mr. Libby

13 Q Mr. Davidson, your recollection as to the time on that  
14 visit of the 28th, had to do with your regular business  
15 practices; is that right?

16 A Correct. Well, I try to get most of my customers to pick  
17 up early, especially ones that are going to be customers. I  
18 have certain customers that pick up, that were on, say, net  
19 basis. I do care what time they show up, customers that cash,  
20 I try to get them there so I try to make my deposit.

21 Q Your office was in Weymouth on the Route 3 Industrial  
22 Park?

23 A Correct.

24 Q And your testimony here today is that visit could not  
25 have taken place before 12:30?

1 A Correct.

2 Q Okay. Now, you mentioned something about selling  
3 antennas, you sold antennas to ARCOM, the week before; isn't  
4 that right?

5 A Correct.

6 Q Do those antennas come equipment with magnets?

7 A I'm not sure if the ones I sold to them, I don't know if  
8 they had magnets in them or not.

9 Q Typically, they do?

10 MS. SHARTON: Objection.

11 A No.

12 Q Some do?

13 A Some do, yes. For temporary installation magnets are  
14 used to place in a vehicle. But most likely, the antennas I  
15 sold them that time was a nonglass instrument, like, a  
16 cellular antenna which is for different frequency.

17 Q Mr. Brown and Mr. Trenkler both appeared that day; is  
18 that right?

19 A Yes.

20 Q No question in your mind about that?

21 A No.

22 Q The only time that they appeared in your office was  
23 together and it was that day, that hour; is that your  
24 testimony?

25 A I remember that specific time. They might have shown up

1 a long time before. But I know that I remember since when  
2 they were partners in this ARCOM venture, that was the first  
3 time they had come, too.

4 Q Your testimony, sir, today, before the Court and jury, is  
5 that of all this time dealing with ARCOM, it was this day, at  
6 that hour, that each of these two individuals appeared at your  
7 office; is that right?

8 A I know they both came --

9 Q Yes or no, sir?

10 A You'd better repeat --

11 Q Is that your testimony here, today?

12 A Repeat the question, please.

13 Q Certainly.

14 Of all the times, all your dealings with ARCOM, your  
15 testimony today, before the Court and jury, is, on this day  
16 the 28th of October, those two individuals Al Trenkler and  
17 Richard Brown, appeared in your offices in Weymouth on Route  
18 3, no earlier than 12:30; is that your testimony?

19 A Correct.

20 Q Are you friendly with Mr. Trenkler?

21 A Just in a business relationship.

22 Q Never socialized with him?

23 A No.

24 Q Never go out with him, at all?

25 A No.

1 Q Did you know where he lived?

2 A No.

3 Q Other than Mr. Brown, did you know anything about his  
4 associates?

5 A No, I did not.

6 Q Do you know anything, sir, other than what you testified  
7 here today -- strike that.

8 Do you know anything at all with respect to the  
9 circumstances surrounding the October 1991 bombing in  
10 Roslindale?

11 A No, I do not.

12 Q Sir, absent that subpoena, would you be appearing here,  
13 today?

14 A I'm sorry?

15 Q Absent a subpoena, would you voluntarily appear, today?

16 A Certainly.

17 MR. LIBBY: I have nothing further, your Honor.

18 THE COURT: Anything else, Ms. Sharton?

19 MS. SHARTON: No questions, your Honor.

20 THE COURT: Thank you, Mr. Davidson, you are excused.  
21 Who is next?

22 MR. SEGAL: David Fardy, your Honor.

23 THE CLERK: State your name, and spell your last  
24 name.

25 THE WITNESS: David Fardy, F A R D Y.

1 THE COURT: You may proceed.

2 DAVID FARDY, sworn

3 Direct Examination by Mr. Lopez

4 Q Good morning.

5 Could you please introduce yourself to the Court and  
6 jury?

7 A Yes, my name is David Fardy.

8 THE COURT: Mr. Fardy, can you move a bit closer to  
9 the microphone, please.

10 A My last name is Fardy, F A R D Y.

11 Q And are you employed, Mr. Fardy?

12 A Yes, I am.

13 Q And where are you employed?

14 A At The Design Shop.

15 Q And what is The Design Shop?

16 A We are a prototype development machine shop.

17 Q And what is a prototype development machine shop?

18 A We will build custom parts for companies that need to  
19 develop products.

20 Q Are you married, sir?

21 A Yes, I am.

22 Q How long have you been married?

23 A Four years.

24 Q And how long has The Design Shop been in business?

25 A Between 27 and 30 years.

1 Q Mr. Fardy would just please speak up.

2 A About 27 to 30 years.

3 Q And where is it located?

4 A In Newton, on 39 Chapel Street.

5 Q Now, directing your attention to October 17th, 1991, do  
6 you recall where you were on this day?

7 A At the Christian Science Monitor.

8 Q Do you recall it was a Thursday?

9 A Could have been.

10 Q All right.

11 Why were you there that day?

12 A We were finishing up our part of the installation of the  
13 microwave antenna.

14 Q Do you recall who else was present at that time?

15 A My coworker, Peter Cataldo, Al Trenkler, and one of his  
16 assistants.

17 Q All right.

18 And what were you doing there that day?

19 A We were putting the antenna on the mast.

20 MR. LOPEZ: Let me just have a moment, your Honor.

21 (Pause.)

22 MR. LOPEZ: May I approach the witness, your Honor?

23 THE COURT: Yes.

24 Q Mr. Fardy, I'm going to show you what's been marked as  
25 Defendant's Exhibit 127, which will be entered into

1 evidence.

2 MR. LOPEZ: There's no objection.

3 MR. LIBBY: No objection.

4 Q I ask you if you recognize that?

5 A Yes, I do.

6 Q Do you recognize anyone in this photo?

7 A That is myself and my co-worker, Peter Cataldo.

8 Q And could you explain what your doing in that photo?

9 A We are assembling the brackets to the back of the  
10 antenna.

11 Q To your knowledge, was that photo taken on October 17th,  
12 1991?

13 A Yes.

14 Q I show you what's been marked as Defendant's Exhibit 128  
15 in evidence, and I ask you if you recognize that photo?

16 A Yes, I do.

17 Q And are you also in that photo?

18 A Yes, I am.

19 Q And what are you wearing in that photo?

20 A I'm wearing my belt and some tools.

21 Q All right. And what are you doing in that photo?

22 A We are mounting the dish to the antenna.

23 Q I show you what's been marked as Defendant's Exhibit 129,  
24 and I ask you if you're in that photo, also?

25 A Yes, I am.

1 Q Now, specifically with respect to this area here, is that  
2 what is known as the mast?

3 A Yes.

4 Q All right. And that's what you were working on that day?

5 And this --

6 THE COURT: I'm sorry, you need to allow the witness  
7 to answer.

8 A Yes.

9 Q And is this your coworker, Peter Cataldo?

10 A Yes, it is.

11 Q Now, let me show you this photo, that's been marked as  
12 Defendant's Exhibit 130, do you recognize the person in that  
13 photo?

14 A Yes, it looks like the coworker that was with Al.

15 Q Do you recognize anything else in this photo?

16 A That's the roof top where we was working and the dish  
17 that we were working on.

18 Q And on October 17th, was this wood structure also there  
19 at that time?

20 A Yes, it was.

21 Q And do you know what that wood was used for?

22 A That was housing the dish, for storage.

23 MR. LOPEZ: Your Honor, I ask these be published.

24 [Defendants' Exhibit 127, 128, 129, and 130 entered  
25 in evidence.]

1 Q Now, how long were you there on October 17th?

2 A It was most of the afternoon. We started early in the  
3 morning.

4 Q And thereafter, did you send a bill to ARCOM?

5 A Yes, I did.

6 Q Mr. Fardy, I show you what's been marked as Defendant's  
7 Exhibit 131, and I represent that it's been moved --

8 MR. LOPEZ: I will move into evidence without  
9 objection.

10 [Defendants' Exhibit 131 entered in evidence.]

11 Q Do you recognize that?

12 A Yes, I do.

13 Q What is that?

14 A That is the bill that we sent to ARCOM.

15 Q And has anything been changed on this bill since the time  
16 that you -- it is original bill that you sent to ARCOM?

17 A Yes, it is.

18 Q Has anything been changed?

19 A It's been stamped "received," and there has been a  
20 correction on the amount.

21 Q And the amount shown is \$680. How much of a correction?

22 A \$40.

23 Q Up or lower?

24 A Lower.

25 Q So \$640 was the total amount?

1 A Yes.

2 Q And this stamp here, that's something?

3 A Something that they must have done when they received it.

4 Q All right.

5 Now, I ask you to look at that, and I ask you if that  
6 document indicates the hours you were at the Christian Science  
7 Center on October 17th, 1991?

8 A Yes, it does.

9 Q And what are those hours?

10 A 7 to 3:30 p.m.

11 MR. LOPEZ: Your Honor, I ask this be published at  
12 this time.

13 Q So, you were there the entire day, October 17th, from --

14 THE COURT: He was there from 7 until 3:30.

15 Q 7 a.m. until 3:30?

16 A Yes, sir.

17 Q Was Al Trenkler there with you at that time?

18 A Yes.

19 Q Can you identify Al Trenkler for this Court?

20 A (Indicating).

21 Q Could you indicate what he is wearing?

22 A He's wearing a blue jacket and a blue tie and a white  
23 shirt with stripes.

24 MR. LOPEZ: May the record reflect the defendant has  
25 been identified?

1 THE COURT: Yes.

2 Q Now, Mr. Fardy, has that bill been paid?

3 A Yes, it has.

4 MR. LOPEZ: Thank you, Mr. Fardy.

5 No further questions.

6 THE COURT: Any questions, Mr. Libby?

7 MR. LIBBY: Very briefly, your Honor.

8 Cross-examination by Mr. Libby

9 Q Mr. Fardy, are you friendly with Mr. Trenkler?

10 A Was I, yes.

11 Q You've known him since the mid-'80s?

12 A Basically, yes.

13 Q And you didn't have to be subpoenaed to show up here,  
14 today?

15 A No, sir.

16 Q You are here willingly?

17 A Yes.

18 Q To testify on his behalf; is that right?

19 A Yes.

20 Q You're friendship with Mr. Trenkler goes beyond business,  
21 does it not?

22 A Somewhat, yes.

23 Q You socialize with him --

24 A Yes.

25 Q -- in the past, right?

1 In fact, you've gone on some trips with him, right?

2 A Yes.

3 Q And on some of those trips, you used a four-wheel drive  
4 vehicle?

5 A Yes.

6 Q Whose vehicle was that please?

7 A It was Mr. Trenkler's.

8 Q And he would take you off the road?

9 A Yes.

10 Q Into some -- up in the woods area, and so forth?

11 A Yes.

12 MR. LIBBY: I have nothing further, your Honor.

13 THE COURT: Anything else?

14 MR. LOPEZ: Just one question.

15 Redirect Examination by Mr. Lopez

16 Q But we did issue you a subpoena in this case?

17 A Yes, you did.

18 Q And you're here pursuant to that subpoena?

19 A Yes.

20 MR. LIBBY: I have no further questions.

21 THE COURT: Thank you, Mr. Fardy, you are excused,  
22 and we will take the morning recess.

23 THE COURT: Court is in recess.

24 [Recess.]

25 THE COURT: You may proceed.

1 MR. SEGAL: Thank you, your Honor.

2 Nurdan Cagdas, sworn

3 Direct Examination by Mr. Segal

4 Q Good morning, Mr. Cagdas, would you spell both your first  
5 and your last name for us.

6 A The first name is Nurdan, N U R D A N. The last name is  
7 Cagdas, C A G D A S.

8 Q Where do you live?

9 A 25 Mechanic Street, Quincy.

10 Q Mr. Cagdas, how are you employed?

11 A I work in a restaurant, sautee chef.

12 Q And what do you do as a sautee chef?

13 A Sautee (laughter) cook.

14 Q You've answered. That's fine.

15 Directing your attention to October 1991, do you  
16 recall whether you did some work for a corporation called  
17 ARCOM; is that right?

18 A Yes.

19 Q And where was that corporation located?

20 A In Weymouth.

21 Q And do you recall who were the main people in that  
22 company?

23 A Yes.

24 Q Who was that?

25 A Rich Brown and Al Trenkler.

1 Q I want to show you the Defendant's Exhibit 112 in  
2 evidence, the master security log for the Christian Science  
3 Church, for October 17th, and I'll ask you to look at page 2  
4 of that log.

5 Looking at that, can you tell us where were you on  
6 October 17th, 1991, sir?

7 A On the roof of the Christian Science Center.

8 Q And Nurdan, what were you doing on the roof there, sir?

9 A That day, we were setting up the support for the dish.

10 Q All right. You say "we;" do you recall who?

11 A Al Trenkler and two other gentlemen.

12 MR. SEGAL: If I might borrow just from the jury, one  
13 second, Exhibits 129 and 130.

14 Q Can you identify this picture, which is already in  
15 evidence as defendant's Exhibit 129, Mr. Cagdas?

16 A Yes.

17 Q Now, keeping your voice up, what is that picture?

18 A That is a picture of two gentlemen who were putting up  
19 the dish.

20 Q This is a satellite dish you were putting up?

21 A Yes.

22 Q Now, looking at Exhibit 130, in evidence, can you  
23 identify anybody in evidence?

24 A Yes.

25 Q Who?

1 A That's myself.

2 Q What were you doing there?

3 A Putting in all the dishes.

4 Q And you do that prior to assembly?

5 A Yes.

6 Q What's the next number?

7 THE COURT: 132, Mr. Segal.

8 Q Let me show you what's marked for identification,  
9 Defendant's Exhibit 132, can you identify this particular  
10 photograph, Mr. Cagdas?

11 A Yes.

12 Q How do you identify that?

13 A That's myself.

14 Q Do you recall on what day it was taken?

15 A The 19th.

16 Q Well, let me ask you, do you recall if this photo was  
17 taken at the same time?

18 A Yes, it was --

19 Q Does this photo also represent the work you were doing on  
20 the 17th at the church?

21 A Yes.

22 Q And what are you doing in that particular folder?

23 A Stacking up the pieces of the crates.

24 MR. SEGAL: I'd ask that Defendant's Exhibit 132 be  
25 admitted into evidence at this time.

1                   [Defendant's Exhibit 132 entered into evidence.]

2                   MR. SEGAL: And I be asked that I be allowed to  
3 publish.

4                   THE COURT: Exhibit 132 is marked, and you may  
5 circulate it to the jury, again.

6                   Any further questions?

7                   MR. SEGAL: Yes.

8 Q       Mr. Cagdas, let me show you -- the last number was --

9                   THE COURT: 133 is next.

10                  MR. SEGAL: Let me show you Defendant's Exhibit 133,  
11 in evidence, this particular check, a copy of it, rather, can  
12 you look at the front and the back, and tell us if you can  
13 identify that check, sir?

14 A       Yes.

15 Q       And how can you identify that particular check?

16 A       It was a check that Rich Brown wrote because I was the  
17 only one wearing identification at the time. So, he wrote out  
18 the amount that everybody was getting paid and I cashed it  
19 with Al.

20 Q       That's a copy of a check, am I right?

21 A       Yes.

22 Q       And you might even have the original, but looking at the  
23 back of that check, does your -- does your signature appear on  
24 it?

25 A       Yes.

1 Q All right.

2 Mr. Kelly was kind enough to give me the original of  
3 Exhibit 133.

4 Is this the original that you received?

5 A Yes, it is.

6 Q All right. Did you receive it on October 18th, 1991?

7 A Yes.

8 Q I'd ask that that check be admitted into evidence at this  
9 particular time?

10 MR. KELLY: No objection.

11 THE COURT: It is in evidence.

12 MR. SEGAL: I'm sorry, the original of that check be  
13 admitted.

14 **[Defendant's Exhibit 133 entered into evidence.]**

15 Q Looking at the back of this check, marked Exhibit 133,  
16 can you tell us where you cashed it?

17 A It was all-time check cashing right down the street from  
18 my house.

19 Q What city was that?

20 A In Quincy.

21 Q And who went with you to cash that check?

22 A Al Trenkler.

23 Q Do you recall what sort of work you did that particular  
24 day, October 18th, 1991?

25 A We did various work on the office, like, painting and

1 stuff.

2 Q You say "we"; do you recall who was there besides  
3 yourself?

4 A Al Trenkler, Rich Brown was there; Dave Fardy, I believe,  
5 too.

6 Q Who do you recall going there to cash the check?

7 A Al, Al Trenkler.

8 Q Now, there was some notations on the left-hand side of  
9 that check. It says N D R A. Can you tell us what those  
10 stand for?

11 A N was myself, D was Dave, R was rich, I believe, and A  
12 was for Al.

13 Q I think you said you were the only one who had  
14 identification to cash the check?

15 A Yes.

16 Q Is it fair to say that even though the check was for 245,  
17 you got the proceeds and divided it among other people?

18 A Yes.

19 MR. SEGAL: May I publish that check to the jury?

20 THE COURT: Yes.

21 Do you have any other questions?

22 MR. SEGAL: I do.

23 THE COURT: I was trying to save you a trip.

24 MR. SEGAL: Thank you.

25 Q Now, let's direct your attention to the next day, October

1 19th, 1991, and I want to show you the master security log at  
2 the Christian Science Church, which is Defendant's Exhibit 114  
3 in evidence.

4 And I direct your attention to page 2 of that log, to  
5 see if you can tell us where were you on that particular day,  
6 sir?

7 A We're back on the roof, again.

8 Q The roof being --

9 A The Christian Science Center.

10 Q And what were you doing there that day, sir?

11 A That day, I believe we were either setting up the  
12 scaffolding or taking it down.

13 Q Do you recall who was with you on that day?

14 A It was Rich Brown, Al Trenkler, and Dave Flaherty, that  
15 was the day.

16 Q Let me show you defendant's photographs which I'll mark  
17 as Exhibits 134, 135, 136, 137, 138, 139 and 140.

18 Looking at these particular photographs, let me start  
19 with 134. Can you identify this particular photograph, sir?

20 A Yes.

21 Q How do you identify that?

22 A That's David Flaherty helping to remove the scaffolding.

23 Q And what day was that? Can you identify that as the 19th  
24 of October?

25 A Yes, as far as I can remember.

1 Q All right. Is this another picture of Mr. Flaherty  
2 removing the scaffolding?

3 A Yes, it is.

4 Q And that's 135. Let me show you this picture,  
5 Defendant's Exhibit 136. Can you identify the individual in  
6 that photograph?

7 A That's myself.

8 Q Okay. What are you doing there?

9 A Taking down scaffolding on the roof.

10 Q 137, can you identify the people in that particular  
11 photograph?

12 A Yes.

13 Q Who is in that, sir?

14 A Rich Brown and myself.

15 Q 138, can you identify those particular people?

16 A Yes.

17 Q Whose that?

18 A Rich Brown and Al Trenkler.

19 Q 139?

20 A Rich Brown.

21 Q 140, can you identify that particular truck?

22 A Yes, that's the van that was rented for the scaffolding,  
23 and that's David Flaherty and myself.

24 Q Is it fair to say all these photographs were taken the  
25 day you removed the scaffolding down from the church?

1 A Yes.

2 MR. SEGAL: I'd ask that 134 through 140 be admitted  
3 into evidence.

4 MR. KELLY: No objection.

5 MR. SEGAL: I ask that they be published.

6 [Defendant's Exhibits 134 through 140 entered into  
7 evidence.]

8 Q Let me just back up for one second, Mr. Cagdas.

9 On the 17th, the first day we talked about, October  
10 17th, you were up on the roof. Do you recall anything unusual  
11 about lunch that particular day?

12 A Yes, we ordered pizza from Domino's. And the freight  
13 elevator was pretty slow, so I took the stairs to go out and  
14 get pizza.

15 Q How many flights of stairs did you have to go down to get  
16 the pizza?

17 A A lot.

18 Q Do you recall roughly how high that roof of the church  
19 was, how many flights up?

20 A I'm not sure.

21 Q Would it be fair to say that it was more than 30 flights?

22 A Something like that.

23 Q After you got the pizza, did you take the elevator back?

24 A Yes.

25 Q Let me direct your attention to another check, sir, which

1 is Defendant's Exhibit 141 for identification, and I'll ask if  
2 you can identify this particular check, sir?

3 A Yes.

4 Q All right. Did you receive that on October 28th, 1991?

5 A Yes.

6 Q And does your signature appear on the back?

7 A Yes, it does.

8 Q I'd ask that this check be admitted into evidence at this  
9 time?

10 MR. KELLY: I would just like to see it and have the  
11 number of it, please.

12 THE COURT: The exhibit number.

13 MR. KELLY: The check number, your Honor, excuse me.

14 THE COURT: So it is in evidence without objection.

15 MR. KELLY: No objection.

16 **[Defendant's Exhibits 141 entered in evidence.]**

17 Q Looking at the check of October 28th, 1991, which is now  
18 in evidence, would you look at the back of that check, and  
19 tell us, does your signature appear on it?

20 A Yes, it does.

21 Q And looking at that check, would you tell us where you  
22 cashed that check?

23 A In South Boston.

24 Q And how can you tell that from the back of the check?

25 Is there something on that that helps you tell you

1       cashed in South Boston?

2       A       It's stamped.

3       Q       With some sort of check cashing service in South Boston?

4       A       Yes.

5       Q       Mr. Cagdas, do you recall who went with you to cash that  
6       check?

7       A       Yes.

8       Q       Who is that?

9       A       Al.

10      Q       And do you recall where the two of you went after cashing  
11      the check?

12      A       It was to some station, I believe, I don't know if it was  
13      a TV station or something like that. We did more satellite  
14      dish work.

15      Q       Now, that day, October 28th, do you recall being at the  
16      ARCOM headquarters that day, at all?

17      A       Yes, earlier in the day.

18      Q       And do you recall if Al was there that day?

19      A       Yes.

20      Q       Do you recall if anybody else was at ARCOM that morning  
21      earlier?

22      A       Rich, I guess.

23      Q       But you're not sure?

24      A       No.

25               MR. SEGAL: Thank you, Mr. Cagdas.

1 I have no further questions.

2 THE COURT: Mr. Kelly.

3 MR. KELLY: Yes, your Honor.

4 MR. SEGAL: I'd like to publish that to the jury.

5 MR. KELLY: I would like to use it, first.

6 MR. SEGAL: All right. That's fine.

7 Cross-examination by Mr. Kelly

8 Q Mr. Cagdas, were you an employee of this ARCOM company?

9 A Yes.

10 Q Is it fair to describe you as a part-time employee?

11 A Yes.

12 Q Were you paid hourly, sir?

13 A Yes, I was.

14 Q How much did you make hourly in October 1991?

15 A I believe it was five or six dollars an hour.

16 Q And how were you paid?

17 A By check.

18 Q Okay. And were taxes taken out?

19 A No, sir.

20 Q You were paid, what we call, under the table, right?

21 A I guess so.

22 Q Okay. What do you understand that to mean, sir?

23 Did you declare your income from your tax returns  
24 from Cagdas?

25 A No, I didn't.

1 Q And how long did you work for this company?

2 A Maybe a month or two, tops.

3 Q And how much would you say you made over the course of  
4 that entire period of time from this company?

5 A A few hundred.

6 Q And sometimes they would write you a check, as you've  
7 just showed us here, I think you got circulated, that was for  
8 a larger amount of money for the amount that was owed to you  
9 for services rendered, right?

10 A Yes.

11 Q That check was \$245, and only a portion of it was going  
12 to you and other portions were going to a whole string of  
13 other people?

14 A Yes.

15 Q And there was no reflection on the face of that check for  
16 any taxes being taken out for you, was there?

17 A No, sir.

18 Q And there was no reflection of any taxes being taken out  
19 for anybody on that list, was there, sir?

20 A No.

21 Q Nothing for Al, right?

22 A No, no, sir.

23 Q Nothing for Rich?

24 A No, sir.

25 Q Nothing for this, what was his name, Flaherty?

1 A Yes.

2 Q It was your understanding that everybody was paid under  
3 the table?

4 A I believe so.

5 Q Now, you -- were just talking about, at the end of your  
6 testimony, what you did on October 28th, 1991?

7 A Correct.

8 Q What day of the week was that?

9 A I'm not sure.

10 Q Okay. Was it a weekend?

11 A I believe so, maybe a Saturday.

12 Q Okay. And you remembered that you took this check that  
13 was just seen here, this exhibit that was here for 141, and  
14 you cashed a check at a check cashing service in South Boston,  
15 right; is that right?

16 A Yes.

17 Q Do you have a bank that you customarily bank at,  
18 Mr. Cagdas?

19 A At the time I didn't.

20 Q And when you go to a check cashing service, they charge  
21 you a certain amount of money to cash the check, don't they?

22 A Yes.

23 Q And did you customarily use this outfit in South Boston  
24 that you used on this particular occasion?

25 A Yes.

1 Q Do you live in South Boston?

2 A No, sir.

3 Q Now, the face of this check indicates that there's an N,  
4 and it says \$40?

5 A Yes.

6 Q And below it there's a reference that says 160. The  
7 total in the check is 200, correct?

8 A Yes.

9 Q Are you the N?

10 A Yes.

11 Q So you got \$40 for this check?

12 A Yes.

13 Q What happened to the other 160?

14 A I really don't remember. It might have gone to Rich or  
15 something, I don't know.

16 Q And -- okay.

17 Now, you said that you cashed that check at what  
18 time, sir?

19 A I believe it was late afternoon.

20 Q Late afternoon. And what time did you go to work that  
21 morning, Mr. Cagdas?

22 A Early in the -- say early afternoon.

23 Q Early afternoon. What time, do you remember?

24 A Between 12 and 1, maybe.

25 Q In fact, you punch a clock, don't you -- or strike that.

1           You had time cards?

2     A     Yes.

3     Q     And you don't punch a clock, so it doesn't tell you with  
4     precision what time you showed up. You kind of write it in?

5     A     Yes.

6     Q     Let me show you this piece of paper, sir, and ask you  
7     whether or not this is --

8           MR. SEGAL: Can we get a reference?

9     Q     Is this a time card for you, Nurdan Cagdas, for October  
10    28th, 1991?

11    A     Yes, it is.

12    Q     And the entries for that day actually fall into one  
13    little block on the piece of paper, Mr. Cagdas, don't they,  
14    kind of right where I'm pointing?

15    A     Yes.

16    Q     And what they indicate, sir, is you came in at 12:50  
17    p.m., correct?

18    A     Yes.

19    Q     And is that consistent with your memory?

20    A     Yes.

21    Q     And that you left at 1 o'clock?

22           MR. SEGAL: Objection. This is a hearsay document,  
23    unless it's authenticated.

24    Q     Sir, let me ask you, do you have an independent memory of  
25    exactly what time you came and went on October 28th, 1991?

1 A Not really.

2 Q Would this refresh your memory?

3 A Yes.

4 Q All right. Back to my question, what time did you come  
5 in, sir?

6 A 12:50.

7 Q And what time did you then leave?

8 A 1.

9 Q Okay. Did you come back?

10 A Yes.

11 Q What time did you come back?

12 A 1:30.

13 Q And did you leave again?

14 A Yes.

15 Q What time did you leave again?

16 A 1:30 to 4:30.

17 Q So, you worked for 10 minutes, 12:50 to 1 o'clock. What  
18 did you do in that ten minutes?

19 MR. SEGAL: I object, your Honor, this isn't in  
20 evidence.

21 THE COURT: He just told us what he did. He  
22 testified to it.

23 MR. SEGAL: He just said what the time card said.

24 THE COURT: But he testified to it.

25 Q You worked for ten minutes, from 12:50 to 1 o'clock,

1 Mr. Cagdas, right?

2 A Yes.

3 Q What did you do for ten minutes?

4 A I probably stood around.

5 Q Where did you stand around?

6 A At the office.

7 Q You're in Weymouth some place?

8 A Yes.

9 Q And then you took a half-hour to the lunch break?

10 A Yes.

11 Q And then what did you do for three hours, from 1:30 to  
12 4:30?

13 A Went out to cash the check and going to Boston.

14 Q So ARCOM, your employer, paid you to go to South Boston  
15 to cash the check?

16 A I believe it was when I was on the clock.

17 Q Okay. And do you remember how long it took you to go  
18 from Weymouth to South Boston to cash the check and then go  
19 back to Weymouth?

20 A No, sir.

21 Q Do you agree with me that it's probably at least a 15-,  
22 20-minute ride to go from Weymouth to South Boston?

23 A Yes.

24 Q And that it must have taken you at least ten minutes to  
25 cash the check, right?

1 A Yes.

2 Q And who was with you when you did this?

3 A Al.

4 Q Anybody else?

5 A No, sir.

6 Q You were asked questions about your whereabouts and  
7 activities on October 18th.

8 Do you remember those questions?

9 A Yes.

10 Q And you said you were doing various types of work around  
11 the office, painting things, like that, Mr. Trenkler, Mr.  
12 Brown, Mr. Flaherty and yourself, correct?

13 A Yes.

14 Q Was there anybody else other than the four of you?

15 A Not that I remember.

16 Q Okay. And what hours did you work that day, Mr. Cagdas?

17 A I'm not really sure.

18 Q Was it your usual practice to come in early afternoon?

19 A Kind of sort of, it was just when you were there, you  
20 know, early in the morning late afternoon.

21 Q It was flexible?

22 A Yes.

23 Q And you don't have a precise memory of what time you came  
24 to work on the 18th of October?

25 A No, sir.

1 Q What day of the week was the 18th of October 1991?

2 A I don't recall.

3 Q Was it a weekend?

4 A It might have been.

5 Q And how long did you work that day painting or doing  
6 various odd jobs?

7 A A few hours.

8 Q Okay, and at any point on that day -- by the way, do you  
9 remember seeing an accounting fellow who did some kind of  
10 financial consulting with Mr. Trenkler; do you remember seeing  
11 anybody?

12 A Yes, I believe there was somebody like that.

13 Q Do you know the guy?

14 A No, sir.

15 Q Did you ever see him before this day?

16 A I don't think so. I might have, I don't remember.

17 Q Do you know the name?

18 A No, sir.

19 Q Okay. Do you know what they were doing, if anything?

20 A No, sir.

21 Q Mr. Cagdas, you recall at an earlier point in time, sir,  
22 you were interviewed about your events, your activities, on  
23 October 18th, 1991, by an investigator hired by the defendant,  
24 correct?

25 A Yes.

- 1 Q Do you remember that guy's name?
- 2 A Mr. Karolides.
- 3 Q When were you interviewed by Mr. Karolides?
- 4 A The first time?
- 5 Q How many times have you been interviewed by
- 6 Mr. Karolides?
- 7 A A couple times.
- 8 Q When was the first time?
- 9 A Months ago.
- 10 Q Okay. When was the last time you were interviewed by
- 11 Mr. Karolides?
- 12 A I talked to him yesterday.
- 13 Q Okay. In person?
- 14 A Yes.
- 15 Q What did you talk about?
- 16 A About the case.
- 17 Q About your testimony?
- 18 A Yes.
- 19 Q Is it fair to state, sir, that when you first talked to
- 20 Mr. Karolides, you didn't have a real good memory of the
- 21 events of October 18th, October 19th, or October 21, sir?
- 22 A No, sir.
- 23 Q Mr. Karolides helped refreshed your memory?
- 24 A Yes.
- 25 MR. KELLY: I have nothing further.

Redirect examination by Mr. Segal

1  
2 Q A couple of questions, sir.

3 Mr. Cagdas, Mr. Kelly showed you this time card for  
4 October 28th. Do you remember that?

5 Here's the original; am I right?

6 A Yes.

7 Q Now, is that your writing on the time card?

8 A I believe it was Rich.

9 Q In other words, who filled out the time card?

10 A I believe it was Rich.

11 Q You say "Rich," that's Rich Brown?

12 A Yes.

13 Q And what we could see, was he pretty good at accurate  
14 record keeping?

15 A I guess so.

16 Q Now, I think you told us you cashed a check on the 28th  
17 in South Boston; am I right?

18 A Yes.

19 Q And wasn't the reason you cashed it there because you  
20 were going with Al to a job?

21 A Yes.

22 Q And it was on the way to the job?

23 A Yes.

24 Q Now, when you met with Mr. Karolides, did he show you  
25 some checks to try and help you refresh your recollection?

1 A Yes, he did.

2 Q Some of the checks that you've seen here in evidence?

3 A Yes.

4 Q When he met with you yesterday to go over your testimony,  
5 was anybody else present?

6 A You were.

7 MR. SEGAL: I have no further questions.

8 THE COURT: Anything else, Mr. Kelly?

9 MR. KELLY: Yes, your Honor.

10 Recross examination by Mr. Kelly

11 Q When Mr. Karolides first interviewed you and asked you  
12 some questions about your activities on the 18th of October,  
13 you had a hard time remembering specifically where you were at  
14 what particular time?

15 MR. SEGAL: Objection. That's been asked and  
16 answered.

17 MR. KELLY: It's a preparatory question to my next  
18 question.

19 THE COURT: What's the next question?

20 Q Am I correct about that one, Mr. Cagdas?

21 THE COURT: You've already asked that. Go on to the  
22 next question.

23 Q In order to help refresh your memory the first time you  
24 were interviewed, Mr. Karolides didn't show you any checks,  
25 did he?

1 A I don't really remember, I don't think so, no.

2 Q He told you certain things, didn't he, sir?

3 A Oh, yes.

4 Q He told you, you know, for example, Nurdan, you remember  
5 that was the day that you sent out for pizza; remember that?

6 MR. SEGAL: Objection.

7 THE COURT: What's the objection?

8 MR. SEGAL: It's hearsay.

9 THE COURT: It's not being offered for hearsay, for  
10 the truth of it. It is being offered for what was said and  
11 the issue of credibility.

12 Q He told you things just as I suggested, right?

13 A Yes.

14 Q And you didn't remember that until he told you, did you?

15 A A bit.

16 Q In fact, you told us that you thought that October 18th  
17 might be a weekend?

18 A Yes.

19 Q It was a Friday, wasn't it, sir?

20 A I guess so.

21 Q October 28th, 1991, might be a weekend?

22 A Yes.

23 Q Would you be surprised if I told you it was a Monday; you  
24 wouldn't be surprised, would you?

25 A No, sir.

1 Q What did you do last Tuesday at 2:30; do you remember?

2 A No, sir.

3 MR. KELLY: Thank you.

4 MR. SEGAL: I have one or two questions.

5 THE COURT: I thought we finished after the second  
6 round, and this is the second round.

7 MR. SEGAL: That's right. Can I get one question?

8 THE COURT: Thank you, Mr. Cagdas, you are excused.  
9 Who is next?

10 MS. SHARTON: David Millette.

11 THE COURT: David who?

12 MS. SHARTON: David Millette.

13 THE CLERK: State your name, and spell your last  
14 name.

15 THE WITNESS: David Millette, M I L L E T T E.

16 THE COURT: You may proceed.

17 David Millette, sworn

18 Direct Examination by Ms. Sharton

19 Q Good morning, Mr. Millette.

20 Are you here pursuant to a subpoena?

21 A Yes, I am.

22 Q What is your occupation, sir?

23 A Carpenter.

24 Q Do you know Alfred Trenkler?

25 A Yes, I do.

1 Q Do you see him here in the courtroom, today?

2 A Yes, I do.

3 Q What is he wearing?

4 A Blue suit, blue tie with some designs on it, and --

5 Q Down there at the end, here?

6 A The gentleman at the end.

7 Q For how long have you known Mr. Trenkler?

8 A Two or three years.

9 Q What is your relationship with Mr. Trenkler?

10 A He's an acquaintance of a friend of mine.

11 Q Mr. Millette, I'd like to direct your attention to  
12 Saturday, October 26th, 1991, where did you live on that date,  
13 sir?

14 A 1650 Dorchester avenue, in Dorchester, Massachusetts.

15 Q With whom did you live?

16 A I lived with Thomas Strout.

17 Q And, sir, directing your attention to the evening of  
18 Saturday, October 26th, what did you do that evening?

19 A I had a few friends over for an informal dinner party.

20 Q Who was at that dinner party on September 26th, 1991?

21 A John Cates, Alfred Trenkler and Eric -- I don't remember  
22 Eric's last name.

23 Q Was your roommate there as well?

24 A Yes, Thomas Strout was there, too.

25 Q What time, Mr. Millette, did that dinner party start

1 approximately?

2 A 6 or 7 o'clock.

3 Q And what time did Mr. Trenkler arrive at that dinner  
4 party?

5 A Around 6 or 7 o'clock.

6 Q That's 6 or 7 p.m. in the evening?

7 A Yes.

8 Q All right. Did Mr. Cates and Mr. Trenkler arrive  
9 together?

10 A Yes.

11 Q Approximately how long did they stay at your house that  
12 evening?

13 A I don't know what time they left. I believe that I fell  
14 asleep 2 or 3 o'clock at night, I'm sorry.

15 Q Is that 2 or 3 a.m.?

16 A 2 or 3 a.m., they were still there, I believe.

17 Q Did Mr. Trenkler leave your house at any time from 6 p.m.  
18 until 2 or 3 in the morning?

19 A No.

20 Q Sir, how do you know, how do you remember this dinner  
21 party took place on October -- Saturday, October 26th, 1991?

22 A Well, John had come from Warwick, and he works every  
23 Saturday for this company where he goes and cleans the place,  
24 and we were talking about the upcoming Halloween which was  
25 during the week of the next week; it was three or four days

1 from Halloween, and we were talking about Halloween.

2 Q Is there any doubt in your mind, Mr. Millette, that  
3 Mr. Trenkler was present at your house from 6 or 7 p.m. to  
4 2 or 3 in the morning on Saturday, October 26th, 1991?

5 A No.

6 MS. SHARTON: I have no further questions.

7 THE COURT: Any questions?

8 MR. KELLY: Yes.

9 Cross-examination by Mr. Kelly

10 Q Good morning, Mr. Millette. How are you, sir?

11 A Good morning.

12 Q You and I have met before, haven't we, sir?

13 A I believe so.

14 Q And what were the circumstances when you and I last met?

15 A I don't remember when we last met.

16 Q We only met once, didn't we, sir?

17 A I suppose so, if that's what you say.

18 Q Well, I'm asking you, do you remember?

19 A I don't remember how many times I've seen you.

20 Q Okay. When I saw you on one occasion, I asked you some  
21 questions, didn't I, Mr. Millette?

22 A Okay.

23 Q That's a yes or no?

24 A Yes.

25 Q And before I asked you those questions, you were placed

1 under oath; do you remember that?

2 A Yes.

3 Q And you swore to tell the in response to my questions?

4 A Yes.

5 Q During the period of time that you and I met and I was  
6 asking you these questions, at any time, sir, did you tell me  
7 anything about a dinner party at your house in Dorchester?

8 MS. SHARTON: Objection, your Honor.

9 THE COURT: What's the objection?

10 MR. SEGAL: I don't believe we've set up anything  
11 about whether he was asked that; there's no foundation here  
12 for any prior inconsistent statement.

13 MR. KELLY: It's a perfectly appropriate question on  
14 cross-examination.

15 THE COURT: I think the question is proper. You can  
16 certainly on redirect find out what he was asked about it.

17 MR. KELLY: Do you recall my question, sir?

18 A No, I don't recall it.

19 Q My question was, when we met on this occasion, I was  
20 asking you some questions:

21 At any time did you tell me about this dinner party  
22 in Dorchester that you've just described?

23 A I don't recall.

24 Q Okay. When did you first recall the dinner party?

25 A The day it happened.

1 Q I mean going back from today?

2 A Yeah.

3 Q When did you first recall this dinner party on October  
4 26th, 1991?

5 A I don't remember. When somebody asked me about it,  
6 that's when I recalled about it.

7 Q What distinctive features, if any, lead you to precisely  
8 position this dinner party on the day of October 26th, 1991?

9 A As I stated earlier, we talked about Halloween which was  
10 just a couple of days away.

11 Q And that's what you remember?

12 A That's what I remember.

13 Q And you remember that it was, it was 1991, as opposed to  
14 some other year?

15 A Yes.

16 Q And again, sir, your testimony is that the party started  
17 around 6 or 7 p.m.

18 A Yes.

19 Q You fell asleep, I think you said, at around 2 or 3 in  
20 the morning?

21 A I believe so.

22 Q And I think you testified that Mr. Cates and Mr. Trenkler  
23 were still there when you fell asleep?

24 A Yes.

25 Q Now, had you talked about this matter, the topic of this

1 dinner party, with anybody before testifying here today, sir?

2 A Yes, I mentioned it.

3 Q Okay. To whom?

4 A The lawyer, I talked to her about it.

5 Q Okay. Anybody else?

6 A Not that I recall.

7 Q Okay. You met Mr. Trenkler through a fellow named Cates,  
8 right?

9 A Yes.

10 Q How long have you known this fellow, John Cates?

11 A Ten years, approximately.

12 Q And he's not originally from the Boston area, is he?

13 A No, he's not.

14 Q Where is he from?

15 A Houston, Texas.

16 Q Do you know when he moved to the Boston area?

17 A Yes.

18 Q When?

19 A Oh, '88, '89.

20 Q Okay. So you knew him when he was living in Texas?

21 A Yes.

22 Q Were you living in Texas?

23 A Yes.

24 Q Were you a roommate of Mr. Cates?

25 A Yes.

1 Q Is it fair to say that you were a close friend of  
2 Mr. Cates?

3 A Yes.

4 Q Is it fair to state that Mr. Cates is a former lover of  
5 yours?

6 A Yes.

7 Q Is it fair to say that you discussed this dinner party  
8 with Mr. Cates before testifying here today?

9 A Yes.

10 Q And before you had this discussion with Mr. Cates, you  
11 didn't remember the date of the dinner party, did you,  
12 Mr. Millette?

13 A Yes, I did. He asked me when it was.

14 Q When did you have this discussion with Mr. Cates?

15 A Oh, a few months ago.

16 Q Just before Mr. Cates was called to testify in this  
17 courthouse?

18 A I have no way of knowing that. I don't keep track of  
19 dates of when other people are testifying.

20 Q You don't keep track of dates at all, do you, sir?

21 A In matters -- no, that's not a, not a true statement.

22 Q A couple of months ago, give me the best estimate, what  
23 month would that have been?

24 A I don't recall.

25 Q If I told you July, would that help refresh your memory?

1 A No.

2 Q You have a memory of that discussion with Mr. Cates?

3 A No.

4 Q You don't remember when it took place, but you remember  
5 the substance was the dinner party; is that a fair statement?

6 A Right.

7 Q And is your memory better about things that happened long  
8 ago, as opposed to things that happened a few months ago?

9 A No.

10 Q It's worse, isn't it?

11 A No.

12 Q Like most of us.

13 THE COURT: Like most of us, that he can't tell us  
14 about.

15 MR. KELLY: Okay.

16 Q One of the questions I did ask you when we were together  
17 is whether or not you knew a person by the name of Alfred  
18 Trenkler.

19 Do you remember me asking you that question?

20 A Yes, I do.

21 Q And do you remember what you said when I asked you the  
22 question: Is there some doubt in your mind --

23 MS. SHARTON: Can I have the page number?

24 MR. KELLY: Page 5, line 20.

25 Q Do you remember how you responded when I asked you the

1 question: Is there some doubt in your mind about whether you  
2 know that individual?

3 A Yes.

4 Q What did you tell me?

5 A I said I don't know if I know him. I didn't know the  
6 person's last name.

7 Q Do you remember saying: Well, I've never -- I don't know  
8 his last name. I know a guy named Al who is a friend of a  
9 friend of mine, right?

10 A Right.

11 Q You didn't know that the fellow's last name was Trenkler?

12 A No.

13 Q You didn't know this guy very well on April 9th, 1992,  
14 did you?

15 A I don't -- I still don't know him very well.

16 Q You say your occupation was a carpenter; is that your  
17 occupation, when you and I met in April of 1992?

18 A I might have been unemployed at the time. I'm also a  
19 painter, handyman, and whatever job I can get at the time so  
20 that I can support myself. I'm willing to do any type of  
21 work. I'm a hard worker. I'll go by any title that I can get  
22 a job from.

23 Q Okay. And where are you living at the present time,  
24 Mr. Millette?

25 A In Boston.

1 Q Whereabouts?

2 A In Boston.

3 Q Whereabouts?

4 MR. SEGAL: Objection. I don't see any relevance.

5 THE COURT: The objection is sustained.

6 Q Do you live in an apartment or a house?

7 MR. SEGAL: Objection.

8 THE COURT: The objection is sustained.

9 Q Is it fair to state you don't have a residence,  
10 Mr. Millette?

11 MR. SEGAL: Objection.

12 THE COURT: We don't need to get into that,  
13 Mr. Kelly.

14 MR. KELLY: I have nothing further.

15 **Redirect Examination by Ms. Sharton**

16 Q Mr. Millette, when you talked to Mr. Kelly on that prior  
17 occasion, were you ever asked about a dinner party on October  
18 26th, 1991?

19 A Never.

20 Q Were you ever asked about a dinner party that you had at  
21 any time?

22 A Never.

23 Q Mr. Millette, in April 1992, when you testified in a  
24 prior proceeding, you met Mr. Kelly, did you know Al  
25 Trenkler's last name at that time?

1 A If -- well, I did, because Mr. Kelly told me who he was.

2 Q Would you lie for Alfred Trenkler?

3 A No.

4 MR. SEGAL: Nothing further, your Honor.

5 THE COURT: Anything else, Mr. Kelly.

6 MR. KELLY: Yes.

7 Recross Examination by Mr. Kelly

8 Q You remember the questions that I asked you in response  
9 to Ms. Sharton's, but you don't remember the response to mine?

10 MR. SEGAL: Objection.

11 THE COURT: I don't know what you mean.

12 Q Well, you have a specific memory of every question I  
13 asked you on April 9th, 1992?

14 MR. SEGAL: Objection.

15 THE COURT: No, he may answer that.

16 A Ask me a question, and I'll tell you if I remember it.

17 Q I think there's a question pending, sir?

18 A Well, then ask it.

19 Q I think I already have. Do you remember every question I  
20 asked you on April 9th of 1992?

21 MR. SEGAL: Objection, your Honor.

22 THE COURT: He may answer that?

23 A The only way for me to know that is ask me every question  
24 and you can tell by my responses whether I remember every  
25 one. I cannot state whether I know every question you ask me

1 because you asked me every question.

2 Q The only reason you're making that speech, sir, is you  
3 don't remember every question I asked you, do you?

4 MR. SEGAL: Objection.

5 THE COURT: To the extent that this is argumentative  
6 question, it is. The objection is sustained.

7 Q Do you remember what, if any, questions I asked, about  
8 your whereabouts on the weekend prior to October 28th, 1991,  
9 sir?

10 A No, I don't recall that question.

11 Q You did a few minutes ago, though?

12 MR. SEGAL: Objection.

13 THE COURT: No, that's --

14 MR. KELLY: I'll withdraw that.

15 Q Mr. Millette, a friend of a friend is under suspicion of  
16 a serious crime. That was the situation --

17 MR. SEGAL: Objection, your Honor.

18 Q -- in April of 1992 when you were called before me?

19 A Yes.

20 Q If you had information to offer that you thought might  
21 vindicate an innocent man, would you have told someone on  
22 April 9th of 1992?

23 MR. SEGAL: Objection.

24 Q Yes or no?

25 THE COURT: The objection is overruled.

1 A If I had known that I had information that could clear  
2 somebody, I would have given it.

3 Q Even if no one asked you about it?

4 A I don't know.

5 Q You would be so anxious to clear somebody --

6 THE COURT: I do believe, Mr. Kelly, you're arguing  
7 with the witness.

8 MR. KELLY: I'll ask one last question. I'll try not  
9 to be argumentative.

10 Q Did you tell me or anybody with me on April 9th of 1992  
11 about a dinner party that took place on October 26th, 1991  
12 that was attended by that defendant?

13 A I don't recall.

14 THE COURT: Thank you, Mr. Millette. You are  
15 excused.

16 Members of the jury, we will stretch and the defense  
17 will call its next witness.

18 THE COURT: Who is next?

19 MR. SEGAL: Mr. Philip Colwell, C O L W E L L.

20 THE CLERK: Please be seated and spell your name for  
21 the reporter.

22 THE WITNESS: Philip Colwell, C O L W E L L.

23 THE COURT: Philip, one L or two L's.

24 THE WITNESS: One L.

25 THE COURT: You may proceed.

1                   Philip Colwell, sworn

2                   Direct Examination by Mr. Lopez

3       Q       Thank you. Mr. Colwell, are you employed?

4       A       Yes, I am.

5       Q       Where are you employed?

6       A       UPS Norwood.

7       Q       I'd ask you to speak up or move the microphone?

8       A       United Parcel Service, Norwood.

9       Q       Very good. Thank you. What position do you hold?

10      A       Package car driver.

11      Q       And how long have you had that position?

12      A       Two months.

13      Q       All right. Now, where do you live, sir?

14      A       44 Eastbourne Street.

15      Q       And where is 44 Eastbourne Street in reference to 39  
16      Eastbourne Street?

17      A       Directly across.

18      Q       Directly across the street?

19      A       (Witness nodded.)

20      Q       Now, I direct your attention to approximately two weeks  
21      before the date of October 28th, 1991, and I direct your  
22      attention to a week night at approximately 11 p.m., do you  
23      know where you were at that time?

24                   MR. KELLY: Can we have a particular date, your  
25      Honor, "a week night," how can he possibly answer that.

1 MR. LOPEZ: Your Honor, this is -- I'm directing the  
2 witness to his best memory.

3 THE COURT: Are you asking him where he was on one  
4 night two weeks before the incident?

5 MR. LOPEZ: That's correct.

6 THE COURT: Without telling us on what night?

7 MR. LOPEZ: October 14th.

8 Q Approximately October 14th?

9 A Approximately.

10 Q Let me try and clarify this.

11 Mr. Colwell, are you familiar with the date of  
12 October 28th, 1991?

13 A Yes.

14 Q Are you familiar with what happened on that day?

15 A Yes.

16 Q And approximately two weeks before that time, do you  
17 recall something else happening that you noticed?

18 A Yes.

19 Q Do you know the specific day in which you made the  
20 observation you were about to get into?

21 A No.

22 Q But are you certain that it was approximately two weeks  
23 before?

24 A Approximately.

25 Q Okay. Now, on that date approximately two weeks before

1     October 28th at approximately 11 p.m., were you in your car?

2     A     Yes.

3     Q     Where was your car located?

4     A     In front of my house.

5     Q     What kind of car did you own at that time?

6     A     Plymouth Volare.

7     Q     And were you with anyone at that time?

8     A     Yes.

9     Q     Which direction was your car pointed?

10    A     Facing toward Beach Street.

11    Q     And behind you was the dead end portion of Eastbourne?

12    A     Correct.

13    Q     All right. Now, while in your car at approximately 11  
14    p.m., what, if anything, did you observe?

15    A     An unknown person walking from the dead end in the middle  
16    of the street, went over to the driveway at 39 Eastbourne  
17    Street and walked past it, stopped at the yellow house which  
18    is the second house away from 39 Eastbourne, turned around,  
19    went back to the driveway at 39, and was going to go up it and  
20    the automatic lights came on, and this person turned around  
21    and headed down towards Beach Street.

22    Q     Now, when did you first notice this person?

23    A     As they were walking right beside my car.

24    Q     And at the time this person was walking beside your car,  
25    where exactly in the street was this person?

1 A Right in the middle of the street.

2 Q And so he passed right by your car?

3 A Yes.

4 Q Did he come from your rear or from --

5 A Rear.

6 Q From your rear, all right.

7 Can you describe with your best memory what this  
8 person -- what description of this person do you remember?

9 A Taller than me, approximately 5, 10, white.

10 Q White, did you say?

11 A White.

12 Q Do you mean Caucasian?

13 A Caucasian.

14 Q All right.

15 A Wearing a baseball hat, jeans, sneakers and a dark  
16 jacket.

17 Q And how tall are you, sir?

18 A 5, 6.

19 Q And this person that you saw was in your -- are you  
20 certain that he was taller than you?

21 A Yes.

22 MR. LOPEZ: Al, if you'll stand up.

23 Q Did you see this person on that night?

24 A No.

25 MR. LOPEZ: Thank you, your Honor.

1 Q Now, after this person walked by you, he went down to No.  
2 31?

3 A Yes.

4 Q What color is that house?

5 A Yellow.

6 Q And then at some point this person turned around?

7 A Yes.

8 Q When this person turned around, did you have an  
9 opportunity to see him as he walked toward you?

10 A Yes.

11 Q And then what did he do?

12 A He went toward the driveway at 39 Eastbourne. And like I  
13 said the automatic lights, the motion detectors, turned the  
14 light on, then he turned around and went toward Beach Street,  
15 walking pretty fast.

16 Q How far did he get up the driveway before the motion  
17 detectors went off?

18 A Not very far at all.

19 Q And after the lights went on this person headed in a  
20 direction?

21 THE COURT: He just told us he went toward Beach  
22 Street.

23 Q Was that the same direction that he had come from?

24 A No.

25 Q Was it the opposite direction?

1 A Yes.

2 Q And can you describe the speed or gait he was walking at  
3 after this light went off?

4 A Just a brisk pace.

5 Q Thank you very much, Mr. Colwell.

6 THE COURT: Anything else, Mr. Kelly?

7 MR. KELLY: Yes, your Honor.

8 Cross-examination by Mr. Kelly

9 Q Good afternoon, Mr. Colwell. How are you, sir?

10 A Fine, thank you.

11 Q Mr. Colwell, your best memory of this, of this particular  
12 night was that it was around 11 o'clock?

13 A Yes.

14 Q Obviously, it was dark?

15 A Correct.

16 Q I'm sorry. You'll have to keep your voice up a little  
17 bit. You can just speak into the microphone for me. You  
18 don't know really know what night of the week it was?

19 A No.

20 Q It was sometime, a couple weeks before the explosion?

21 A Yes.

22 Q Were you in the vicinity of Eastbourne Street when the  
23 explosion occurred?

24 A Yes.

25 Q Did you respond to the scene at all, sir?

1 A I didn't go over there, but I was home at the time, and I  
2 come out of the house.

3 Q Now, you live at 44 Eastbourne Street, Mr. Colwell?

4 A Yes.

5 Q And if you're looking out the front door of your house,  
6 is 39 Eastbourne directly in front of you or is it kind of  
7 diagonal? 39 Eastbourne Street, where is it in relation to  
8 your house?

9 A I'd say directly across.

10 Q And when you were parked in your Plymouth Volare, were  
11 you right in front of your house at 44 Eastbourne Street?

12 A Yes.

13 Q You said there was someone else with you in the car, who  
14 was with you in the car?

15 A A former girlfriend.

16 Q Okay. And then we would presume you were just talking,  
17 yes?

18 A Yes.

19 Q Nothing more than that?

20 A Nothing.

21 THE COURT: You needn't get into that, Mr. Kelly.

22 MR. KELLY: I just want to be sure, your Honor. I  
23 wouldn't want to be distracted.

24 Q This figure that you described came walking, your car was  
25 pointed, as I understand it, headed towards the corner of

1 Eastbourne and Beach?

2 A Correct.

3 Q And a figure comes walking up from the dead end or from  
4 behind your car, okay?

5 A (Witness nodded.)

6 THE COURT: Mr. Colwell, you need to say yes or no,  
7 because the reporter can't take down the nodding of the head  
8 or the shaking of it either.

9 THE WITNESS: Okay.

10 Q The person then, as you say, walked past the driveway up  
11 to the yellow house at 31, correct?

12 A Yes.

13 Q And that's about 20, 30 yards past where your car was  
14 parked?

15 A Correct.

16 Q Is it at that point when you first see somebody walking  
17 in the street?

18 A No.

19 Q You had seen him when he was near the car?

20 A Right beside my car.

21 Q Okay. Are there street lights on your street, Mr.  
22 Colwell?

23 A Yes, there are.

24 Q Did you see the person's face?

25 A No.

1 Q Do you know whether the person wore glasses?

2 A I don't know.

3 Q Or whether the person had facial hair?

4 A I don't know.

5 Q But you remember glancing as the person walked by, and  
6 how much of a person did you see as he walked by the window of  
7 your door there?

8 MR. LOPEZ: Objection as to the characterization of  
9 "glancing as he walked by."

10 THE COURT: Observing.

11 MR. KELLY: Observing.

12 Q How much of the person did you see as he walked by the  
13 window there?

14 A Just the back.

15 Q Then the person gets to the yellow house and he comes  
16 back, are you now focused on what this person is doing at this  
17 point as he's walking back towards your car?

18 A He was walking past my car on to that sidewalk at the end  
19 of her driveway, and he was on the sidewalk then, and then he  
20 came back up the sidewalk.

21 Q And have you stopped all the conversation with your  
22 girlfriend to pay attention to what this fellow was doing?

23 A Yes. I was wondering who it was and what was going on.

24 Q You hadn't seen that person in the area before?

25 A No.

1 Q The person then starts to walk up the driveway?

2 A Yes.

3 Q And then the lights go on?

4 A Yes.

5 Q And when the lights go on, those lights in that house are  
6 literally directly across from you from where you're sitting  
7 in your car?

8 A Yes.

9 Q Right. So that as you're looking at this person in the  
10 driveway, the lights are above that person and behind him,  
11 right?

12 A Right.

13 Q So, what you see there at 11 o'clock at night is  
14 effectively the outline of a person coming back down the  
15 driveway toward your car?

16 A Well, not toward my car.

17 Q He goes at an angle down towards Beach?

18 A Yes.

19 Q But is it fair to state that at that moment when the  
20 lights flip on you don't get a chance at that point either to  
21 see this person's face?

22 A Right.

23 Q Or to see what color clothing the person has on?

24 A Right.

25 Q Because the combination of the darkness and the light

1 behind him makes it really difficult for you to tell some of  
2 these features, isn't that fair to say?

3 A Yes.

4 Q Now, you did say that you remember the person having blue  
5 jeans, baseball cap, correct?

6 A Yes.

7 Q And you said "dark jacket," can you be more specific than  
8 "dark jacket" or is that as far as you can go?

9 A That is as far as I know.

10 Q Was the person, what was the person thin or a little  
11 stockier?

12 A I really don't remember.

13 Q Okay. When were you first asked about this subject  
14 matter by any law enforcement officers, Mr. Colwell?

15 A Immediately after the explosion.

16 Q You recall being interviewed by a couple of other Boston  
17 police detectives at about quarter of one on October 28, 1991?

18 A Yes.

19 Q That would have been Detective Messina and Detective  
20 Bishop.

21 Q Do you remember that?

22 A Yes.

23 Q And do you remember whether at that time, sir, you told  
24 Detectives Messina and Bishop something that was in more detail  
25 than you've told us here today?

1 MR. LOPEZ: Objection.

2 MR. KELLY: Do you remember that?

3 MR. LOPEZ: I don't understand the question.

4 Something in more detail with respect to --

5 MR. KELLY: I'll ask a better question.

6 Q Did you give them a more detailed description of the  
7 person you saw that night on October 28th, 1991 that you've  
8 been able to give us here today?

9 A Yes.

10 Q What did you tell those officers at that time, if you  
11 recall?

12 A I really don't remember.

13 Q Okay. If I showed you this report, do you think it would  
14 help refresh your memory?

15 A Possibly.

16 MR. KELLY: Your Honor, if I may approach the  
17 witness.

18 Q Mr. Colwell, if you can read the second paragraph of that  
19 report?

20 A About two weeks ago --

21 THE COURT: Read it to yourself, if you would, Mr.  
22 Colwell, please.

23 Q My fault. I'm sorry.

24 If you could read that portion of the report and then  
25 when you're done just kind of put it down.

1 (Pause.)

2 Having read that, sir, does it refresh your memory as  
3 to whether you provided any additional detail to the two  
4 detectives that you've been able to recall today?

5 A Yes.

6 Q Okay. And what else do you remember telling them about  
7 this person you saw?

8 A Heavy muscular build.

9 Q So you remember describing him as other than thin?

10 A Correct.

11 Q What else did you tell him?

12 A A tan jacket, but like you said, with the -- 11 o'clock  
13 at night in the darkness, I can't be positive.

14 Q Okay. Do you remember telling them anything else, sir?

15 A No.

16 Q Did you tell him that the person had no glasses or beard?

17 A Yes.

18 Q And is that your best memory now, no glasses, no beard?

19 A Yes.

20 THE COURT: Yes?

21 THE WITNESS: Yes.

22 Q Thank you, Mr. Colwell.

23 THE COURT: Any further questions?

24 MR. LOPEZ: No, your Honor.

25 THE COURT: Thank you, Mr. Colwell. You're excused.

1 Who is next?

2 MR. SEGAL: Brian O'Leary.

3 Brian O'Leary, sworn

4 Direct Examination by Mr. Segal

5 THE CLERK: Please be seated and spell your name for  
6 the reporter.

7 THE WITNESS: Brian O'Leary, O ' L E A R Y.

8 Q Good afternoon, Mr. O'Leary. Where do you live?

9 A I live at 109 Snow Road in North Quincy.

10 Q What is your occupation, Mr. O'Leary?

11 A I'm a union carpenter.

12 Q How long have you been a carpenter?

13 A I've been in the Union not all that long, but I've been a  
14 carpenter. I've been doing carpentry since I was young.

15 Q Have you had occasion to do some carpentry work over the  
16 years for Al Trenkler?

17 A I have.

18 Q Let me show you what I marked as Defendant's Exhibit 142  
19 and 143 and 144 for identification, and I'll ask if you can  
20 identify these three pictures, sir?

21 A These are some boxes I built for Al for a job he was  
22 doing. They were for the purpose of air lifting satellite  
23 dishes and other satellite equipment for the building in  
24 Boston.

25 Q Do you recall if that building was the Christian Science

1 Church?

2 A I believe it was.

3 MR. SEGAL: I would ask at this time these three  
4 exhibits, 142, 143, 144 be admitted in evidence.

5 THE COURT: Mr. Segal, are those all the boxes, all  
6 three photos?

7 MR. SEGAL: Three different shots of positions.

8 MR. LIBBY: May I see those, please.

9 MR. SEGAL: I think they're coming in without  
10 objection.

11 THE COURT: All right. They're in evidence without  
12 objection.

13 [Defendant's Exhibits 142, 143, 144 entered into  
14 evidence.]

15 Q By the way, is that work you did for Mr. Trenkler  
16 represented in those boxes, represented in those pictures?

17 A Yes, it is.

18 MR. SEGAL: I would ask that they be published to the  
19 jury.

20 Q Were there other jobs where Al Trenkler would hire you to  
21 do the carpentry work?

22 A Yes.

23 Q Do you ever recall him doing any carpentry work on any of  
24 these jobs?

25 A No, any time he need something like that done, he usually

1 gave me a call.

2 Q Now, on October 16th, 1991, were you working at the MIT  
3 job?

4 A I was.

5 Q And what were you doing there?

6 A We were setting up a satellite down link and running a  
7 cable and various assorted work.

8 Q And were you working for Mr. Trenkler on that job too?

9 A I was.

10 Q Was that the date he was arrested?

11 A It was right in those few days that I was working there  
12 that he was arrested, yes.

13 MR. SEGAL: No further questions.

14 THE COURT: Any questions?

15 MR. LIBBY: Yes, your Honor.

16 Cross-examination by Mr. Libby

17 Q Good afternoon, Mr. O'Leary.

18 A How are you?

19 Q We've met before?

20 A Yes.

21 Q You know that I'm Frank Libby?

22 A Yes.

23 Q If I may approach, your Honor, if I may show you  
24 Government's Exhibit 68, and I'll ask you if you recognize  
25 what's depicted in the photograph, and you have to look

1 closely, please. Do you see two individuals in the  
2 photograph?

3 A I do.

4 Q Do you recognize them?

5 A That looks kind of like Rich Brown, but I'm not sure. Do  
6 you know Rich Brown, is that him?

7 Q And who is to his right?

8 A Oh, that's Al.

9 Q And do you recall the circumstances, you see that the  
10 location where this photograph is being taken?

11 A Yeah, we're standing at the roof of a building.

12 Q Is that the Christian Science building?

13 A It's hard to say. There's a lot of roof of buildings  
14 that look just like that.

15 Q The gentleman on the left as you look at Government's  
16 Exhibit 68 is Mr. Alfred Trenkler?

17 A I would say so.

18 MR. LIBBY: The Government would offer Exhibit 68.

19 MR. SEGAL: I'm not sure.

20 THE COURT: Yes or no, is there an objection?

21 MR. SEGAL: Yes.

22 THE COURT: What are you offering it for, just to  
23 show a picture of Mr. Trenkler?

24 Q Let me try again. Do you recognize that roof top,  
25 Mr. O'Leary?

1 A I do not.

2 Q Do you recognize this as a picture of Mr. Trenkler and  
3 Mr. Brown together?

4 A I would.

5 MR. LIBBY: I would offer that for that reason, your  
6 Honor.

7 MR. SEGAL: Foundation.

8 THE COURT: Well, what is the point of having a  
9 picture of Mr. Brown and Mr. Trenkler together?

10 MR. LIBBY: Show them together at the work site.

11 THE COURT: We don't know if that's the work site,  
12 that's the problem.

13 MR. LIBBY: I'll ask that question.

14 Q Do you recognize this as being one of the ARCOM's work  
15 site?

16 A I could not positively say.

17 Q Did you work on the Christian Science building at any  
18 time, sir?

19 A I don't believe I did, no.

20 Q Did you work on any roof with ARCOM, please?

21 A Several roof tops.

22 Q Is that one of those roof tops, please?

23 A I couldn't say that it was one of them I worked for. It  
24 is a roof top, yes.

25 Q Does it look familiar to you, sir?

1 A No, not particularly.

2 MR. LIBBY: Your Honor, I would offer it for the  
3 limited purpose to show --

4 THE COURT: It shall be marked for identification as  
5 Government's Exhibit 68.

6 [Government's Exhibit 68 marked for identification.]

7 Q Mr. O'Leary, we met for the first time in March of '92?

8 A Yeah, as a matter of fact, it was two weekends after my  
9 birthday.

10 Q You came into the U.S. Attorney's Office to visit with  
11 the Government, correct?

12 A Yes.

13 Q Where did you come in from?

14 A Martha's Vineyard.

15 Q And you were there looking, looking for work?

16 A I was working, yes.

17 Q And at that time, sir, we had a conversation, right?

18 A Yes.

19 Q With an agent present?

20 A Yes.

21 Q And we talked about your, your familiarity with the  
22 defendant, Mr. Trenkler, correct?

23 A Yes.

24 Q And it dated back to the mid 1980s; is that correct?

25 A Yeah.

- 1 Q Where were you living at the time?
- 2 A I was living at home, I believe.
- 3 Q Which is where?
- 4 A 109 Snow Road in North Quincy.
- 5 Q In North Quincy?
- 6 A Yes.
- 7 Q Do you recall when you first met Mr. Trenkler?
- 8 A I do.
- 9 Q And when was that?
- 10 A It was around 1985, I would say.
- 11 Q And --
- 12 A I was working at a gas station, he used to get gas there.
- 13 Q And that's how you met him?
- 14 A Yes.
- 15 Q What was he driving at the time?
- 16 A Jeep.
- 17 Q Four-wheel-drive jeep?
- 18 A Four-wheel-drive jeep.
- 19 Q How often would you see him?
- 20 A I don't know; your average customer, once, twice a week.
- 21 Q Did you have a conversation with him?
- 22 A Yeah, just shoot the breeze.
- 23 Q What was your first impression of him, please?
- 24 A It --
- 25 MR. SEGAL: Objection.

1 THE COURT: The objection is sustained.

2 Q Did you become friendly with him?

3 A Sure.

4 Q And you met with him more than just simply at the gas  
5 station; is that right?

6 A Yeah, over the time, four -- me and three of my friends  
7 worked at the gas station. We were all close friends growing  
8 up.

9 Q And did the three of you, your friends and yourself, go  
10 off and do things with Mr. Trenkler?

11 A Yeah, we became friends. Things you do with your regular  
12 friends.

13 Q Who were your friends?

14 A My friend Andy Robinson, a friend of mine Steve Mahoney  
15 and Dave Gaydes.

16 Q And would you go off, and these outings that you would go  
17 to --

18 MR. SEGAL: Objection.

19 THE COURT: The objection is sustained.

20 May I see counsel, please.

21 [Conference at the bench, as follows:

22 THE COURT: There was a motion in limine asking about  
23 gifts and such.

24 MR. LIBBY: I'm not getting into it.

25 THE COURT: What are you getting into?

1 MR. LIBBY: Just this basis of familiarity and his  
2 bias, your Honor, that's all. He'd go on these friendly  
3 outings and they make trips together and socializing, for  
4 years, from '84 on. My question, I only have one or two other  
5 questions on that, and we're going to get into work sites.  
6 Nothing to do with homosexuality.

7 THE COURT: Work sites.

8 MR. LIBBY: He had worked with Mr. Trenkler various  
9 times of the year at various other work sites.

10 MR. SEGAL: All I put him on for was carpentry.  
11 We're way afield.

12 THE COURT: How is this part of the direct?

13 MR. LIBBY: Clearly with respect to his bias as to  
14 having him work for Al over the years, five, six, seven times,  
15 various times, various different locations. I believe I'm  
16 clearly entitled to get into that.

17 THE COURT: I frankly don't understand why you're  
18 doing this. What came out on direct is that he was a  
19 carpenter, has done carpentry work for the defendant. He  
20 built the boxes for the Christian Science Church. On  
21 September 16th, he was working for the defendant and he had  
22 never seen the defendant do carpentry work. That's the sum  
23 total of the direct.

24 Are you saying that he's lying about --

25 MR. LIBBY: No.

1 THE COURT: Well, why do we get into this?

2 MR. LIBBY: I am entitled to examine him with respect  
3 to any of his testimony, his believability. Obviously, the  
4 purpose here with respect to his boxes is to indicate somehow,  
5 and I'm going to ask him about the nature of his work, the  
6 location of his work. I'm entitled to probe him with respect  
7 to his bias on that.

8 THE COURT: I mean, what is there about the direct?  
9 I agree you're entitled asking about the judgment, getting  
10 into all of this other stuff --

11 MR. LIBBY: I understand.

12 THE COURT: The reason I asked you, first, in the  
13 first place, is I'm concerned about young men getting in and  
14 driving around.

15 MR. LIBBY: Well, I'm not going to do that. I'm not  
16 going to do that. I won't do that.

17 MR. SEGAL: That's the Cody motion.

18 THE COURT: That's right.

19 MR. LIBBY: That's right. I'm not going to do that.  
20 I have no intention of doing that.

21 THE COURT: That's why I stopped. I don't know why  
22 you're pressing on this bias.

23 ... end of conference at the bench.]

24 THE COURT: You may proceed.

25 MR. LIBBY: If I may, your Honor, Exhibit 132 is

1 already in evidence, if I could publish it to the jury.

2 THE COURT: I think they have seen it, but they can  
3 see it again. This is the same as Government Exhibit 68,  
4 enlarged.

5 MR. LIBBY: That's right. That's correct, your  
6 Honor.

7 Q You had a working relationship with Mr. Trenkler over the  
8 years?

9 A Yes.

10 Q And you worked on satellite dish kind of work?

11 A Sure.

12 Q Is that right?

13 Could you please pull the microphone?

14 A Yes.

15 Q You worked on towers with him?

16 A Yes.

17 Q And you've seen him in and around towers?

18 A Sure.

19 Q Is that right?

20 A Yes.

21 Q Where are these towers primarily located, please?

22 A Well, we did a big tower down in Rhode Island. I think  
23 it was a 180-foot free-standing tower.

24 Q Is that in the middle of a city?

25 A No, out in the suburbs.

1 Q Out in the country?

2 A Country, I guess.

3 Q Primarily located on hill tops, out in the woods?

4 A That type of thing, yeah.

5 Q Did these towers, sir, have, typically, transmitting  
6 stations located nearby?

7 A Yeah, one; yes, they do.

8 Q And you had with you other individuals working for ARCOM?

9 A Sure.

10 Q Are you familiar with a fellow named Nurdan Cagdas?

11 A A who?

12 Q A Nurdan Cagdas?

13 A I don't know the man.

14 Q David Flaherty?

15 A I don't know the man.

16 Q Robert Craig?

17 A Yeah.

18 Q Andy Robinson?

19 A Yeah.

20 Q You know those folks?

21 A Yes.

22 Q Now, in fact, Mr. O'Leary, you introduced these  
23 individuals to Mr. Trenkler, did you not?

24 A Sure.

25 Q You introduced Mr. Brown to Mr. Trenkler, correct?

1 A I probably did, yeah.

2 Q In the mid-'80s, right?

3 A That would be around the time frame, yeah.

4 Q You introduced Mr. Craig to Mr. Trenkler?

5 A Yeah.

6 Q You understood that Mr. Craig and Mr. Trenkler were  
7 roommates thereafter, right?

8 A Yeah.

9 Q For some period of time?

10 A Sure.

11 Q Now, you stayed in contact with Mr. Trenkler on and off  
12 from 1984, 1985, on; is that correct?

13 A Yeah.

14 Q During that period of time, sir, did you become aware of  
15 an incident in Quincy in 1986 involving the detonation of an  
16 explosive device?

17 MR. SEGAL: Objection.

18 THE COURT: The objection is sustained.

19 A I did not.

20 THE COURT: No, you needn't answer that. It is well  
21 beyond the scope of the direct.

22 MR. LIBBY: Let me see if I can finish up, your  
23 Honor.

24 Q Shortly before we met in March of 1992, Mr. O'Leary, had  
25 you received a grand jury subpoena, correct?

1 A Mm-hmm.

2 Q To come to Boston to appear before a grand jury?

3 A Yes.

4 Q To be sworn under oath and give testimony; is that  
5 right?

6 A If that's what it would entail, yes.

7 Q Where were you when you received that subpoena?

8 A I never actually received the subpoena until I came  
9 here. A gentleman called me, a police officer, I believe his  
10 name was Frank Armstrong, and he called me, and he asked me if  
11 I could come in.

12 Q And Sergeant Armstrong, or rather, Frank Armstrong told  
13 you he was a sergeant with the Boston Police Department?

14 A Yes.

15 Q You recall that conversation?

16 A Yeah, I do.

17 Q And you were on Martha's Vineyard at the time?

18 A Yes, I was.

19 MR. SEGAL: Objection.

20 THE COURT: What does that have to do with the direct  
21 or the issue of credibility?

22 MR. LIBBY: Your Honor, I beg your pardon. I will  
23 rephrase it, so the Court can understand.

24 Q Immediately upon finishing the conversation with Sergeant  
25 Armstrong, Mr. O'Leary, you reached out for Al Trenkler, did

1     you not?

2     A     I did.

3     Q     And the way you did that was by paging him, correct?

4     A     Yes.

5     Q     Do you recall his pager number?

6     A     I don't.

7             MR. LIBBY:  If I may approach, your Honor?

8             THE COURT:  Well, why do we need this?  He said he  
9     did.

10            MR. LIBBY:  I want to see if I can refresh his  
11   recollection.

12   Q     I'll show you Government's Exhibit 32 A, sir, and ask if  
13   that refreshes your recollection?

14   A     Yeah, that sounds familiar; that looks familiar.

15   Q     And what was his pager number, please?

16   A     Pager number?

17   Q     Do you recall his, Alfred Trenkler's number there at that  
18   time?

19   A     That one that's right there?

20   Q     And what is that?

21   A     617-553-0778.

22   Q     And that's the pager number that you used on that  
23   occasion?

24   A     I can't say, but it's very likely that it is.

25            MR. LIBBY:  Nothing further, your Honor.

Redirect Examination by Mr. Segal

Q Mr. O'Leary, do you understand when you were called in, they were investigating Mr. Alfred Trenkler?

A Yeah, when Frank Armstrong called me, I thought it was a fi -- I thought it was just somebody calling up, kidding around.

MR. LIBBY: Your Honor, if we can just have the witness answer the question.

Q Is it fair to say you called Mr. Trenkler to notify him that you were being called in?

A I did.

MR. SEGAL: No further questions.

MR. LIBBY: Nothing.

THE COURT: Thank you, Mr. O'Leary, you are excused.

Members of the jury, we will take a brief luncheon. See if we can get it done in 15 minutes.

[Whereupon, the jury left the courtroom.]

THE COURT: Who is next?

MR. LOPEZ: Edward Alvaro.

MR. LIBBY: Which raises this point. There's going to be some documentation and elicited testimony with respect to bids and work performed in '92 and perhaps even into '93, some documentation, I just fail to see the relevance of that. And two, expected testimony from a Mr. Winchester the day the defendant was arrested on that day. I don't see any reason

1 why we should get into the specifics of that either.

2 THE COURT: What is this being offered for? To show  
3 that there was a viable company in '92.

4 MR. LOPEZ: With respect to Mr. Libby's first point I  
5 think he's talking about the submitted bids of Mr. Alvaro.  
6 We're going to offer them conditionally, because Mr. Alvaro  
7 can only state that he had conversations with Al with respect  
8 to these bids in the fall of 1991 prior to October 28th. He  
9 cannot say, however, that it was prior to October 28th.  
10 Mr. McNamara who will be coming in next week can pinpoint  
11 it before October --

12 THE COURT: What's the relevance of the testimony?  
13 If it's offered on the issue that the company got the business  
14 after the event, that's hardly relevant or if Mr. Trenkler  
15 didn't even know about it.

16 MR. LOPEZ: The relevance is with respect to  
17 prospective employment which Mr. Trenkler did know about prior  
18 to October 28th.

19 THE COURT: If Mr. Alvaro didn't talk to him until  
20 after October 28th.

21 MR. LOPEZ: Mr. Alvaro did talk to him before October  
22 28th. Mr. Alvaro cannot pinpoint specifically when it was.  
23 If I can just try and track it for you. Mr. --

24 THE COURT: Wait a minute. Can he pinpoint that he  
25 had a discussion about a prospective job for ARCOM before

1 October 28th?

2 MR. LOPEZ: What he can do is he can state that he  
3 had discussions with Mr. Trenkler about these bids in the fall  
4 of 1991 when this photo was taken. He knows further that Al  
5 was there on behalf of the Christian Science Church sent there  
6 by Mr. McNamara. What he can't tell you is whether or not it  
7 was before October 28th. That's why I'm saying --

8 THE COURT: Well, the Christian Science Church went  
9 on past October 28th, did it not.

10 MR. LOPEZ: That's different, your Honor. This is a  
11 ten-meter dish. This ten-meter dish was trying to be moved by  
12 Channel 25. Mr. Alvaro was involved in that. Mr. Trenkler  
13 went out to Channel 25 pursuant to Mr. McNamara's request  
14 prior to October 28th while he was looking at this particular  
15 dish to see how he could move it. There were discussions  
16 about other business. The other business, bids were submitted  
17 in 1992, but the initial contact was in --

18 THE COURT: Well, I suppose, I suppose Mr. Libby can  
19 tell us that he had some discussion with Mr. Trenkler before  
20 the 28th of October about the possibility of getting  
21 business. That doesn't require us to get into what business  
22 he in fact got into in 1992 because that is equally  
23 irrelevant. What's the second issue?

24 MR. LIBBY: The arrest scenario at MIT, I see no  
25 relevance.

1 THE COURT: What does that have to do with this case.

2 MR. SEGAL: All we want to show with Mr. Winchester  
3 is he had some discussions with this man about projects, and  
4 in December he was working on a viable project at MIT.

5 THE COURT: What's the relevance of that?

6 MR. SEGAL: There was plenty of evidence that he was  
7 a target for a year. Here he's working on a project rather  
8 than fleeing some place.

9 THE COURT: It's an unconsciousness of guilt  
10 argument.

11 MR. SEGAL: Yeah, that's a good way to put it. It's  
12 very well thought of, your Honor. I wish I had been that  
13 quick.

14 MR. LIBBY: There's no relevance to that --

15 THE COURT: I don't think you're going to talk about  
16 that. Your objection is noted. That's it?

17 MR. SEGAL: Yes.

18 THE COURT: How about Cody?

19 MR. LOPEZ: That's what I was going to get --

20 THE COURT: While we're on the record. Mr. Kelly,  
21 how about Cody?

22 MR. KELLY: Your Honor, we obviously oppose the  
23 motion for some of the same --

24 THE COURT: Well, I understand that. But of course,  
25 it goes into things that we had agreed we wouldn't get into

1 it.

2 MR. KELLY: What we had agreed we wouldn't get into,  
3 your Honor, two areas, sexual solicitation of teenage males  
4 for sexual purposes and any mention of drugs. And I believe  
5 if you look at the transcript of Mr. Cody's testimony there  
6 are neither of those subjects mentioned.

7 THE COURT: There was a separate motion about  
8 Mr. Cody which I sort of said after the fact no ruling was  
9 necessary. I don't think I told anybody about it. I simply  
10 endorsed it thinking it was the one that we had talked about,  
11 wasn't it?

12 MR. SEGAL: There was a discussion up at the bench,  
13 and he, basically Mr. Kelly said I'm not going to get into  
14 those areas. My concern is, and the reason for this motion is  
15 over my vigorous objection, is I think we went through the  
16 back-door by putting on evidence that he was living with a  
17 15-year old giving him gifts. That's the same sort of thing  
18 your Honor ruled out. I just think it went through the  
19 back-door as much as I tried to close the door with  
20 objections, and I think it should now be struck because --

21 THE COURT: I'm going to read his testimony before I  
22 strike it.

23 MR. SEGAL: And I would ask you to read it in  
24 conjunction with your 404(b) orders.

25 THE COURT: Oh, yeah, I will do that.

1 (The judge confers with the clerk.)

2 [Whereupon, the jury entered the courtroom.]

3 Edward Alvaro, sworn

4 THE CLERK: Please be seated and spell your name for  
5 the reporter.

6 THE WITNESS: My last name is Alvaro, A L V A R O.

7 Direct Examination by Mr. Segal

8 Q Mr. Alvaro, good afternoon. Where are you employed, sir?

9 A WFXR, Channel 25.

10 Q And is that Fox 25?

11 A Yes.

12 Q And how long have you been employed with Fox 25?

13 A I've been at that television station since 1981, 12  
14 years.

15 Q And what position do you hold with Fox 25?

16 A I'm the engineering supervisor.

17 Q Can you briefly describe what your responsibilities are  
18 with Fox 25?

19 A I supervise the department of operations and people. I'm  
20 also involved with dealing with vendors, special projects,  
21 building maintenance and whatnot.

22 Q Now, directing your attention to March of 1992, did you  
23 contact Al Trenkler at that time?

24 MR. LIBBY: Objection, your Honor. March of '92.

25 THE COURT: I thought we had agreed that we would

1 talk about the fall of 1991.

2 MR. LOPEZ: Your Honor, if I may approach.

3 THE COURT: We just discussed this, Mr. Lopez.

4 MR. LOPEZ: I understand, that your Honor. There is  
5 a sequence here that will establish the relevance of this, and  
6 this is --

7 THE COURT: I think we can do it very well without  
8 the sequence if I understand what it is you're going to get  
9 into.

10 MR. LOPEZ: Thank you. May I approach the witness,  
11 your Honor?

12 THE COURT: Yes. If these are '90, '92 contracts, I  
13 agreed we wouldn't get into them.

14 MR. LOPEZ: I would like to have them marked for  
15 identification purposes.

16 THE COURT: We can do that.

17 MR. LOPEZ: Defendant's Exhibit 145 for  
18 identification purposes.

19 [Defendant's Exhibits 145 and 146 marked for  
20 identification.]

21 Q Sir, I ask you if you recognize that?

22 A Yes.

23 Q And I show you what's been marked as Defendant's Exhibit  
24 146 for identification, and I ask you if you recognize that?

25 A Yes.

1 Q Now, --

2 MR. LIBBY: Excuse me, which one is 145 and 146.

3 THE COURT: It doesn't make any difference. They're  
4 only marked for identification.

5 MR. LIBBY: I've got two 145s, your Honor.

6 (Counsel confer.)

7 Q Now, directing your attention to what's been marked as  
8 Exhibit 145 for identification, can you -- is it fair to say  
9 that that is a bid for moving a 3.8 meter and 5.8 meter dish?

10 A Yes.

11 MR. LIBBY: Your Honor, please.

12 THE COURT: It's an introductory question, we're now  
13 going back to the fall.

14 Q And directing your attention to what's been marked as  
15 Exhibit 146 for identification, is that a bid for the  
16 installation of a 7-meter dish?

17 A Yes, it is.

18 Q And just one more preliminary question, your Honor, you  
19 received these bids sometime in March of 1992, is that  
20 correct?

21 A That's correct.

22 Q Now, --

23 THE COURT: Persistence does pay sometimes.

24 Q Do you recall when the subject of these bids was first  
25 discussed with Alfred Trenkler?

- 1 A Yes.
- 2 Q When was that?
- 3 A Sometime in the autumn of '91.
- 4 Q Do you recall the exact date?
- 5 A No.
- 6 Q Do you recall the exact month?
- 7 A No.
- 8 Q What, if anything, do you recall about your first  
9 discussion with respect to these bids?
- 10 A Mr. Trenkler came to our old facility which was in  
11 Needham Heights on behalf of the monitor, Channel 68 to look  
12 at a ten-meter satellite dish we had there that we were going  
13 to give to anyone who wanted it just for the cost of taking it  
14 out there, we were going to be moving to Dedham. We were not  
15 going to be bringing that dish with us.
- 16 Q Did you have an understanding at that time as to what  
17 organization Channel 68 was affiliated with?
- 18 A Christian Science.
- 19 Q And do you recall anything else about this meeting in  
20 1991?
- 21 A Mr. Trenkler took some pictures of the dish.
- 22 Q I'll show you what's been marked as Defendant's 147, and  
23 I would ask you if you recognize that?
- 24 A Yes, I do.
- 25 Q And what is that?

1 A That was our Scientific Atlanta ten-meter satellite dish,  
2 and part of it in the picture --

3 Q And Mr. Trenkler took that photograph when you met him?

4 A Yes.

5 MR. LOPEZ: I would introduce this into evidence,,  
6 your Honor, at this time.

7 THE COURT: No objection.

8 MR. LIBBY: Conditionally, your Honor.

9 THE COURT: Right. It is being offered for the  
10 purpose of pinpointing a particular date for the conversation.

11 MR. LOPEZ: That's correct.

12 THE COURT: And only for that purpose.

13 Q And is this a fair and accurate representation of the  
14 ten-meter dish sometime in the autumn of 1991?

15 A Yes.

16 Q Your Honor, I would offer the photograph at this point in  
17 time with respect to the --

18 THE COURT: It is in evidence on that issue to assist  
19 in helping the date. Yes.

20 MR. LOPEZ: May I give it to the jury? Thank you.

21 MR. LOPEZ: No more questions.

22 THE COURT: Anything?

23 MR. LIBBY: Briefly.

24 Cross-examination by Mr. Libby

25 Q Mr. Alvaro, before 1991 did Mr. Trenkler ever perform any

1 services for your work?

2 A Not directly for us.

3 Q Did you ever see him performing any services for you?

4 A Yes.

5 Q Where?

6 A On or at our site there in Needham.

7 Q Was this after October 28, 1991?

8 A No, before, well before.

9 Q And what were the kind of services?

10 A He was working for Boston Catholic television. We carry  
11 the Mass, we carried the Mass then. He was putting the dish  
12 on the roof or something like that. He was doing some work  
13 for them.

14 Q Did you actually see him working?

15 A I can't recall, but I know I've seen -- I saw him there.

16 Q And that kind of work involved telecommunications,  
17 correct?

18 A Yes.

19 Q Wiring, and so forth?

20 A Yes.

21 Q Connections?

22 A Yes.

23 Q Cooking things up?

24 A Yes.

25 Q Is that right? To your knowledge, was Mr. Trenkler

1 knowledgeable and skilled in that area?

2 A At that time I did not know him, I don't know.

3 Q Did you have any report to the contrary, reflecting  
4 anything negative --

5 (Mr. Lopez stands.)

6 THE COURT: The objection is sustained.

7 Q Over what period of time was he working on that job that  
8 you're talking about, was it a Mass, is that what you said?

9 A Oh, way back?

10 Q Yes. Way back?

11 A I don't recall, it was years ago.

12 Q When you say way back, mid'80's?

13 A That's early to mid '80's.

14 Q One job?

15 A I don't recall.

16 Q More than one job?

17 A It may have been.

18 Q Two or three?

19 A May have been.

20 Q Did the job last a month at a time?

21 A No. They were very brief periods.

22 Q Was he working alone?

23 A I seem to recall there was more than one person there  
24 doing the work.

25 Q Two or three?

1 A Probably, yeah.

2 Q Do you recall their names?

3 A No.

4 Q Other than -- and this was in what location, please?

5 A In Needham, our old studio.

6 Q Other than seeing Mr. Trenkler present at your old  
7 studios in Needham, sir, have you ever seen him off of those  
8 premises at any time, ever been with him off of those  
9 premises?

10 A No.

11 Q Ever socialize with him?

12 A No.

13 Q Do you know any of his friends or associates?

14 A Work associates?

15 Q Yes.

16 A People that used to work at Boston Catholic.

17 Q Had you ever visited Mr. Trenkler at his home?

18 A No.

19 Q Did you know where he lived?

20 A No.

21 Q Did you know anything about his hobbies or interests?

22 A No.

23 Q Do you have any idea, sir, -- strike that.

24 Were you -- do you have any knowledge, sir, at all of  
25 any kind about any of the circumstances surrounding the

1 explosion that took place in Roslindale.

2 (Mr. Lopez stands.)

3 THE COURT: The objection is sustained.

4 MR. LOPEZ: Thank you, your Honor.

5 Q Mr. Alvaro, were you subpoenaed here today?

6 A Yes.

7 Q Absent that subpoena, sir, would you have appeared?

8 A Probably not.

9 MR. LIBBY: Thank you. Nothing further.

10 MR. LOPEZ: Nothing, your Honor.

11 THE COURT: Thank you, Mr. Alvaro. You are excused.

12 Who is next?

13 MS. SHARTON: Frank Cavallo, your Honor.

14 Frank Cavallo, sworn

15 Direct Examination by Ms. Sharton

16 THE CLERK: Please be seated and spell your name for  
17 the reporter.

18 THE WITNESS: It's Frank Cavallo, C A V A L L O.

19 THE COURT: You may proceed.

20 Q Mr. Cavallo, where do you live, sir?

21 A I live in Hopkinton.

22 Q Are you married?

23 A Yes.

24 Q Do you have any children?

25 A Yes, two.

1 Q What is your educational background?

2 A I have a Bachelors Degree in Management and an Associates  
3 Degree in Electronic Communication.

4 Q What is your occupation, sir?

5 A A general manager of Videocom, and Videocom Satellite.

6 Q Where is the Videocom located?

7 A In Dedham.

8 Q Are you also a vice president of that company?

9 A I am.

10 Q And what does Videocom do, sir? What is that company?

11 A We're in the satellite distribution business. We have  
12 transmitted television signals for broadcast networks and  
13 others.

14 Q How long have you been affiliated with Videocom?

15 A Eleven years.

16 Q Were you always vice president and general manager?

17 A No.

18 Q How long have you been vice president and general  
19 manager?

20 A Three or four years.

21 Q And can you give us an idea of the type of services that  
22 Videocom provides in a little more detail, who are your  
23 customers and what do you provide for them?

24 A Customers include companies like broadcast networks:  
25 CBS, ABC, ESPN, locally sports channels, cable news, MIT.

1 Q You provide satellite services?

2 A Yes. We distribute programming for them. They deliver  
3 us a signal through fiber optics or microwave connections, and  
4 we'll distribute it via satellites and we'll distribute it to  
5 different points around the world.

6 Q Do you put in satellite dishes for your customers?

7 A We don't do any installations. We're a service provider.

8 Q Mr. Cavallo, do you know Alfred Trenkler?

9 A Yes.

10 Q How long have you known him?

11 A Five to seven years.

12 Q What is your relationship to Mr. Trenkler?

13 A He's strictly business association. He's done some  
14 contract work for us.

15 Q Have you hired him on occasion to be a subcontractor to  
16 help provide services to your customers?

17 A We've hired him to do installations and to provide  
18 services for us.

19 Q And was he paid on a per job basis when he did  
20 installations?

21 A Yes, he was.

22 Q When you say "installations," are you talking about  
23 satellite dishes?

24 A Yes, in order for us to provide services to other  
25 customers, it includes satellite dishes including towers and,

1 you know, the hardware, the specific hardware that's required  
2 to facilitate the service for our customers and installation  
3 of those, that hardware as part of what's necessary.

4 Q Okay. When you say "satellite dishes," you're talking  
5 about the big white things that are up on the roof --

6 A Yes. We have various sizes for different applications,  
7 but our largest antenna would be nine meters. It's very, very  
8 large and seven meters, seven-meter, five-meter antennas that  
9 are used in conjunction with our services.

10 Q Mr. Cavallo, approximately how many jobs over the past  
11 five to seven years did Mr. Trenkler perform at Videocom?

12 A Probably 20 to, 20, 30, maybe 40.

13 Q And going back to the late 1980s, sir, what projects did  
14 Mr. Trenkler perform for Videocom at that time?

15 A Mr. Trenkler installed two satellite dishes, a tower. He  
16 installed a power generator.

17 Q What is installing a, what does installing a satellite  
18 tower entail?

19 A A satellite tower entails a foundation. It entails doing  
20 some wind load studies to insure it's the correct tower for  
21 the correct size antennas. It involves hiring a crane, and it  
22 finally involves physically climbing that tower and erecting  
23 the tower.

24 Q And these were the services that Mr. Trenkler performed  
25 for you in the late 1980s?

1 A That was one of the things he did, yes.

2 Q How much was Mr. Trenkler, his company, paid for that  
3 particular job?

4 THE COURT: Which particular job?

5 MS. SHARTON: The erection of the satellite job, the  
6 late 1980s?

7 A I don't remember specifically, I would imagine four or  
8 five thousands of dollars, maybe more.

9 Q Did Mr. Trenkler also perform some jobs in New Hampshire  
10 in the late 1980's?

11 A We were contracted by ABC to help out with the New  
12 Hampshire's primers, and the company Mr. Trenkler was  
13 associated with did help out with some microwave link, point  
14 to point microwave links for the New Hampshire primers in  
15 1988.

16 Q What exactly did that job entail?

17 A New Hampshire is a place where there is not a lot,  
18 especially in 1988, broadcast activity that comes out of that  
19 region. And there's only -- at the time, there was only a few  
20 ways to send broadcast signals out of that region, and we  
21 needed to do something special for ABC, because of all of  
22 those links were taken and additional signals were needed. So  
23 point to point microwave was simply -- the antenna installed  
24 on top of the building, temporarily, I believe this particular  
25 link was to Mt. Uncanoonick (ph.) from downtown New Hampshire,

1 and from that point we took the signalling in via traditional  
2 fiber optics, so it was an intermediary link.

3 Q Mr. Cavallo, how much has Mr. Trenkler paid for his  
4 services in connection with the New Hampshire primer work?

5 A Probably in that same range, 4- or \$5,000. It's been  
6 quite a few years, so I don't remember exactly.

7 Q Directing your attention to the years 1990 and 1991, up  
8 through and including the fall of 1991, were there any large  
9 projects that you were discussing with Mr. Trenkler to have  
10 him perform the Videocom?

11 A Yes. In that time frame, Al's company did install the  
12 nine-meter, seven-meter, and then we were going to go through  
13 an expansion phase and we were working on installing the third  
14 largest --

15 Q What did the job installing the nine-meter, the  
16 nine-meter satellite dish?

17 A Yes.

18 Q What did that entail?

19 A That similar to erecting a tower is a little more  
20 complicated. This very large attack, it gets delivered on a  
21 tractor trailer, and it needs to be assembled, and then with a  
22 crane lifted on to a sports structure. Only when that's done  
23 a foundation needs to be put in.

24 Q And Mr. Trenkler was charged with overseeing that  
25 operation at Videocom?

1 A Yes.

2 Q Approximately how much did Videocom pay for the erection  
3 of the nine-meter satellite dish?

4 A Probably some place between 10 and \$15,000 in that range,  
5 I would imagine.

6 Q And during the years 190 up through and including the  
7 fall of 1991, you were also talking to Mr. Trenkler about the  
8 erection of a seven-meter dish?

9 A Yes.

10 Q And what did that job entail?

11 A It would have entailed work pretty similar to the work  
12 Mr. Trenkler had done previously.

13 Q And how much was that job?

14 A It would have been identical.

15 Q And you also talked about an expansion that you were  
16 discussing with Mr. Trenkler in the fall of 1991?

17 MR. LIBBY: Objection, your Honor. If we could have  
18 a specifically date in the fall.

19 THE COURT: If you can pinpoint it.

20 Q Mr. Cavallo, do you remember the specific date of the  
21 discussion you had with Mr. Trenkler about an expansion?

22 A No, I can't.

23 Q Can you tell us what that -- can you pinpoint that it was  
24 in the fall of 1991, sometime?

25 MR. LIBBY: Same objection, your Honor.

1 THE COURT: Well, she's trying to fix the date.

2 A I can't pinpoint any specific dates that Al worked on  
3 specific projects.

4 Q Sometime in 1991 were you discussing a move of a Videocom  
5 services?

6 MR. LIBBY: Well, your Honor, if it's after October  
7 28th, I fail to see the relevance.

8 THE COURT: Well, we're still trying to figure out  
9 when it was.

10 MR. LIBBY: I object to the form of the question.

11 THE COURT: You may answer the question.

12 Q Mr. Cavallo, if you could tell us to the best of your  
13 recollection when you started discussing the expansion or move  
14 of Videocom with Mr. Trenkler?

15 A As soon as we would have installed an additional antenna  
16 we would have been out of space and at that time we would have  
17 begun talking about a facility move because we were out of  
18 space.

19 Q And what would it involve, what would this move have  
20 involved?

21 A It would have involved dismantling all of the facilities  
22 we constructed and moving to another location.

23 THE COURT: When did you run out of space?

24 A The seven-meter, the installation that we were talking to  
25 Al about the last one, would have put us virtually out of the

1 room.

2 Q When did that happen?

3 A It didn't happen.

4 Q Mr. Cavallo, was it typical for you to discuss projects  
5 well before the actual project happens?

6 A No, it is not.

7 Q What is the time lag, typically?

8 A Typically, there would be a -- all our installations are  
9 tied to contracts. And once a contract was in a stage where  
10 it looked like it would be probably, typically we expedite  
11 things very quickly at that time.

12 Q Mr. Cavallo, in the fall of 1991, I think you talked  
13 about a few large projects that you were discussing the bids  
14 on, the move or the installation of the seven-meter dish; is  
15 that right?

16 A Yes.

17 Q Had those, had you decided upon which bid to take as it  
18 involved 1991?

19 MR. LIBBY: Objection, your Honor. We're still  
20 dealing with the fall of 1991, and I've been sitting quiet for  
21 the last ten questions.

22 THE COURT: Well, can you pinpoint whether it was  
23 before or after the end of October when you had this  
24 discussion.

25 THE WITNESS: All I can say, your Honor, is our

1 discussions are ongoing. We had a long term relationship with  
2 AWT, and the companies that Al was involved with. And Al was  
3 familiar, constantly familiar with what was happening in our  
4 business. And due to the nature of the business, we would let  
5 him know, you know, as soon as we knew something was up just  
6 to get a sense of how busy you would be and what to be, you  
7 know projecting ahead to be doing.

8 Q In general, Mr. Cavallo, were you satisfied with  
9 Mr. Trenkler's work?

10 A Yes.

11 Q Did you receive inquiries about his work from other  
12 businessmen?

13 A Yes.

14 Q Did you in fact recommend Mr. Trenkler to him?

15 A Yes.

16 MS. SHARTON: I have nothing further, your Honor.

17 MR. LIBBY: Very briefly.  
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Cross-examination by Mr. Libby

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Q Mr. Cavallo, do you see Mr. Trenkler in the courtroom today?

THE WITNESS: Yes.

Q Where is he?

A Sitting right here.

Q Mr. Cavallo, you say that you had ongoing business relationship with Mr. Trenkler for about five or six years; is that true?

A Yes.

Q Upwards of 30, 40 jobs?

A Yes.

Q Would you say then, that over that time you came to know Mr. Trenkler fairly well?

A No.

Q You did not get to know Mr. Trenkler fairly well?

A As a contractor, I got to know him well.

Q As a contractor?

A Based on his work.

Q You saw, you spoke with him, you saw him around the job site; is that right?

A Yes.

Q In fact, it was within your job description to negotiate matters such as this with Mr. Trenkler?

A It was.

1 Q So you had occasions to visit with him time after time  
2 after time for each of these 30 or 40 jobs; is that right?

3 A No.

4 Q Not so?

5 A No.

6 Q How would you describe, please, your typical meeting with  
7 Mr. Trenkler?

8 THE COURT: Is this such a thing?

9 Q Did you have a typical meeting with Mr. Trenkler?

10 MS. SHARTON: I have no objection, your Honor.

11 Q Did you have a typical meeting with Mr. Trenkler?

12 A The meetings we had were brief, and they were to review  
13 final contracts or final details on what he had been doing on  
14 the larger projects. On the smaller projects, we had no  
15 interface.

16 Q In fact, sir, you testified before in this proceeding  
17 generally, haven't you?

18 A I have.

19 Q Under oath, true?

20 A Yes.

21 Q And at that time when you were asked that question, you  
22 said that your typical meetings with him were extremely short,  
23 true?

24 A This is true.

25 Q Would you agree with that assessment?

1 A Yes.

2 Q Actually have you been subpoenaed here today?

3 A I have.

4 Q Without that subpoena would you be here today?

5 A Probably not.

6 MR. LIBBY: Thank you. I have nothing further.

7 THE COURT: Anything else, Ms. Sharton?

8 MS. SHARTON: No, your Honor.

9 THE COURT: Thank you. Who is next?

10 MS. SHARTON: Roderick Kennedy.

11 THE CLERK: Please be seated and spell your name for  
12 the reporter?

13 A Roderick, R O D E R I C K, J. Kennedy.

14 THE COURT: You may proceed.

15 Roderick J. Kennedy, sworn

16 Direct Examination by Ms. Sharton

17 Q Good afternoon, Mr. Kennedy. Where do you live, sir?

18 A Quincy, Massachusetts.

19 Q What is your job?

20 A I'm a private investigator.

21 Q For whom do you work?

22 A North America Security Consultants.

23 Q Before you joined North America Security Consultants what  
24 did you do?

25 A I was a special agent with the Federal Bureau of

1 Investigation.

2 Q And for how many years were you with the FBI?

3 A 25 years.

4 Q What particular division of the FBI were you in?

5 A I generally work there in criminal cases.

6 Q Mr. Kennedy, were you contacted by defense counsel in  
7 connection with this case?

8 A I was.

9 Q And were you given a specific assignment to do?

10 A I was.

11 Q Okay. Sir, what was that assignment?

12 A My assignment was to determine the most expeditious route  
13 from the former location of ARCOM which was located at 82  
14 Broad Street in Weymouth, Massachusetts, to the location of  
15 the Radio Shack located at 197 Massachusetts Avenue in Boston.

16 Q Okay. And were you asked to do something with regard to  
17 timing that route?

18 A Yes, I was asked to time the route, starting at 2,  
19 approximately 2 o'clock on Friday afternoon, sir.

20 Q Okay. Were you paid for your services, sir?

21 A I was.

22 Q And how much were you paid?

23 A The company received \$75 per hour.

24 Q Was that your regular rate?

25 A That was my regular rate.

1 Q Sir, did you in fact drive that route from 82 Broad  
2 Street in Weymouth to the Radio Shack in Mass. Avenue in  
3 Boston?

4 A I did.

5 Q And how many successor Fridays did you do that?

6 A Four successor Fridays.

7 Q Approximately what time did you do that drive?

8 A At 2 p.m.

9 Q Sir, what route did you in fact -- did you follow the  
10 same route on all four occasions?

11 A Yes, I did.

12 Q Okay. What route was that?

13 A I would start in front of 82 Broad Street and go to  
14 Washington Street, north on Washington Street to Commercial  
15 Street, take a left on to Commercial Street, direct to Union  
16 Street in Braintree. There I would take, what comes around to  
17 the Route 3 north, to the Southeast Expressway, proceed on the  
18 Southeast Expressway to Southampton Street exit, proceed on  
19 Southampton Street to Massachusetts Avenue, to 197  
20 Massachusetts Avenue.

21 Q Sir, how did you determine what route to take?

22 A I determined this by looking at a book of maps and then  
23 by former experience in traveling a similar route.

24 Q And on each occasion, sir, how did you time the drive?

25 A By the -- my watch and a clock in the car.

1 Q All right. And on each occasion, sir, what speed did you  
2 travel?

3 A I generally traveled the speed limit or the speed of the  
4 prevailing traffic.

5 Q Sir, when was the first Friday that you timed this drive,  
6 from 82 Broad Street in Weymouth to the Radio Shack in Boston  
7 on Mass. Avenue?

8 A October 15th.

9 Q Of this year?

10 A Of this year, 1993.

11 Q And was that the Friday, sir?

12 A It was Friday.

13 Q What time did you leave 82 Broad Street in Weymouth?

14 A 2 p.m.

15 Q And what time did you arrive at the Radio Shack of 197  
16 Mass. Avenue in Boston?

17 A 2:30 p.m.

18 Q And so the total time was?

19 A 30 minutes.

20 Q And sir, when was the second time that you timed this  
21 drive?

22 A The October 22nd, 1993.

23 Q And again, you did. Did you leave 82 Broad Street at 2  
24 p.m.?

25 A Yes.

1 Q At what day of the week?

2 A Friday.

3 Q What was the total time on October 22nd?

4 A 26 minutes.

5 Q And sir, on the --

6 THE COURT: How long did it take on the 29th?

7 THE WITNESS: On the 29th, it was 28 minutes.

8 Q That was October 29th?

9 A October 29th.

10 Q Again, the same route each time?

11 A That's correct.

12 Q On the fourth occasion, what date did you time the draft?

13 A On November 5th.

14 Q And on that date November 5th, how long did the drive  
15 take?

16 A 25 minutes.

17 Q And sir, based upon the four test drives you took, what  
18 is the average time it takes to drive from 82 Broad Street to  
19 the Radio Shack 197 Mass. Avenue in Boston using the most  
20 direct route?

21 A A little over 27 minutes.

22 MS. SHARTON: I have nothing further.

23 Cross-examination by Mr. Libby

24 Q Mr. Kennedy, you're a private investigator?

25 A That's correct.

1 Q And how long have you been a private investigator?

2 A Four months.

3 Q And over that period of time, sir, how much has this  
4 particular job, if you will, taken with respect to your  
5 overall time?

6 A Approximately 10 percent.

7 Q And during that period of time have you performed any  
8 work for the Government?

9 A No.

10 Q Paid by the Government in any respect?

11 A No, sir.

12 Q So you have been doing a hundred percent of your work for  
13 criminal defense; is that right?

14 A No, 10 percent.

15 Q But in terms of generally speaking you hold yourself out  
16 as a private investigator, have you done most of your work for  
17 defense clients?

18 A Just 10 percent, 10 percent, sir.

19 Q Your other work has been involved in what?

20 A In other matters.

21 Q Not criminal matters?

22 A Not criminal matters.

23 Q I see. Now, what you were asked to do here was  
24 essentially to drive from one location from Weymouth to  
25 Boston; is that right?

1 A That is correct.

2 Q In your mind, sir, would that require any particular  
3 expertise on your part to do that?

4 A That's correct.

5 Q Was a former FBI agent required to do that in your mind?

6 MS. SHARTON: Objection.

7 THE COURT: Sustained.

8 It doesn't take -- we know it doesn't take --  
9 somebody had to drive it.

10 Q You were asked before you came in here today,  
11 Mr. Kennedy, you were approached, were you not, by an agent of  
12 Government?

13 A Yes. Yes, sir.

14 Q And that was Special Agent Leahy?

15 A That's what he said, yes.

16 Q Do you recall Special Agent Leahy seated here in the  
17 front row?

18 A Yes, sir.

19 Q He approached you?

20 A He did.

21 Q Asked to speak with you?

22 MS. SHARTON: I object.

23 THE COURT: Overruled.

24 Q He asked to speak with you?

25 A Yes.

1 Q What did you tell him?

2 A I just asked him if I could talk with the defense  
3 attorneys before I spoke with him.

4 Q Isn't it true that you told Agent Leahy that you were  
5 told not to speak with the Government?

6 A Yes.

7 Q And you didn't?

8 A No, sir.

9 Q Now, with respect to your, the four trips you made, did  
10 you do that alone, or did have you some help?

11 A I did it alone.

12 Q And the average I believe was something in the area of  
13 26, 27 minutes?

14 A A little over 27 minutes.

15 Q If I were to tell you that the same trip was performed on  
16 two separate occasions at approximately the same time  
17 resulting in an 18-minute trip?

18 MS. SHARTON: Objection, your Honor.

19 THE COURT: No. We're not going to get into that  
20 unless you tell me you're going to have evidence of it.

21 MR. LIBBY: We will have evidence on that, your  
22 Honor. So if I could put the question to him.

23 THE COURT: Let me have the question again.

24 Q Mr. Kennedy, you've testified that you ran that route  
25 four separate occasions, is that right?

1 A That's correct.

2 Q Averaged about 26, 27 minutes?

3 A 27, yes.

4 Q If I were to tell you that the route was run on two prior  
5 occasions at approximately the same time with an average of an  
6 18-minute trip, would you reject that time requirement with  
7 respect to that trip?

8 MS. SHARTON: Objection.

9 THE COURT: I don't know what you mean by that.

10 Q Could you -- strike that.

11 Mr. Kennedy, would you deny that anyone traveling at  
12 a reasonable speed between ARCOM and the Radio Shack 197 Mass.  
13 Avenue, Back Bay, could be completed in approximately 18  
14 minutes.

15 MS. SHARTON: Objection.

16 THE COURT: He can tell us that.

17 A I doubt that they could travel it that quickly.

18 Q You doubt that?

19 A Yes, sir.

20 Q So you would doubt that?

21 MS. SHARTON: Objection.

22 THE COURT: The objection to the last question is  
23 sustained.

24 Q Now, I believe you went into some detail as to the route  
25 that you took?

1 A Yes, sir.

2 Q And did you come upon that route yourself? Did you  
3 settle on that route yourself?

4 A Yes, sir.

5 Q Did you take the route yourself each time?

6 A Yes, sir.

7 Q Did anyone from the defense camp assist you in choosing  
8 that route, sir?

9 A Yes, sir.

10 Q Who was that?

11 A Mr. Segal.

12 Q Anyone other than Mr. Segal?

13 A No, sir.

14 Q Did you speak to the defendant about that route at all?

15 A No, sir.

16 Q One moment, your Honor. I believe you testified that you  
17 left each time at approximately 2 o'clock; is that right?

18 A Yes, sir.

19 Q Assuming that you departed at 1:45 on each occasion. Is  
20 it fair to say that you would have arrived at approximately 15  
21 minutes earlier each time?

22 A Yes, sir.

23 Q And, sir, you made the speed limit at each time?

24 A No, sir.

25 Q You went beyond the speed limit?

1 A Yes, sir.

2 MR. LIBBY: I have nothing further.

3 THE COURT: Anything else?

4 MS. SHARTON: Just a couple of questions.

5 Redirect Examination by Ms. Sharton

6 Q Sir, you testified that you spent approximately 10  
7 percent of your time on criminal defense matters; is that  
8 right?

9 A Yes, ma'am.

10 Q The case that you were retained, the assignment you were  
11 retained for in this case was not 10 percent of your overall  
12 time; is that right?

13 A That's correct.

14 Q Okay. And sir, when you were, the route that you  
15 ultimately timed these four Fridays, did you -- strike that.  
16 Did you drive that route prior to the four Fridays?

17 A Yes.

18 Q And what was the purpose of driving that route prior to  
19 four Fridays?

20 A To determine the most expeditious route.

21 Q And the first time that you spoke with Mr. Segal and he  
22 gave you a route to go from 82 Broad Street to Weymouth, to  
23 Radio Shack and Mass. Avenue, did you end up following that  
24 route before Friday?

25 A No, I did not.

1 Q And why was that, sir?

2 A I determined that that route was not the most direct  
3 route, fastest way from getting from Broad Street to Radio  
4 Shack.

5 Q In fact, the route Mr. Segal gave you was slower?

6 A Yes, slower.

7 MS. SHARTON: All right. I have no further  
8 questions.

9 THE COURT: Anything else?

10 MR. LIBBY: One moment, your Honor.

11 Recross examination by Mr. Libby

12 Q Mr. Kennedy, assuming that you leave at 1:45, the route  
13 that you're talking about here, roughly 26, 27 minute trip  
14 from ARCOM to the Back Bay Radio Shack on Mass. Avenue --

15 MS. SHARTON: Objection.

16 THE COURT: Let him finish the question.

17 Q I'm asking him to assume. You leave 15 minutes earlier  
18 than you testified 1:45 rather than 2 o'clock. 26 minutes on  
19 average route, 26 or 27 minutes. Would you have time, sir, to  
20 park the car and be inside the store by 2:36?

21 MS. SHARTON: Objection. Withdraw the objection,  
22 your Honor.

23 A If I left 15 minutes earlier and took the same amount of  
24 time, but I'd be able to get into the store by 2:30.

25 Q 26 minutes on route takes you to about 2:15?

1 A 27 minutes.

2 Q 2:11, 2:12, would there be sufficient time to park the  
3 car be inside the car by 2:36?

4 A It's very difficult finding a parking spot on Mass.  
5 Avenue. I don't know I would assume I could, but I don't  
6 know.

7 MR. LIBBY: I have nothing further, thank you.

8 THE COURT: Thank you, Mr. Kennedy, you're excused.  
9 Who is next?

10 MR. SEGAL: We've finished our witnesses for today.  
11 We had one or two.

12 THE COURT: Who are not testifying?

13 MR. SEGAL: There's one or two in that category, and  
14 another two who were supposed to be here on Tuesday that are  
15 short.

16 THE COURT: We will finish Tuesday, right?

17 MR. SEGAL: With a good wind, we hope to be finish on  
18 Tuesday.

19 THE COURT: Members of the jury, for your planning  
20 purposes, Monday and Tuesday we'll be here. Wednesday  
21 Thursday Friday we're off. The following Monday we will have  
22 arguments and charge, and you will be deliberating on your  
23 verdict. So you will be here in the afternoon on Monday  
24 before Thanksgiving, that is a week from this coming Monday  
25 until you decide you can go longer or until you have a verdict

1 as the case may be.

2 I thank you very much for your indulgence in letting  
3 us stay late today. I hope you get to your meeting on time  
4 Ms. Pinelli and you are now free to go. Have a good weekend  
5 and see you on Monday. Ms. Auerbach wishes for you to wait  
6 for a moment so she can give you your checks.

7 [Whereupon, the jury left the courtroom.]

8 THE COURT: Court is in recess.

9 [Whereupon, the jury trial adjourned at 1:47, to be  
10 reconvened on Monday, November 14th, 1993 at 9 a.m.]

11  
12 **CERTIFICATE**

13 We certify that the foregoing is a correct  
14 transcription of our computer-aided stenographic notes of the  
15 proceedings in the above-entitled matter.

16 \_\_\_\_\_  
17 James E. McLaughlin

18 \_\_\_\_\_  
19 Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Francis Foley, sworn (by Mr. Kelly)	3			
- Joseph Pelphrey, sworn (by Mr. Lopez) (by Mr. Kelly)	22	33		
- Scott Davis, sworn (by Mr. Lopez)	35			
- Mark D. Romboli, sworn (by Mr. Segal) (by Mr. Kelly)	40	50		
Robert Davidson, sworn (by Ms. Sharton) (by Mr. Libby)	55	64		
David Fardy, sworn (by Mr. Lopez) (by Mr. Libby)	68	74	75	
- Nurdan Cagdas, sworn (by Mr. Segal) (by Mr. Kelly)	76	89	97	98
- David Millette, sworn (by Ms. Sharton) (by Mr. Kelly)	100	103	110	111
Philip Colwell, sworn (by Mr. Lopez) (by Mr. Kelly)	114	119		
- Brian O'Leary, sworn (by Mr. Segal) (by Mr. Libby)	127	129	142	
Edward Alvaro, sworn (by Mr. Segal) (by Mr. Libby)	147	152		
Frank Cavallo, sworn (by Ms. Sharton) (by Mr. Libby)	155	165		

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Government's</u>			
68	(See Clerk's Notes.)	132	
<u>Defendant's</u>			
110,111	(See Clerk's Notes.)		26
112-115			28
116			31
118,119			38
120-122			43
123			49
124			150
125			61
126			61
127-130			72
131			72
132			79
133			80
134-140			84
141			85
142-144			128
145,146			148

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
- Roderick J. Kennedy, sworn				
(by Ms. Sharton)	167		177	
(by Mr. Libby)		171		178

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CR 92-10369-Z

ZOBEL, D. J.

UNITED STATES OF AMERICA

v.

ALFRED TRENKLER

Fifteenth Day of Trial

APPEARANCES:

For the Government:

Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

For the Defendant:

Terry Philip Segal, Esq., Scott Lopez, Esq.,  
and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
210 Commercial Street, Boston, MA. 02109.

Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

November 15, 1993

Computer-Aided Transcription

P R O C E E D I N G S

1  
2 THE COURT: There was one matter which remained  
3 pending last week which is the defendant's motion to strike  
4 the testimony of Michael Cody. I've reviewed the brief, and  
5 the motion is denied. There is a motion to strike signature  
6 testimony of Thomas Waskom which was just delivered to me. I  
7 have not read it. I will read it before I act on it.

8 What else?

9 MR. SEGAL: I had a matter in connection with  
10 Mr. Kline's testimony, your Honor. At the prior hearing  
11 Mr. Libby asked Mr. Kline have you talked to Mr. Trenkler,  
12 would that be helpful? I would ask for a ruling in advance  
13 that that question cannot be asked or answered because --

14 THE COURT: On the Fifth Amendment grounds?

15 MR. SEGAL: Yes.

16 MR. LIBBY: Absolutely not, your Honor. They have a  
17 choice to put an expert on or not. 702 rules permit opposing  
18 party to scope into the underlying expert's opinion.

19 THE COURT: The problem is you sort of run into the  
20 Fifth Amendment issues. To the extent that the defendant may  
21 not take the stand to call attention to the fact that the  
22 expert also didn't talk to the defendant runs into problems.

23 MR. LIBBY: Your Honor, the expert may rely on  
24 hearsay under the rules. Mr. Trenkler's explanation to him as  
25 to these matters relating to '86 which this expert says he's

1       unclear on. And which bears on his signature analysis , and  
2       of course, cuts centrally --

3               THE COURT: I understand all that. But how do you  
4       get around the problem of highlighting to the jury that the  
5       defendant -- even he didn't talk to the defendant, if in fact  
6       that's the evidence.

7               MR. LIBBY: Your Honor, it's not suggesting any  
8       silence on the part of Mr. Trenkler with respect to  
9       proceeding, and his appearance and taking the stand in this  
10      proceeding. It cuts directly to the expert's credibility,  
11      persuasiveness and the breadth of his understanding before the  
12      Court and jury which is signature analysis.

13              We are perfectly entitled to, your Honor, to explain  
14      to the jury that his inability to put together this 1986  
15      device which, of course, is central to the issue, the fact  
16      finders here, derives from in the normal expert's case he  
17      would, in fact, speak to all these various folks. Whatever  
18      the source may be --

19              THE COURT: You may certainly ask him who he talked  
20      to, but I think there is a serious danger if you ask him  
21      specifically if he talked to the defendant.

22              MR. LIBBY: I wouldn't put it that way, your Honor.

23              THE COURT: You may ask him who he talked to, and he  
24      may tell us who he talked to, and then you have to meet the  
25      issue of whether he will argue, well, he didn't talk to the

1 defendant. But you may certainly ask who he talked to, and I  
2 assume that Mr. Segal has no objection to that.

3 MR. SEGAL: Well --

4 THE COURT: He's entitled to ask who he talked to.

5 MR. SEGAL: Yes, but I think his question will be  
6 wouldn't it have been helpful to talk to the defendant.

7 THE COURT: No. That question we won't put to him.  
8 But you may certainly inquire who he talked to in the course  
9 of his investigation.

10 MR. LIBBY: Your Honor, we're talking about the 1986  
11 device which he's already admitted. I don't understand what  
12 Fifth Amendment implications are with respect to that.

13 MR. SEGAL: He's not going to testify in this case.  
14 I'm making a flat unequivocal statement.

15 MR. LIBBY: I understand that. But there's  
16 absolutely no jeopardy with respect to the '86 device that  
17 he's talking about which he's admitted making. It absolutely  
18 cuts, your Honor, to the core of this expert's credibility to  
19 determine -- he's coming forward and saying, I've looked at  
20 the '86 and I've looked at the '91 and here's why they are  
21 dissimilar and why you shouldn't believe the same person made  
22 them.

23 THE COURT: Mr. Segal, why can't he ask the question,  
24 would it be helpful to talk to the defendant about 1986?

25 MR. SEGAL: Because, it will highlight the simple

1 fact that this defendant was not testifying in this case. It  
2 is a back door highlighting of that fact. Because, well, you  
3 didn't talk to him there, the jury could infer, why doesn't he  
4 come on, and explain now how he built the '86 device, and I  
5 think it cuts right into this privilege, since he is not  
6 testifying.

7 MR. LIBBY: The government won't comment on that,  
8 your Honor. The government will comment on this expert's  
9 understanding of the scope and depth of his understanding of  
10 that device which is the objective material before the jury.

11 THE COURT: I'll think about that.

12 May I see counsel for a moment?

13 [Whereupon, the jury entered the courtroom.]

14 THE COURT: Good morning, please be seated.

15 Do you wish the windows closed?

16 I'll give you the stick.

17 Please be seated. Mr. Segal, please call your next  
18 witness, please.

19 Denny Kline, sworn

20 Direct Examination by Mr. Segal

21 THE WITNESS: My name is Denny Kline, and it's  
22 spelled, D E N N Y, K L I N E.

23 Q Good morning, Mr. Kline.

24 Where do you live, sir?

25 A I live in Stafford, Virginia.

1 Q What is your current occupation, please?

2 A I am self-employed under the corporate name of ETA  
3 Consultants Incorporated.

4 Q What does ETA Consultants Incorporated do, sir?

5 A Well, I'm involved in the explosives training and  
6 analysis of bomb incidents and explosions.

7 Q What are the type of clients that ETA presently has,  
8 sir?

9 A My clients would be government, state and local law  
10 enforcement agencies, insurance companies, attorneys in  
11 criminal and civil matters.

12 Q Mr. Kline, where did you attend college?

13 A I attended college first at Georgia Southern University  
14 in Statesboro, Georgia, where I obtained a bachelor of science  
15 degree.

16 Q Do you have an advanced degree, sir?

17 A Yes, I do.

18 Q Where is that from and in what subject?

19 A I have a Masters of Forensic Science at George Washington  
20 University in Washington, D.C.

21 Q From 1970 to 1990, sir, how were you employed?

22 A I was employed as a Special Agent for the Federal Bureau  
23 of Investigation.

24 Q From 1970 to 1976, what were your duties with the FBI,  
25 sir?

1 A During that period, I was assigned the duties as a  
2 Special Agent, the investigative responsibilities that are  
3 assigned and delegated to the FBI organization.

4 Q From 1976 to 1988, what were your duties with the FBI,  
5 please?

6 A 1976, I was transferred to Washington, D.C., was promoted  
7 to Supervisory Special Agent, and was assigned to the  
8 explosives unit of the FBI Laboratory.

9 Q What were your duties in the explosives unit for that  
10 period of time, please?

11 A There were a variety of duties that were assigned to us  
12 in that position. My job principally was to examine items  
13 that were submitted to the FBI Laboratory as a result of  
14 bombings or attempted bombings. The purpose of identifying  
15 those bomb components in reconstructing bomb devices. Also, I  
16 was asked to respond to the sites of major bombings and  
17 actually supervised and managed the collection of the evidence  
18 after a bombing exploded. Was also involved in training our  
19 own agents, other law enforcement agencies and military with  
20 regard to post blast investigation and bombing investigations.

21 Q From 1988 to 1990, what were your duties with the Federal  
22 Bureau of Investigation?

23 A 1988, I was transferred to the FBI Academy which was in  
24 Quantico, Virginia. And there I was assigned as a faculty  
25 member and program manager for international training in

1 forensic science, the Forensic Science and Research Training  
2 Center.

3 Q What do your duties consist of there, please?

4 A Principally, my duties were in a training capacity, and  
5 that was provide instruction in forensic matters and bombing  
6 matters to local and federal law enforcement agents as well as  
7 to special agents of the FBI and the Drug Enforcement  
8 Administration.

9 Q Mr. Kline, please list some of the major bombing  
10 investigations you participated in while with the FBI?

11 A Well, I was involved in the bombing of Pan Am Flight 103  
12 over Lockerbie, Scotland. I have been involved in several  
13 airplane bombings that have been committed by mid-east  
14 terrorist groups which involved the bombing of Pan Am flight  
15 in Honolulu Hawaii, one in Rio de Janeiro, one in Geneva,  
16 Switzerland. I was also involved in the bombing, on-scene  
17 sites, for the investigation of a bombing in TWA Flight 840 in  
18 Athens, Greece; I think it was in '86.

19 Most recently, I suppose, one of the major cases was  
20 the trial which I participated in, in Athens, Greece, just  
21 this April. Was able to prosecute -- the government  
22 prosecuted the terrorist bomber who committed those airplane  
23 bombings in '82 and, also, in Geneva, Switzerland.

24 Q Did you testify for the prosecution in this April case?

25 A Yes, I did.

1 Q What do your certifications include, Mr. Kline?

2 A I'm certified by the FBI Laboratory as a hazardous  
3 devices and explosives specialist. I am a certified bomb  
4 technician, having successfully completed a course of  
5 instruction at the Hazardous School in Huntsville, Alabama,  
6 which trains local and federal law enforcement personnel on  
7 explosives recognition and demolition in basically how to  
8 handle live explosive bombs.

9 Q Have you held any teaching positions, sir?

10 A Well, I was, of course, a faculty member at the FBI  
11 Academy; and in connection with that assignment, also made me  
12 an adjunct professor at the University of Virginia. I was the  
13 program manager and instructor for the Antiterrorist  
14 Assistance Program, postblast investigation course, that's  
15 sponsored and funded by the U.S. Department of State in Baton  
16 Rouge, Louisiana.

17 Q Have you had occasion to be a guest lecturer for the CIA?

18 A Yes. I was a regular instructor at the course of  
19 counterterrorism that the CIA regularly holds at one of their  
20 facilities. And I was also an instructor, on frequent  
21 occasions, at the Defense Intelligence College, which is part  
22 of the Defense Intelligence Agency at Bolling Air Force Base.

23 Q Have you authored any publications?

24 A I helped in the revision of the FBI training manuals  
25 regarding those manuals on bomb investigations and

1 introduction to explosives, I have published articles for the  
2 Bomb Data Center's technical bulletins and other investigative  
3 bulletins that goes out to bomb investigators and technicians  
4 around the world, and have provided papers in several  
5 international conferences on terroristss and terrorist  
6 bombings.

7 Q How many times, Mr. Kline, have you been qualified as a  
8 hazardous devices and explosives expert in courts of law?

9 A I would say upwards of 50 times.

10 Q How many times prior to this case have you testified in a  
11 court of law as an expert for the defense in a criminal case?

12 A One time.

13 Q What is your hourly compensation, sir, in this case?

14 A It is \$200 an hour, sir.

15 MR. SEGAL: At this time I would submit Mr. Kline as  
16 an expert in this particular case.

17 MR. LIBBY: No objection, your Honor.

18 THE COURT: All right.

19 Q In the field of bomb examinations, what does the term  
20 "signature" mean to you, sir?

21 A Signature is simply a term that is applied to the  
22 principle in bomb investigations that suggest that an  
23 individual who makes the bomb makes the bomb in the same way  
24 using the same components and putting those components  
25 together in basically the same way.

1 Q Does signature imply -- does the term "signature" in bomb  
2 examination imply singularly unique features?

3 A Well, it takes singularly unique features in  
4 consideration in making a determination about a signature  
5 identification, certainly.

6 Q Is it similar to handwriting- or fingerprint-type  
7 signature?

8 A Yes, I would say so.

9 Q In your 20 years with the Federal Bureau of  
10 Investigation, has it been your responsibility, Mr. Kline, to  
11 make a comparison examination of various explosive devices  
12 and, then, the signature identification?

13 A Yes, I have.

14 Q How many such comparison examinations have you done to  
15 make signature identifications?

16 A I have probably over a hundred -- 350 separate bombings I  
17 had to compare the components, either from bombings or  
18 attempted bombings.

19 Q What type of individuals were associated with those bombs  
20 or bombs you analyzed?

21 A Those cases would have involved terrorist groups,  
22 domestic, international terrorist groups. It would have  
23 involved organized crime. They would have involved motorcycle  
24 gangs. There are some cases where I did intercomparisons that  
25 only involved one individual. So, it would be a variety of

1 experiences, I suppose.

2 Q How many times, Mr. Kline, have you testified in a court  
3 of law on the issue of signature?

4 A Fifteen times, best of my recollection.

5 Q Were you involved in a number of examinations involving a  
6 series of bombings associated with the FALN?

7 A Yes, I was.

8 Q What is the FALN?

9 A The FALN is a Puerto Rican independence group that has  
10 committed violent acts in Puerto Rico and New York and New  
11 Jersey, for the purpose of espousing their political doctrines,  
12 committed bombings and murder and some bank robberies.

13 Q How many bombings have you investigated relating to the  
14 FALN?

15 A Evidence was submitted to the FBI Laboratory in about 175  
16 bombings involving this group called the FALN, which I had the  
17 opportunity, assignment, to evaluate.

18 Q In your experience, what were the unique signature  
19 feature or features you find in the FALN cases you  
20 investigated, sir?

21 A Well, there were several. But the most outstanding, I  
22 suppose, back in the mid-'70s when they first came to the  
23 fore, it was the presence of a propane tank in their duffle  
24 bag that was kind of the FALN signature. But in addition to  
25 that, it was the fact that they used a time delay fusing

1 system which involved the use of a pocket watch. It wasn't  
2 just that they used a pocket watch as a time delay but the  
3 individual way in which these pocket watches were altered.  
4 One of the features was the fact that they picked a particular  
5 time on that clock. And after that they always used 9 clock  
6 as their selected time of delay; the way they selected wires,  
7 they used alligator clips to connect wire to wire and make the  
8 wire connections. And one of the signatures, I suppose, is  
9 the fact that they usually made a phone call to claim credit  
10 for their bombing and then left a letter, also, which  
11 indicated that they were the ones who were responsible. And  
12 of course, that's taken into consideration as unique.

13 Q Mr. Kline, did you have occasion while you were in the  
14 FBI to do a signature analysis involving a series of bombings  
15 associated with a group of Croatian terrorists?

16 A Yes, I did.

17 Q How many bombings did you analyze?

18 A To the best of my recollection, I think there were 12 or  
19 15 bombing incidents involving the Croatian case.

20 Q Mr. Kline, what did you determine to be the signature  
21 identification or identifications in those cases?

22 A Well, there were several different kinds of bombs that  
23 were employed in the Croatian series of bombings. But there  
24 were two bombs, in particular, that certainly characterized  
25 what we mean by signature identification.

1           Two of these bombs were book bombs. Book bombs were  
2 packaged up and sent through the mail. The book bombs were  
3 booby trap book bombs, designed so when you receive the  
4 package and open the cover of the book, the bomb was designed  
5 to explode. When you open the cover, there were two switches  
6 or two wire loops, bare wire loops, and they would pull  
7 together and make contact and complete an electrical circuit.  
8 The components of the bomb were, were concealed inside a  
9 cut-out section of both of these two books. And what was  
10 seemed singularly unique about this alteration was the  
11 beginning page for the cutout and the ending page for the  
12 cutout were the same in both of these book bombs.  
13 Additionally, both books were the same books, written by H. D.  
14 Wells, and I don't recall the title. Both books were  
15 identical. Those are singularly unique features that one has  
16 to utilize in identifying or making a signature  
17 identification.

18       Q     Mr. Kline, did you have occasion to make a signature  
19 analysis involving a terrorist group known as Omega 7?

20       A     Yes, I have.

21       Q     What is Omega 7, from your experience?

22       A     Omega 7 consisted of a group of individuals who were  
23 identified as anti-Castro Cubans who committed acts of murder,  
24 bombing to again, perpetuate their political believes against  
25 Castro.

1 Q How many bombings did you analyze in connection with the  
2 investigation of Omega 7?

3 A There were probably around 150 bombings, quite a number.

4 Q What was the signature identification or identifications  
5 you discovered in those bombings?

6 A Well, again, with regard to having 135 bombings, there  
7 were several different kinds of bombs that were constructed.  
8 The main thing, of course, is most of the time the Omega 7  
9 group left a logo, a stamp, that said Omega 7 on the devices,  
10 normally. They also left a letter claiming credit. But they,  
11 too, used a time delay device for the fusing system in some of  
12 their bombs.

13 What was interested about those time delay devices in  
14 that series of cases was that the bomb maker used a Helbros  
15 pocket watch, as opposed to a less expensive Westclox watch.  
16 A Helbros pocket watches sell upwards to \$100. And it is very  
17 expensive and very unusual for a bomber to use that kind of a  
18 material. And the way he altered the pocket watch was unique,  
19 too, in a particular way.

20 Q Mr. Kline, in this particular case, were you asked to  
21 compare the 1986 device and the 1991 device for signature  
22 identification?

23 A Yes, I was.

24 Q Did you view the 1986 device?

25 A No, I did not view the 1986 device.

1 Q Did you view any debris of the device?

2 A No. To the best of my knowledge, it had been destroyed;  
3 it was not available.

4 Q To your knowledge, were any photographs available for you  
5 to view of the debris of the '86 device?

6 A No photographs were available.

7 Q All right. So, you didn't view any photographs at all,  
8 sir?

9 A No.

10 Q What information did you rely on in connection with your  
11 analysis of the 1986 device, sir?

12 A I relied on the laboratory report, Francis Hankard of the  
13 Massachusetts State Department of Public Safety, in their  
14 crime laboratory, the handwritten note of Detective Lanergan,  
15 and other reports from the Quincy Police Department.

16 Q Mr. Kline, what information did you rely on in connection  
17 with your analysis of the 1991 device?

18 A My analysis was based on the report written by the ATF  
19 laboratory examiner, Cynthia Wallace; the Technology  
20 Explosives Technology branch report written by Thomas Waskom;  
21 and I also personally reviewed the evidence that was recovered  
22 by the ATF here in Boston.

23 Q Did you also look at this reconstruction that ATF, did  
24 which was Exhibit, Government's Exhibit 5?

25 A I have seen that previously, yes, sir.

1 Q By the way, in your opinion, is this, is Exhibit 5 a  
2 logical reconstruction of the way the '86 device was set up?

3 A Based on the evidence that was identified by ATF, I would  
4 say that the assessment by Mr. Waskom of the technology branch  
5 was an accurate reconstruction, yes.

6 Q In your opinion, Mr. Kline, what are the ideal conditions  
7 to make a signature comparison between two devices?

8 A I suppose the ideal condition would be to have two or  
9 more bombs were that were recovered unexploded, rendered safe,  
10 if you will; and thirdly, to have a, a subject arrested in the  
11 case, where you would find evidence of materials that he used  
12 to make that bomb. That would be the most ideal situation in  
13 making the signature identification.

14 Q Mr. Kline, what present conditions were present in  
15 connection with your analysis of the '86 device and the '91  
16 device in this case?

17 A Could you repeat that please, sir.

18 Q Mr. Kline, in this case, what conditions were present in  
19 connection with your analysis of the '86 and '91 devices?

20 A With regard to the '86 device, I think this is your  
21 question, only the laboratory report and some investigative  
22 reports by detectives were available; whereas, the material  
23 for '91, all we had was the exploded remains. In both cases,  
24 both bombs, the bombs had exploded. So, you're depending on  
25 the accurate analysis of the laboratory examiner, which makes

1     it more difficult the identification signature  
2     identification.

3     Q     In your opinion, in this case, with these conditions  
4     where on one, the '86, you don't even have the debris, do they  
5     present a problem in make a signature analysis?

6     A     Well, I don't know if it was a problem. It certainly  
7     makes it a little more difficult to reach a conclusion.

8     Q     Why do you say that, sir?

9     A     Well, it's just easier if you have the materials to look  
10    at. There are some features that you see in the laboratory  
11    report that you like verified. As an examiner of some  
12    experience, it would certainly benefit me to know that if I  
13    have a piece of plastic here that may have some numbering on  
14    it that might have been missed and could positively be able to  
15    identify that piece of plastic as coming from a particular  
16    component doesn't mean it's not possible, but it makes it more  
17    difficult; it's just that simple.

18    Q     Does the fact that these two devices were five years  
19    apart, present any problem?

20    A     That increases the problematic situation as well, yes.

21    Q     What about the fact that we only have two devices to  
22    compare, one to another?

23    A     That, that increases the difficulty in making a signature  
24    identification.

25    Q     Would you rather have more devices?

1 A Well, certainly the more devices you have, the greater  
2 the preponderance of similarities and the stronger your  
3 opinion becomes. It's not that you can't make an opinion one  
4 way or the other; it is just the more devices will provide you  
5 with more information. And obviously, the more information  
6 you have, the better judgment you can make about a signature  
7 identification.

8 Q Mr. Kline, based upon your training, education, and  
9 experience as an FBI hazardous devices and explosives expert,  
10 do you have an opinion, to a reasonable degree of scientific  
11 certainty, whether there is a signature identification linking  
12 the 1986 device to the 1991 device?

13 A Due to the absence of unique similarities and the  
14 preponderance of dissimilarities, I personally could not make  
15 an opinion that there was a signature identification that  
16 existed between the '86 bomb and the '91 bomb.

17 Q Mr. Kline, based upon the written reports from '86, did  
18 you attempt to recreate that device?

19 A Yes, I did.

20 Q Let me show you what's been marked as Defendant's Exhibit  
21 150 for identification.

22 Can you identify what I've shown you as Defendant's  
23 Exhibit 150 for identification?

24 A Yes.

25 Q What is it?

1 A Government's Exhibit --

2 Q Defendant's Exhibit, I'm sorry.

3 A Defendant's Exhibit 150.

4 Q Yes.

5 A Defendant's Exhibit 150 represents a reconstruction that  
6 I personally did from the report written by Francis Hankard.  
7 I took his laboratory report, taking the identification of the  
8 wires, the various components. I purchased those components  
9 and reconstructed that '86 device as best as the description  
10 would allow, connecting wires in the same place in basically  
11 the same way and using very basically the identical  
12 components, as close as I could get them.

13 MR. SEGAL: Your Honor, with the Court's permission,  
14 I would like to ask Mr. Kline to come down and stand in front  
15 of the jury because I'm going to ask him some questions about  
16 this device and Government's Exhibit 5, if I might.

17 THE COURT: All right.

18 (Pause.)

19 [Demonstration at jury box.]

20 THE COURT: Mr. Kline, as you make this  
21 demonstration, perhaps you can hold it up because the sides of  
22 the cart prevent the jurors from seeing it.

23 THE WITNESS: I certainly will.

24 THE COURT: All right. What is the question?

25 Q Mr. Kline, I might have misspoke about the government

1 device, which is Exhibit 5.

2 Is it fair to say that from you can see an accurate  
3 reconstruction of the '91 device?

4 THE COURT: He said that.

5 MR. SEGAL: I thought I asked him about the -- I  
6 called it the '86. If I did, I wanted to just clear it up.

7 THE WITNESS: This is an accurate representation of  
8 the 1991 device.

9 Q Now, keeping your voice up just a little because we're  
10 away from the microphone, looking at the two devices, sir,  
11 Defendant's Exhibit 150 and Government's Exhibit 5, what is  
12 the difference in the main -- is there difference in the main  
13 charge between those two devices?

14 A Yes, there is.

15 Q All right. What is the difference, what is the 1986 main  
16 charge, and would you illustrate, would you hold it up for the  
17 jury.

18 A I must explain that this is a simulated mock-up of an  
19 M-21 device which I put together, but it represents the same  
20 basic size, and the components are the same here.

21 The '86 device used a pyrotechnic device having a  
22 flash powder main charge.

23 Q Would you keep your voice up just a little, sir.

24 A Yes.

25 The '91 device used a dynamite main charge. So, very

1 simply, the two main charges are different.

2 Q Mr. Kline, is the initiator which causes the main charge  
3 to explode different in each device?

4 A Yes, they are.

5 Q What is the difference, starting with '86?

6 A The '86 device simply uses a quick match which is built  
7 into the Mark 21, the M-21 simulator. It comes with this  
8 product when it is assembled. The '91 device uses two  
9 separate components, components that don't come with the main  
10 charge. There are two detonators; it is called dual priming.  
11 We have a built-in initiator in the '86 device; we have two  
12 high explosive electric detonators in the '91 device.

13 Q Mr. Kline, are the fusing systems in the two devices  
14 different?

15 A Yes, they are.

16 Q What is the difference, starting with '86, please?

17 A Well, basically, the '86 device, the first difference is  
18 that they are, they are different types, different brands.  
19 The maker of the '86 device simply disassembled a radio  
20 control car. He took the housing of the car away and used the  
21 components, the radio control components, which consisted of a  
22 receiver which is mounted on this circuit board; it comes with  
23 a slide switch, which is part of the car unit; it has a  
24 built-in battery pack that has four AA batteries, and it has  
25 an antenna wire which, in this case, according to -- and I can

1 only relay -- or, rely on Mr. Hankard's analysis -- it has an  
2 improvised antenna. The antenna from the, from the receiver  
3 here is connected to an additional wire which is 75 1/2 inches  
4 long and has on the end of it, a little metal tab which  
5 normally comes on antenna of a much shorter wire.

6 The '91 device use utilized in its fusing system,  
7 separate independent Futaba components. Much better  
8 equipment, much easier to assemble. As a matter of fact,  
9 these components have to be connected together; and they are  
10 made with little connectors on the end of their wires,  
11 individual wires, as you can see right here, where you can  
12 just plug them into each other.

13 We have the receiver, we have a servo motor, and the  
14 horn for the servo motor. The battery pack is a separate  
15 unit, which is a Futaba brand, where you can select or use  
16 your own type of batteries. But it also includes four  
17 batteries in the power source or as the power source for the  
18 fusing system.

19 Q Mr. Kline, are the firing systems the same in these two  
20 devices?

21 A The firing systems are not the same.

22 Q What's the difference, starting with '86?

23 A With '86 -- let me say that in all radio control devices,  
24 you receive a signal from a remote transmitter. And that  
25 current is transmitted to some kind of a switching mechanism

1 which transmits that electrical current to the detonators that  
2 cause the main charge to explode. That's the basic function  
3 and the basic design of all radio control devices, at least  
4 that I've encountered.

5 In the firing system of the '86 device, the switching  
6 mechanism that goes into the firing circuit was identified as  
7 a relay switch, which is an electrical magnetic switch. If we  
8 look down the wires away from the receiver unit, we see a  
9 toggle switch, manually operated toggle switch. And these  
10 were wired into the detonator wires, if you will, the  
11 initiator wires, of the N-21 -- the M-21.

12 With regard to the firing circuit of the '91 device,  
13 it is different because we have the presence of a toggle  
14 switch which we also have in '86. But it is different because  
15 it's mechanically operated remotely.

16 In '86, the toggle switch has to be operated by  
17 someone turning the toggle switch. It is a manually turned  
18 on-and-off switch.

19 In '91, the toggle switch is used by a remote control  
20 device. In other words, current is sent to the servo motor,  
21 and it remotely activates the switch, turns it on and off; in  
22 other words, the bomber it set away from it.

23 Q Is there a difference in how batteries were used between  
24 1986 and 1991?

25 A The battery source, power sources, in the firing circuit

1 were in fact different. In '86, the bomb maker used two size  
2 J 6-volt batteries. In the '91 device, the bomb maker used  
3 five 9-volt batteries. That's a difference.

4 Q Mr. Kline, was there a difference in the way wires were  
5 connected to batteries in these two devices?

6 A Yes, there were.

7 Q What was the difference?

8 A Well, I can say that, according to Mr. Hankard's report,  
9 it appears that all of the wires in the '86 device were  
10 twisted, then soldered, and then insulated with tape.

11 In the '91 device, most of the wires, of course, were  
12 just hooked together with, with plugs, the plug-in  
13 connectors. However, there is evidence that the wires from  
14 the snap connectors on the batteries were, in fact, twisted  
15 and soldered and connected, in the same way as the '86 device.

16 One difference is that the detonator wires, the wires  
17 that -- the two wires that come off your electric detonators,  
18 they were connected together in series, according to  
19 Mr. Waskom's report and according to the logical way in which  
20 the device was assembled. Those wires were only twisted, and  
21 they were secured, or insulated, with a piece of white plastic  
22 tape.

23 Now, that suggests a difference. Because what the  
24 bomber has done is, he has not soldered his detonator wires in  
25 the '91 device; but in the '86 device, you will see that he

1 has solder-connected his electrical circuit into the lead  
2 wires from the initiator of the '86 device. This is an  
3 obvious difference.

4 Q Mr. Kline, was there a difference in the type of toggle  
5 switch used in each device?

6 A Yes. The toggle switch in the '86 device was a double  
7 pole, double throw, having three contacts on the bottom. And  
8 the toggle switch in the '91 device was a single pole, single  
9 throw, having two contacts on the bottom. They were also of  
10 different manufacture.

11 Q Was there a difference in the purpose for each toggle  
12 switch in these devices?

13 A Yes, there was.

14 Q What was that difference?

15 A Well, the position that we are assuming that this toggle  
16 switch was placed in, in the '86 device, the way it was wired,  
17 suggests that it was used to arm the system, to make it safe  
18 when the man was putting the bomb together.

19 In the '91 device, the toggle switch was used as a  
20 trigger, or to fire it. So, we have an arming switch and a  
21 firing switch. Same kind of component but a uniquely  
22 different application for that same component.

23 Q Mr. Kline, was there a difference in between the two  
24 devices in the way the two toggle switches were turned on and  
25 off?

1     A     Yes, I think I previously mentioned that, the toggle  
2     switch was turned on and off, in the '86, by hand. The bomber  
3     actually had to go in and move the switch. In '91 the toggle  
4     switch was remotely activated by the mechanics of the servo  
5     motor.

6     Q     Mr. Kline, was there a difference in the wires used in  
7     each device?

8     A     In looking at the wires that I have gone out and  
9     purchased, according to the description by Mr. Hankard and as  
10    described by one of the ATF people, the wires used in '86 were  
11    scrap wires.

12           The wires that were used in the '91 device were wires  
13    that were part of the individual components. The Futaba  
14    components have wires already built into them. The battery  
15    snap connectors have wires that are attached to them, that are  
16    put on there when manufactured. And the wires from the  
17    detonators are manufactured wires that come with those. So,  
18    there was really no scrap wire here; the wires were component  
19    wires.

20    Q     Mr. Kline, was there a difference in the type of  
21    container used to house the two devices?

22    A     Yes, there was.

23    Q     What was that difference?

24    A     Well, this, as you can see, according to the description,  
25    again, both by Detective Lanergan of the Quincy Police

1 Department, he mentions that the receiver unit and the battery  
2 packs here and the components, all of the components, and even  
3 the magnet were all taped with a duct tape. To me that's  
4 wrapping a device. It is -- I don't call that a container.

5 Q Is that duct tape next to you, is that the type of duct  
6 tape that you believe it was wrapped in?

7 A Well, it was described as a silver type of duct tape, as  
8 I recall.

9 Q All right.

10 A And it would be something like this, of course.

11 The '91 device, in comparison, when we address the  
12 issue of a container, personally, I don't consider wrapping it  
13 in tape a container. So, '86 does not have a container. '91  
14 was built in a very well made, according to all the  
15 information I read, anyway, was very well assembled with  
16 adhesives and glue. It was precisely cut by making drawing  
17 lines with blue ink pen. And it was painted black and made  
18 thin, so that it could be concealed underneath the  
19 undercarriage of the vehicle. Those two principles in  
20 themselves show some difference this. This device I wouldn't  
21 say was built to be concealed; where certainly, this one was.

22 Q Mr. Kline, was there a difference in the type of magnets  
23 used in each device?

24 A Yes, there was.

25 Q What was that difference, starting with '86, please?

1       A     Well, in '86, according to Mr. Hankard's description,  
2       based on the size and the identification that there was a  
3       steel plate on the magnet, what we have here is a, is a  
4       speaker magnet, a magnet that I looked all over my area of the  
5       country to try to duplicate and could only find in a broken  
6       speaker magnet, from a woofer, as a matter of fact, to have  
7       this kind of size.

8               It suggests to me that the man who made '86 was  
9       taking materials that were close to him, scrap wire, a busted  
10      speaker, and he simply took the magnet off of that speaker,  
11      and he used this speaker magnet to attach this device to the  
12      underside of the car.

13             In 1991 -- and we don't have the magnets here. But  
14      this device --

15      Q     Let me show you the other government mock-up.

16      A     The Government's reconstruction of the device illustrates  
17      not one magnet but many magnets, and the magnets are of  
18      different type. We have circular donut magnets here; and then  
19      we have what have been identified as button magnets. So, we  
20      have a different kind of magnet between the two devices,  
21      number one; and secondly, we have a difference in the number  
22      of magnets that were used. So this, this is a significant  
23      difference. It is an obvious difference.

24      Q     How many magnets do you recall were used in the '91  
25      device and what type of magnets?

1 A It's my understanding that there were 12 button magnets  
2 and at least one donut, or ring magnet.

3 Q Mr. Kline, in terms of adhesives, was there a difference  
4 between the two devices?

5 A There were no adhesives used in the '86 device, according  
6 to the examination results of Mr. Hankard. Adhesives were  
7 used in the assembly of the '91 device.

8 Q What were those adhesives that you recall?

9 A They were identified as cyanoacrylate, which is like  
10 super glue or crazy glue, that type of adhesive.

11 Q Mr. Kline, in your opinion, do these two devices exhibit  
12 a different level of sophistication or knowledge about  
13 explosives?

14 A Yes, they do.

15 Q What's the basis of that opinion?

16 A Well, the basis for that opinion begins with just a  
17 visual observation of the two devices. This device is kind of  
18 crudely put together with materials that are, that are kind of  
19 readily available, almost at the spur of the moment kind of  
20 thing. Where, this device was built by a person who was  
21 rather calculating, precise, who used components that were  
22 easy to assemble. This device certainly would be more  
23 efficient. That would be one of the ways that I would  
24 consider there was a difference in criminal sophistication, if  
25 you will, in this.

1 Q In your opinion -- what is your opinion of the level of  
2 explosives knowledge used in connection with the '91 device?

3 MR. LIBBY: Objection, your Honor.

4 THE COURT: What's the objection?

5 MR. LIBBY: To the form, level of explosive  
6 knowledge.

7 MR. SEGAL: I think he's entitled as an expert.

8 THE COURT: Well, I assume he's telling us based on  
9 his examination of the device.

10 MR. LIBBY: Your Honor --

11 MR. LIBBY: I'll add, that based upon your  
12 examination.

13 MR. LIBBY: The earlier question had to do with level  
14 of criminal sophistication, now we're talking about explosives  
15 knowledge.

16 THE COURT: He didn't talk about criminal  
17 sophistication, he just talked about the level of  
18 sophistication and knowledge. I don't know how this question  
19 is different from what the last question was. But to the  
20 extent that it is, and the witness understands it to be  
21 different, he can tell us.

22 THE WITNESS: I think what you're asking --

23 THE COURT: No, don't think what he's asking. If you  
24 don't understand, let Mr. Segal try again.

25 THE WITNESS: Let me answer --

1 MR. LIBBY: If we can have a question?

2 MR. SEGAL: I think if he understands it, he should  
3 try. And if he doesn't, I'll ask it again. .

4 THE COURT: No, let him have a clear question that  
5 the witness clearly understands, and then he can clearly  
6 answer.

7 MR. SEGAL: All right.

8 Q Looking at the '91 device, do you have an opinion whether  
9 it indicates that the maker had been trained in explosives or  
10 knew something about explosives?

11 MR. LIBBY: Objection, your Honor.

12 THE COURT: He may answer that.

13 A In examining the two devices, the first thing that I  
14 observed, that struck my attention about the, if you will, the  
15 level of explosives knowledge or something that indicated to  
16 me that the maker of this bomb had, had some training or  
17 experience in the explosives, was the use of two detonators.  
18 It's not commonly encountered. But I know for a fact that it  
19 is used by military bomb technicians. We have used it in our  
20 training in Baton Rouge for our antiterrorist program down  
21 there. It is a technique that's been, been used in training  
22 by the Department of Defense for special training operations.  
23 And in addition to that, I've seen it on several other cases  
24 by individuals who I know have had some explosives training.  
25 So, the presence of two detonators into the main charge piqued

1 my curiosity. That was the first thing.

2 Secondly, is the fact that in this device, the bomber  
3 did not solder-connect the detonator leg wires. And the  
4 reason that, that someone who knows about making bombs doesn't  
5 solder-connect those leg wires, is that he's afraid that heat  
6 or friction or, or shock could cause an accidental explosion  
7 of that detonator. He's going to handle those detonators with  
8 a little caution. And he's not going to be playing around  
9 with a soldering iron in those case. I think most bomb  
10 technicians would agree with that.

11 In the '86 device, however, the maker of this bomb  
12 did solder-connect his, his electrical circuit into the wires  
13 that lead into the element that causes this bomb to explode.  
14 So, there is a different level, a different mindset, if you  
15 will, between how these two bombs were put together in that  
16 regard.

17 Q Let me ask you about the dynamite wrapper. There's  
18 evidence that it had been removed from the '91 device.

19 A Another point that --

20 Q Do you have an opinion on the significance of that?

21 A Yes, I do.

22 The removal of the dynamite wrapper itself, suggests  
23 that an individual has either read a lot or maybe has had some  
24 prior criminal activity or associations. Because he knows  
25 that that dynamite wrapper has some identifying data on it by

1 which he can be traced, if this wrapper was found. You can  
2 trace where it came from. Removing that wrapper suggests that  
3 he was aware of this information or the possibility that ATF  
4 could, in fact, trace that dynamite back to its source and  
5 subsequently find that you made the bomb. So, doing that  
6 suggested that he had more of a level of sophistication.

7 In '86, the labeling or identifying data on the M-21  
8 was not removed. It was still there. It was identified by  
9 Mr. Hankard in his report. It even had a partial lot number  
10 that he had listed on there which would be suitable for some  
11 tracing.

12 Q Mr. Kline, what is your opinion as to the level of  
13 sophistication required to make the '86 device?

14 A I think that the person who made this device probably had  
15 a degree of electronics knowledge. He had to take one kind of  
16 component, disassemble it and be able to put it together and  
17 throw in relay switches and toggle switches in unusual places  
18 in a bomb. So I think he had some knowledge and skill in  
19 electronics.

20 But I think this person over here probably didn't  
21 have the same degree, could have had the same degree of  
22 knowledge, certainly the person who built this could have  
23 built this based on the way it was connected. But you can get  
24 instructions on how to make and put together these Futaba  
25 components at the hobby store when by the components.

1 Q Mr. Kline --

2 MR. SEGAL: Your honor, I'm going to refer to a  
3 chart. Maybe we can just do it from standing up, if it is all  
4 right with your Honor?

5 I'll put this over here.

6 Q Mr. Kline, looking at the Government's chart on signature  
7 analysis, the first item says forensic similarities. And it  
8 says wires were twisted, soldered and taped.

9 Do you see that block up there on the left side?

10 A This here?

11 Q Yes.

12 A Yes, I do.

13 Q Keeping your voice up, would you agree with Mr. Waskom  
14 that that fact is significant in helping to reach a signature  
15 identification in this case?

16 A It is a singular similarity that I would associate with  
17 making a decision, but it's not that uncommon; and, therefore,  
18 I wouldn't extend a great detail of weight to it in and of  
19 itself.

20 Q Have you seen other cases involving other bombs with  
21 wires twisted, soldered and taped?

22 A Yes, I have.

23 Q The next item on the chart is: Components were wrapped  
24 in duct tape.

25 Do you agree with Mr. Waskom, the components were

1 wrapped in duct tape is significant in helping reach a  
2 signature identification in this case?

3 A No.

4 Q Why not?

5 A Well, simply because, again, it is too general and it is  
6 too commonly used in bombs. I would certainly consider it in  
7 making the overall assumption or identification. But the  
8 strength of it is limited because it is such a common item.

9 Q The next item on the chart is "devices were affixed to  
10 undercarriage of vehicle."

11 Do you agree with Mr. Waskom that the devices affixed  
12 to undercarriage of vehicle are significant in helping to  
13 reach a signature identification in this case?

14 A Again, that, that identifies a general similarity, if you  
15 will, forensic similarity. And I would submit that most of  
16 the radio control devices that are placed on cars are placed  
17 on the undercarriage of vehicles. And there have been others  
18 that have been placed on vehicles other than these two bombs  
19 in this case.

20 Q Looking on right side of this chart on forensic  
21 similarities, the next item was "devices were affixed with  
22 round magnets."

23 Do you agree with Mr. Waskom that that phrase  
24 "devices affixed with round magnets" is significant in  
25 helping to reach a signature identification in this case?

1 A No.

2 Q Why not?

3 A Again, the, the assumption that round magnets is  
4 singularly unique is too broad in scope. When you look at  
5 these two devices, this round magnet right here is simply a  
6 speaker magnet. And I submit that the man who made the '86  
7 device doesn't have a propensity to round magnets. That  
8 speaker magnets could whereby square, it could have been  
9 regular tangle. He simply had it there. So the fact you have  
10 a round magnet in '86, but you have a multitude of round  
11 magnets in '91 is not -- should not be given that much weight,  
12 the fact that there are simply round.

13 Q Are the magnets used in the two devices of different  
14 sizes, sir?

15 A They, they are.

16 Q Are they of different types?

17 A Yes, they are.

18 Q Have you seen them before in connection with bombings  
19 you've investigated?

20 A I have. I've never seen the button magnets before. I've  
21 seen the circular donut magnets before.

22 Q In your experience, are the round magnets readily  
23 available in commercial outlets?

24 A I've seen them available in Radio Shack, and I know they  
25 are available in electronics stores.

1 Q Are they also part of most auto and stereo and TV speaker  
2 systems?

3 MR. LIBBY: Can we have the witness testify, your  
4 Honor, at this point.

5 MR. SEGAL: I think that was a yes or no.

6 THE COURT: But he's objecting to the fact that  
7 you're leading your witness, and the objection is sustained.

8 MR. SEGAL: All right.

9 Q Let me ask the question:

10 Do you agree with Mr. Waskom that the next category,  
11 toggle switch, was used in each firing system?

12 Do you see that under "forensic similarity"?

13 A I agree that the --

14 Q Well, let me ask the question, I just want to focus it.

15 Do you agree with Mr. Waskom that that phrase "toggle  
16 switch was used in each firing circuit" is significant in  
17 reaching a -- helping to reach a signature identification in  
18 this case?

19 A No, I do not.

20 Q Why not?

21 A Well, because the toggle switches had different functions  
22 and they were operated, turned on and off, in different  
23 manners. And that is a singularly unique difference, as  
24 opposed to a forensic similarity.

25 Q What were the different functions that you observed the

1 toggle switches in the two devices to have?

2 THE COURT: Hasn't he already explained that?

3 MR. SEGAL: All right.

4 Q To your knowledge, are toggle switches fairly commonly  
5 used?

6 A I have seen them used before in bombs, yes.

7 Q Now, the next item says, under the forensic similarity,  
8 "small lamps were used to test circuitry of the devices."

9 From your examination of the physical, of the  
10 physical evidence in this case, do you agree with that  
11 statement?

12 A No, I do not.

13 Q Why not, sir?

14 A Well, in the '86 device, there is a comment made to  
15 Detective Lanergan that a small lamp was used to test the  
16 circuit. In the laboratory report that Mr. -- what's his  
17 name -- Hankard made, there is no indication that he  
18 identified in the debris that was collected from that bombing  
19 a small lamp. So, a small lamp is not present in the '86  
20 device.

21 Q How about in 1991, was there any evidence found in the  
22 debris, to your knowledge, of a small lamp?

23 A Well, there are two factors there. The first factor is  
24 that, that the ATF Laboratory report did not identify the  
25 presence of a small lamp being present in that debris, which

1 would have been if it was used in the circuit. So, it was not  
2 apparently used in the circuit of the '91 device. Secondly,  
3 during the searches of Mr. Trenkler's locations, a test  
4 circuit using a small lamp was not recovered or identified as  
5 having been in his presence.

6 So, in my opinion, there really is no existence of a  
7 small lamp test circuit in the '91 device. And if you don't  
8 have one in '91, you can't compare it and say that there is a  
9 forensic similarity.

10 Q Now, the next item, under forensic similarities, in the  
11 government chart, says "devices were designed and built to  
12 function by remote control."

13 Do you find that significant for signature purposes  
14 in this case?

15 A No.

16 Q Why not?

17 A Well again, the scope of that statement is too broad and  
18 too general. The devices were designed and built to function  
19 by remote control. There are a lot of devices, not a  
20 preponderance of devices, but frequently we encounter radio  
21 control devices in bombs. So, to say that there is a forensic  
22 similarity that these two bombs were controlled remotely,  
23 radio controlled remotely, is not significant in of itself to  
24 establish this signature identification.

25 As we mentioned, the components in -- and this is a

1 way we establish the difference -- is that they were different  
2 types of radio controlled components and they were altered in  
3 a different way.

4 Q Mr. Kline, looking at the government chart, it says  
5 "circumstantial similarities."

6 Do you see that phrase?

7 A Yes, I do.

8 Q Is it your -- was it your practice, in the 20 years that  
9 were with the FBI, to consider circumstantial similarities in  
10 attempting to reach a signature identification?

11 A My examinations in my identifications that result in a  
12 signature identification, if there is one, are based primarily  
13 on the examination of the physical evidence, and not  
14 circumstantial evidence. It's not a position for the  
15 laboratory in its forensic analysis to use them in their  
16 forensic conclusions.

17 Now, if we're talking about solving case, yes, we're  
18 going to take all the information. But when I talk about just  
19 a signature identification between two components, I do not  
20 consider the circumstantial similarities. I simply consider  
21 the components, the way they are made, the type that were  
22 bought and used, employed, and the way those components and  
23 wires were assembled together.

24 Q Mr. Kline was the benefit of that phrase "circumstantial  
25 similarities" in relation to signature identification?

1 A What is the benefit?

2 Q Yes. Does it assist in any way in signature  
3 identification?

4 A Well, not in the signature identification itself, no. I  
5 would say that it doesn't. Not the ones that are listed here,  
6 I would say.

7 Q Can it reinforce in any way a signature identification?

8 A I would say circumstantial similarities can reinforce a  
9 signature identification made just on examination of the  
10 components themselves; yes, I would agree.

11 Q In your work with the FBI, sir, did you have occasion to  
12 investigate bombing incidents with physical elements found  
13 similar to those found at the Roslindale bombing?

14 A Yes, I have.

15 MR. SEGAL: Would you stay there, please.

16 I would like to bring up one more chart.

17 (Pause.)

18 Q Directing your attention to the 1980 examination of  
19 physical evidence relating to the attempted bombing OF the  
20 Cuban ambassador to the UN, in New York City, would you look  
21 on the right side of that chart.

22 Do you see those elements?

23 A Yes, I see those.

24 Q Is that a case that you investigated?

25 A That was a case in which a bombing, attempted bombing

1 case, where the bomb did not explode, that was investigated by  
2 the New York City Police Department and the Bomb Squad and the  
3 FBI Office in New York, and this evidence was submitted to me  
4 to examine at the FBI Laboratory.

5 Q Are some of the similarities between the physical  
6 evidence collected in that case, in New York City and the  
7 Roslindale incident, reflected on this chart that is before  
8 you?

9 A Yes, they are.

10 Q By the way, so, is it fair to say that the elements on  
11 the right-hand side of this diagram were found in the New York  
12 situation?

13 A Yes, it is.

14 Q Was that a bomb under a vehicle, remote control, with  
15 magnets?

16 A Yes.

17 Q All right.

18 I won't go through every other, but all those items  
19 on the right-hand side were found in connection with that  
20 attempted bombing of the Cuban ambassador?

21 A That's correct. Additionally, the Futaba, we mentioned  
22 Futaba here, there was Futaba receiver and a Futaba servo  
23 motor that was altered with a horn, as well. And toggle  
24 switches were also used, single pole toggle switches.

25 Q Do you recall the number of blasting caps found in

1 connection with the Cuban ambassador incident?

2 A Yes, the main charge in the bombing, attempted bombing,  
3 in New York, in' 80, used two detonators to prime the main  
4 charge. It was dual primed.

5 Q By the way, that bomb involving the Cuban ambassador, was  
6 that discovered undetonated, or was there just debris found?

7 A It was undetonated.

8 Q Now, let me show you these photos, Defendant's Exhibits  
9 151 to 158 for identification.

10 MR. LIBBY: May I be heard, your Honor.

11 As I understand it, counsel and I have talked about  
12 this, these photographs may be used to refresh the witness's  
13 recollection, but not for any direct evidentiary purposes.  
14 This is from an outside investigation. Unless he intends to  
15 offer them in evidence, and on that ground, I would object.

16 MR. SEGAL: I don't intend to offer them at this  
17 time. I was going to use them simply as a chalk to illustrate  
18 the items listed on that particular board. For instance,  
19 magnets, and we have pictures of the magnets. I think he's  
20 entitle to show --

21 THE COURT: He can describe them to us.

22 MR. SEGAL: Okay.

23 MR. LIBBY: Without showing them to the jury.

24 Q Looking at the photographs, are the photographs I've  
25 given you now, photographs taken of the device found in 1980

1 in connection with the Cuban ambassador's attempted  
2 assassination?

3 A Yes, they were.

4 Q All right. Looking at those photographs, how do the  
5 magnets, the round magnets, compare to the round magnets in  
6 this case?

7 A The round magnets that were recovered and identified were  
8 round, circular round, donut magnets like we have here in the  
9 '91 device.

10 Q All right.

11 Looking at the next photo, what is --

12 MR. LIBBY: May I see that last photo, please.

13 MR. SEGAL: Sure.

14 Q By the way, was there wood recovered in connection with  
15 that particular device of that Cuban ambassador?

16 A Yes, the magnets in the fusing system, the firing  
17 circuit, total, were mounted on a piece of wood is a recall  
18 adhesives were used to mount these components on the wood as  
19 well as bolts and other items.

20 Q What was the adhesive, that you recall?

21 In fact --

22 A I don't know that we have...

23 THE COURT: Mr. Kline, do you need those photographs  
24 to remind you of that particular bomb?

25 THE WITNESS: No, ma'am.

1 THE COURT: Then, why don't we just have testimony  
2 without the photographs.

3 MR. SEGAL: All right.

4 Q Looking at the elements --

5 THE COURT: They remain marked for identification  
6 only.

7 [Defendant's Exhibits 150 to 158 marked for  
8 identification.]

9 Q Looking at the elements on the chart on the right, what  
10 was the remote type -- remote control device used in '80?

11 A Futaba components, including the Futaba receiver, servo  
12 motor, and a battery power source, all Futaba brand, were  
13 utilized in the fusing circuit.

14 Q What type of batteries were used in the 1980 incident in  
15 New York?

16 A 9-volt batteries. There were two 9-volt batteries.

17 Q Was a slide switch used?

18 A Yes, it was.

19 Q Wood box?

20 A The components were contained, not in a wood box, but in  
21 a projects box, a plastics projects box, like you would find  
22 in Radio Shack. However, the device was concealed in a  
23 cardboard box. It was, specifically, it was a Colt's  
24 Firearm's packaging box for a Colt weapon, a pistol. It was  
25 that kind of box was used to conceal this bomb. And that box

1 was with the wood placed inside the box, and the magnets  
2 inserted on that piece of wood was wrapped in tape, the device  
3 was contained inside the box was wrapped in tape, and it was  
4 placed underneath the vehicle using those magnets.

5 Q And was there a single pole toggle switch used in the '80  
6 device?

7 A In this 1980 device, I think we had 10 toggle switches,  
8 all singular type, all single pole, single throw. There were  
9 multiple toggle switches.

10 Q Were battery snap connectors used in the '80 device?

11 A Yes, they were.

12 Q And do you recall how many blasting caps were used in  
13 the '80 device and what type of caps?

14 A There were two, and I think they were Dupont Number 10 --  
15 No. 6 instantaneous.

16 Q Do you recall whether the servo was the Futaba servo in  
17 that device?

18 A Yes it was.

19 Q Were the wires twisted, soldered, and taped?

20 A Yes, they were.

21 Q Was black tape used to wrap components?

22 A Yes, it was.

23 Q In 1980, did you also investigate a bomb that was  
24 recovered in Hialeah Florida?

25 A Yes.

1 Q Let me show you another page of this chart.

2 Does what I've just flipped over, that says Hialeah,  
3 Florida, accurately describe the components that you found in  
4 connection with the investigation of the bombing, of the bomb  
5 in Hialeah, Florida?

6 A Yes. Let me be clear, that this device was recovered and  
7 rendered safe in Miami. And the disassembled components were  
8 sent to the laboratory for analysis.

9 Q Like New York, that bomb in Florida hadn't gone off?

10 A That's right, it had not exploded.

11 Q So, the New York bomb you analyzed after it had been  
12 rendered safe and sent to the lab; is that right?

13 A That is correct.

14 Q You did the same thing in connection with the Hialeah  
15 bomb?

16 A That's correct.

17 Q All right.

18 What were the components you found in the physical  
19 evidence submitted to you in connection with the Hialeah,  
20 Florida bomb?

21 A Well, it, too, contained a remote control radio control  
22 system utilizing Futaba components, a Futaba receiver, one  
23 Futaba servo motor that had one of those little rotor arms,  
24 called a horn, like we have in the '91 device, sitting right  
25 here, attached to it. Attached right next to that servo horn

1 was a single, single pole, single throw toggle switch which  
2 was the trigger for the firing system of this device.

3 The wires were soldered, they were twisted, and they  
4 were secured, or insulated, with tape. Magnets were used to  
5 secure this device to the undercarriage of the vehicle. The  
6 magnets in the Hialeah case were not round magnets; however,  
7 they were bar magnets, hand bar magnets, that were used. It  
8 was mounted on a piece on a piece of board, these components  
9 were mounted on a piece of board, with glue, adhesive-type  
10 material, but this device was not concealed in any kind of  
11 container. A 9-volt battery was used as the power source for  
12 the firing circuit.

13 Q Were there AA batteries used in the Hialeah bomb?

14 A Yes, the AA batteries are part of the, the Futaba power  
15 pack, anyway. This happened to be a rechargeable power pack,  
16 and inside that are a specific kind of AA battery that are  
17 sealed into that unit.

18 Q Was a toggle switch used in the Hialeah bomb?

19 A Yes.

20 Q What was the explosive in that Hialeah bomb, that you  
21 recall?

22 A I believe it was C-4 4 plastic explosive.

23 Q Mr. Kline, at my request, did you conduct a battery test  
24 in this particular case, sir?

25 A Yes, I did.

1 Q What did that test consist of?

2 A Well, I was interested to know how long the AA batteries,  
3 four AA batteries, would last if this -- like the '91 device  
4 was assembled. And I had turned on the slide switch to allow  
5 current to come in to the receiver unit. And I have a similar  
6 circuitry at home that I use in training. And I have a Futaba  
7 radio controlled receiver, Futaba radio controlled servo motor  
8 and horn and microswitch, and all the other things that go  
9 along with it. And I used a Futaba battery pack, just like we  
10 have in the '91 device, and I went out and bought four brand  
11 new fresh batteries, put them into the battery pack; it was  
12 wired into the fusing system --

13 MR. LIBBY: If I may, your Honor, at this point,  
14 object as to relevance.

15 THE COURT: Well, it is relevant on the issue of how  
16 this bomb worked, isn't it?

17 MR. LIBBY: No, your Honor.

18 THE COURT: Why not?

19 MR. LIBBY: Because, as we know, we had initiation.  
20 We have, in fact, initiation on Monday at noon.

21 THE COURT: But the question was when was it armed?

22 MR. LIBBY: I don't believe that was the question.  
23 The question had to with the life of the batteries.

24 THE COURT: Well, but the defendant says it does. So  
25 he's offering evidence on this issue. I think it is

1 relevant.

2 Q Please continue, Mr. Kline.

3 A To continue, I turned on the slide switch, which allows,  
4 activates the receiver for this radio controlled unit. And I  
5 turned this system on at 8 o'clock in the evening; temperature  
6 was about 70 degrees. I checked it every two hours; of  
7 course, during the night I didn't. But I got up the next  
8 morning around 8 o'clock and began checking it every two  
9 hours. And at approximately 6 clock that evening, the system  
10 would not function. In other words, the batteries lost their  
11 power, their source of energy, and they could not activate the  
12 rest of the unit.

13 I repeated this test twice. And on both occasions,  
14 approximately the same amount of time, 22 hours, was all that  
15 that these batteries would function or last after that toggle  
16 switch or rather, the slide switch was turned on.

17 Q Mr. Kline, from your experience in bombing investigations  
18 which led to arrests, what has been the result of searches of  
19 the defendant's homes and businesses?

20 THE COURT: The objection to that is sustained.

21 Q Mr. Kline, we have in evidence the Defendant's 25, which  
22 is your report.

23 Is this 21-page document that report, sir?

24 A It appears to be so, yes.

25 Q Sir, I take it you analyzed the physical evidence in this

1 case that was submitted to ATF?

2 A I did.

3 Q The debris?

4 A Yes.

5 Q Did you find that any of that physical evidence seized  
6 from any location of Mr. Trenkler linked him to the  
7 construction of the '91 device?

8 A No.

9 Q Mr. Kline, I'd ask you to look at this chart which  
10 summarizes your testimony and, say, on forensic comparison  
11 between the '86 and the '91 devices, was this prepared under  
12 your direction, sir?

13 A Yes, it was.

14 MR. SEGAL: I'd ask that this chart be put and moved  
15 into evidence at this particular time?

16 THE COURT: Well, it is certainly a chalk, but how  
17 can it be anything more than that? It is simply a  
18 representation of what he's told us, and the evidence before  
19 the jury is what he told us.

20 THE COURT: But it is marked for identification as a  
21 chalk.

22 MR. SEGAL: Could it be submitted as a summary,  
23 similar to sometimes you put in a chalk that summarizes  
24 evidence, in the sense that --

25 THE COURT: This is not 1001 type-summary evidence.

1           Good try.

2           MR. SEGAL: That's the basis I would like to move it  
3 in.

4       Q     Does this accurately summarize the testimony you've given  
5 today, Mr. Kline, of forensic differences between these two  
6 devices?

7       A     Yes.

8           MR. SEGAL: I would like to move this chalk into  
9 evidence at this time.

10          THE COURT: Motion is denied, and it is marked for  
11 identification.

12          THE CLERK: What's the number on that?

13          MR. SEGAL: That would be 160.

14          **[Defendants' Exhibit 160 for identification.]**

15          MR. SEGAL: For the record, I'd ask that the chalk  
16 there be marked Defendant's Exhibit 161 for identification,  
17 the chalk we were referring to that relates to Hialeah, New  
18 York City, and Roslindale. We never really marked it for  
19 identification.

20          **[Defendants' Exhibit 161 marked for identification.]**

21       Q     Mr. Kline, is this a fair and accurate copy of your  
22 resume, sir?

23       A     Yes, it is.

24          MR. SEGAL: I'd ask that this resume be admitted into  
25 evidence at this particular time.

1 THE COURT: No objection?

2 MR. LIBBY: For identification I.D.?

3 THE COURT: Do you really object?

4 MR. LIBBY: I guess not.

5 MR. SEGAL: I wanted to end on a winning note that  
6 one came in. I have no further questions.

7 [Defendants' Exhibit 162 entered in evidence.]

8 MR. SEGAL: And ask it be published to the jury,  
9 also, your Honor.

10 MR. KELLY: Your Honor, is it possible that we could  
11 take a morning recess a little bit earlier, and start the  
12 cross after 15 minutes or so; just helps us to organize  
13 ourselves.

14 THE COURT: I hope your goodies have arrived. They  
15 are supposed to be here. If not, we'll wait until they get  
16 here.

17 [Whereupon, the jury was excused.]

18 [Recess.]

19

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1 [Whereupon, the jury entered the courtroom.]

2 THE COURT: You may cross-examine.

3 MR. LIBBY: Thank you, your Honor.

4 Cross-examination by Mr. Libby

5 Q Good morning, Mr. Kline.

6 A Good morning, sir.

7 Q Good morning.

8 A Good morning, sir.

9 Q We have met before?

10 A Excuse me?

11 Q We have met before?

12 A Yes, we have.

13 Q Sir, on whose behalf are you appearing here today?

14 A I've been retained by Mr. Segal on behalf of  
15 Mr. Trenkler.

16 Q Mr. Trenkler is your client, is he not?

17 A No, I wouldn't say he's my client.

18 Q You would not say he's your client?

19 A No, Mr. Segal is my client.

20 Q I see. Now, Mr. Kline --

21 THE COURT: Excuse me, for interrupting. There was  
22 left open from an earlier discussion a question to the extent  
23 there was a motion by the defendant it is denied. You may  
24 proceed. Your objection is noted.

25 MR. LIBBY: Thank you, your Honor.

1 THE COURT: If I need to clarify for the record, I  
2 will do that.

3 MR. SEGAL: I think maybe you could, I'm a little --

4 THE COURT: The issue you raised this morning.

5 MR. SEGAL: Yes.

6 THE COURT: That I told you I would think about it,  
7 I've thought about it and your motion is denied.

8 MR. SEGAL: The only problem is I don't remember the  
9 issue that was raised. I apologize.

10 THE COURT: Ms. Sharton will tell you.

11 MR. SEGAL: Once you hit 50, your Honor, it's all  
12 down hill.

13 THE COURT: Don't I know it. Go ahead.

14 Q Mr. Kline, you spent many years with the FBI?

15 A I spent 20 years with the FBI, that's correct.

16 Q And a primary share of your time was spent with these  
17 terrorist bombing incidents; is that correct?

18 A Be more specific, if you can, sir.

19 Q Most of your time was spent involved in these  
20 investigations with these terrorists bombings, true?

21 A The first six years was involved in investigating cases  
22 that came to the FBI which are investigated by all agents of  
23 the FBI. We have investigative jurisdiction. In '76 when I  
24 went to the laboratory, I was assigned cases on the basis that  
25 came in as a matter of routine. As I gained experience in

1 that position, just by chance, I suppose, I happen to get  
2 those cases that are developed into serious bombing cases.  
3 Some of those serious bombing cases did involve terrorists,  
4 yes.

5 Q That's where you spent most of your time, from '76 on,  
6 true?

7 A I don't know if I spent most of my time. I spent a great  
8 deal of my time investigating terrorists bombings.

9 MR. LIBBY: If I may approach, your Honor.

10 Q Page 215, Mr. Kline, you testified in this court on an  
11 earlier proceeding; is that correct?

12 A That's correct.

13 Q Under oath?

14 A Under oath.

15 Q On 215, sir?

16 MR. SEGAL: Can we have a --

17 Q Line 2. Then I asked you, if you spent primarily most of  
18 your time on it?

19 "Answer: Yes.

20 "Question: You said no?

21 "Answer: Oh, I'm sorry.

22 "Question: You had these garden variety things such  
23 as you pointed to sort of.

24 "Answer: Let me --

25 "Question: If I may, sir.

1 "Answer: Fine. I think you misinterpreted it.

2 "Question: You testified with respect to your  
3 extensive investigation involving the FALN?

4 "Answer: That's correct.

5 "Question: Croatian Group, Omega Seven, Miami IRA,  
6 AntiCastro, the Greece Terrorist Group, the United Freedom  
7 Front, have I missed any?

8 "Answer: There are others.

9 "Question: That's where you spend your time, right?

10 "Answer: I spent most of my time doing that, that's  
11 correct."

12 Did I read that properly, sir?

13 A That's correct, you read that properly.

14 Q Now, terrorist bombing, sir, is distinctive in that it  
15 involves groups, most of which have international  
16 implications, true, based on what I've just talked about here,  
17 Croatian Group, the Greece bombing, the IRA, the AntiCastro?

18 A The AntiCastro or the FALN did not have interracial  
19 implications. The Croatian Group was a domestic terrorist  
20 group that had interracial implications but their activities  
21 were domestically oriented.

22 Q These activities have political ends by definition, true?

23 A By political ends, yes, I think they were motivated by  
24 political ends.

25 Q Now, you mentioned previously jurisdiction, the FBI has

1 some jurisdiction and the ATF has other jurisdictions, true?

2 A That's true.

3 Q And the FBI is primarily interested in these terrorists  
4 group type bombings that, in fact, involve international  
5 groups with political ends to the bombings?

6 A That's correct.

7 Q And the ATF, on the other hand, sir, they pretty much  
8 involve themselves with investigations involving domestic  
9 bombings, purely domestic bombings without any terrorist  
10 overtones, true?

11 A That's fairly accurate, yes.

12 Q And in fact, they involve themselves in bombings just of  
13 the type we had here in Roslindale in 1991, correct?

14 A Those are the types of bombings they most properly  
15 investigate, yes.

16 Q Nothing terrorist of any kind involving the Roslindale  
17 bombing, true?

18 A Excuse me?

19 Q No terrorist aim or goal of any kind associated with the  
20 1991 Roslindale bombing?

21 A Not that I'm aware.

22 Q So the ATF handles it, right?

23 A That's correct.

24 Q So your expertise primarily from about the mid'70s on,  
25 sir, have been involved in focusing, becoming very familiar

[illegible]

— with the Cuban ambassador's attempted

— were.

— Looking at those photographs, how do the  
— round magnets, compare to the round magnets in

— magnets that were recovered and identified were  
— round, donut magnets like we have here in the

— ing at the next photo, what is --

—BBY: May I see that last photo, please.

—EGAL: Sure.

— ey, was there wood recovered in connection with  
— device of that Cuban ambassador?

— magnets in the fusing system, the firing  
— were mounted on a piece of wood is a recall  
— used to mount these components on the wood as  
— and other items.

— the adhesive, that you recall?

— et --

— now that we have...

— COURT: Mr. Kline, do you need those photographs  
— of that particular bomb?

— ITNESS: No, ma'am.

1 THE COURT: Then, why don't we just have testimony  
2 without the photographs.

3 MR. SEGAL: All right.

4 Q Looking at the elements --

5 THE COURT: They remain marked for identification  
6 only.

7 [Defendant's Exhibits 150 to 158 marked for  
8 identification.]

9 Q Looking at the elements on the chart on the right, what  
10 was the remote type -- remote control device used in '80?

11 A Futaba components, including the Futaba receiver, servo  
12 motor, and a battery power source, all Futaba brand, were  
13 utilized in the fusing circuit.

14 Q What type of batteries were used in the 1980 incident in  
15 New York?

16 A 9-volt batteries. There were two 9-volt batteries.

17 Q Was a slide switch used?

18 A Yes, it was.

19 Q Wood box?

20 A The components were contained, not in a wood box, but in  
21 a projects box, a plastics projects box, like you would find  
22 in Radio Shack. However, the device was concealed in a  
23 cardboard box. It was, specifically, it was a Colt's  
24 Firearm's packaging box for a Colt weapon, a pistol. It was  
25 that kind of box was used to conceal this bomb. And that box

1 was with the wood placed inside the box, and the magnets  
2 inserted on that piece of wood was wrapped in tape, the device  
3 was contained inside the box was wrapped in tape, and it was  
4 placed underneath the vehicle using those magnets.

5 Q And was there a single pole toggle switch used in the '80  
6 device?

7 A In this 1980 device, I think we had 10 toggle switches,  
8 all singular type, all single pole, single throw. There were  
9 multiple toggle switches.

10 Q Were battery snap connectors used in the '80 device?

11 A Yes, they were.

12 Q And do you recall how many blasting caps were used in  
13 the '80 device and what type of caps?

14 A There were two, and I think they were Dupont Number 10 --  
15 No. 6 instantaneous.

16 Q Do you recall weather the servo was the Futaba servo in  
17 that device?

18 A Yes it was.

19 Q Were the wires twisted, soldered, and taped?

20 A Yes, they were.

21 Q Was black tape used to wrap components?

22 A Yes, it was.

23 Q In 1980, did you also investigate a bomb that was  
24 recovered in Hialeah Florida?

25 A Yes.

1 Q Let me show you another page of this chart.

2 Does what I've just flipped over, that says Hialeah,  
3 Florida, accurately describe the components that you found in  
4 connection with the investigation of the bombing, of the bomb  
5 in Hialeah, Florida?

6 A Yes. Let me be clear, that this device was recovered and  
7 rendered safe in Miami. And the disassembled components were  
8 sent to the laboratory for analysis.

9 Q Like New York, that bomb in Florida hadn't gone off?

10 A That's right, it had not exploded.

11 Q So, the New York bomb you analyzed after it had been  
12 rendered safe and sent to the lab; is that right?

13 A That is correct.

14 Q You did the same thing in connection with the Hialeah  
15 bomb?

16 A That's correct.

17 Q All right.

18 What were the components you found in the physical  
19 evidence submitted to you in connection with the Hialeah,  
20 Florida bomb?

21 A Well, it, too, contained a remote control radio control  
22 system utilizing Futaba components, a Futaba receiver, one  
23 Futaba servo motor that had one of those little rotor arms,  
24 called a horn, like we have in the '91 device, sitting right  
25 here, attached to it. Attached right next to that servo horn

1 was a single, single pole, single throw toggle switch which  
2 was the trigger for the firing system of this device.

3 The wires were soldered, they were twisted, and they  
4 were secured, or insulated, with tape. Magnets were used to  
5 secure this device to the undercarriage of the vehicle. The  
6 magnets in the Hialeah case were not round magnets; however,  
7 they were bar magnets, hand bar magnets, that were used. It  
8 was mounted on a piece on a piece of board, these components  
9 were mounted on a piece of board, with glue, adhesive-type  
10 material, but this device was not concealed in any kind of  
11 container. A 9-volt battery was used as the power source for  
12 the firing circuit.

13 Q Were there AA batteries used in the Hialeah bomb?

14 A Yes, the AA batteries are part of the, the Futaba power  
15 pack, anyway. This happened to be a rechargeable power pack,  
16 and inside that are a specific kind of AA battery that are  
17 sealed into that unit.

18 Q Was a toggle switch used in the Hialeah bomb?

19 A Yes.

20 Q What was the explosive in that Hialeah bomb, that you  
21 recall?

22 A I believe it was C-4 4 plastic explosive.

23 Q Mr. Kline, at my request, did you conduct a battery test  
24 in this particular case, sir?

25 A Yes, I did.

1 Q What did that test consist of?

2 A Well, I was interested to know how long the AA batteries,  
3 four AA batteries, would last if this -- like the '91 device  
4 was assembled. And I had turned on the slide switch to allow  
5 current to come in to the receiver unit. And I have a similar  
6 circuitry at home that I use in training. And I have a Futaba  
7 radio controlled receiver, Futaba radio controlled servo motor  
8 and horn and microswitch, and all the other things that go  
9 along with it. And I used a Futaba battery pack, just like we  
10 have in the '91 device, and I went out and bought four brand  
11 new fresh batteries, put them into the battery pack; it was  
12 wired into the fusing system --

13 MR. LIBBY: If I may, your Honor, at this point,  
14 object as to relevance.

15 THE COURT: Well, it is relevant on the issue of how  
16 this bomb worked, isn't it?

17 MR. LIBBY: No, your Honor.

18 THE COURT: Why not?

19 MR. LIBBY: Because, as we know, we had initiation.  
20 We have, in fact, initiation on Monday at noon.

21 THE COURT: But the question was when was it armed?

22 MR. LIBBY: I don't believe that was the question.  
23 The question had to with the life of the batteries.

24 THE COURT: Well, but the defendant says it does. So  
25 he's offering evidence on this issue. I think it is

1 relevant.

2 Q Please continue, Mr. Kline.

3 A To continue, I turned on the slide switch, which allows,  
4 activates the receiver for this radio controlled unit. And I  
5 turned this system on at 8 o'clock in the evening; temperature  
6 was about 70 degrees. I checked it every two hours; of  
7 course, during the night I didn't. But I got up the next  
8 morning around 8 o'clock and began checking it every two  
9 hours. And at approximately 6 clock that evening, the system  
10 would not function. In other words, the batteries lost their  
11 power, their source of energy, and they could not activate the  
12 rest of the unit.

13 I repeated this test twice. And on both occasions,  
14 approximately the same amount of time, 22 hours, was all that  
15 that these batteries would function or last after that toggle  
16 switch or rather, the slide switch was turned on.

17 Q Mr. Kline, from your experience in bombing investigations  
18 which led to arrests, what has been the result of searches of  
19 the defendant's homes and businesses?

20 THE COURT: The objection to that is sustained.

21 Q Mr. Kline, we have in evidence the Defendant's 25, which  
22 is your report.

23 Is this 21-page document that report, sir?

24 A It appears to be so, yes.

25 Q Sir, I take it you analyzed the physical evidence in this

1 case that was submitted to ATF?

2 A I did.

3 Q The debris?

4 A Yes.

5 Q Did you find that any of that physical evidence seized  
6 from any location of Mr. Trenkler linked him to the  
7 construction of the '91 device?

8 A No.

9 Q Mr. Kline, I'd ask you to look at this chart which  
10 summarizes your testimony and, say, on forensic comparison  
11 between the '86 and the '91 devices, was this prepared under  
12 your direction, sir?

13 A Yes, it was.

14 MR. SEGAL: I'd ask that this chart be put and moved  
15 into evidence at this particular time?

16 THE COURT: Well, it is certainly a chalk, but how  
17 can it be anything more than that? It is simply a  
18 representation of what he's told us, and the evidence before  
19 the jury is what he told us.

20 THE COURT: But it is marked for identification as a  
21 chalk.

22 MR. SEGAL: Could it be submitted as a summary,  
23 similar to sometimes you put in a chalk that summarizes  
24 evidence, in the sense that --

25 THE COURT: This is not 1001 type-summary evidence.

1           Good try.

2           MR. SEGAL: That's the basis I would like to move it  
3 in.

4       Q     Does this accurately summarize the testimony you've given  
5 today, Mr. Kline, of forensic differences between these two  
6 devices?

7       A     Yes.

8           MR. SEGAL: I would like to move this chalk into  
9 evidence at this time.

10          THE COURT: Motion is denied, and it is marked for  
11 identification.

12          THE CLERK: What's the number on that?

13          MR. SEGAL: That would be 160.

14          **[Defendants' Exhibit 160 for identification.]**

15          MR. SEGAL: For the record, I'd ask that the chalk  
16 there be marked Defendant's Exhibit 161 for identification,  
17 the chalk we were referring to that relates to Hialeah, New  
18 York City, and Roslindale. We never really marked it for  
19 identification.

20          **[Defendants' Exhibit 161 marked for identification.]**

21       Q     Mr. Kline, is this a fair and accurate copy of your  
22 resume, sir?

23       A     Yes, it is.

24          MR. SEGAL: I'd ask that this resume be admitted into  
25 evidence at this particular time.

1 THE COURT: No objection?

2 MR. LIBBY: For identification I.D.?

3 THE COURT: Do you really object?

4 MR. LIBBY: I guess not.

5 MR. SEGAL: I wanted to end on a winning note that  
6 one came in. I have no further questions.

7 [Defendants' Exhibit 162 entered in evidence.]

8 MR. SEGAL: And ask it be published to the jury,  
9 also, your Honor.

10 MR. KELLY: Your Honor, is it possible that we could  
11 take a morning recess a little bit earlier, and start the  
12 cross after 15 minutes or so; just helps us to organize  
13 ourselves.

14 THE COURT: I hope your goodies have arrived. They  
15 are supposed to be here. If not, we'll wait until they get  
16 here.

17 [Whereupon, the jury was excused.]

18 [Recess.]

19

20

21

22

23

24

25

1 [Whereupon, the jury entered the courtroom.]

2 THE COURT: You may cross-examine.

3 MR. LIBBY: Thank you, your Honor.

4 Cross-examination by Mr. Libby

5 Q Good morning, Mr. Kline.

6 A Good morning, sir.

7 Q Good morning.

8 A Good morning, sir.

9 Q We have met before?

10 A Excuse me?

11 Q We have met before?

12 A Yes, we have.

13 Q Sir, on whose behalf are you appearing here today?

14 A I've been retained by Mr. Segal on behalf of  
15 Mr. Trenkler.

16 Q Mr. Trenkler is your client, is he not?

17 A No, I wouldn't say he's my client.

18 Q You would not say he's your client?

19 A No, Mr. Segal is my client.

20 Q I see. Now, Mr. Kline --

21 THE COURT: Excuse me, for interrupting. There was  
22 left open from an earlier discussion a question to the extent  
23 there was a motion by the defendant it is denied. You may  
24 proceed. Your objection is noted.

25 MR. LIBBY: Thank you, your Honor.

1 THE COURT: If I need to clarify for the record, I  
2 will do that.

3 MR. SEGAL: I think maybe you could, I'm a little --

4 THE COURT: The issue you raised this morning.

5 MR. SEGAL: Yes.

6 THE COURT: That I told you I would think about it,  
7 I've thought about it and your motion is denied.

8 MR. SEGAL: The only problem is I don't remember the  
9 issue that was raised. I apologize.

10 THE COURT: Ms. Sharton will tell you.

11 MR. SEGAL: Once you hit 50, your Honor, it's all  
12 down hill.

13 THE COURT: Don't I know it. Go ahead.

14 Q Mr. Kline, you spent many years with the FBI?

15 A I spent 20 years with the FBI, that's correct.

16 Q And a primary share of your time was spent with these  
17 terrorist bombing incidents; is that correct?

18 A Be more specific, if you can, sir.

19 Q Most of your time was spent involved in these  
20 investigations with these terrorists bombings, true?

21 A The first six years was involved in investigating cases  
22 that came to the FBI which are investigated by all agents of  
23 the FBI. We have investigative jurisdiction. In '76 when I  
24 went to the laboratory, I was assigned cases on the basis that  
25 came in as a matter of routine. As I gained experience in

1 that position, just by chance, I suppose, I happen to get  
2 those cases that are developed into serious bombing cases.  
3 Some of those serious bombing cases did involve terrorists,  
4 yes.

5 Q That's where you spent most of your time, from '76 on,  
6 true?

7 A I don't know if I spent most of my time. I spent a great  
8 deal of my time investigating terrorists bombings.

9 MR. LIBBY: If I may approach, your Honor.

10 Q Page 215, Mr. Kline, you testified in this court on an  
11 earlier proceeding; is that correct?

12 A That's correct.

13 Q Under oath?

14 A Under oath.

15 Q On 215, sir?

16 MR. SEGAL: Can we have a --

17 Q Line 2. Then I asked you, if you spent primarily most of  
18 your time on it?

19 "Answer: Yes.

20 "Question: You said no?

21 "Answer: Oh, I'm sorry.

22 "Question: You had these garden variety things such  
23 as you pointed to sort of.

24 "Answer: Let me --

25 "Question: If I may, sir.

1 "Answer: Fine. I think you misinterpreted it.

2 "Question: You testified with respect to your  
3 extensive investigation involving the FALN?

4 "Answer: That's correct.

5 "Question: Croatian Group, Omega Seven, Miami IRA,  
6 AntiCastro, the Greece Terrorist Group, the United Freedom  
7 Front, have I missed any?

8 "Answer: There are others.

9 "Question: That's where you spend your time, right?

10 "Answer: I spent most of my time doing that, that's  
11 correct."

12 Did I read that properly, sir?

13 A That's correct, you read that properly.

14 Q Now, terrorist bombing, sir, is distinctive in that it  
15 involves groups, most of which have international  
16 implications, true, based on what I've just talked about here,  
17 Croatian Group, the Greece bombing, the IRA, the AntiCastro?

18 A The AntiCastro or the FALN did not have interracial  
19 implications. The Croatian Group was a domestic terrorist  
20 group that had interracial implications but their activities  
21 were domestically oriented.

22 Q These activities have political ends by definition, true?

23 A By political ends, yes, I think they were motivated by  
24 political ends.

25 Q Now, you mentioned previously jurisdiction, the FBI has

1 some jurisdiction and the ATF has other jurisdictions, true?

2 A That's true.

3 Q And the FBI is primarily interested in these terrorists  
4 group type bombings that, in fact, involve international  
5 groups with political ends to the bombings?

6 A That's correct.

7 Q And the ATF, on the other hand, sir, they pretty much  
8 involve themselves with investigations involving domestic  
9 bombings, purely domestic bombings without any terrorist  
10 overtones, true?

11 A That's fairly accurate, yes.

12 Q And in fact, they involve themselves in bombings just of  
13 the type we had here in Roslindale in 1991, correct?

14 A Those are the types of bombings they most properly  
15 investigate, yes.

16 Q Nothing terrorist of any kind involving the Roslindale  
17 bombing, true?

18 A Excuse me?

19 Q No terrorist aim or goal of any kind associated with the  
20 1991 Roslindale bombing?

21 A Not that I'm aware.

22 Q So the ATF handles it, right?

23 A That's correct.

24 Q So your expertise primarily from about the mid'70s on,  
25 sir, have been involved in focusing, becoming very familiar

1 with large scale terrorist groups who undertake these  
2 bombings, true?

3 A I think that's a misrepresentation of what I do at the  
4 laboratory and what the FBI does at the laboratory.

5 Q Sir, if I may, you testified that most of these terrorist  
6 groups employ series, S E R I E S, bombings, true?

7 A That's true.

8 Q The FALN involved 175 bombings?

9 A That's right.

10 Q Croatian Group between 10 and 15?

11 A Yes.

12 Q The Omega Seven, where is it located?

13 A Where is it located?

14 Q Where do they operate out of?

15 A Miami, New York, New Jersey.

16 Q 150 series bombings?

17 A Pardon me?

18 Q 150 series bomb?

19 A There were approximately 150 bombs associated with that  
20 organization.

21 Q And when these groups commonly set out to produce a bomb,  
22 an explosive device, they do it in bulk, don't they, they  
23 don't make just one they have a mini assembly line going;  
24 don't they?

25 A You may say so, yes.

1 Q And when they do it, they have two or three individuals  
2 in the group secreted away in a secret place, and buy the  
3 materials for these devices in bulk?

4 A That's true.

5 Q They might have a dozen pocket watches, and they're going  
6 to build the same bomb?

7 A That's right.

8 Q Now, that's why we see, do we not, sir, these instances  
9 where later on as you testified, you become very familiar with  
10 a particular group's signature, right?

11 A That's true.

12 Q For example, these book bombs, where they carve the book  
13 out of the middle, beginning page 9 goes to 160, right?

14 A Yes.

15 Q They do that on purpose, don't they. The groups do that  
16 intentionally, right?

17 A I would assume that they do it intentionally, but it also  
18 goes to the signature of the individual person in that group  
19 who makes that bomb.

20 Q And it's not mere coincidence is it, sir, that each of  
21 these bombs is an H. G. Wells book, the title of which escapes  
22 you at the moment, and it begins on page 6 and ends at 190,  
23 not coincidence is it?

24 A I don't know what you mean by the question.

25 Q Well, sir, let me see if I can change tact here. The

1 Omega, the Omega Seven Group that left their logo?

2 A Yes.

3 Q These folks involving terrorist bombings want you to know  
4 who left the bomb, true?

5 A In those cases, that's true.

6 Q It is not one of these inadvertent instances where the  
7 bomb maker unwittingly leaves something which reveals his  
8 handiwork that would reveal something that could leave  
9 investigators to determine its identity; it's not that kind of  
10 thing, is it?

11 A It's hard to say.

12 Q And the reason for that is, these groups want to be able  
13 to -- strike that. These groups want to take credit for a  
14 bombing after the fact, right?

15 A That's true.

16 Q So when they call 45 minutes after a bombing incident at  
17 an airline or an airport which is what the FBI gets involved  
18 in, true, right?

19 A That's true.

20 Q You will believe them, right?

21 A That's correct.

22 Q So the question at that point, sir, is not who done it,  
23 but catch me if you can, true?

24 A That's not entirely true.

25 Q Not entirely true?

1 A No.

2 Q These folks are not in the slightest bit shy about  
3 letting you know who is responsible for?

4 A I would submit to you that they don't want to get  
5 caught. They take all the precautions necessary by using dark  
6 gloves so they do not leave their fingerprints. They are very  
7 much concerned about getting caught.

8 Q With respect to their group's identity, sir, they're not  
9 shy at all?

10 A Not about their group's identity.

11 Q Okay. That's my question.

12 Now, in this case you're called on to review whether  
13 the evidence suggests a signature between the 1986 device and  
14 the 1981 device, true?

15 A That's right.

16 Q And sitting here today there's no question in your mind,  
17 Mr. Kline, as to the individual responsible for the design and  
18 construction of the 1986 explosive device, is there?

19 A Yes, that's true.

20 Q There is a question in your mind?

21 A There is no question.

22 Q And who, please, is the individual responsible for the  
23 design and construction of the 1986 device?

24 A Based on the information provided, maybe it was  
25 Mr. Trenkler.

1 Q And you say, sir, that Mr. Trenkler is not your client?

2 A No, he's not. I don't know how to answer that question.  
3 I'm retained by Mr. Segal.

4 MR. LIBBY: Your Honor, if I may approach.

5 MR. SEGAL: Can we get a page, please?

6 MR. LIBBY: Yeah 228, line 14.

7 "Question: On whose behalf are you appearing here  
8 today?

9 "Answer: I'm appearing here on behalf of  
10 Mr. Trenkler."

11 Skip down to 20.

12 "Answer: What are you saying?

13 "Question: He is your client, correct?

14 "Answer: Yes, he is.

15 "Question: You are appearing on his behalf here  
16 today, right?

17 "Answer: That's correct."

18 Did I read that properly?

19 A You read that properly. I would assume I misspoke. I'm  
20 here on his behalf.

21 Q Have you misspoken about anything else here today so far  
22 as you know?

23 A Not that I'm aware of.

24 Q Now, as to the 1991 bombing, you testified, it simply  
25 wasn't a terrorist based bombing, true?

1 A Not to my knowledge, it was not.

2 Q And sir, so far as you know, looking into the case,  
3 looking into the crime scene integrity, the crime scene  
4 search, the National Response Team in that case did a  
5 remarkable job; did they not?

6 A They were very efficient in what they did, yes.

7 Q They did a fine job, true?

8 A True.

9 Q You know Mr. Waskom, do you not?

10 A Yes, I do.

11 Q You met him before coming here today?

12 A I did.

13 Q Are you familiar with his qualifications?

14 A I am.

15 Q Do you understand him to be a seasoned veteran, explosive  
16 enforcement officer of ATF?

17 A In three years you're a seasoned veteran, yes.

18 Q Before that a life long career in military?

19 A He's a seasoned explosives ordnance disposal technician  
20 who I have respect for.

21 Q And with respect to the Plexiglas mark, did that fairly  
22 and accurately depict the reconstruction of the 1991 homemade  
23 bomb, does it not?

24 A I would say that it does.

25 Q And in this respect, sir, with respect to this device,

1 depicted here in Government Exhibit 5, would you agree with  
2 me, that it reflects great care in the making, right?

3 A Yes.

4 Q Quality craftsmanship?

5 A That is what was reported by Mr. Waskom and the--

6 Q And you agree with that?

7 A I agree with that.

8 Q Do you agree with "painstakingly attention to detail"?

9 A I believe it was carefully done, I don't know about  
10 "painstaking." It was carefully manufactured,, it was well  
11 done.

12 Q We know, for example, that the five nine-volt batteries  
13 was glued together as a unit?

14 A I think that's accurate.

15 Q And in fact, that glue glued into the box itself as a  
16 single unit?

17 A That's right.

18 Q That reflects somewhat of the mind set of the maker his  
19 care to make sure it remains in the unit of the box?

20 A Remains intact, yes.

21 Q And we also see that in the way that the box was  
22 constructed, right?

23 A Yes, we do.

24 Q We had a template used in cutting along these lines, are  
25 you familiar with that?

1 A Yes, I am.

2 Q And you saw that there was glue along the edges of the  
3 box and then these finishing nails, very delicate finishing  
4 nails; did you see that?

5 A No. I think there were two penny nails.

6 Q You saw those along the perimeter of the box, right?

7 A I didn't see them. That's what was purported.

8 Q You didn't see any of these nails, sir?

9 A No. I saw some two penny nails from the evidence I  
10 observed in Boston, yes.

11 Q Do you have any reason to believe they weren't in this  
12 construction?

13 A No, I don't.

14 Q Now, you also agree with me, sir, that this device  
15 reflects Government's -- for lack of a better term "fail  
16 safe." It, for example, has 45 volts in series of five  
17 nine-volt batteries far more power to detonate those blasting  
18 caps, is that true?

19 A That's true.

20 Q And it was low profile, right?

21 A What do you mean by "low profile"?

22 Q Sorry, from looking at it from the side, assume that it  
23 was affixed underneath the undercarriage of the vehicle, it's  
24 low profile, right, it's relatively thin?

25 A It's a thin box, yes.

1 Q And it was designed to avoid detection?

2 A That's exactly right.

3 Q Spray painted black?

4 A That would be my opinion as well.

5 Q Magnets on its face, underneath the car, to avoid  
6 detection, right, true?

7 A Yes.

8 Q And it was affixed by means of these series of button  
9 magnets and large ring magnets, right?

10 A That's correct.

11 Q Now, sir, I don't recall your testimony on this.

12 Sir, but do you disagree that these large magnets are  
13 speaker magnets. Do you deny that?

14 A I deny that those in and of itself are not speaker  
15 magnets, yes.

16 Q Do you rule this out then?

17 A That they were speaker magnets?

18 Q Yes.

19 A I couldn't make an opinion whether they were or not.

20 Q So you don't know one way or the other, is that right?

21 A I know that those kind of magnets are used in the  
22 manufacture of speakers, and the manufacture of the basis of  
23 antennas that you put on top of your car. They can also be  
24 used in small motors, but there is no information, or  
25 available information from the report that I saw or the

1 information in the analysis that I took at the laboratory or  
2 rather in the office here that suggested that those magnets  
3 came from a speaker. And I would submit to you, sir, if  
4 you've ever tried to disassemble a speaker and get that magnet  
5 out, a speaker magnet, you would probably break it as I did in  
6 this '86 device.

7 Q Sir, my question is simply do you disagree with  
8 Mr. Waskom's opinion that these magnets, these large ring  
9 magnets are consistent with speaker magnets; do you disagree  
10 with it or not?

11 A I would agree that they are used in the manufacture of  
12 speaker magnets.

13 Q These magnets here, sir?

14 A These two large magnets.

15 Q You would agree with, Mr. Waskom, that they are  
16 consistent with speaker magnets?

17 A No, they are not consistent with speaker magnets. The  
18 other is an assembled component, and is not a speaker magnet.

19 Q The outer circumference is 3.65 inches?

20 A Yes, what about it?

21 Q The inner circumference is 2.05?

22 A Yes.

23 Q Antenna magnets are much smaller, are they not, sir?

24 A That's true, I suppose. It depends. No, I don't know.

25 Q Five minutes ago you mentioned as a point of fact that

1 they were consistent with antenna magnets?

2 A They are consistent with the kind of magnets involved in  
3 antenna.

4 Q You said antenna magnets -- I'm directing your attention  
5 to the size -- antenna magnets are substantially smaller?

6 A I have no idea.

7 Q So, are you changing your testimony?

8 A No, I'm not changing my testimony.

9 MR. SEGAL: Objection.

10 Q Now, that device, the '91 device was also designed to be  
11 initiated by remote control, true?

12 A Yes.

13 Q And by doing so that permits the trigger person to remain  
14 a safe distance away at the time of the initiation and  
15 explosion?

16 A That's the theory for the remote control device.

17 Q And the trigger person can choose his or her time and  
18 place for the initiation; is that right?

19 A That's correct.

20 Q We also know, sir, and you would agree with me, that in  
21 this device we have a toggle switch, right?

22 A Yes.

23 Q Not a microswitch, a toggle switch?

24 A That's correct.

25 Q And some of these components in the device were bound in

1 duct tape, true?

2 A Only one component that I'm aware of is examined or  
3 reported in Ms. Wallace's report was wrapped in duct tape and  
4 that was the dynamite.

5 Q The main charge?

6 A The main charge.

7 Q And that main charge was two to three sticks of ammonium  
8 dynamite?

9 A That was the opinion given by the ATF, and I have no  
10 reason to disagree.

11 Q You have been around dynamite a good long while, have you  
12 not, sir?

13 A I have.

14 Q Are you familiar with the effects?

15 A Yes.

16 Q Are you familiar with the effect of two to three sticks  
17 of dynamite?

18 A Yes.

19 Q Placed under the undercarriage of an automobile?

20 A Yes.

21 Q And on explosions, sir, two to three sticks of dynamite  
22 affixed to the undercarriage, specifically underneath the  
23 driver's seat of the '86 Buick, do you have that scenario in  
24 mind?

25 A Yes.

1 Q That would reduce that vehicle essentially to rubble,  
2 would it not?

3 A Two to stick underneath of the undercarriage reduce it to  
4 rubble?

5 Q I'll rephrase it. It would reduce the area of the  
6 driver's seat to rubble?

7 A It would more than likely penetrate the side of the  
8 driver's, where the driver's sitting, throw fragmentation up  
9 through there. If the windows were closed, it would probably  
10 blow the windows out. Fragments would go through the roof,  
11 blow it out. It would produce a significant amount of damage.

12 Q Not more than likely, virtually certainly, it's no  
13 question in your mind?

14 A If it detonated.

15 Q If we had complete detonation?

16 A Yes.

17 Q Virtually certain to kill the occupant in the driver's  
18 seat?

19 A I don't know about being virtually certain to kill. I  
20 would say that it could kill.

21 Q That explosion, sir, would drive these magnets and  
22 scrapnel up through the floor pan into the driver, true?

23 A That's true.

24 Q Now, with respect to signature opinion generally, Mr.  
25 Kline, you believe in that theory, signature theory, right?

1 A Yes, I do.

2 Q You are a proponent of it?

3 A I am.

4 Q You testified previously about it?

5 A Yes, I have.

6 Q And in fact, by the way, you mentioned it in response to  
7 Mr. Segal's question is it is akin to handwriting and  
8 fingerprints; isn't that true?

9 A Not just as positive as handwriting and fingerprints.

10 Q But in fact, it doesn't have anything to do with  
11 fingerprints at all?

12 A It's basically the same principle, the signature  
13 identification is somewhat like a fingerprint. It's akin to a  
14 fingerprint.

15 Q One cannot change one's fingerprints, right?

16 A That's correct.

17 Q You're born with it?

18 A That's true.

19 Q You can change your handwriting, but you will it so,  
20 true?

21 A That's true.

22 Q So handwriting effectively reflects the habits, the  
23 quirks, the personal touches of the individual, right?

24 A Yes.

25 Q Whereas fingerprinting is an objective thing, and you

1 look at it and it's either that person's fingerprints or not,  
2 is that right?

3 A That's correct.

4 Q And they're not really the same thing, are they not?

5 A I suppose not.

6 Q Now, if you've testified -- strike that.

7 You would agree with me that signature as follows:  
8 It is well-known presence in the field of analysis and  
9 reconstruction of explosive devices.

10 MR. SEGAL: Can we get a page?

11 MR. LIBBY: The first affidavit page 6, paragraph  
12 14. That once an individual builds an improvised bomb, he or  
13 she repeats significant and unique aspects of the first bomb  
14 if he or she builds a second bomb. Basically, the bomb maker  
15 individualizes his or her bomb construction by the types of  
16 components employed, alterations made and the means of  
17 assembling the device. Thus to determine whether an  
18 individual has constructed another device, it is necessary to  
19 identify specific, singularly unique or uncharacteristic  
20 similarities in the design, components, assembly construction,  
21 and other circumstances which appear to be individualized by  
22 the bomb maker. These singularly unique alterations or  
23 methods in constructing a device are commonly referred to as  
24 the bomber's signature?

25 A That's correct.

1 Q And that's your affidavit, sir?

2 A That's right.

3 Q Which you signed under the pains and penalties of perjury  
4 back in June of this year, right?

5 A Yes.

6 Q And singularly unique as you use it here, sir, means one,  
7 right? Unique means one?

8 A Yes, it does.

9 Q And that's what you are looking for when you get into the  
10 signature investigation, sir, you're looking for that  
11 particular thing that I believe, as you put it before, smacks  
12 you in the face and puts you on notice that this is -- I've  
13 seen this before, this means something to me, true?

14 A That's correct.

15 Q And with respect to wiring generally, sir, you may find  
16 that singularly unique feature present in the wiring between  
17 two particular devices, right?

18 A The way the wires are connected, yes. It would be a  
19 feature that we would consider in trying to establish a  
20 signature identification.

21 Q And in order to understand that, take a moment to  
22 understand that you can connect wires simply by twisting?

23 A Yes.

24 Q You may connect them by taping them, right?

25 A Yes.

1 Q Standing alone each one of those would not really give  
2 you a great deal of information, fairly common?

3 A Well, each one in itself would be a singularly unique way  
4 of assembling or putting the wire together.

5 Q Just simply twisting it would be singularly unique?

6 A Yes, it would.

7 Q So if you saw something twisted, sir, just simply twisted  
8 that smacks you in the face as being unique?

9 A It doesn't smack me in the face, but it's the way the  
10 individual is setting the device.

11 Q If you twist the wire and solder it, it gives you more  
12 information about the bomber?

13 A The information is even stronger.

14 Q Say, if you found a connection of the solder and then  
15 taped, that would give you more information?

16 A That's right. It would increase the strength of the  
17 uniqueness.

18 Q That's because it's narrowing the field, right?

19 A That would be a fair assumption, yes.

20 Q Now, sir, you prepared and signed under oath again a  
21 second affidavit in this case, did you not?

22 A I did.

23 Q And you did that, I believe, on the 19th day of October  
24 1993, true?

25 A Yes, I believe that's correct.

1 Q Now, in the -- with respect to the 1986 device, sir, if I  
2 may, your Honor --

3 MR. SEGAL: Could we get a page?

4 MR. LIBBY: Page 11, Terry, first affidavit.

5 MR. SEGAL: Are we on the first or second?

6 MR. LIBBY: First affidavit.

7 MR. SEGAL: Page 11.

8 MR. LIBBY: That's right. Paragraph 27.

9 Q You say, sir, in your first affidavit "in the '86 device  
10 the wire connections were twisted, soldered, and taped"; is  
11 that right?

12 Did I read that right?

13 A Yes.

14 Q And you go on to say, "However in the '91 device the wire  
15 connections were twisted and taped but not soldered," true?

16 A That's correct.

17 Q Now, later on, sir, -- strike that.

18 When you said the 1986 device, the wires were twisted  
19 soldered and taped, you said that that was a singularly unique  
20 method of assembly which individual bomb makers are likely to  
21 repeat, true?

22 A Yes, it identified the difference between the '91 bomb.

23 THE COURT: Do we have a set of these for the witness  
24 and then we'll save you the walk.

25 MR. LIBBY: Directing yourself to page 11, same

1 paragraph, Terry.

2 MR. KELLY: If it helps, I don't need my copy.

3 MR. SEGAL: Which one do you want, the first or the  
4 second?

5 THE COURT: We should have a copy of each if you're  
6 going to refer to each of them, and then can you go back there  
7 and he can hear you better. We'll stretch while we work it  
8 out.

9 (Pause.)

10 Are we ready? All right.

11 Q Again, Mr. Kline, page 11 of your first affidavit, you  
12 say the '86 device the wire connections were twisted,  
13 soldered, and taped; is that true?

14 A That's true.

15 Q Then you go on saying these are singularly unique methods  
16 of assembly which individual bomb makers are likely to repeat?

17 A That's correct.

18 Q And then, sir, you prepared and filed a second affidavit  
19 under pains and penalties of perjury in October. And before  
20 you did that, sir, you took care to review what you wrote,  
21 right?

22 A Excuse me?

23 Q You took care to review what you prepared, right?

24 A Yes.

25 Q You want to make sure it was accurate?

1 A That's correct.

2 Q You want to make sure that each affidavit, your affidavit  
3 in June and your later affidavit in October, you wanted to  
4 make sure that it was truthful and accurate, true?

5 A Yes, that's right.

6 Q And you don't want to take these affidavits casually, do  
7 you?

8 A No, I do not.

9 Q You understood fully the significance that they carry,  
10 true?

11 A Yes.

12 Q They carry the weight of your expert opinion, do they  
13 not?

14 A They do.

15 Q So you first say in June the wires in '86 were twisted  
16 and soldered and taped, and that was a singularly unique  
17 similarity that the bombers repeat, true?

18 A That's true.

19 Q And then some three months later -- page 17, paragraph  
20 29, well, seven or eight lines down. You say, This wire --  
21 that is a wire that you've seen in the meanwhile between June  
22 and October -- this wire appears to be twisted, soldered and  
23 taped, this reduces the strength of the dissimilar issue  
24 regarding wire wired assemblies in the two devices, but it is  
25 not so unique that it exhibits in and of itself that it was;

1     isn't that true?

2     A     You did read that correctly.

3     Q     In fact, you testified here today notwithstanding your  
4     earlier affidavit in June, sir, where you said soldered and  
5     taped is singularly unique. You said it's not uncommon to see  
6     that, and you wouldn't give it --

7     A     No. I think you've taken that out of context. What I  
8     said this wire appears to be twisted, soldered, and taped.  
9     This reduces the strength of the dissimilar issues regarding  
10    the connection of the wire. You see when I wrote this first  
11    affidavit, it stood out that the wires were connected in a  
12    different way.

13    Q     Well, sir, you went on to say today that it's not  
14    uncommon to see it, and you wouldn't give it much weight,  
15    true?

16    A     That's correct.

17    Q     And what happened in the meanwhile between your June '93  
18    affidavit and your October '93 affidavit is you saw this  
19    evidence?

20    A     I saw a photograph.

21    Q     Did you see the evidence, sir?

22    A     I don't think I saw the evidence. I think it's in  
23    evidence, but I did not look at it.

24    Q     Did you make an effort to see this evidence?

25    A     It was in the room, I didn't look at it. I assumed the

1 validity of it --

2 Q These wires are twisted, soldered, and taped, true?

3 A I said, that yes.

4 Q And you understood that this came from the crime scene in  
5 Roslindale, right?

6 A That's correct.

7 Q This is precisely what you identified in your June  
8 affidavit as being a singularly unique method of assembly that  
9 a bomb maker might make and is likely to repeat, true?

10 A That's correct.

11 Q Sir, would you have penned that in your first affidavit  
12 had you seen this evidence?

13 A I would have said that it was singularly unique in the  
14 first one.

15 Q You would have said it anyway?

16 A Yes, that's true.

17 Q Is that your testimony before the jury?

18 A I would have said it was both soldered, twisted, and  
19 taped, which shows a singularly unique method in an assembly  
20 wire, which it is.

21 Q Now, beyond that change, sir, beyond the singularly  
22 unique in June to not so unique in October, you made other  
23 changes in your affidavits, have you not?

24 A You would have to point them out to me, sir.

25 Q Do you know sitting here today if you made any changes in

1 your affidavit?

2 A I think I did mention additions based on information.

3 Q Some information?

4 A I can't be specific, I don't recall off the top of my  
5 head.

6 Q The information that came to you in the meanwhile from  
7 your June affidavit to your October affidavit, this is an  
8 evolving process, true, for you, as an expert?

9 A Yes, sure.

10 Q You came to understand more information, right?

11 A That's right.

12 Q Now, for example, in your first affidavit with respect to  
13 the toggle switches, sir, if I may have the 1986 schematic,  
14 your Honor.

15 THE COURT: I'm not sure whether the witness can see.

16 Q Can you see that?

17 A I can't.

18 Q Can you see that now?

19 A Yes, I can.

20 Q Paragraph 24?

21 A Which affidavit?

22 Q The first affidavit. You say, sir, in your first  
23 affidavit, paragraph 24, the 1986 device, the toggle switch  
24 was used as a safety for a backup switch to arm the power  
25 switch for the fusing system; is that right?

1 A That's true.

2 Q And that puts the toggle switch somewhere in this system  
3 here, correct, the yellow lined material which is the fusing  
4 system here, would you agree?

5 A There's a possibility it was placed there.

6 Q Do you disagree that this represents the fusing system as  
7 the Government alleges, anyway?

8 A No, that's fine.

9 Q So the tenor of this is that toggle switch is placed in  
10 the fusing system, right?

11 A There's a possibility that it was placed there.

12 Q You say here, sir, unqualifiably, in other words, in the  
13 '86 device the toggle switch was used as a safety or backup  
14 switch to arm the power switch for the fusing system, true?

15 A That's true.

16 Q And what, the effect of that is, sir, is to take the  
17 toggle switch, and you understood that the Government's point  
18 was in the firing system, right?

19 A That's correct.

20 Q So the effect of what you're saying in the first  
21 affidavit was to take that toggle switch and put it down here;  
22 is that right?

23 A That's correct.

24 Q And that would have been a distinctive difference in your  
25 view?

1 A That would have been a distinctive difference.

2 Q Detracting from any signature opinion between the two  
3 devices '86 and --

4 A It would be another similarity if I put it there, in that  
5 position.

6 Q Now, paragraph 26, second affidavit, do you have that Mr.  
7 Kline, paragraph 26, page 11?

8 A Yes.

9 Q Your second affidavit. Specifically, the toggle switch  
10 in the '86 device was simply to allow the functioning of the  
11 remote control system. In the '91 device the toggle switch  
12 was used to fire the bomb. Due to absence of physical  
13 evidence and sufficient information on the actual construction  
14 of the '86 device, it cannot be positively determined whether  
15 the toggle switch was placed in the fusing circuit or the  
16 firing circuit.

17 Did I read that correctly?

18 A That's correct.

19 Q So, in your June affidavit, you unqualifiably put the  
20 toggle switch out of the firing circuit where the Government  
21 puts it, and you put it in the fusing system, right?

22 A That was the '86.

23 Q That's correct. Three months later it said I don't know,  
24 it could be here it could be there, right?

25 A And that is accurate.

1 Q You changed your opinion based on that information that  
2 had come to you in the meanwhile, right?

3 A My opinion is the --

4 Q My question solely was whether you changed your opinion  
5 based on information that had come in?

6 A The information was the same.

7 Q So your answer to my question, sir, is no; is that right?

8 A I would say so, yes.

9 Q Now, you say that you couldn't put it in either system,  
10 the firing system or fusing system, the toggle switch?

11 A I'm saying based on the information that was available at  
12 the time, it was not possible, nor logical to be quite honest  
13 that Mr. Waskom was more accurate in this position.

14 Q Mr. Kline, your opinion, your later opinion is you can't  
15 put it in either circuit, right?

16 A That's correct.

17 Q Knowing that the Government puts it in the firing  
18 circuit, true?

19 A That's correct.

20 Q As an expert, sir, it behooves you to avail yourself of  
21 all potential information shedding light on this, right?

22 A That's true.

23 Q You would want to know this because it has meaning for  
24 you as an expert on this signature analysis, true?

25 A That's correct.

1 Q For that reason you've read all the reports that you can,  
2 right?

3 A Yes.

4 Q You've talked to various people about it, right?

5 A No, I haven't.

6 Q You have not?

7 A No.

8 Q You would want to fully explore everything you could  
9 about that issue in order to reduce any uncertainty and  
10 eliminate any uncertainty and know where that toggle switch  
11 was, right?

12 A It would be good information to know exactly where it was  
13 placed, yes, in an actual reconstruction.

14 Q Sir, \$200 an hour would you want to be able to do that  
15 for your client, true?

16 A I suppose so.

17 Q And it's a significant matter in the signature analysis,  
18 isn't it?

19 A Yes, it is.

20 Q All right. So when you asked Mr. Trenkler, your client,  
21 where the 1986 toggle switch was, in this circuit or that  
22 circuit, what did he tell you?

23 MR. SEGAL: Objection.

24 THE COURT: The objection is sustained.-- The  
25 objection is overruled. That is the same question that I

1 mentioned before. He may have the question.

2 Q What did he tell you?

3 A I have not talked to Mr. Trenkler.

4 Q As his expert, would you care to?

5 A I was advised by --

6 Q Mr. Kline, would you care to?

7 A It would assist me in reconstructing if he told me  
8 exactly how the bomb was built.

9 Q It would more than assist you, sir, would it not?

10 A I don't know if he could remember how he built the bomb  
11 five years ago; I don't know if I would.

12 Q Mr. Kline you could sit side by side with Mr. Trenkler  
13 and reconstruct this device?

14 A I would think that we could, yes.

15 Q No question in your mind about it?

16 A That's right.

17 Q Were you advised to stay away from Mr. Trenkler?

18 THE COURT: The objection to that question is  
19 sustained.

20 Q Now, the bottom line is you're uncomfortable about not  
21 knowing where that toggle switch?

22 A Not particularly uncomfortable.

23 Q You cannot reject Mr. Waskom's opinion that it's in the  
24 firing system, can you?

25 A No.

1 Q And the mere fact that it's in the firing system that a  
2 toggle switch is in the firing system is significant here, is  
3 it not?

4 A It's a similarity, but it's not tremendously important  
5 when you look at how its functions and what its purpose is.

6 Q It is significant, is it not?

7 A The toggle switch in '91 was a trigger. The toggle  
8 switch in the '86 device, whether it's in the firing system or  
9 the fusing system is still an arm, it activates the system.

10 Q It is important to say?

11 A You can't take the purposes --

12 Q If I can finish my question?

13 A Certainly.

14 Q The mere fact that a toggle switch appeared regardless of  
15 its purpose in each firing circuit of the 1986 and the 1991  
16 device would be meaningful to you, true?

17 A It would carry a certain amount of weight as far as the  
18 meaningfulness of it, this is my concern.

19 Q Now, speaking of information, sir, let me show you what's  
20 been marked Defendant's Exhibit 156. These photographs, sir,  
21 which Mr. Segal showed you, you're familiar with those, are  
22 you not?

23 A They're photographs I took of evidence while I was at the  
24 FBI.

25 Q Those are formal FBI records, are they not, sir?

1 A These photographs are my documents.

2 Q They were created in the course of your role as  
3 investigator on that case, were they not?

4 A That's correct.

5 Q And in that respect, they became formal official FBI  
6 records; did they not?

7 A Yes, they did.

8 Q And you are retired now, are you not?

9 A Yes, I am.

10 Q And you retained those photographs and you gave them to  
11 counsel, true?

12 A I didn't retain them. I had them with me. When I  
13 retired I took a lot of materials related to explosives with  
14 me knowing that I would use them in my retirement.

15 Q You also took formal FBI records regarding the Cuban  
16 ambassador's case?

17 A Yes.

18 Q The Hialeah, Florida case in 1980?

19 A Yes.

20 Q Sir, are you familiar with the confidentiality  
21 regulations regarding disclosure of documents such as those?

22 A Yes.

23 Q You're familiar with them. What do they require with  
24 respect to present duty, present act of duty of FBI agents and  
25 retired FBI agents?

1           MR. SEGAL: We object. I'd like to be heard at the  
2 side bar on this issue.

3           THE COURT: I'll hear you.

4           [Conference at the bench, as follows:

5           THE COURT: What's the objection?

6           MR. SEGAL: Well, Mr. Libby filed a motion to  
7 preclude us Mr. Kline testifying about cases he investigated  
8 at the FBI. He said unless you can produce the documents that  
9 support that, he shouldn't be allowed to testify. So we sent  
10 over those documents, and we never had any intention to put  
11 them in evidence, and in fact we weren't even going to use  
12 them until he filed this motion. Now, having done that he's  
13 going to try and say, well, improper use of documents. It's  
14 like someone shoots his parents and says he's an orphan.

15           He, I assume, was trying to say, Well, Mr. Kline  
16 can't come on and testify about those two investigations  
17 because he's just relying on hearsay. So, Mr. Kline goes into  
18 his file and gets his own private copy of them, and responds  
19 to his motion. And now, he's trying to say that he's  
20 improperly used that information. I don't think he can have  
21 it both ways where he filed this motion to preclude him from  
22 testifying about it.

23           THE COURT: Do you have a rule on that?

24           MR. SEGAL: I simply filed a response to him. He  
25 filed the motion, and I sent in the point of response.

1 THE COURT: Hold it. Hold it.

2 MR. SEGAL: So, I don't think he can have it both  
3 ways. Having raised this issue in that context, now we're  
4 going to say -- well, having produced the stuff, you shouldn't  
5 have produced it. He simply produced it in response to his  
6 motion.

7 THE COURT: His objection is not to the production of  
8 it. His objection is in the way in what he says are official  
9 documents.

10 MR. SEGAL: I think it's in the use of documents, not  
11 taking away documents.

12 MR. LIBBY: 28 CFR 1622.

13 THE COURT: I think that's where --

14 MR. LIBBY: Precisely, your Honor.

15 THE COURT: I don't know if I should stop him from  
16 that. He could have asked those questions without any  
17 documents having been produced. I mean, I don't know -- I  
18 suppose it's being offered on the issue of the witness's  
19 credibility, that he's prepared to violate his own regulations  
20 of the agency at which he worked. I think that's the argument  
21 he's going to make. I think he's entitled to do that.

22 MR. SEGAL: I would say in the normal context I would  
23 agree. But here he files the motion saying, You shouldn't  
24 able to rely on these reports. So the man goes into his files  
25 and gets his own copy of the reports. We turn them over to

1 the Government a week or two ago so he can have them. Now, he  
2 says, you know, those reports that I asked for are improper.

3 MR. LIBBY: I didn't ask for any report.

4 MR. SEGAL: I would like you to look at the motion he  
5 filed.

6 MR. LIBBY: Just so Mr. Segal understands. It's a  
7 perfect opportunity to subpoena the FBI lab to make an FOIA  
8 request, or what have you. I had no understanding that this  
9 man had breached his own confidentiality requirements, had his  
10 own private files. Nothing in there has really pertained to  
11 the motion. I didn't want him coming and saying, The Court in  
12 this case allowed that as signature evidence and didn't allow  
13 this as signature evidence. That was my primary concern. I  
14 find out now this man has private files which is in direct  
15 contravention which is precisely the Court's point with  
16 respect to his credibility, his willingness to do those.

17 MR. SEGAL: I would like to see this before we go  
18 around the mulberry bush.

19 MR. LIBBY: That's my last question on this anyway.

20 MR. SEGAL: I'd like to read it while --

21 MR. LIBBY: Can I push on?

22 MR. SEGAL: Can I read it?

23 THE COURT: Just read it. We want to finish with  
24 this so read it and I'll rule.

25 (Pause.)

1 MR. LIBBY: I do have --

2 MR. SEGAL: I can't read it.

3 I can't walk and chew gum at the same time, your  
4 Honor, I'm sorry.

5 (Pause.)

6 MR. SEGAL: Well, my position is still the same.

7 THE COURT: You may have the question.

8 ... End of conference at the bench.]

9 THE COURT: You may proceed.

10 MR. LIBBY: Thank you, your Honor.

11 Q I believe my last question to you, Mr. Kline, was what  
12 your understanding was as a retired FBI agent regarding  
13 confidentiality documentation of records?

14 A I honestly don't recall what my specific obligations  
15 were.

16 Q You don't know whether one way or the other production to  
17 those photographs or records constitutes an obligation of  
18 that?

19 A I don't think so. I don't think there is a violation of  
20 confidentiality. I don't know the answer to that to be quite  
21 honest.

22 Q Now, along those lines, sir, in connection with  
23 preparation as an expert in this case, you've spoken with  
24 active duty FBI personnel?

25 A Excuse me?

1 Q In connection with preparing for your testimony, and your  
2 involvement as a defense expert in this case, you've reached  
3 out and contacted FBI personnel, true?

4 A I haven't used any expert FBI personnel.

5 Q Have you answered my question--

6 A To prepare for my testimony, no.

7 Q Mr. Kline, have you reached out and contacted any FBI  
8 personnel in connection with your role as expert for the  
9 defense in this case?

10 A I advised someone I have testified in this case, yes.

11 Q How many FBI people had you spoken to or tried to speak  
12 to?

13 A Maybe two.

14 Q In each case, sir, you identified yourself as a retired  
15 FBI agent?

16 A Certainly.

17 Q You identified yourself as being the expert for the  
18 defense in a criminal prosecution?

19 A I've been advised so that I was testifying in this case,  
20 yes.

21 Q Right up front?

22 A Yes.

23 Q Did you speak with anyone from the ATF, ATF personnel?

24 A I have.

25 Q How many?

1 A I think maybe two.

2 Q Each occasion, sir, you identified yourself as a retired  
3 FBI agent?

4 A Yes.

5 Q In each occasion you identified yourself as appearing for  
6 the defense as an expert in an ongoing process?

7 A I have.

8 Q Now, with respect to the question of soldering, sir, I  
9 believe you testified this that one difference between ... you  
10 mentioned one of the dissimilarities was in the '86, the wires  
11 were twisted, soldered, and taped, I believe you testified  
12 that you would agree that in '91, they were twisted and  
13 soldered and taped as well; is that right?

14 A With the exception of the detonator leg wires.

15 Q Which I'm getting to. Now, this photograph was, this  
16 photograph, sir, was one of the five battery snap connectors,  
17 true?

18 A That's true.

19 Q Any reason to believe that the other four weren't treated  
20 the same way?

21 A No, there is not.

22 Q Very likely. Almost certain they were treated the same  
23 way, true?

24 A That would be my opinion, yes.

25 Q Reflects the mind set of the maker, right?

1 A Yes, it does.

2 Q And you say what was dissimilar between the '86 and the  
3 '91 was that although these wires were twisted, soldered.  
4 And taped, in the '91, the leg wires on the detonator caps  
5 were simply twisted and taped but not soldered, am I right?

6 A That's my understanding, yes.

7 Q When you later went on to testify, did you not, today  
8 that this makes sense, right?

9 A Yes.

10 Q First, the leg wires were twisted and taped, but not  
11 soldered because you wouldn't want a heat source here in that  
12 kind of --

13 A That's right.

14 Q It was logical in this respect in '91 where you had  
15 blasting caps to see that they weren't soldered, right?

16 A That's correct.

17 Q So on its face it's not really a dissimilarity at all, is  
18 it?

19 A That's correct.

20 Q In fact, once the maker chooses dynamite, right, you  
21 necessarily have the presence of blasting caps, true?

22 A You need a detonator to initiate.

23 Q And when you have detonator caps, you have leg wires,  
24 right?

25 A That's true.

1 Q That necessarily follows, right?

2 A Yes.

3 Q And with respect to the '86 which is here, we didn't have  
4 dynamite, but we had an M 21 Hoffman, true?

5 A That's true.

6 Q The initiator there was a white plastic plug with some  
7 wires going into the photo black powder?

8 A That's true.

9 Q No blasting caps at all?

10 A That's right.

11 Q So the threshold difference here, Mr. Kline, is a type of  
12 explosive that the maker settled on, right?

13 A He settled on?

14 Q Yes. That he chose?

15 A That was made available to him?

16 Q Sure. He chose the '86 for one purpose, right?

17 A I would say the motive was different based on the type of  
18 main charge he used, yes.

19 Q He chose the '91 two to three sticks of ammonium  
20 dynamite?

21 A I don't know if it was ammonium dynamite, but it was  
22 dynamite.

23 Q He testified at great length about the two to three  
24 sticks of dynamite under the floor pan of an '86 Buick, right?

25 A That's correct.

1 Q Now, in the second affidavit, paragraph 31, page 14, you  
2 say that additional dissimilarities of singular significance  
3 of the '86 device and the '91 device include the fact the '86  
4 device was not concealed in a container, the '91 was contained  
5 in a box that was painted black, and so forth. Do you see  
6 that there?

7 A Yes, I do.

8 Q And I believe you also said that it was logical in the  
9 '86, no container was necessary because it was going to be  
10 applied immediately. It was going to be affixed and then  
11 applied, right?

12 A I don't know that I said that, that it was necessary.

13 Q Well, --

14 A He didn't have to have any cleaner.

15 Q You understood that the application virtually after the  
16 fix, right, within the moments in the '86?

17 A Yes, we can assume that.

18 Q It wasn't to be affixed and then follow the vehicle  
19 around, and then trigger at the time and place of the makers  
20 choosing, right?

21 A That's based on the investigation, I'd say that's true.

22 Q That was logically consistent with the purpose that the  
23 maker had at that time, true?

24 A That's true.

25 Q Now, I want you to assume that some components of the

1 1986 device were indeed contained within a rectangular box, a  
2 plastic box with a smaller gray box associated with it. I  
3 want you to assume that . You would consider that  
4 significant, wouldn't you?

5 A I'm not going to assume anything.

6 MR. SEGAL: I object unless there's some evidence,  
7 your Honor.

8 MR. LIBBY: Absolutely, your Honor. I've taken that  
9 right from the transcript.

10 THE COURT: I will allow the question. And the jury  
11 will have to determine, as I explained to you earlier,  
12 whenever an expert witness is asked to make assumptions, and  
13 bases his opinion on the assumptions he is asked to make, you  
14 will have to test the assumptions against the evidence and  
15 determine whether they accord with the facts as you determine  
16 them to be.

17 A Would you repeat the question?

18 Q I certainly will. First, I want you to make assumption.

19 A What's the assumption you want me to make, please repeat  
20 that.

21 Q I want you to assume that some components, unclear which,  
22 but some components of the '86 device were indeed contained in  
23 a rectangular box, a plastic box, but contained in a  
24 rectangular box, and that associated with that rectangular box  
25 was a smaller gray box. Please make that assumption which is

1 contrary, as I understand your testimony as to what you said  
2 here?

3 A There was nothing mentioned in Mr. Hankard's report that  
4 I recall.

5 Q I understand, sir.

6 A Why should I assume that, sir?

7 Q If you would, just to humor for me. Make an assumption,  
8 I want you to assume that box was present in the '86 device.  
9 I understand you have problems with that, assume it?

10 A All right.

11 Q You would consider that information to be significant in  
12 purposes of this signature analysis, right?

13 MR. SEGAL: Objection.

14 THE COURT: What's your objection?

15 MR. SEGAL: The same basis that that's not --

16 THE COURT: No, the objection is overruled.

17 Q Yes or no?

18 A If I understand this right, you're saying if there was a  
19 big box, and inside the big box there was a smaller box, would  
20 that have a similarity?

21 Q Mr. Kline, the smaller box is inside of the larger  
22 rectangular box, okay? In the 1986 device, simply make that  
23 assumption for me, would you consider that to be significant  
24 for purposes of this signature analysis?

25 A I'm sorry, you're losing me here. Let me -- I want to be

1 accurate in what I'm assuming here. Are we talking the '86  
2 device, or are we talking about the '91 device.

3 Q You've testified, excuse me, sir, you've testified, your  
4 understanding there was no container from this device, true?

5 A There was none that identified by Mr. Hankard.

6 Q That's your testimony today?

7 A That's correct.

8 Q Contrary to your testimony and your understanding,  
9 whatever it may be, I want you to assume that there's a  
10 rectangular box housing some of the components of that '86  
11 device?

12 A What's the size of it?

13 Q About six inches?

14 A Okay.

15 Q All right. An associate not inside it but to the outside  
16 of it, there's a smaller gray box?

17 A Yes.

18 Q Making that assumption, sir, you would consider that  
19 information significant, true?

20 MR. SEGAL: Objection. Can we see the transcript of  
21 the prior--

22 MR. LIBBY: 12-33, your Honor. I gave the  
23 transcript.

24 MR. SEGAL: I'd like to see it.

25 Q Would you consider it significant?

1 MR. SEGAL: Well, I'd like your Honor to look at it  
2 before --

3 THE COURT: Well, I'm looking at my notes which is  
4 the basis of my ruling.

5 MR. LIBBY: May I have an answer?

6 THE COURT: Hold it one second.

7 MR. SEGAL: I'd ask your Honor to look at this  
8 transcript first before a ruling, because I submit it's not  
9 quite what we're hearing.

10 THE COURT: I'll look at it.

11 I don't need the record.

12 (Discussion off the record.)

13 THE COURT: You may have the question.

14 MR. SEGAL: We should have that on the record, your  
15 Honor.

16 THE COURT: The record may reflect the objection to  
17 the question and the disagreement by Mr. Segal to any  
18 references about six inches and the black box, correct?

19 MR. SEGAL: And just my objection to the whole  
20 question is not based on evidence in the record.

21 THE COURT: And the objection is overruled. You may  
22 have the question. Ask it once more, but ask it simply.

23 A I think I understand his question.

24 THE COURT: Don't ask it again, we'll get an answer.

25 Q It asked for a yes or no answer: Do you consider that

1 information consistent, sir?

2 A If in fact the --

3 Q Can you give me a yes or no?

4 A If I understand the question correctly, you said that if  
5 there was a large rectangular box, six inches, and a smaller  
6 box on the side in '86, assuming that it was present, would  
7 that be -- have some significant value in comparing or  
8 establishing a signature identification. If that is your  
9 question, yes, I would consider that of value.

10 Q It would certainly would, right?

11 A Yes, it would.

12 MR. SEGAL: Objection, to the speech.

13 THE COURT: The objection to that question is  
14 sustained.

15 Q And the reason for that is, because as you stated in your  
16 affidavit, sir, the absence of the container, the absence of  
17 the container in '86, your original understanding was a  
18 significant dissimilarity, right?

19 A It was one of the dissimilarities that I noted.

20 Q So if there was a '86 box contrary to your understanding,  
21 that was also significant, right?

22 A Yes, but there was no evidence that I'm aware of that  
23 those boxes did exist based on the Hankard report.

24 Q No argument here, sir, I understand that you would not be  
25 aware of it. I'm asking you to make that assumption. Back to

1 the toggle switch for a moment, you say you're unable to put  
2 the toggle switch in '86 down in the firing circuit, sir?

3 A It's not positive to say where it was placed. The whole  
4 reconstruction is an assumption based on logic and theory.

5 Q But if we put the toggle switch down in the fusing  
6 circuit, sir, doesn't that simply perform the very same  
7 function as the power switch?

8 A Yes, it does. And it doesn't make a whole lot of sense.

9 Q So would you agree with me it makes no sense to put a  
10 toggle switch in the fusing circuit. It makes sense, on the  
11 other hand, to put it up here in the firing circuit where the  
12 Government contends. And that is because it allows you to  
13 flash this light bulb on and off?

14 A What light bulb?

15 Q This light bulb in the circuit, sir?

16 A In '86 no light bulb was recovered in that circuit.

17 Q You read Mr. Lanergan's notes, right?

18 A He simply said that a light bulb, a small bulb was used  
19 to test the circuit. It doesn't mean it was assembled into  
20 the circuit.

21 Q And we all understand, sir, the real evidence of the '86  
22 is gone, right?

23 A That's correct.

24 Q And it not include a test bulb, did it not?

25 A It did not.

1 Q And you read Detective Lanergan's three-page typed  
2 report?

3 A Yes.

4 Q And you read his one-page note, right?

5 A Yes, I did.

6 Q And that had to do with contemporaneous conversation with  
7 the Defendant Al Trenkler, and that indicated, from his  
8 conversations, that that light bulb was used to test the  
9 firing circuit, right?

10 A Yes, it was used to test the firing circuit.

11 Q So that toggle switch had to be there to allow us to see  
12 that light bulb?

13 A That's a wrong assumption. It did not have to be there.  
14 The small bulb was used to test the circuit. You can simply  
15 take two wires and a light bulb and touch it to that circuit  
16 and test it without assuming it or making it a part of the  
17 circuit itself. The absence of the light bulb suggests that  
18 it was simply done in that manner.

19 Q Now, sir, you were asked by Mr. Segal if it was fairly  
20 common to see a toggle switch in an improvised explosive  
21 device; do you recall that question?

22 A Yes.

23 Q And your answer to his question was I've seen them  
24 before?

25 A That's true.

1 Q Right. Is it fairly common, sir, is it common -- please  
2 answer his question -- is it common to see toggle switches in  
3 this circuit?

4 A In the firing circuit?

5 Q Yes, sir. I would say maybe. You don't know any better  
6 than maybe, sir?

7 A I can't be more solid than that.

8 Q Isn't it true, sir, that you see far more microswitches  
9 in that circuit than you do a toggle switches?

10 A That is true.

11 Q No question, right. So the significance here is there's  
12 a toggle switch present in that circuit, right?

13 A That's true.

14 Q And in fact, I believe you testified that there was some  
15 significance associated with the fact that the 1986 toggle  
16 here was a double pole, double throw, right?

17 A Yes.

18 Q Which means it has three positions?

19 A That's right.

20 Q Neutral and then back and forward, right? And the '91  
21 was a single pole, single throw, right?

22 A Yes.

23 Q Two positions on and off, right?

24 A Yes.

25 Q And you said it was integral to your opinion as to

1 dissimilarity that these toggle switches were different,  
2 double pole?

3 A There was just another difference that I observed and  
4 recorded in my notes.

5 Q And in fact, it's equally consistent with just simply in  
6 '86 maybe just grabbing something as I believe you testified  
7 grabbed whatever was nearby, right?

8 A That's my opinion, yes.

9 Q So this distinction between double pole and the '86, and  
10 single pole and the '91 is really meaningless, right?

11 A I don't know that it's meaningless.

12 Q There was no design feature in the '86, sir, that  
13 required a double pole, double throw toggle switch, true?

14 A That's true.

15 Q It's just on and off, right?

16 A That's true.

17 Q Same purpose of a single pole, single throw, right?

18 A That's true.

19 Q Now, you also say, I believe that with respect to the  
20 toggle switch itself, in the '91 device, was it your  
21 testimony, sir, that that toggle switch is in fact not unique;  
22 is that your testimony?

23 A Say that again, sir, I'm sorry.

24 Q Is it your testimony that the toggle switch in the 1991  
25 device, the Radio Shack toggle device is not unique?

1 A Is not unique.

2 Q And abundantly available?

3 A I believe that is what I stated.

4 Q And abundantly available?

5 A Clearly available at Radio Shack.

6 Q You would agree with me, sir, that that particular toggle  
7 switch seen here on Government Exhibit 33 A -- if I may  
8 approach, your Honor. This stock number here, single pole,  
9 single throw toggle switch, and this stock number?

10 A 275-602.

11 Q You would agree with me that that has distinctive contact  
12 points, right?

13 A What do you mean by "distinctive contact points"?

14 Q You hold it upside down and look at the contact points  
15 below, right? They are distinct to that model, right?

16 A Yes, they are.

17 Q And you understand, sir, that in this case, there is an  
18 absolute match between the toggle switch which was employed in  
19 the '91 device and the toggle switch which was depicted on  
20 that Radio Shack receipt?

21 A I agreed with the identification that ATF made that the  
22 toggle switch used in the '91 bomb was in fact a Radio Shack  
23 toggle switch of the same model that I did not speak of.

24 Q And you understand that that is now discontinued, that  
25 series of switch?

1 A I did not know that, I haven't purchased one of those  
2 here about a month ago. I don't know if it's discontinued or  
3 not because I bought one.

4 Q Now, with respect to your testimony about your forensic  
5 report, and I believe your summary answer to Mr. Segal's  
6 question was, with respect to all of the materials, to your  
7 knowledge, that were gathered from Mr. Trenkler's basement  
8 apartment, the garage at White Lawn, his business at Broad  
9 Street, ARCOM and his automobile, there was no physical  
10 evidence, any of those locations for Mr. Trenkler to this  
11 device?

12 A That's true. That was also the conclusions reached in  
13 the laboratory report although not stated.

14 Q Now, I want you to, I know you have difficulty. I want  
15 you to assume an identical set of circumstances for me?

16 A Certainly.

17 Q Where an individual has, in fact, designed and  
18 constructed this device which you put together for us, 1986  
19 device?

20 A Yes.

21 Q Okay. And the same individual has in fact designed and  
22 constructed the 1991 device, just assume that for me, okay?

23 A Yes, I'll assume that for you.

24 Q And I want you to further assume that subsequent  
25 investigation with respect to the explosion of this device has

1 disclosed no real evidence wires tools things of that nature  
2 resulting from searches of home, garage, and automobile and  
3 business of that same individual, right? Can you make those  
4 assumptions for me?

5 A Yes.

6 Q Can you conceive of any explanation, sir, consistent with  
7 that individual's involvement and no physical link in the  
8 evidence as I've asked you to assume? Can you give us any  
9 explanation consistent with involving, notwithstanding, no  
10 physical link?

11 A I don't quite understand that question, sir.

12 Q Any problem with the assumptions?

13 A Well, for your benefit I'm assuming these things.

14 Q Mr. Kline, I understand that. I'm asking you to assume  
15 those things in series, and it's taken some time to do that,  
16 right, and you told me at each step you've understood the  
17 assumption.

18 Now, my question to you is, can you give us any  
19 explanation consistent with that individual's involvement in  
20 the two devices which nonetheless explains no physical link?

21 A Can I give you an explanation that explains why no  
22 evidence was found in Mr. Trenkler's possession that matched  
23 the '91 bomb; is that what you're saying?

24 Q Consistent with, no, no, not Mr. Trenkler, now, I'm  
25 asking you to assume an identical set of circumstances, some

1 individual, all right, who was designing and constructing the  
2 1986 --

3 A I would submit to you that in almost every case that I've  
4 investigated, whether it be a terrorist group or an individual  
5 bombing, when we have reconstructed the bomb, whether it be an  
6 attempted bombing or it be an actual bombing, and we have  
7 identified in the rest of the subject, and conducted searches  
8 in connection with that bombing investigation, in every case  
9 that I have personally been involved in, physical evidence was  
10 collected and identified and helped us to establish that that  
11 individual was in fact the bomb maker of those bombings.

12 Q Mr. Kline, I've asked you to make some assumptions?

13 A Assuming -- my assumption is you should have found  
14 something.

15 Q Mr. Kline, your answer, your answer that you've just gave  
16 me was not responsive to my question, was it?

17 MR. SEGAL: I object.

18 THE COURT: Without telling him whether it was or it  
19 wasn't, you may have the question.

20 Q Do you believe your question was responsive to my  
21 question, Mr. Kline?

22 A Yes, I do.

23 Q Did you intend that answer to benefit anyone, sir?

24 MR. SEGAL: I object to that.

25 THE COURT: Objection sustained.

1 Q Isn't it true that one explanation that involvement is  
2 still consistent with no physical link to the evidence is that  
3 the maker took great care, took his components, took his  
4 tools, used gloves, plastic bags within plastic bags,  
5 constructed it there, took care to make sure that the remnant,  
6 the actual tools used, scraps of wire, everything and anything  
7 associated with this thing is disposed of. Isn't that  
8 consistent. Isn't that an explanation consistent just as I've  
9 indicated to you?

10 A It is not consistent with the man who made that bomb  
11 right there. That bomb didn't take the kind of care that the  
12 man who made that bomb did.

13 Q You disagree with me then?

14 A Yes.

15 Q It's not consistent with that?

16 A It's possible that he did, certainly. I don't disagree  
17 with the possibility, but it's not consistent with these two  
18 bombs.

19 Q Now, I want you to, unhappily, make another series of  
20 assumptions. And that is that we have an individual, much as  
21 in Mr. Trenkler's case, who designed and built the 1986  
22 device. Shortly after the 1991 explosion of this device, and  
23 before any particulars as to the number of blasting caps, and  
24 the amount of dynamite used in the 1991 device is made public,  
25 before that's made public, this individual I'm asking you to

1     assume is told only that this device utilized remote control,  
2     1, and two dynamite. That's all that person's told. I want  
3     you to further assume that that individual is asked by ATF  
4     agents to depict a wiring diagram, that that individual would  
5     expect used in this device. And finally, I want you to assume  
6     that that individual drew this diagram, the bottom right-hand  
7     corner, Defendant's 90 further depicting each of these two to  
8     be an individual stick of dynamite and a line in each to be a  
9     blasting cap. Making those suppositions, do you consider this  
10    diagram to be significant?

11           MR. SEGAL: Objection. And I'd like to be --

12           THE COURT: You may tell us whether it's significant  
13    or not, whether he considers it to be significant or not?

14    A     Those are boxes.

15    Q     I'm asking you to assume that each are a stick of  
16    dynamite and that line in each is a blasting cap; do you  
17    consider that significant?

18           THE COURT: Significant in signature analysis or  
19    significant in general.

20           MR. LIBBY: Significant investigative --

21           THE COURT: The objection to that is sustained. He  
22    wasn't offered as an expert on investigative techniques. He  
23    was offered as an expert on signature only.

24           MR. LIBBY: Your Honor, I believe he testified as to  
25    other matters beyond that.

1 THE COURT: On cross he did.

2 MR. LIBBY: No, your Honor. On direct examination he  
3 testified as to letters, telephone calls, other matters off  
4 the forensics from these bombing groups.

5 MR. SEGAL: That was in connection with signature. I  
6 submit we're beyond the scope of the direct, way beyond.

7 MR. LIBBY: I will ask it in terms of signature.

8 Q Do you consider that to be significant, sir?

9 A If that depicts cartridges of dynamite, I would consider  
10 that to have some significance, yes.

11 Q It has a lot of significance, true?

12 A Well, I don't know, that's not a very good diagram.

13 Q Assume that it's two sticks of dynamite, one blasting cap  
14 each stick, that's significant, true?

15 A Are we assuming all this?

16 Q Yes, we are.

17 A I'd like to base my analysis on what I see, not on  
18 assumptions, sir.

19 Q Your Honor, please. This is the fourth time.

20 THE COURT: Is the question whether the fact that two  
21 blasting caps is significant or whether the two blasting caps  
22 perhaps were drawn were significant. Hold it, which is the  
23 question.

24 MR. LIBBY: Based on the information known to that  
25 individual, the depiction that came out was the two blasting

1 caps.

2 THE COURT: That's argument to the jury. I think we  
3 will go on to something else.

4 Q Now, sir, the two blasting caps which we had in this  
5 case, right?

6 A In '91, yes.

7 Q And that's known as dual priming as you testified, right?

8 A That's my definition of dual priming, yes.

9 Q And we see that here in this photograph, true?

10 A To identify the remains of two detonators in that bomb  
11 suggested the device was dual priming.

12 Q Was there any question in your mind, sir, that this was  
13 dual priming?

14 A No.

15 Q In fact, you saw the leg wires attached together, right?

16 A Exactly.

17 Q And that technique, sir, is consistent with individuals  
18 involved in criminal activity, true?

19 A I've seen individuals involved in criminal activity use  
20 that device before, yes, or that technique before.

21 Q And it's not uncommonly seen with those who have a  
22 certain criminal sophistication or experience in the field,  
23 true?

24 THE COURT: What field?

25 MR. LIBBY: In the field of explosives, your Honor.

1 Q True?

2 A That's true.

3 Q And it's something, sir, that you expect to see on the  
4 understanding of dual priming you would expect to see and it's  
5 consistent with an individual who has expressed knowledge in  
6 blasting cap shunts, sympathetic detonation, and the fact that  
7 leg wires may act as antenna?

8 MR. SEGAL: Objection.

9 THE COURT: Objection sustained.

10 Q Mr. Kline, can you see that?

11 A Yes, I can.

12 Q You used that in your direct examination.

13 A Yes.

14 Q I believe you testified that each of these -- you had  
15 some disagreement with each of these forensic similarities,  
16 right?

17 A Yes.

18 Q Each one of these forensic similarities you had some  
19 point of contention?

20 A That is correct.

21 Q I want you to assume that that's accurate.

22 A Assume that's accurate, yes.

23 Q Every bit of that is accurate. And without simply  
24 looking to each individual point, taking them as a whole, now,  
25 not speaking about specific individual points of componentry

1 but the cumulative weight of those points which I'm asking you  
2 to assume to be true, together, sir, you would agree with me,  
3 they have a strong suggestion towards establishing a signature  
4 link between the two devices, true?

5 A That's where we disagree, counselor.

6 Q You're assuming the truth of these things, sir?

7 A I'm assuming the truth of those.

8 Q All right.

9 Now, you testified, I believe, with respect to, for  
10 example, in connection with your demonstration of the points  
11 of contention you had for the government here, with respect to  
12 the Cuban ambassador case?

13 A Yes.

14 Q That was the 1980 case, right?

15 A That's correct.

16 Q I believe you mentioned that there were round magnets  
17 used in that case?

18 A Yes.

19 Q And for that reason, you said that you'd seen this  
20 before, correct?

21 A Yes.

22 Q There wasn't much significance associated with the fact  
23 that there were round magnets; you saw this in 1980, right?

24 A Yes.

25 Q Are you suggesting any connection at all, sir, between

1 the attempt on the Cuban ambassador's life in New York City  
2 and the Roslindale case?

3 A No, the point for bringing that to the attention of the  
4 Court is to show that there were more similarities, general  
5 similarities, involved in the, in the bombing of the Cuban  
6 ambassador's case, in the '91 bomb, in the '86 bomb and the  
7 '91 bomb.

8 Q The answer to my question, sir: There was absolutely no  
9 connection in your mind between the Cuban ambassador case and  
10 the --

11 A It's my opinion that the individual who made the 1980  
12 bomb did not make the 1991, and I know that for a fact because  
13 he's incarcerated.

14 Q You also know, sir, there's no connection between the two  
15 because I believe you said the Cuban ambassador's bombing  
16 involved six servo motors, right?

17 A Yes, it did.

18 Q Six of those things; 10 toggle switches, right?

19 A Right.

20 Q And we didn't have speaker magnets, we had antenna  
21 magnets, true?

22 A I don't know if there were antenna magnets. They were  
23 round and circular, round doughnut-type magnets.

24 Q You don't -- you can't deny that they were antenna  
25 magnets?

1 A I don't know.

2 Q You don't know.

3 A I mean, they were both twisting and soldering and secured  
4 the tape.

5 Q You would consider there are different means of twisting  
6 and soldering, sir?

7 A Yes.

8 Q And you would consider the differences between and among  
9 them to be significant for signature purposes?

10 A If there were something specifically unique about the  
11 technique of twisting the wires, if it was noticeable I would  
12 report it, yes; and yes, it might be important.

13 Q Now, with respect to circumstantial similarities, down at  
14 the bottom of the chart, I believe you testified that you  
15 didn't look to these things, right?

16 A That's true. I tried to use the same information that  
17 ATF used in their laboratory analysis, and simply looking at  
18 the evidence, the components, and excluding some factors like  
19 that.

20 Q Sir, in your 20-some-odd years with the FBI, did you ever  
21 look to circumstantial similarities between bombing scenarios  
22 in the course of your investigative conduct?

23 A Not in an attempt to establish a signature; but yes, I  
24 used investigative information with the overall accomplishment  
25 with the goal of solving the case, certainly.

1 Q For example, Omega 7, Croatian, these FALN, these folks  
2 that give letters and phone calls after the fact, right?

3 A Absolutely.

4 Q They don't have any forensic value, true?

5 It's not real evidence, right?

6 A What is "not real evidence" to you?

7 Q Letters and phone calls, sir.

8 A Those are initial circumstances.

9 Q That's circumstantial evidence, is it not?

10 A If it's a note or a paper or a document, it's physical  
11 evidence. But it has nothing to do with the establishment of  
12 the signature itself.

13 Q Precisely my point, sir. It is something that has  
14 nothing to do with the forensics of the device, true?

15 A That's correct.

16 Q And you looked to it in determining what group you have  
17 responsible for the bombing?

18 A That's correct.

19 Q Now, looking to these circumstantial similarities, sir,  
20 and, again, assuming each of these to be true, do you consider  
21 them to be significant in your analysis?

22 MR. SEGAL: Objection. He's testified -- now, he's  
23 asking for.

24 THE COURT: I can't hear you.

25 MR. SEGAL: He's testified that he doesn't look to

1 those in connection with signature analysis. Now, he's  
2 saying --

3 THE COURT: That's the question: Does he? Assuming  
4 them to be true, does he?

5 MR. LIBBY: Your Honor, I established in his direct  
6 testimony --

7 THE COURT: You're talking about two different  
8 things. The witness is talking, on the one hand, about  
9 signature and, on the other hand, about investigating a  
10 crime. The question is whether on signature he looks to  
11 circumstantial similarities.

12 THE WITNESS: And the answer is no.

13 Q Sir, do you ever look at circumstantial, sir, matters in  
14 the course of determining any signature analysis?

15 A Not the signature, no. I just look at the forensic  
16 components.

17 Q It has absolutely no basis of no information, no  
18 significance to you, sir, to know that these devices were  
19 placed within ten miles of each other?

20 A It has nothing to do with how the bomb was built.

21 Q On that point that the devices were designed to be  
22 affixed to undercarriages of target vehicles, have any meaning  
23 to you at all?

24 A The placement of the device is certainly something.

25 Q So you would agree with me on that?

1 A At that point, yes.

2 Q And the remainder of those points, sir, do you consider  
3 any of them to be significant in the course of opining on your  
4 signature analysis?

5 MR. SEGAL: Objection.

6 THE COURT: He may have the question.

7 A No.

8 Q You consider none of that to be significant?

9 THE COURT: That's the fifth time, and now the  
10 objection is sustained.

11 Q When were you retained, sir?

12 A I believe it was in February of this year.

13 Q And you made several visits with respect to the evidence?

14 A Two occasions.

15 Q Two occasions.

16 You had the evidence available to you at any time,  
17 right?

18 Any time you that you could make arrangements to do  
19 so?

20 A Yes.

21 Q And you satisfied yourself with respect to inspecting and  
22 examining that evidence?

23 A Yes.

24 Q As I believe you discussed previously you learned more  
25 about the device as the case progressed, as you made the

1 visits, and more information came known to you?

2 A That's correct.

3 Q And you haven't hesitated, sir, to change your opinion  
4 when you thought it necessary in your professional judgment,  
5 true?

6 A Could you repeat that?

7 Q You haven't hesitated to change your opinion when you  
8 deemed it necessary, in your professional judgment?

9 A As information comes to me and it's validated, I would  
10 change my opinion if it was accurate, reliable.

11 Q Sir, you have changed your opinion between your first  
12 affidavit and your second affidavit, as you've indicated, with  
13 respect to at least the importance of the soldering, twisting  
14 and taping of the wires, true?

15 A To the importance of it?

16 Q Yes.

17 A I don't think I changed my --

18 Q You said you needed some --

19 THE COURT: I do believe that's a repetition of what  
20 we've already done.

21 MR. LIBBY: I'm simply trying to get to acknowledge  
22 prior testimony along the lines of this record, that's all.

23 MR. SEGAL: We've done it already.

24 MR. LIBBY: He's contesting it.

25 THE COURT: Well, I don't recall that he contested it

1 when you did it the first time. But now --

2 MR. SEGAL: We've gone far longer than the direct,  
3 your Honor.

4 THE COURT: You have enough to argue the case to the  
5 jury.

6 MR. LIBBY: I have about five more minutes.

7 Q Mr. Kline, you said it was singularly unique, and then  
8 you said it was not so unique?

9 THE COURT: It's the same question, the objection is  
10 sustained.

11 MR. SEGAL: Objection.

12 Q Now, in your first affidavit, sir, you took the position,  
13 clearly, that the person who made the 1986 device was simply  
14 not the person who made the 1991 device; two separate  
15 individuals, true?

16 A I don't know that I said it quite that way.

17 Are you speaking, referring to my first affidavit?

18 Q Yes, I am, your June affidavit.

19 MR. SEGAL: Can we get a page?

20 MR. LIBBY: Page 5?

21 A My statement specifically was that he examined and he  
22 built these devices, it indicated that a different person made  
23 each device.

24 Q That's your first affidavit.

25 A Yes.

1 Q ?

2 The second affidavit, 11th of October, you take the  
3 position, sir, paragraph 15, the maker of the 1986 device and  
4 the 1991 device most likely were not the same person.

5 Do you see that there?

6 A That's correct.

7 Q So, first, you say unqualifiably not the same person; now  
8 you say most likely not the same person, true?

9 MR. SEGAL: Objection.

10 THE COURT: The objection sustained.

11 Q Well, Mr. Kline, you were aware of that difference,  
12 however subtle, in the way you framed that statement between  
13 your first and second affidavits, true?

14 A No.

15 Q You weren't aware of it?

16 A Of how I framed it?

17 Q Yes.

18 A I think basically they say the same thing. I'm  
19 suggesting that based on my examination that the person who  
20 built the '86 bomb probably didn't make the '91 bomb. That's  
21 my opinion. Frame it any way you want, that's what I'm saying  
22 in both.

23 Q I want to direct your attention to your two statements in  
24 the affidavits. You said a different person made each device  
25 in the first affidavit and then you say most likely they were

1 not made by the same person, true?

2 MR. SEGAL: Objection. It's mischaracterizing what  
3 he said. He's not reading it correctly, your Honor.

4 THE WITNESS: He's not reading it correctly, your  
5 Honor.

6 Q You say here, on page 5, first affidavit, paragraph 12:

7 It is my opinion that a comparison of the design,  
8 construction and circumstances of the '86 device and the '91  
9 device indicate that a different person made each device?

10 A That's true.

11 Q Did I read that correctly, sir?

12 A Yes.

13 Q Page 6, paragraph 15: The basis for my conclusion of the  
14 maker of the '86 device and the '91 device most likely were  
15 not the same person, and so forth.

16 Did I read that correctly, in part?

17 A Yes, you did.

18 Q Now you further changed your testimony, your opinion, sir  
19 -- strike that.

20 Were you aware that you made that change?

21 A I think they mean the same thing.

22 Q So you took part in preparing and reviewing these  
23 affidavits?

24 A Yes, absolutely.

25 Q So, you believe they mean the same thing; is that right?

1 A Yes.

2 Q Now, it had no basis and in no way prompted, sir, by any  
3 further information that came to your attention between June  
4 and October of '93; is that what you're saying?

5 A The reason for the change in terminology had nothing to  
6 do with that, no, to answer your question.

7 Q So, the answer to my question is: No.

8 The information about this photograph, the evidence  
9 of the twisted, soldered tape, nothing for you in the course  
10 of changing your opinion here; is that right?

11 A No.

12 Q Now, sir, even after your second affidavit of 11 October,  
13 sir, there's testimony under oath in this court, in a related  
14 proceeding, you testified that you can't say, you, Denny  
15 Klein, can't say that the individual who made the 1986 did not  
16 make the 1991 device; indeed, in general there is a  
17 possibility, a probability, that maybe there is a connection  
18 between the maker of these two bombs, true?

19 A Excuse me, that's true. I made that statement.

20 Q Mr. Kline, are you getting paid \$200 an hour here?

21 A Yes, I am.

22 Q By the client, Mr. Trenkler?

23 A By -- I'm not sure, I bill Mr. Segal.

24 Q And you have been paid to date, how much, sir?

25 A I haven't the total page.

1 Q Have you been paid at least \$10,000?

2 A Yes, I have.

3 Q Do you have more coming, three or four thousands of  
4 dollars, anyway?

5 A I have some more coming, yes.

6 MR. LIBBY: I have nothing further.

7 THE COURT: Any redirect?

8 MR. SEGAL: I have none.

9 Thank you, Mr. Kline, you are excused.

10 Members of the jury, we will stretch while you call  
11 the next witness.

12 MR. SEGAL: I would like to move in for evidence, the  
13 same way that the government's chalk, their mock-up is  
14 admitted, I would like my mock-up admitted, which I think you  
15 admitted for consideration by the jury.

16 THE COURT: Your mock-up will be treated in the same  
17 way the government's mock-up. All are in identification as  
18 chalks what we will do with them hereafter we will discuss  
19 hereafter.

20 MR. SEGAL: I'm just referring to Exhibit 151.

21 THE COURT: Who is the next witness?

22 MR. LOPEZ: William McNamara, your Honor.  
23  
24  
25

1                   William McNamara, sworn

2                   Direct Examination by Mr. Lopez

3                   THE CLERK: State your name, and spell your last  
4 name.

5                   THE WITNESS: My name is William McNamara,  
6 M c N A M A R A.

7 Q Are you employed, Mr. McNamara?

8 A Yes, I am.

9 Q Whom are you employed by?

10 A I currently work for COMSAT, C O M S A T World Systems.

11 Q What type of company is COMSAT World Systems?

12 A COMSAT is the United States signatory to the  
13 International Satellite Consortium, Intelsat, I N T E L S A T.

14 Q How long have you been with that company?

15 A Just over one year.

16 Q And what position do you hold?

17 A I'm currently manager of systems, managing engineering  
18 support.

19 Q Could you briefly describe your responsibilities with  
20 COMSAT?

21 A My responsibilities include managing a group of engineers  
22 who support existing satellite networks and potential clients.

23 Q Could you provide the Court with a representative sample  
24 of some of the businesses that you deal with?

25 MR. KELLY: Your Honor, I don't see the relevance.

1 THE COURT: Is this an expert or a fact witness?

2 MR. LOPEZ: This is just establishing Mr. McNamara's  
3 responsibilities.

4 MR. KELLY: I object.

5 THE COURT: Well, what does that have to do with  
6 anything in the case?

7 MR. LOPEZ: Well, your Honor, whenever a witness  
8 takes the stand, credibility is an issue. His  
9 responsibilities as an individual bears heavily or is one  
10 of --

11 THE COURT: Tell us in one sentence what your  
12 responsibility is.

13 Q That's all I asked, briefly describe some of the clients  
14 or companies that you worked?

15 THE COURT: We, that's not the question. You said  
16 "his responsibilities." He may tell us his responsibilities,  
17 but who the clients are is wholly irrelevant.

18 MR. KELLY: I think he just told us his  
19 responsibilities, and I'm not challenging this gentleman's  
20 credibility.

21 MR. LOPEZ: If the government stipulates his  
22 credibility, that's fine, your Honor.

23 Q Are you married, Mr. McNamara?

24 A Yes, I am.

25 Q Do you have any children?

1 A Yes, I have a girl who is six and a boy who is three.

2 Q And how long have you been married?

3 A Eight years.

4 Q Now, directing your attention to the summer of 1991, who  
5 were you employed with at that -- employed by at that time?

6 A At that time I worked with the Christian Science  
7 Publishing Society.

8 Q And what position did you hold with the Christian Science  
9 Publishing Society?

10 A I was a manager of video transmission services.

11 Q Could you describe your responsibilities at that time?

12 A I was responsible for all inbound and outbound video  
13 feeds for the Christian Science Monitor cable channel.

14 Q Could you briefly describe what inbound and outbound  
15 video feed means?

16 A Monitor channeling program was heavily news oriented and  
17 required live interviews from remote locations and also  
18 gathering news footage around the world; most of it by  
19 satellite.

20 Q And the outbound feeds, what were they?

21 A Outbound feeds were the final product for distribution  
22 for air.

23 Q Let me just ask you this, does the Monitor channel,  
24 Channel 68 exist today?

25 A The Monitor channel does not. As far as I know, 68 does

1 still exist.

2 Q When did the Monitor channel close its doors?

3 A April 15, 1992.

4 Q Now, directing your attention to the summer of 1991, was  
5 there a particular project under consideration by the  
6 Christian Science Publishing Society at that time?

7 A Yes, there was.

8 Q And what project was under consideration?

9 A There was a project to establish microwave lengths  
10 connecting the Christian Science Center with WQTV and the  
11 Christian Science Center with Videocom Satellite Associates.

12 Q And the Christian Science Center is located across from  
13 Symphony Hall?

14 A That's correct, One Norway Street.

15 Q And where is WQTV located?

16 A 1660 Soldiers Field Road.

17 Q And Videocom Associates?

18 A In Dedham.

19 Q What was the purpose of this project?

20 A We had existing fiberoptic links between those sites, and  
21 we wanted to replace those with microwave links.

22 Q Why did you want to replace the existing fiberoptic lines  
23 with microwave links?

24 MR. KELLY: We don't contest the fact that there was  
25 some problem. Why do we have to get into the reason for it?

1 THE COURT: What is the relevance as to the why?

2 MR. LOPEZ: Well, your Honor --

3 THE COURT: Just that they did it?

4 MR. LOPEZ: Well, the testimony will be that  
5 Mr. Trenkler was retained by the Christian Science Church.  
6 We've heard a lot here about Mr. Trenkler's responsibility --

7 THE COURT: What's the purpose of the question as to  
8 why they did it, why they wanted to replace fiberoptics with  
9 microwave links?

10 MR. LOPEZ: To assist the jury in understanding  
11 exactly what it was that Mr. Trenkler was doing at the  
12 Christian Science Church.

13 THE COURT: Let's find out what he knows about what  
14 he actually did.

15 MR. LOPEZ: If I can just lead him what the purpose  
16 of the project was, your Honor.

17 MR. KELLY: We would stipulate that my understanding,  
18 as a layperson, that he was installing some kind of fancy,  
19 plancy microwave dishes.

20 MR. LOPEZ: This will take, like, two questions.

21 THE COURT: Go ahead.

22 Q Why did you want to replace the already existing  
23 fiberoptic lines?

24 A Because in the long run, it is better to own than to  
25 lease, and we were leasing the fiberoptic line from the phone

1 company.

2 Q Did you make the decision to switch the microwave  
3 technology?

4 A It was not my ultimate decision, no.

5 Q What role if any did you play in establishing these  
6 microwave links?

7 A Once the decision was made, I was tasked with managing  
8 the implementation.

9 Q Now, as a result of being assigned this responsibility,  
10 did you have a conversation with Frank Cavallo?

11 A Yes, I did.

12 Q And as a result of that conversation, did you do  
13 anything?

14 A Yes, I did.

15 Q What did you do?

16 A I called Al Trenkler.

17 Q And what business name was Al Trenkler operating under at  
18 that time?

19 A ARCOM.

20 Q And as a result of your conversation, did you have a  
21 meeting with Al at some point?

22 A Yes, we did.

23 Q Who else was present?

24 A It was myself, Richard Brown and Al Trenkler.

25 Q Can you identify Al Trenkler for this court?

1 A It's him right there (indicating).

2 MR. LOPEZ: May the record reflect he'S identified Al  
3 Trenkler.

4 Q Now, what was the purpose of this meeting between  
5 yourself, Mr. Trenkler and Mr. Brown?

6 A He discussed the scope and nature of the project.

7 Q And what generally was the scope and nature of the  
8 project?

9 A To install dishes at WQTV and the Christian Science  
10 Center and Videocom Satellite Associates and all associated  
11 hardware and electronics.

12 Q And who owned or operated WQTV at this time?

13 A THE Christian Science organization.

14 Q And describe specifically what it was that you wanted Al  
15 Trenkler to do?

16 A He needed to have a clear line of site between the three  
17 sites mentioned. Al had to go to those sights and do the site  
18 surveys. We had to optimize where we were going to place  
19 these dishes. We had a mounting pipe constructed and going  
20 through the Christian Science Center for implementation of  
21 those dishes. From those dishes the way guidelines have to be  
22 made into the electronic shack, and the electronics hardware  
23 has to be installed in the shack.

24 Q And eventually the SEC would have to authorize?

25 A Yes.

1 Q Now, who made the decision to hire ARCOM?

2 A I did.

3 Q And why?

4 MR. KELLY: I would object to that, your Honor.

5 THE COURT: Sustained.

6 Q When did you decide to hire Al Trenkler?

7 A It was late in July of '91.

8 MR. LOPEZ: If I may approach the witness, your  
9 Honor.

10 THE CLERK: 163 is your next number.

11 Q Mr. McNamara, I'm going to show you what's been marked as  
12 Defendant's Exhibit 163, and I ask you if you recognize it?

13 A Yes, I do.

14 Q And what do you recognize it to be?

15 A This is a letter of intent that I had drafted and sent to  
16 Richard Brown.

17 Q And why Mr. Brown?

18 A Mr. Brown was the business manager at ARCOM at that time.

19 Q And is this your signature?

20 A Yes, it is.

21 MR. LOPEZ: Your Honor, I would ask that this be  
22 moved into evidence and published to the jury.

23 THE COURT: Any objection?

24 MR. KELLY: No, your Honor. The government will  
25 stipulate that there was a project there and this fellow was

1 the manager for Christian Science. If there's any reason to  
2 streamline it, we don't contest it.

3 MR. LOPEZ: I'll try and streamline it as best I can,  
4 your Honor.

5 **[Defendant's Exhibit 163 entered into evidence.]**

6 Q Showing you what's been marked as Exhibits 118 and 119,  
7 which are already in evidence, I ask you if you recognize  
8 them?

9 A Yes, I do.

10 Q And what are they?

11 A These are copies of purchase orders issued by the  
12 Christian Science Publishing Society.

13 Q Now, describe generally the work that ARCOM was hired to  
14 do for you?

15 THE COURT: I thought you just did that, to install  
16 the dishes and associated hardware with a clear line of site  
17 to the three sites.

18 MR. KELLY: And the purchase orders further elaborate  
19 and speak for themselves.

20 Q Was he also hired to recommend equipment that the church  
21 was to purchase in order to accomplish --

22 A Yes, he was.

23 Q So he performed the function of a consultant?

24 A Yes.

25 Q Okay. Now, did this work require the use of a

1 helicopter?

2 A Yes, it did.

3 Q And what if anything did the helicopter do?

4 A The helicopter --

5 MR. KELLY: I would object, your Honor. I don't see  
6 the relevance of that. I would stipulate that they used a  
7 helicopter.

8 MR. LOPEZ: Fine.

9 If the government wants to stipulate --

10 MR. KELLY: I've said that all along.

11 THE COURT: It is stipulated that a helicopter was  
12 used to take the dish to the roof.

13 What's next.

14 Q Did Mr. Trenkler complete the work that he contracted  
15 with the church to complete?

16 A Yes, he did.

17 Q And were you satisfied with Mr. Trenkler's work?

18 A Yes, I was.

19 Q And when approximately was the work completed?

20 A In March.

21 Q And did that take longer than anticipated?

22 A They were some slight delays due to the pressurization  
23 equipment at WQTV.

24 Q And was that something attributable to ARCOM?

25 A Oh, no.

1 Q Who was it attributable to?

2 A Myself and the engineer of WQTV.

3 Q And directing your attention to before October 28th,  
4 1991, did you discuss any other projects with Mr. Trenkler?

5 A Yes, I did.

6 MR. KELLY: Objection, relevance grounds.

7 THE COURT: Before October 28th, 1991?

8 MR. LOPEZ: Before October '91.

9 MR. KELLY: About projects that take place  
10 thereafter?

11 THE COURT: I'll allow it.

12 Q What was the first project that you discussed with  
13 Mr. Trenkler prior to October 28th, 1991?

14 A That would be the possible installation of another  
15 satellite dish on top of the administration roof at the  
16 Christian Science Center.

17 Q And do you recall what size dish was involved in that?

18 A It would have been a minimum of five meters, or about 15  
19 feet.

20 Q And the approximate cost of that project?

21 A Total cost between us would have been between 150 to  
22 \$200,000.

23 Q And assuming that ARCOM was awarded that contract, what  
24 would be the amount approximately of the ARCOM contract?

25 A About one third.

1 Q So approximately 50 to \$70,000?

2 A That's correct.

3 Q Now, did you discuss the second project --

4 A Yes, I did.

5 Q -- with Mr. Trenkler.

6 And what was that?

7 A The possibility of, yet, another microwave link between  
8 Christian Science Center and WGBH, Channel 2.

9 Q And this was in the time frame before October 28th, 1991?

10 A Yes.

11 Q And what size dish was anticipated in that conversation?

12 A It would have been six to eight feet.

13 Q Now, what was the approximate cost of that?

14 A Somewhere between 50 and \$75,000.

15 Q And if ARCOM was awarded that contract, what would be the  
16 amount of ARCOM's contract?

17 A Again, about one third.

18 Q Now, was there any other project that you discussed with  
19 Trenkler prior to October 28th, 1991?

20 A Yes, there was.

21 Q And what project was that?

22 A Shortly after the helicopter lift at the local Fox  
23 affiliate let it be known that there would be a ten-meter dish  
24 on our property that they would give away to anybody who  
25 wanted to move it off their grounds.

1 Q And are you aware that the Fox affiliate was Channel 25?

2 A Yes.

3 Q And when you say "shortly after the helicopter lift," do  
4 you know when the helicopter lift was?

5 A The second lift was on October 13th.

6 Q And when you say "shortly after," what time frame are you  
7 referring to?

8 A That would be within two weeks.

9 Q So sometime between October 13th and October 27th, you  
10 had this conversation with Mr. Trenkler regarding the  
11 ten-meter dish?

12 A Yes.

13 Q Now, are you familiar with the procedure for long-term  
14 contractor badges at the Christian Science Center in the fall  
15 of 1991?

16 A Yes, I am.

17 Q And what was it?

18 THE COURT: Haven't we had testimony on that  
19 already?

20 MR. LOPEZ: It was a foundation question, your Honor.

21 Q Let me show you Defendant's Exhibit 116, and I ask you if  
22 you recognize that form?

23 A Yes, I do.

24 Q And what is that form?

25 A It's a request for a contractor's badge from the

1 Christian Science Center.

2 Q Now, did you complete a similar form as that which has  
3 been marked Defendant's of Exhibit 116 for Mr. Trenkler?

4 A Yes, I did.

5 Q And when was that?

6 A That would have been shortly after the purchase orders  
7 were issued.

8 Q And a first purchase issue was issued on September, the  
9 3rd; is that correct?

10 A Yes.

11 Q And why did you complete this form on Mr. Trenkler's  
12 behalf?

13 MR. KELLY: Objection, your Honor. I think it's  
14 cumulative. I think that was explained already. We don't  
15 challenge it, in any event.

16 THE COURT: I assume he did it to get a long-term  
17 badge.

18 MR. LOPEZ: If they were going to stipulate that it  
19 was to allow him access to the administration building and the  
20 broadcast center to be able to complete his work, and only for  
21 that purpose, then I would be happy to accept that  
22 stipulation.

23 MR. KELLY: You got it.

24 THE COURT: Any questions, Mr. Kelly?

25 MR. KELLY: No, your Honor.

1 THE COURT: Thank you, Mr. McNamara, you're excused.  
2 Who is next?

3 MR. SEGAL: Just a moment, your Honor.

4 MR. SEGAL: I wonder if we could approach the bench  
5 just very briefly.

6 THE COURT: Are we out of witnesses?

7 MR. SEGAL: Well, I think it would be easier if we  
8 started in the morning, your Honor, that's all.

9 THE COURT: We will finish tomorrow.

10 MR. SEGAL: I'll finish my case by 10:15, at the  
11 latest.

12 THE COURT: We will finish tomorrow, right.

13 MR. KELLY: Most certainly, your Honor.

14 THE COURT: All right. Then we will adjourn now  
15 until 9 o'clock tomorrow morning, members of the jury. And  
16 please remember what I told you, not to talk about the case,  
17 not to make up your mind, and not to read, listen or watch  
18 anything about it.

19 [Whereupon, the jury left the courtroom.]

20 THE COURT: Court is in recess until 2, this case  
21 until 9 tomorrow morning.

22 Whereupon, the jury trial was adjourned concluded at  
23 12:54 a.m. to be reconvened on Tuesday, November 15th, 1993.

24

25

CERTIFICATE

We certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

---

James E. McLaughlin

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Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Denny Kline, sworn (by Mr. Segal)	5			
(by Mr. Libby)		55		
William McNamara, sworn (by Mr. Lopez)	130 <del>150</del> L.T.			

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
<u>Defendant's</u>			
150-158	(See Clerk's Notes.)	46	
160		53	
161		53	
162			54
163			138

## 1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

4  
5  
6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Sixteenth Day of Trial11  
12  
13 APPEARANCES:14 For the Government:15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.17  
18 For the Defendant:19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
21 210 Commercial Street, Boston, MA. 02109.22 Courtroom 3  
23 Federal Courthouse  
24 Boston, Massachusetts

25 November 16, 1993

Computer-Aided Transcription

P R O C E E D I N G S

[Whereupon, the jury entered the courtroom.]

THE COURT: Good morning, please be seated.

THE CLERK: Please be seated and spell your name for the reporter.

THE WITNESS: Josephine Wallace, W A L L A C E.

THE COURT: The parties have agreed to a stipulation, and I think I explained to you that simply means they have agreed that certain facts are not in dispute. We have marked it as Defendant's Exhibit 164. You may read it to the jury.

[Defendant's Exhibit 164 entered in evidence.]

MS. SHARTON: In October of 1991, the total number of passenger vehicles registered in the Commonwealth of Massachusetts was 4,174,756. Of those registered vehicles approximately 2,100,000 had license plates which consisted of three numbers followed by three letters.

Josephine Wallace, sworn

Direct Examination by Ms. Sharton

Q Good morning, Mrs. Wallace. Where do you live, ma'am?

A I live in Milton, 7 White Lawn Avenue.

Q What is your occupation?

A I'm a real estate broker.

Q For what company?

A Hunneman Company, Caldwell Banker.

Q Did you grow up in Milton, Mrs. Wallace?

1 A Yes, I did.

2 Q Did you attend school there?

3 A I went to Milton Academy.

4 Q What did you do after attending or graduating from Milton  
5 Academy?

6 A I pursued a career in ice skating. I won a national  
7 championship and then turned professional and skated as a  
8 professional.

9 Q Are you Alfred Trenkler's mother?

10 A Yes, I am.

11 Q Have you been in the courtroom for this entire trial?

12 A Yes, I have.

13 Q To whom are you married?

14 A Jack Wallace.

15 Q And how long have you been married to Mr. Wallace?

16 A We have been married for 32 years.

17 Q Do you have any other children?

18 A Yes, I do. David Wallace.

19 Q How old is David?

20 A David is 31.

21 Q Is Mr. Wallace Alfred's natural father?

22 A No, he is his stepfather.

23 Q Who is Alfred's natural father?

24 A Alfred Trenkler.

25 Q For how long were you married to Mr. Trenkler?

1 A From 1956 to 1960.

2 Q How old was Alfred when you were divorced?

3 A He was five.

4 Q Mrs. Wallace, what did Alfred's natural father do for a  
5 living?

6 A He was also an ice skater. He was the lead comedian in  
7 Ice Capades.

8 Q Where is he living now?

9 A He's living in California.

10 Q Has Mr. Wallace been Alfred's father since he was  
11 five-years old?

12 A Yes.

13 Q Mrs. Wallace, how long have you and your husband lived at  
14 7 White Lawn Avenue in Milton?

15 A We have been there for 31 years.

16 Q Is that the home where both David and Alfred grew up?

17 A Yes, it is.

18 Q Where did Alfred attend school after high school?

19 A He went to Milton Academy, through the 6th grade, and  
20 then he went to Park School in Brookline through the 8th grade  
21 and then Thayer Academy in Braintree.

22 Q Did you attend college after?

23 A Yes, he went to Wentworth Institute.

24 Q And what was his major there?

25 A Electronic engineering.

- 1 Q And what year did you graduate?
- 2 A 1977.
- 3 Q Mrs. Wallace, in 1991, where was your son Alfred living?
- 4 A He was living in Quincy.
- 5 Q Okay. Do you know with whom he was living?
- 6 A John Cates.
- 7 Q And in 1991, how often did Alfred visit your home?
- 8 A Oh, he was there probably once a week, maybe twice a
- 9 week.
- 10 Q Did he ever stay overnight at your house?
- 11 A No.
- 12 Q In 1991?
- 13 A No.
- 14 Q Have you ever met Mr. Cates?
- 15 A Yes, I have.
- 16 Q And has he been to your home on family occasions?
- 17 A Yes, he has.
- 18 Q Mrs. Wallace, are you aware of your son's sexual
- 19 orientation?
- 20 A Yes, I am.
- 21 Q Do you and your husband accept that?
- 22 A Of course.
- 23 Q Mrs. Wallace, have you ever met Thomas Shay, Jr.?
- 24 A No, I have not.
- 25 Q Has he ever called your house?

1 A No.

2 Q And Mrs. Wallace, since Alfred was released on bail in  
3 August of this year, has he lived at home with you and your  
4 husband?

5 A Yes, he's been home since August 2nd.

6 MS. SHARTON: I have no further questions.

7 Cross-examination by Mr. Kelly

8 Q Good morning, Mrs. Wallace.

9 A Good morning.

10 Q Mrs. Wallace, you described your son's educational  
11 background, attending Milton Academy then the Park School,  
12 then Thayer and Wentworth Institute. Do you know what type of  
13 degree your son received from Wentworth Institute?

14 A I don't know the exact title but a degree. No, I don't.

15 Q Do you know how many years he was there?

16 A He was there two years.

17 Q Would that have been an associate's degree?

18 A Perhaps, yes.

19 Q Was he in the field of electrical engineering?

20 A Yes.

21 Q To your knowledge, is your son skilled in the field of  
22 electronics, in electrical engineering?

23 A From what I know of the field I would say yes, but I'm  
24 very unknowledgeable.

25 Q Okay. Does your son have other skills and hobbies other

1     than electronics?

2     A     No, not that I can think of.

3     Q     For example, Mrs. Wallace, is your son, has your son  
4     worked, say, with woodworking; is he skilled with wood?

5     A     No, not particularly.

6     Q     Does your son -- even though he didn't live at your home  
7     in 1991, he had a room at the house, did he not?

8     A     There was a room, or I should say there is a room on the  
9     third floor that was his when he was living in the house.

10    Q     And he continued to store some materials in the room into  
11    1991, did he not?

12    A     The things that he stored were mostly in the garage. In  
13    the room I would say there might have been one or two obsolete  
14    pieces of clothing, some things remaining he had, a chemistry  
15    set, things from his childhood really.

16    Q     We've seen a number of pictures of the garage. Your  
17    garage in 1991 was very congested with lots of materials?

18    A     Yes, I would say that's very accurate.

19    Q     And some of the photographs I think that have been  
20    distributed, show, like, scraps of wood and saw dust, and  
21    things like that, on the floor of the garage?

22    A     Yes.

23    Q     Did both of your sons both David and Mr. Trenkler, did  
24    they both get involved in working with wood? Is that the  
25    reason why you see pictures of wood and scraps of wood on the

1 floor of the garage?

2 A I would say that David was the one who was more into the  
3 woodworking.

4 Q Did you also go into the garage and use the garage  
5 yourself, Mrs. Wallace?

6 A No, I didn't.

7 Q You have told us that your son was not living at home in  
8 1991 but was living in Quincy.

9 Had you ever been to your son's apartment in Quincy?

10 A No.

11 Q Okay. How long did he live there?

12 A I believe he lived there for approximately a year.

13 Q You were here during the testimony of Mr. Cates, were you  
14 not?

15 A Yes, I was.

16 Q And I think Mr. Cates told us that Mr. Trenkler resided  
17 with him from October of 1990 until December of 1992, would  
18 that consistent with your memory of the time that he lived  
19 with Mr. Cates in Quincy?

20 A I would have to say fine, I really don't have the dates.

21 Q Okay.

22 Approximately how far from your home in Milton, was  
23 Alfred's apartment in Quincy?

24 A In time or miles?

25 Q In distance.

1 A I don't know that I can give you an accurate answer,  
2 perhaps --

3 Q Would it be fair to say it is approximately four miles?

4 A That's possible.

5 Q And at no time during the two-year period that your son  
6 resided there, were you invited by him to come over to the  
7 apartment; is that fair to say?

8 A I would say that was fair to say.

9 Q Now, during that same time frame, your son continued to  
10 use your address in Milton as his legal address, did he not?

11 A I don't really know. I mean, he received mail there, but  
12 he also had a post office box in, I believe, it was in  
13 Weymouth.

14 Q Were you aware of the fact that he continued to use the 7  
15 White Lawn address as the address on his driver's license, for  
16 example?

17 A No, because I don't think I have ever seen his driver's  
18 license.

19 Q Okay. You were asked a question by Ms. Sharton about  
20 your son's sexual orientation. You and I first met,  
21 Ms. Wallace, back in March of 1992, correct?

22 A Yes.

23 Q It's fair to state, Mrs. Wallace, is it not, that prior  
24 to this difficult incident for you, and prior to this  
25 investigation, you were not aware of your son's sexual

1 orientation, were you?

2 A I think what I told you, Mr. Kelly, was that I had  
3 doubts, but it was something that was just never discussed.

4 Q You are not personally acquainted with or familiar with  
5 all of your son's social friends, that would be a fair  
6 statement, would it not?

7 A I'm sure not.

8 Q So, you may not have ever met anyone by the name of  
9 Thomas Shay, Jr. as I think you've told us, correct?

10 A That's correct.

11 Q But you may not have met a large number of Mr. Trenkler,  
12 your son's other social friends, that would also be correct?

13 A Yes, sir, I would say so.

14 Q Did your son ever bring any of his social friends over to  
15 your house at 7 White Lawn Ave. other than this Mr. Cates  
16 during the period 1991?

17 A Yes. Brian O'Leary.

18 Q He's the gentleman that came in and testified here?

19 A Yes.

20 Once and now I'm not even sure of the exact date, but  
21 I did meet Richard Brown once.

22 Q His business partner?

23 A Yes. And I'm sure there are one or two others, but I  
24 don't really remember their names.

25 Q Had you met since you were here every day, Mrs. Wallace,

1 had you met this fellow that testified, Mr. Craig that came in  
2 and testified that he was the roommate of your son, for some  
3 period of time, had you met him before?

4 A When I saw him on the stand, I tried to recollect and  
5 perhaps I did at some point. But I really don't remember.

6 Q There was another fellow that testified before him, Mr.  
7 Coady, had you met that gentleman before?

8 A Not to my knowledge.

9 Q And finally, there was another fellow who testified, a  
10 Mr. Leach, had you met him before?

11 A No, never.

12 Q After your son finished his schooling, Mrs. Wallace, at  
13 any time did he serve in the United States military?

14 A No, he didn't.

15 MR. KELLY: Thank you, Ms. Wallace.

16 THE COURT: Anything else, Ms. Sharton?

17 MS. SHARTON: No, your Honor.

18 THE COURT: Who is next?

19 MR. SEGAL: The defense rests, your Honor. And we  
20 have a motion to file that I would like to briefly be heard  
21 on.

22 THE COURT: Any rebuttal.

23 MR. KELLY: Yes. The United States would like to  
24 call two witnesses.

25 THE COURT: I don't believe I have to rule on this

1 motion now, I will hear the rebuttal first.

2 You may proceed.

3 MR. KELLY: Your Honor, the United States calls  
4 Special Agent Thomas D'Ambrosio.

5 THE COURT: Mr. D'Ambrosio, you are still under oath.

6 THE WITNESS: Yes, your Honor.

7 Thomas D'Ambrosio, recalled

8 Direct Examination by Mr. Kelly

9 Q For the benefit of the reporter, would you spell your  
10 last name, please.

11 A D A M B R O S I O.

12 Q And Special Agent, you have previously given testimony in  
13 this proceeding, have you not?

14 A Yes, I have.

15 Q And you have been sitting in the back of the courtroom  
16 throughout the trial, with other agents and members of the  
17 Hurley and Foley families, have you not?

18 A Yes, I have.

19 Q Special Agent, were present during the testimony of one  
20 of the defendant's investigators of Mr. Rod Kennedy, when he  
21 testified concerning how long it took him to make a drive from  
22 the defendant's office in Weymouth to the Radio Shack store on  
23 Massachusetts Ave. in Boston?

24 A Yes.

25 Q Agent, based on that testimony, what is your

1 understanding of the time that it took Mr. Kennedy to drive  
2 this distance on a Friday afternoon, at or about 2 o'clock  
3 p.m.

4 A I believe he testified that the average time was 27  
5 minutes.

6 Q Now, Agent D'Ambrosio, did you conduct a similar test,  
7 sir?

8 A Yes, I did.

9 Q Did anyone else conduct a similar test with you?

10 A Yes, Special Agent Dennis Leahy.

11 Q When did you conduct this tests?

12 A On Friday, October 29th.

13 Q That would have been in 1993?

14 A 1993.

15 Q Prior to the start of this trial?

16 A During the course of this trial.

17 Q Prior to the testimony of Mr. Kennedy?

18 A Yes.

19 Q Now, directing your attention to this day, Friday,  
20 October 29th, 1993, what time did you depart from the offices  
21 of ARCOM on Broad Street in Weymouth, sir?

22 A I departed at 2 p.m.

23 Q And how about Agent Leahy?

24 A At the same time.

25 Q How do you know that?

1 A We were parked alongside each other at the curb in front  
2 of 82 Broad Street and left exactly the same time.

3 Q And did Agent Leahy and yourself travel along the same  
4 route to the Radio Shack store in Boston?

5 A No, we did not.

6 Q Okay.

7 What route did you travel?

8 A Prior to doing this test, I had decided there were  
9 probably two routes to Boston. One what I believe to be the  
10 shortest route and one which I believe or longest route. I  
11 took the shortest route and Agent Leahy took the longer route.

12 Q What route did you travel, sir?

13 A From 82 Broad Street which was offices of ARCOM, I turned  
14 right on Washington Street, traveled North on Washington  
15 Street, to where I took a left on to Union Avenue, Union  
16 Avenue, Braintree brings you to Route 3 where I entered Route  
17 3, traveled North on Route 3 to the Southeast Expressway,  
18 exited the Southeast Expressway on the Massachusetts Avenue  
19 exit and drove directly to 197 Massachusetts Avenue where I  
20 parked at a meter opposite the Radio Shack store.

21 Q How was the route that you took different than the route  
22 that was taken by Mr. Kennedy?

23 A It is essentially the same except that I traveled through  
24 the Massachusetts Avenue exit whereas he exited earlier on the  
25 Expressway at South Hampton Street.

1 Q And what route is more direct?

2 A My belief is that the existing the Massachusetts Avenue  
3 exist is much more direct.

4 Q Why is that?

5 A It is a left-handed exit off the expressway, there are  
6 virtually no traffic lights until you reach the end of that  
7 exit ramp, whereas existing earlier, on the right-hand side of  
8 the expressway, it requires a left-hand turn, against traffic  
9 at the end the ramp, and there are several other traffic  
10 lights before reaching Massachusetts Avenue.

11 Q And what route did Agent Leahy take?

12 A He -- from the -- from Broad Street, into Broad Street,  
13 Agent Leahy turned left on Washington Street, and traveled to  
14 Route 18, in Weymouth, where he entered Route 3 from Route  
15 18. He essentially went two miles south prior to reaching  
16 Route 3.

17 Q At what speed did you travel, sir?

18 A He traveled at the speed limit or stayed with the flow of  
19 the prevailing traffic.

20 Q And how long did it take you to drive from the office in  
21 Weymouth to the Radio Shack store on Massachusetts Ave. Agent  
22 D'Ambrosio?

23 A 18 minutes and 19 seconds.

24 Q How did you time this trip?

25 A There's a stop watch to my wrist watch.

1 Q Were you able to park when you arrived?

2 A Yes.

3 Q Where did you park?

4 A Directly opposite the Radio Shack store, at the curb.

5 Q And when did Agent Leahy arrive at the scene?

6 A Approximately two minutes after I, after I arrived.

7 Q And how long did it take him to make the trip?

8 A 20 minutes and 12 seconds.

9 Q Was he able to park?

10 A He parked directly behind me.

11 Q Also at meter?

12 A Yes.

13 Q By the way, on October 29, that was one of the days that  
14 Mr. Kennedy testified that he ran one of his trips; do you  
15 recall that?

16 A Yes, I do.

17 Q And did you know Mr. Kennedy, on or before October 29th  
18 agent D'Ambrosio?

19 A Yes, I did.

20 Q How did you know him?

21 A Several years ago, when Mr. Kennedy was still an active  
22 FBI agent, I was introduced him by a mutual friend.

23 Q And did you see Mr. Kennedy that day October 29th, in the  
24 vicinity of ARCOM at or about 2 o'clock p.m.

25 A No, I did not.

1 Q Did you see Mr. Kennedy in the vicinity of the Radio  
2 Shack store, that same day before 2:25 and 2:30 p.m.

3 A No, I did not.

4 Q Did you see him on the road en route between two  
5 locations?

6 A No.

7 Q Had you started your trip prior to 2 clock p.m. Agent  
8 D'Ambrosio, say, closer to 1:45 approximately what time would  
9 you have arrived at the Massachusetts of a Radio Shack store,  
10 sir?

11 THE COURT: How can tell us that, he might have an  
12 accident.

13 MR. SEGAL: Objection.

14 THE COURT: Objection is sustained.

15 Q The two times were 18 minutes and 19 seconds and 20  
16 minutes and 12 seconds?

17 A Yes.

18 MR. KELLY: Thank you, sir.

19 THE COURT: That's it?

20 MR. KELLY: Yes, your Honor.

21 Cross-examination by Mr. Segal

22 Q Good morning, Agent D'Ambrosio?

23 A Good morning, Mr. Segal.

24 Q Let me go through this trip, what was the total mileage  
25 from Weymouth at 82 Broad Street to the Radio Shack?

1 A I don't have that. I don't have that.

2 Q If I suggest around 14 miles, would that make some  
3 sense?

4 A Sounds long to me.

5 Q Well, let's break it down. You left 82 Broad Street and  
6 got on to the Union Street entrance to the Route 3, am I  
7 right, sir?

8 A Washington Street to Union Street, yes.

9 Q Was there a stop traffic light at Broad and Washington  
10 Street, sir?

11 A Yes.

12 Q And was it green when you went through it?

13 A Yes.

14 Q Was there a traffic light at Washington and Summer Street  
15 on the way? Do you remember that light?

16 A I believe I do, yes. I think that's Summer Street. I do  
17 recall a light like that.

18 Q Was that green?

19 A Yes.

20 Q All right. Was there a traffic light on Washington  
21 Street between Summer and Union Street?

22 A I don't believe Summer intersects Union Street.

23 Q Was there a traffic light at Washington and Union Street?

24 A Yes.

25 Q And I take it that was green, also?

1 A Well, are you asking me whether I know if it was a red  
2 light or green light?

3 Q Was it green when you went to the light, that's my  
4 question?

5 A It was red. I remember stopping.

6 Q Oh, you stopped at the light at Washington and Union  
7 Street, am I right?

8 A Yes, I did.

9 Q The two prior lights were green. I didn't mean to  
10 suggest you went through a red light. I take it you didn't  
11 have to stop at the two prior traffic lights?

12 A Correct.

13 Q And was there a traffic light at Union Street and Middle  
14 Street before you got on Route 3?

15 A I'm not sure where Middle Street is.

16 Q Do you remember any other traffic lights that you had to  
17 go through before you got on Route 3?

18 A Shortly, I know you pass the Braintree Police Department,  
19 shortly prior to that there is a traffic light that I stopped  
20 at.

21 Q So there is -- your testimony is before getting on Route  
22 3, you're only stopped at one those traffic lights; is that  
23 right, sir?

24 A Two.

25 Q Two.

1           There were two red lights?

2     A     Yes.

3     Q     And two green?

4     A     Correct.

5     Q     All right. Is it fair to say that the distance from 82  
6     Broad Street to Route 3 was approximately two and a half  
7     miles?

8     A     That sounds correct.

9     Q     And it took you about, what, five to six minutes to do  
10    that?

11    A     That would seem fair.

12    Q     All right.

13           Now, let's take the next leg of the journey. Is it  
14    fair to say that the distance from Union Street to the  
15    Massachusetts Avenue exit on the expressway was about 10.4  
16    miles?

17    A     I don't know what the mileage is.

18    Q     You didn't clock it?

19    A     I did not.

20    Q     All right.

21           If I suggest that's a number, would it make some  
22    sense?

23    A     It sounds long to me.

24    Q     All right.

25           Now, the Massachusetts Avenue exit on the Expressway

1 is Exhibit 17; am I correct?

2 A I'll agree with you I'm not sure.

3 Q Before exit 17 there's Berkeley Street, exit 16, am I  
4 right?

5 A There is Berkeley Street.

6 Q And even before that is Southampton Street?

7 A Correct.

8 Q In other words, going through the South Shore.

9 So, if you were going to the Radio Shack, in terms of  
10 exits the first exit you could get off to go there would be  
11 Southampton Street which is Mr. Kennedy's route, am I right?  
12 Not talking about the most direct --

13 A Yes.

14 Q -- as you're coming up the expressway.

15 To get to Massachusetts Avenue exit you have to go  
16 about another half mile to a mile on the expressway, am I  
17 right?

18 A Yes, you are.

19 Q All right.

20 By the way, on October 29th, was the expressway that  
21 Friday afternoon moving along at a good pace or was it slow?

22 A Moderate traffic.

23 Q Had you been on that expressway on Friday afternoons when  
24 it, sort of, crawls along?

25 A Yes, I have.

1 Q But this particular day, it was moving fairly well; is  
2 that fair?

3 A There were no accidents, no major tie-ups.

4 Q And the traffic appeared to be moving along at a pretty  
5 good clip?

6 A Yes.

7 Q Would you give me your average mileage speed that you  
8 were going on the Expressway?

9 A Well, like I say, the traffic was moderate. I don't  
10 think that I ever exceeded the speed limit. I don't think it  
11 ever got above 55.

12 Q Is it fair about 55 miles an hour?

13 A That would be my maximum speed, sure.

14 Q From that spot on Union Street up to the Massachusetts  
15 Ave. exit; is that right?

16 A Yes.

17 Q No slow downs, no delays?

18 A No delays.

19 Q Now, when you got off at Massachusetts Avenue, when you  
20 come off that expressway, there's a traffic light, isn't  
21 there?

22 A At the end the ramp, on Massachusetts Avenue, yes.

23 Q Was it red or green as you made this turn?

24 A As I recall, there was a right-hand turn with an arrow;  
25 it was green.

1 Q Then the first traffic light you hit on Massachusetts  
2 Avenue is at Albany Street and Massachusetts Avenue, am I  
3 correct?

4 A By City Hospital, yes.

5 Q Right. What was that light on this particular day? Do  
6 you recall stopping?

7 A I don't recall.

8 Q All right.

9 Then the next traffic light it is about a block down,  
10 Harrison Avenue and Massachusetts Avenue, am I right?

11 A I'm familiar with it, yes.

12 Q Do you recall stopping on the 29th at that particular  
13 traffic light?

14 A I don't know.

15 Q Then the next light is only a block or two down,  
16 Washington Street, and Massachusetts Avenue, am I right?

17 A You're right.

18 Q And do you recall stopping at that light?

19 A I don't recall that I stopped or not.

20 Q Then the next light is only a block or two down, Shawmut  
21 Avenue and Massachusetts Avenue; do you recall that light?

22 A Yes.

23 Q Do you recall whether you made it through that or had to  
24 stop at that light?

25 A I don't recall.

1 Q Then another block or two is a light at Tremont and  
2 Massachusetts Avenue, am I correct?

3 A You're correct.

4 Q Do you recall stopping at that light?

5 A I don't recall.

6 Q Then a block or two down, is Massachusetts Avenue and  
7 Columbus Avenue. There's traffic light there; isn't that  
8 correct?

9 A Yes, there is.

10 Q Do you recall having to stop at that light?

11 A Again, I don't remember.

12 Q All right.

13 Now we're at Huntington Avenue and Massachusetts  
14 Avenue. Do you recall a traffic light there, sir?

15 A Yes, I do.

16 Q Do you recall if you had to stop at that light?

17 A I don't.

18 Q Now, you're getting close to the Christian Science  
19 church, but there's one more traffic light, isn't there, at  
20 Westland and Massachusetts Avenue?

21 A That's correct.

22 Q Do you recall having to stop there on October 29th?

23 A I don't.

24 Q I counted eight lights. Is it your testimony that you  
25 were luckily to hit all eight lights in a green mode when you

1 came offer the Expressway?

2 A No, it is not.

3 Q What lights do you recall stopping at on that list?

4 A I don't recall precisely which lights I stopped at. My  
5 best guess would be that I probably had to stop at  
6 approximately half of those.

7 Q So maybe four of those?

8 A Yes.

9 Q And how long is it your testimony, that it took you to  
10 get from when you came off the exit, Massachusetts Ave. to the  
11 Christian Science, to the Radio Shack, how long did that part  
12 of the trip take?

13 A I really don't recall. I mean I didn't time each leg of  
14 the trip.

15 Q Can you give us an estimate?

16 A I don't think it would be fair.

17 Q All right.

18 You can't estimate for us how long the journey on the  
19 Expressway took. You know from Union to Massachusetts?

20 A It would only be a guess. It was about ten minutes.

21 Q By the way, the Union Street entrance, that's right at  
22 the Hilltop restaurant down there?

23 A That's correct.

24 Q Okay. Thank you. I have no further questions.

25 THE COURT: Anything else, Mr. Kelly?

Redirect Examination by Mr. Kelly

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Q You understand, Agent D'Ambrosio, the relevance of this, to the extent it has any, relates to the time that certain items were purchased?

MR. SEGAL: Objection.

THE COURT: The objection to that is sustained.

MR. KELLY: I'll start again.

THE COURT: Although we're all dying to know it.

(Laughter.)

MR. SEGAL: We're talking about a later time, your Honor.

Q You understand anyway what this relates to, do you not?

A Yes, I do.

Q We'll keep it a secret for a while.

Do you recall any questions by defense counsel to Mr. Kennedy about the odometer mileage, miles he traveled on any of these trips.

MR. SEGAL: Objection.

MR. KELLY: He was there. He can answer the question.

THE COURT: He can say yes or no.

MR. KELLY: That's all I'm looking for.

A No, I don't recall any questions.

Q Or were there any questions to Kennedy about traffic lights?

1 MR. SEGAL: Objection. This is beyond the scope of  
2 my cross, your Honor.

3 THE COURT: Well, it is not exactly. You talked a  
4 lot, and it seems the entire cross-examination had to do with  
5 traffic lights.

6 MR. SEGAL: It had to do with what Mr. Kennedy said  
7 or what was asked of Mr. Kennedy. I think he's permitted to  
8 ask him a little about traffic lights here, but now we're  
9 going a little beyond the playing field.

10 THE COURT: You may have the question.

11 Q Did he ask him any questions about traffic lights?

12 A No, they did not.

13 THE COURT: Anything else?

14 MR. SEGAL: No. Thank you.

15 THE COURT: Thank you, Mr. D'Ambrosio. You are  
16 excused.

17 MR. KELLY: Your Honor, as its last witness, the  
18 United States calls Albert Gleason.

19 Albert W. Gleason, sworn

20 Direct Examination by Mr. Libby

21 THE WITNESS: Albert W. Gleason, G L E A S O N.

22 Q Good morning, Mr. Gleason.

23 A Good morning.

24 Q Keep your voice up, and keep the microphone close to you,  
25 please, sir.

1                   Where do you reside, sir?

2       A       I reside Palm Coast, Florida.

3       Q       Are you employed, sir?

4       A       I'm self-employed as a consultant on the analysis of  
5       investigation of explosions and fires.

6       Q       Keeping your voice up, Mr. Gleason, how long have you  
7       self-employed?

8       A       Since 1986.

9       Q       Fair to say you had a career in explosives?

10      A       Yes. Quite a lengthy one.

11      Q       When did that begin, please, and would you tell Court and  
12      jury, please, how you served in the explosives area?

13      A       Yes. I've been involved in the explosives area for just  
14      over 47 years. My initial training, I received in the United  
15      States Navy, where I was schooled in the explosion sciences  
16      and explosives device technology.

17                   I believe I was employed by the New York Police  
18      Department where I served just under 18 years in the bomb  
19      squad as a bomb technician and investigator. My duties in  
20      that position required that I render safe, disarm all types of  
21      explosive devices, conduct investigations relative to  
22      explosive incidents, and I also served as the unit training  
23      officer.

24      Q       Between what years were with the New York Police  
25      Department's Bomb Squad, sir?

1 A 1956 to 1986.

2 Q Would you give us a sense of the number of investigations  
3 involving explosive devices you were involved in for that  
4 time?

5 A Hundreds, into thousands.

6 Q Please continue.

7 A After retiring from the New York City Police Department,  
8 I was employed by the Bureau of Alcohol, Tobacco & Firearms,  
9 and assigned as explosives enforcement officer. My duties in  
10 that position required and I served as a member of the  
11 National Response Team, as an explosives technician.  
12 Assisting in the investigation as well as in the analysis  
13 relevant to evidence recovery.

14 Q You worked out of Washington in that respect?

15 A I was in Washington, yes, I was.

16 Q Please continue.

17 A My duties also included that I required, that I review,  
18 examine, analyze, reports, investigative reports, photographs,  
19 physical evidence relating to explosion incidents to assist in  
20 the investigation, and ultimately prepare them for trial, and  
21 to testify as an expert witness for the government and also  
22 the state.

23 Q You were an explosives enforcement officer with the ATF  
24 between what years, sir?

25 A From 1973 to 1986.

1 explosion sciences, explosive device technology, construction  
2 and design, as well as the investigation, of explosion  
3 incidents.

4 Q Have you undertaken, sir, or participated in the  
5 publication of any literature, any terms relating to  
6 improvised explosives devices?

7 A Yes, throughout my career I prepared, written, produced,  
8 either papers or training programs, relating to the explosives  
9 disciplines, investigation of explosive incidents, fire  
10 sciences, explosion sciences, destruction, handling,  
11 transportation of hazardous materials, cause in origin  
12 training, it is a state a state-of-the-art term.

13 Q Those materials, sir, were used in connection with your  
14 training, your imparting instruction and training to others in  
15 both New York City Police Department bomb squad and the ATF?

16 A Yes. In addition to the training, I've lectured  
17 throughout the United States and in other countries.

18 Q And in the course of your career, sir, with explosives,  
19 have you received any awards?

20 A Yes, I have several. Awards for valor from New York City  
21 as well as the awards within ATF, including Secretary of  
22 Treasury awards.

23 Q Have you testified before in court, sir, with respect to  
24 issues involving explosives and incendiary devices?

25 A Yes, I have.

1 Q How many times?

2 A Well over a hundred, approaching two hundred times.

3 Q Is that both in State and Federal Court?

4 A That's correct.

5 Q Now, with respect to the precise issue regarding  
6 signature evidence, that is signature linking two or more  
7 devices, improvised explosives devices, sir, have you  
8 testified on this point in court before?

9 A Well, that was what was the primary issue, yes.

10 Q How many times have you so testified, sir?

11 A Where it was a primary issue, in excess of 15 but in  
12 many, many or cases the issue came up.

13 Q That's both in State and Federal Court?

14 A That's correct.

15 MR. LIBBY: At this time the United States would ask  
16 Mr. Gleason be qualified as an expert in explosives generally  
17 and signature analysis.

18 THE COURT: How is this rebuttal?

19 MR. LIBBY: His rebuttal, your Honor, is on various  
20 of the points made by Mr. Kline yesterday.

21 THE COURT: Which wasn't properly covered as part of  
22 your case in chief?

23 MR. LIBBY: Well, your Honor, it has to do with  
24 factual predicate to many of his expert opinions. And we  
25 believe we're entitled, at this point, to rebut those points

1 raised on Mr. Segal's examination of Mr. Kline.

2 THE COURT: Members of the jury, when counsel offers  
3 rebuttal evidence, what they are entitled to do is to cover  
4 issues that the defense raised that weren't properly part of  
5 the case in chief. I mean, for example, this business about  
6 the mileage. That was something that came up in the course of  
7 the defense. It is appropriate for the government to offer  
8 rebuttal. I wish to see counsel to find out whether this is  
9 proper rebuttal or whether they should have done it as part of  
10 their case in chief. You may stretch.

11 [Conference at the bench, as follows:

12 THE COURT: What is the objection?

13 MR. SEGAL: My objection is, your Honor, in their  
14 case in chief, Mr. Waskom testified very extensively on the  
15 issue of signature. Mr. Kline then came on and then gave his  
16 opinion. Now, they are trying to, you know, go back on to  
17 something that they put into their case, and I don't think  
18 that's proper rebuttal.

19 THE COURT: Let me find out from Mr. Libby what it is  
20 you are proposing to offer that is not properly part of your  
21 case in chief.

22 MR. LIBBY: Clearly, we did go extensively into  
23 detail with Mr. Waskom in our direct case. Mr. Kline then  
24 comes on and he puts his spin on the ball with respect to the  
25 factual predicates to each of the governments's similarities

1 here, forensic similarities, as signature analysis. This  
2 witness is going to rebut those specific factual points.

3 THE COURT: Like what? Give me an example.

4 MR. LIBBY: For example, he's going to testify as to  
5 whether round magnets are common or uncommon. Mr. Kline has  
6 testified --

7 THE COURT: Why is that not rebuttal?

8 MR. LIBBY: Mr. Kline testified that they are not  
9 uncommon.

10 THE COURT: But so, Mr. Waskom said they were  
11 common.

12 MR. SEGAL: Mr. Waskom has already --

13 THE COURT: Hold it.

14 MR. LIBBY: If your Honor, please.

15 THE COURT: It seems to me that rebuttal is -- proper  
16 rebuttal is exactly what you did with D'Ambrosio. But there  
17 was plenty of evidence about the magnets and about every one  
18 of the factual predicates, and rebuttal isn't designed to have  
19 the last word.

20 MR. LIBBY: No, that's not it all, your Honor. Until  
21 we had Mr. Kline's specific detail -- and we have it going on  
22 daily copy, and we looked at it in detail -- as to specific  
23 points of reference, on each one of those points, we're  
24 entitled to rebut. Because, quite frankly, until he testifies  
25 as to each of those points, we don't know what his position

1 he's going to take. We can say in our case in chief we have  
2 Mr. Waskom testify.

3 THE COURT: But there is evidence as part of your  
4 case in chief that round magnets are uncommon.

5 MR. LIBBY: If I may, let me get my notes, I want to  
6 make sure I'm complete on this.

7 [Pause.]

8 MR. SEGAL: Can I say something?

9 THE COURT: No.

10 MR. SEGAL: I'll wait until he returns, as long as I  
11 get equal...

12 THE COURT: He has the floor.

13 MR. LIBBY: First of all, a couple of predicate  
14 points, this witness isn't going to be called anywhere near as  
15 extensively as Mr. Waskom. He's going to be 20 minutes,  
16 tops. That's one.

17 THE COURT: That's true.

18 MR. LIBBY: Two, defense has been on notice as to  
19 Mr. Gleason for a good long while.

20 THE COURT: That is not the issue. The question is  
21 whether this is proper rebuttal testimony.

22 MR. LIBBY: Secondly, secondly, the point that's  
23 going to be argued by defense, your Honor, is that Mr. Waskom  
24 is -- what's the word?

25 THE COURT: Is not as experienced as Mr. Kline.

1 MR. LIBBY: That's exactly right.

2 THE COURT: If that was the case, you should have had  
3 this guy as part of your case in chief.

4 MR. LIBBY: Your Honor --

5 THE COURT: You can't have rebuttal because you  
6 anticipate the defense about your expert in chief being a no  
7 good expert.

8 MR. LIBBY: The government's theory, your Honor --  
9 the defense theory throughout, they called an FBI agent who  
10 has viewed all of this evidence through the lens of a  
11 terrorist expert, and this isn't a terrorist bombing. That  
12 raises the notion --

13 THE COURT: That was raised on cross-examination  
14 extensively.

15 MR. LIBBY: We're entitled, your Honor, I believe,  
16 point by point, factually, to go down through with this  
17 witness --

18 THE COURT: Why?

19 MR. LIBBY: Because we don't know exactly until  
20 Mr. Kline testifies, point by point, the points that he says  
21 are significant, factually significant --

22 THE COURT: You had his report.

23 MR. SEGAL: He had a report --

24 THE COURT: Hold it.

25 MR. LIBBY: We had a forensic report, your Honor,

1 somebody who is more experienced than Mr. Kline.

2 MR. LIBBY: Your Honor --

3 THE COURT: I mean, this issue of Kline's and  
4 Waskom's relative experience on signature was an issue that  
5 also came up at the voir dire.

6 MR. LIBBY: Right. But on each of these points, for  
7 example, we don't know specific, precise factual points that  
8 Mr. Kline is going to raise, for example, with respect to the  
9 devices affixed on the undercarriage of a vehicle. We  
10 don't --

11 THE COURT: That's not rebuttal.

12 MR. LIBBY: Your Honor, he's taken the factual  
13 position that most of the devices, most of the devices that  
14 are placed on cars are placed on the undercarriage of  
15 vehicles. That's his opinion given yesterday. First time we  
16 heard that in that faction. Didn't go over in voir dire  
17 before the Court alone in the earlier hearing.

18 THE COURT: But Waskom said otherwise. I mean, I  
19 just don't understand how you can put in somebody now who  
20 simply refutes what Mr. Kline said when there is already  
21 evidence in the case to the contrary. Don't know there is  
22 already evidence in the case to the contrary on that point,  
23 your Honor. Because the jury is inevitably is going to look  
24 at it through the lens of three-year ATF fellow, as opposed to  
25 a 20-plus year FBI agent.

1 THE COURT: That's not the point. You can't cure  
2 that on rebuttal.

3 MR. LIBBY: Your Honor.

4 MR. SEGAL: This witness --

5 THE COURT: Mr. Segal, please.

6 I just don't understand how it is rebuttal. It  
7 would have been fine as part of your case in chief. But I  
8 don't understand how it could come in on rebuttal.

9 MR. LIBBY: He's talked about a couple -- let me add  
10 a couple of things here. He's testified that he doesn't look  
11 to, for example, any of these circumstantial similarities on  
12 significant evidence. We can rebut through this witness that  
13 he is perfectly capable of doing that in the course of  
14 formulating a signature.

15 THE COURT: I did not understand that.

16 MR. LIBBY: Mr. Kline yesterday said I don't look at  
17 circumstantial similarities for signature purposes. This  
18 witness will say it is absolutely appropriate to do so and  
19 here's why.

20 THE COURT: So did Waskom.

21 MR. SEGAL: That is what Mr. Waskom just said that.

22 MR. LIBBY: But your Honor, now why know why  
23 Mr. Kline says he can't look at it, for that reason.

24 THE COURT: Tell me, Mr. Libby, how it is appropriate  
25 to put on rebuttal evidence that simply corroborates what the

1 case in chief already says but which is refuted by the defense  
2 witness who was extensively cross-examined on precisely these  
3 issues?

4 MR. LIBBY: I don't know that we have a coextensive  
5 basis between Mr. Waskom and Mr. Kline on each one of these  
6 points. I don't believe that we have had that. In other  
7 words, you're presuming that Mr. Waskom has said black, and  
8 Mr. Kline has said white on each one of these factual issues.

9 THE COURT: Give me one where it's not coextensive.  
10 It seems to me that Mr. Waskom laid down every one of those  
11 issues here, and then in Mr. Kline went down every one of  
12 those issues. And as to much of them they disagreed, as to  
13 the constellation they disagreed, but that's what the jury has  
14 to sort out, and you are not entitled to have a last witness  
15 who says I agree with Waskom or disagree with Kline.

16 MR. LIBBY: For example, the issue about the small  
17 test bulbs, the question that counsel put to him was limited  
18 to: Based on physical evidence, do you see test bulbs here?  
19 And he says --

20 THE COURT: You can argue to the jury that there's  
21 all this other evidence, whatever the fellow's name, who  
22 said: Yes, I saw him putting this together and I saw the  
23 light go on when turned the switch one way and go off when he  
24 turned the switch the other way. The evidence is in the  
25 case.

1 MR. LIBBY: It is in the case, your Honor.

2 MR. LIBBY: But his opinion went so far as to say he  
3 disagrees with the existence of any test bulb. And he took  
4 that factual --

5 THE COURT: So what? So what?

6 MR. LIBBY: One final point, your Honor, this  
7 battery, life of the battery issue.

8 THE COURT: That is new. If you want evidence on  
9 that, you may have evidence on that.

10 MR. SEGAL: On the battery test.

11 THE COURT: That's proper rebuttal.

12 THE COURT: But none of the other things you  
13 mentioned is not proper rebuttal. I'll be happy to listen to  
14 anything else you have. The mileage, that's proper rebuttal.

15 MR. LIBBY: One moment, your Honor.

16 [Pause.]

17 THE COURT: What else?

18 MR. LIBBY: See if I can try one last time on the  
19 difference.

20 THE COURT: Mr. Libby.

21 MR. LIBBY: Terrorist bombings, your Honor, that was  
22 not part of our case. Mr. Waskom did not look at this  
23 evidence through the eyes of a terrorist expert; Mr. Kline,  
24 however, did. We believe we're entitled --

25 THE COURT: And you cross-examined on that.

1 MR. LIBBY: I think for the very same reason, your  
2 Honor, what is relevant on cross is relevant for rebuttal.

3 THE COURT: No. No. Your objection is noted about  
4 that. But you may go into the battery, the life of the  
5 battery issue. That is clearly new. That is clearly  
6 relevant, and you may absolutely go into that on rebuttal.

7 MR. KELLY: If I might?

8 MR. SEGAL: Only one at a time.

9 MR. LIBBY: I'll go over and talk to Mr. Kelly, for  
10 one second.

11 (Pause.)

12 THE COURT: This is the fourth motion for  
13 reconsideration?

14 MR. LIBBY: For the same reason, your Honor, that the  
15 battery life issue is new, the government submits that  
16 Mr. Kline's direct testimony of his appreciation for and his  
17 various expert's opinions on these matters is viewed through  
18 the eyes of a terrorist bomber expert, is new. Mr. Waskom did  
19 not reach any of his conclusions through that lens. It is a  
20 brand new twist in the evidence. For the very same reason,  
21 your Honor, for example, Mr. Kelly was allowed to put on  
22 Mr. D'Ambrosio on this mileage thing.

23 We crossed --

24 THE COURT: I do not regard that as new because it  
25 goes entirely to his credibility. He was cross-examined about

1 THE COURT: Let me also ask you, why is this not  
2 merely on the issue of credibility, and thus is collateral  
3 evidence on the issue of a witness's credibility?

4 MR. KELLY: I don't think it is. I don't think it is  
5 credibility.

6 THE COURT: So, there is an additional reason why it  
7 shouldn't come in. I think it is coming in on the issue of  
8 Kline's credibility. That's all.

9 MR. KELLY: I don't think -- we have no challenge to  
10 Mr. Kline's credibility.

11 THE COURT: You do. You have a challenge to his  
12 credibility as an expert on signature in this respect.

13 MR. KELLY: I don't think we do. I think that what  
14 we're trying to do is --

15 MR. LIBBY: Applicability.

16 THE COURT: One at a time.

17 MR. KELLY: We are trying to rebut the point that  
18 they have made, that it's makes no difference whether it is a  
19 terrorist bomb or the run of the mill variety of bombs, you  
20 always approach the thing the same way: you look only at the  
21 technical forensic in making your signature analysis, and it's  
22 always the same way whether it's terrorist or homemade.

23 THE COURT: They didn't make that point. You made  
24 the point that it is different. They didn't make the point it  
25 is the same.

1 MR. KELLY: I don't think we made the point that it  
2 is different.

3 THE COURT: You did. In your cross-examination you  
4 did.

5 MR. KELLY: But, your Honor, I've never understood  
6 that simply because you ask a couple of cross-examination of a  
7 witness, that you then are precluded from calling a rebuttal  
8 witness to meet that new defense evidence.

9 THE COURT: I don't understand it to be new defense  
10 evidence. The defendant called an expert and gave an  
11 opinion. You tried to shake that opinion, you being the  
12 government, on the grounds that this guy's expertise is in  
13 terrorist bombs, not in ordinary bombings. And now, you want  
14 to put on an additional expert to say that ordinary bombs are  
15 different from terrorists bombs. But you were the one who  
16 raised it in cross-examination; they didn't raise it.

17 MR. LIBBY: Your Honor, I think the way we handled  
18 that was, and I asked him specifically about circumstantial  
19 similarities, and that's where he drew the line. He said: I  
20 don't look to that in signature evidence.

21 THE COURT: You can argue what significance that is.

22 MR. LIBBY: And a terrorist expert --

23 THE COURT: You have evidence in the case about the  
24 university guy. Of course, they look at circumstantial  
25 evidence. You can argue all about that.

1 MR. SEGAL: That's what Mr. Waskom testified.

2 MR. LIBBY: We're entitled to rebut the notion that  
3 you can't look at that. Of course, this witness is going to  
4 say you certainly can.

5 THE COURT: No. Evidence about terrorist versus  
6 ordinary bombs is out, on two grounds: one, I don't believe it  
7 is proper rebuttal; two, I believe, to the extent that it were  
8 to come in, it would come in solely on the issue of  
9 Mr. Kline's credibility, and it can't come in on that issue.  
10 But you may question him about the life of the battery.

11 ... end of conference at the bench.]

12 Q Mr. Gleason, you were present during Mr. Kline's  
13 testimony yesterday?

14 A That's correct, yes.

15 Q You understand Mr. Kline to be the expert for the defense  
16 in this matter?

17 A Yes.

18 Q And you heard Mr. Kline's testimony about, generally,  
19 checking the working life of AA batteries?

20 A Yes, I did.

21 Q And how he put these four AA batteries together with a  
22 receiver unit similar to that seen in the '91 device?

23 A Yes, I did.

24 Q Okay. And would you tell us, please, what you recall  
25 about how Mr. Kline testified regarding how he checked the

1 life to that system?

2 MR. SEGAL: I object do that.

3 MR. LIBBY: Either I'll do it, or the witness will do  
4 it, your Honor. One of us has to.

5 THE COURT: Well, I think he can assume that the jury  
6 recalls, but state it briefly.

7 MR. LIBBY: I will.

8 Q Mr. Gleason, do you recall that Mr. Kline testified that  
9 he put these four AA batteries together in a pack in line with  
10 the receiver unit and slide switch?

11 A Yes, I do.

12 Q A Futaba unit, correct?

13 A Right.

14 Q And he said that he tested, I believe, on a couple of  
15 occasions, right?

16 A Yes.

17 Q By turning the slide switch on.

18 A The way I recall, he said he turned the slide switch on.  
19 And on several occasions he came down and actually tested the  
20 unit or activated the servo.

21 Q Now, how do you understand that he activated the servo,  
22 please?

23 A Well, if he functioned the transmitter, it would activate  
24 the servo, which is quite a drain on the batteries.

25 Q So, the slide switch is left on throughout this period,

1 correct?

2 A That's correct.

3 Q And every two hours, Mr. Kline says, he tested the system  
4 by flicking the switch on the transmitter, right?

5 A That's correct.

6 Q Which then activated the receiver, right?

7 A Correct.

8 Q Which then moved the arm, correct?

9 A Correct.

10 Q Which then flicked the toggle switch?

11 A That's correct.

12 Q Okay. He did this how many times, your understanding,  
13 please?

14 A Several times throughout the evening and in the morning.  
15 He didn't do it during the late hours of the night.

16 Q Now, in the course of your long experience, sir, as an  
17 explosives enforcement officer and before that, with the New  
18 York Police Department Bomb Squad, have you had occasion to  
19 become familiar with the workings of remote control devices  
20 generally?

21 A Oh, yes I am familiar.

22 Q And specifically, with respect to batteries sources in  
23 these remote control devices, did you come become familiar  
24 with them?

25 A Yes, I did.

1 Q Drawing on that experience, sir, do you consider  
2 Mr. Kline's test procedure as he testified to yesterday, do  
3 you consider that to be a valid test of the life of batteries?

4 A It is neither valid nor scientific test.

5 Q Why do you say that?

6 A That device when assembled with the toggle switch, what  
7 have you, the bomb is intended to be used once. The life of  
8 the batteries, if you do not conduct all these tests, you  
9 extend the life of the battery. Every time you conduct a test  
10 and the servo turns, you're draining some of the life of the  
11 batteries.

12 Q And if you would, please, had that activation process,  
13 actually pulling the trigger and seeing the arm move,  
14 activating the servo, had that not been done, would the life  
15 of those batteries extended beyond the 22 hours as Mr. Kline  
16 testified?

17 A Most likely certainly would, yes.

18 MR. LIBBY: In light of the Court's ruling of  
19 Mr. Gleason, we have nothing else.

20 Cross-examination by Segal

21 Q Good morning, Mr. Gleason, my name is Terry Segal.

22 A Good morning.

23 Q I think you testified on direct you left the Bureau of  
24 ATF in 1986; is that right, sir?

25 A That's correct.

1 Q I have your resume that has 19 -- appears to be 1988; is  
2 that a misprint, if it is '88?

3 A That's probably a misprint on retyping of it, not on my  
4 resume.

5 Q Mr. Gleason, what is the hourly rate you are charging the  
6 government in connection with your services in this case?

7 A I'm working for the government rates, 62.50 an hour.

8 Q And you have been involved in the Roslindale case for a  
9 period of time; isn't that right, sir?

10 A Since March of this year, yes.

11 Q And you put in probably in excess of a hundred hours?

12 A No, no.

13 Q You have been up here two or three times?

14 A A day or two at a time.

15 MR. SEGAL: Thank you, Mr. Gleason, I have no further  
16 questions.

17 THE COURT: Anything else?

18 MR. LIBBY: Nothing, your Honor.

19 Thank you.

20 THE COURT: Thank you, Mr. Gleason, you are excused.

21 Any other witnesses?

22 MR. KELLY: No, your Honor.

23 THE COURT: Members of the jury, you will be strung  
24 early today. You have now heard all of the evidence you are  
25 going to hear. Let me caution you again, however, you are in

1 absolutely no position to decide the case. So, please do not,  
2 do not make up your minds about it, do not talk about it, do  
3 not read about it, listen to anyone or watch any television  
4 accounts there may be about the case.

5 On Monday morning, at 9 o'clock, we will proceed with  
6 the last leg, which will be counsels' argument, and then my  
7 instructions on the law. Until you hear the instructions on  
8 the law, you simply can't decide the case. Each of the  
9 charges here has particular elements that I need to outline to  
10 you. So please, just do not make up your minds about it, in  
11 any way whatsoever.

12 On Monday, you will be here until such time as you  
13 feel you cannot go on any more because you're too tired or you  
14 have a verdict. If you don't have a verdict on Monday, you  
15 will resume on Tuesday morning, to reach a verdict on that  
16 day. I hope that you will be able to stay until 4 or 5 or 6  
17 on Monday afternoon, so that we don't spend, don't waist, if  
18 you will, too much of the day.

19 However, you are now excused until then, with all of  
20 the cautions that I have given you. Kindly leave your note  
21 books when you leave the courtroom, and Monday you will take  
22 the notebooks with you, but until then kindly leave them  
23 behind.

24 Thank you very much.

25 [Whereupon, the jury was excused.]

1 THE COURT: Please be seated.

2 Mr. Segal, do you want to argue on the motion?

3 MR. SEGAL: Yes, your Honor.

4 All the evidence having concluded, I filed a motion  
5 which incorporates my prior motion, but simply to say, your  
6 Honor, on Count 2, which is receipt of dynamite, there is  
7 absolutely no evidence in this case from which a reasonable  
8 juror looking at this evidence in the light most favorable to  
9 the government can conclude Mr. Trenkler received any  
10 dynamite.

11 On the conspiracy, there is no evidence --

12 THE COURT: I don't think that's entirely true. If  
13 the jury, if the jury believes, for example, Mr. Lindholm's  
14 testimony, then they can infer from that that he must have  
15 received the dynamite. You can't very well build a bomb  
16 without dynamite. So, it seems to me that a reasonable jury,  
17 looking at the evidence in the light most favorable to the  
18 government, certainly can infer from the evidence that is  
19 there, that Mr. Trenkler did receive dynamite.

20 MR. SEGAL: All right. On conspiracy, I don't  
21 have --

22 THE COURT: Same thing on conspiracy.

23 THE COURT: If nothing else that testimony allows the  
24 jury to infer that the parties knew each other, the two  
25 defendants knew each other, and they cooperated in this

1 venture.

2 MR. SEGAL: Let me point out --

3 THE COURT: There is other evidence.

4 MR. SEGAL: Just point out on the conspiracy, there  
5 is no evidence that Mr. Trenkler knew Mr. Shay wanted to do  
6 his father in. Even in the light most favorable to the  
7 government. So, I think there is a huge stretch to get that  
8 conspiracy finding to the jury on this evidence. I would  
9 concede there is evidence that Mr. Trenkler knew Mr. Shay.  
10 But that's a big, a much bigger stretch since there is no  
11 evidence in this case, showing Mr. Shay ever said to him I  
12 want to do in my father or please build me a bomb. How do you  
13 get a conspiracy here.

14 THE COURT: Well, there is also Mr. Shay's evidence.  
15 And when you put it altogether Mr. Shay's statements, although  
16 they don't directly implicate Mr. Trenkler, because that  
17 evidence didn't come in, there is evidence from which a jury  
18 -- when it pieces it altogether -- can infer that  
19 Mr. Trenkler did know what Mr. Shay's objective was, given his  
20 statements to Mr. Lindholm, and from that, looking at it again  
21 in the light most favorable to the government, a reasonable  
22 jury can determine that there is evidence beyond a reasonable  
23 doubt, I believe, on every one of the three counts.

24 MR. SEGAL: Thank you.

25 I'll rest on --

1 THE COURT: It is a standard that at the moment is a  
2 very open standard.

3 MR. SEGAL: Well, I ask you possibly in the light of  
4 the evidence, after all the evidence in this case, to possibly  
5 reserve on a couple of those counts at this time.

6 THE COURT: Well, you can obviously raise the  
7 question again after verdict. But at the moment the motion is  
8 denied.

9 Now, with respect to the charge, do you want me to  
10 tell the jury beyond what I told the jury the last time around  
11 I have no requests from anybody that I'm aware of in this  
12 trial.

13 MR. KELLY: Your Honor, we would have submitted  
14 requests except it was our understanding that they were  
15 essentially going to rely on the requests as submitted in the  
16 earlier portion of the same case. We would be happy to  
17 resubmit if the Court wishes.

18 THE COURT: I don't particularly care. I'm happy to  
19 give substantially the same charge.

20 MR. SEGAL: I have no problem with that. I think we  
21 should talk about this 404 B issue, and how you are going to  
22 charge on that issue, because that wasn't in the first case.  
23 I haven't focused on it as much as I should have.

24 THE COURT: Why don't we take a brief recess and you  
25 tell me what you want me to say in addition to that which I

1 did say. Let's take a five- or ten-minute recess, and perhaps  
2 that will give you chance to collect your thoughts.

3 MR. SEGAL: Can you give us a little longer than  
4 that?

5 THE COURT: 15 minutes.

6 How much time do you want?

7 MR. SEGAL: I would like about a half hour to sit  
8 down and look at the, that rule and the standard and all of  
9 that. I only thought the evidence would go longer. I left  
10 the file back at the office, and I have to try to reconstruct  
11 my thoughts on that.

12 MR. KELLY: The only two issues that the government  
13 raises is we had extensive instructions on aiding and abetting  
14 at the first trial that I think need to be toned down here.

15 THE COURT: Toned down?

16 MR. KELLY: I think, the last time it was the clear  
17 emphasis, as you recall some of the prefatory reremarks were  
18 to the effect the charge, say, for example, in count 3 in  
19 effect that he was charged only with aiding and abetting; that  
20 being Mr. Shay. I think some of those remarks we need to  
21 study.

22 The second thing is that I know the Court does this  
23 as a matter of routine anyway, but we would ask that the Court  
24 perhaps emphasize, you say at the outset to the jury, it was  
25 statements of counsel, both myself and Mr. Segal, in the

1 openings are not evidence. And to the extent anything was  
2 said by either of us, they don't find evidence of we have to  
3 disregard it.

4 The reason I say that I know I made one statement for  
5 which we did not adduce evidence. It was not something I  
6 dwelled upon, but I did make the statement in the opening that  
7 there was an admission that Mr. Shay said, at some point, in  
8 September of 1992, I'm not the one who built it; I'm not the  
9 one who planted it; the I'm not the violent one. I did make  
10 that statement in the opening and the record reflects it.  
11 There was no evidence to that effect. Therefore, anything I  
12 said I don't think we need to draw attention to something I  
13 said specifically because they are not going to remember it  
14 anyway, they should disregard it.

15 THE COURT: Well, I won't say that anyhow. I don't  
16 think I'll call any attention to a specific statement. I do  
17 not recall, and my notes certainly don't reflect, that I said  
18 anything about Mr. Shay being only an aider and abetter. I  
19 simply gave the rule that you don't have to be the prime  
20 mover, that applies equally as much to Mr. Trenkler as it does  
21 to Mr. Shay.

22 MR. KELLY: If that's the case, I had a memory there  
23 was a couple of lead-in remarks, and that was what I was  
24 concerned about.

25 Mr. Libby reminds me that there was a statement to

1 the effect I saw it in the transcript, that the government's  
2 theory of prosecution in this case, meaning in the Shay case  
3 was that he was in effect an aider and abettor. I just want  
4 to make sure we adjusted that to this particular matter. I  
5 agree that the aiding and abetting instruction should be  
6 included. I just don't want it to be that it is our theory  
7 that Mr. Trenkler is solely an aider and abettor to this other  
8 fellow.

9 THE COURT: I don't think I said that.

10 MR. SEGAL: I think the last time you did instruct on  
11 failure of the defendant to testify, burden of proof and all  
12 that. That's fine.

13 THE COURT: That's boilerplate.

14 MR. SEGAL: I would like a little time to look at  
15 404(b). There are some instructions that reflects that.

16 THE COURT: You tell me what you want to say. I  
17 suppose we have two alternatives: One is to wait around while  
18 you collect your thoughts today, or to start at 8:30 on Monday  
19 morning to have you tell me what else you want me to say.

20 MR. SEGAL: That's an excellent thought.

21 THE COURT: The problem with that you will collect  
22 lots of thoughts between now and then.

23 MR. SEGAL: I am happy to submit it to Mr. Kelly  
24 before then.

25 MR. KELLY: I don't have a problem. With all due

1 respect to the defense, I think it is dangerous to give any  
2 kind of instruction because you're shining light on something.

3 THE COURT: I may not. All I'm giving him is an  
4 opportunity to tell me what he wants me to say. In the end I  
5 will say what I'm going to say and no more and no less.

6 MR. KELLY: Mr. Segal had asked the Court at the very  
7 outset of the case to advise the jury of the fact that  
8 Mr. Shay had previously been tried and convicted, and I know  
9 the Court.

10 THE COURT: I think we need to repeat that in some  
11 way.

12 MR. KELLY: What you said, as I recall it, in our  
13 opening instruction was Mr. Shay was tried and convicted of  
14 some but not all of the charges. My question is: Do we, at  
15 any point, intend to tell the jury which charges he was  
16 convicted of?

17 THE COURT: I don't know. You tell me what you want  
18 to me to do, and then I'll have to think about it.

19 MR. SEGAL: I would like the statement the first  
20 time. If you read that statement again, it is fine. It's an  
21 excellent statement.

22 MR. KELLY: A spongy statement. We obviously--

23 THE COURT: Usually counsel want me to be spongy with  
24 the jury, both counsel.

25 MR. SEGAL: I'll be happy if you just read that one

1 again.

2 THE COURT: There is one matter remaining that there  
3 is a motion by the defendant to strike the entire testimony of  
4 Mr. Waskom that is denied.

5 I think that's all. I think I've dealt with all of  
6 the outstanding motions.

7 MR. SEGAL: You caught up with every motion, your  
8 Honor.

9 THE COURT: We'll meet at 8:30 and you can give me  
10 any last minute thoughts. How long will you argue, Mr. Segal?

11 MR. SEGAL: I think what we worked out, an hour on  
12 each side.

13 MR. KELLY: We have actually thought about it. I  
14 know from the last trial, does the Court have a particular  
15 preference or rule with respect to rebuttal? Do you have a  
16 limit of time that you place on government counsel in  
17 rebuttal.

18 THE COURT: I don't want rebuttal to take over from  
19 the argument in chief. I don't want half hour's rebuttal on  
20 an hour's worth of argument, or half hour's worth of  
21 argument. And the totality of the government's shouldn't be  
22 excessively longer than the defendants. It is true the  
23 government has burden so maybe some but--

24 MR. KELLY: In the last trial our closing was 45  
25 minutes, in the main closing, and 15 minutes on the rebuttal.

1 This case has a little bit -- a couple of new wrinkles. If we  
2 could ask for -- we may not use it. If we could ask for an  
3 hour for our main closing, and no more than 15 minutes for our  
4 rebuttal, we wouldn't exceed that.

5 THE COURT: That's not unfair. And you'll take about  
6 an hour?

7 I'm not planning to hold counsel to the minute. I  
8 just want to have some general idea when we're going to have  
9 recesses. About an hour?

10 MR. SEGAL: An hour is a good estimate. I think that  
11 is a fair estimate.

12 THE COURT: I'll see you 8:30 Monday morning.

13 MR. SEGAL: I take it there will be the government's  
14 major argument, there will be short recess, my argument and  
15 then followed by immediate rebuttal. Is that your  
16 preference?

17 THE COURT: Ideally what I would like to do is to  
18 take the morning recess after the whole business. If we have  
19 to take recess we probably have time enough to take the recess  
20 in between the arguments, the main arguments, we'll see where  
21 we are.

22 MR. KELLY: Thank you, your Honor.

23 [Whereupon, the jury trial adjourned at 10:26 a.m.,  
24 to be reconvened on Monday, November 21, 1993, at 8:30 a.m.]

25

CERTIFICATE

We certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

\_\_\_\_\_  
James E. McLaughlin

\_\_\_\_\_  
Laura K. S. Walker

I N D E X

<u>Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Josephine Wallace, sworn (By Ms. Sharton)	2			
(By Mr. Kelly)		6		
<u>Rebuttal Witnesses</u>				
Thomas D'Ambrosio, recalled (By Mr. Kelly)	12		26	
(By Mr. Segal)		17		
Albert W. Gleason, sworn (By Mr. Libby)	27			
(By Mr. Segal)		49		

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Ident.</u>	<u>Evid.</u>
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Defendant's

164	(See Clerk's Notes.)		2
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1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

4  
5  
6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Seventeenth Day of Hearing

11  
12 APPEARANCES:

13 For the Government:

14 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
15 Assistant United States Attorneys, Federal Courthouse,  
16 Boston MA 02109.

17 For the Defendant:

18 Terry R. Segal Esq., Scott P. Lopez, Esq., and  
19 Brenda Ruel Sharton, Esq., SEGAL & FEINBERG,  
20 210 Commercial Street, Boston, MA. 02109.

21  
22 Courtroom 3  
23 Federal Courthouse  
24 Boston, Massachusetts

25 November 22, 1993

Computer-Aided Transcription

P R O C E E D I N G S

Charge Conference

1  
2  
3 THE COURT: Mr. Segal, I have just received some  
4 proposed instructions from you, which I have not had an  
5 opportunity to read.

6 Tell me what they say.

7 MR. SEGAL: With your permission, I'd like to have  
8 Mr. Lopez address that, your Honor.

9 MR. LOPEZ: Good morning, your Honor.

10 THE COURT: Just one second.

11 The defendant isn't here, I assume because the  
12 Marshals don't want to bring him down while jurors are  
13 arriving.

14 Do you care?

15 MR. SEGAL: We'll waive his presence in connection  
16 with these instructions, your Honor.

17 THE COURT: All right.

18 MR. LOPEZ: Your Honor, specifically, there are four  
19 requests. The first request is with respect to the '86  
20 incident. And it's our position, your Honor, that this prior  
21 act is -- the jury should be instructed that it's relevant or  
22 that it goes to the issue of identity only. And that is what  
23 this instruction is.

24 THE COURT: Well, that's not true. I mean, that  
25 evidence goes to more than identity, it goes to modus

1 operandi, it goes to some extent to intent, knowledge,  
2 understanding about electronics and how to build a bomb.

3 MR. LOPEZ: Your Honor, with respect to the issue  
4 of --

5 THE COURT: I guess partly -- excuse me -- what  
6 concerns me is that if the jury believes Mr. Waskom and does  
7 not believe Mr. Kline, then that evidence in a sense is even  
8 more than 404(b) evidence. It's direct evidence that one  
9 person -- that this defendant who had admitted building the  
10 '86 bomb, also built the '91 bomb. That's the import of that  
11 testimony.

12 MR. LOPEZ: That's exactly our point. Exactly our  
13 point.

14 If the jury decides that the identity of the 1991  
15 bomb maker is Mr. Trenkler, then, yes, this evidence will be  
16 used against him --

17 THE COURT: Appropriately.

18 MR. LOPEZ: -- and the jury will so conclude.

19 However, if the jury does not conclude identity, then  
20 with respect to the other issues in this case, it shouldn't be  
21 used by them.

22 THE COURT: Well, even if it's not identity, can't  
23 they use -- can't they use the evidence, for example, as to  
24 show -- because as I understand the evidence, Mr. Trenkler  
25 admitted building the 1986 bomb. That's the evidence in the

1 case. Can't they then use it to show that he knew how to  
2 build a bomb?

3 MR. LOPEZ: Your Honor, it is our position that the  
4 jury will be confused by an instruction that on the one hand  
5 they should use it for identity but if they don't find  
6 identity, then they can also use it for knowledge and intent,  
7 if they find identity some other way.

8 Your Honor, there's no question in this case, and our  
9 prior submissions on this, knowledge has never been raised as  
10 an issue by the defense in this case.

11 THE COURT: Yes, but the government has to prove it.

12 MR. LOPEZ: That's correct, your Honor. But with  
13 respect to, if you focus on 1986 --

14 THE COURT: Can I tell the jury that you stipulate  
15 that this defendant knew how to build a bomb like the one in  
16 1991?

17 MR. LOPEZ: Of course not, your Honor.

18 THE COURT: In that case, the government is entitled  
19 to prove it.

20 MR. LOPEZ: Well, your Honor, the point is that the  
21 fact that he had knowledge to build the 1986 incident does not  
22 -- it doesn't follow that he had the knowledge to build the  
23 1991 incident.

24 THE COURT: The jury may use the evidence to so  
25 find. It could infer from the evidence of '86 that that's the

1 case, can they not?

2 MR. LOPEZ: Your Honor, it is our position that this  
3 evidence is relevant and the jury should be instructed  
4 appropriately, that they can use it on the issue of identity.  
5 Knowledge, intent, has never been made an issue by the defense  
6 in this particular case.

7 Yes, it is the government's burden. However, this  
8 evidence does little to prove the knowledge and intent of the  
9 bomb maker in 1991.

10 The knowledge was different, the intent was  
11 different, and 1986, should only be used on the issue of  
12 identity. That's our position.

13 THE COURT: Is not there also the issue that the  
14 government has raised the 1986 incident, that both 1986 and  
15 1991 were -- at least this is the government's position --  
16 were instances where the defendant built a bomb in order to  
17 help a friend who had a grievance against a third party?

18 MR. LOPEZ: Your Honor, that goes to the modus  
19 operandi argument of the government. And as Williams, and as  
20 the footnote in Williams makes clear, where identity is  
21 disputed, Footnote 5, for conduct to be considered  
22 characterizing modus operandi, it generally must be so unusual  
23 and distinctive as to be like a signature.

24 Therefore, it gets back to the same argument, this  
25 evidence, if the jury decides indicates the identity of the

1 1991 bomb maker, with an appropriate instruction as to how to  
2 reach that conclusion, then the defendant would have no  
3 objection.

4 THE COURT: I must --

5 MR. LOPEZ: If, on the other hand, the jury is told,  
6 you can use it under one standard to find identity, but if you  
7 don't find identity, you can also use it to find knowledge and  
8 intent in this particular case. It's our position that that  
9 would prejudice the defendant. And it would be an  
10 inappropriate instruction under the facts of this case.

11 THE COURT: I must say, that to the extent Williams  
12 talks about unusual conduct, it strikes me as somewhat unusual  
13 for somebody to build a bomb to cause harm to a third person  
14 in order to vindicate the rights of a friend.

15 MR. LOPEZ: Your Honor --

16 THE COURT: That's not what people normally do.

17 MR. LOPEZ: The problem here, your Honor, is that  
18 there has been little if any evidence --

19 THE COURT: True.

20 MR. LOPEZ: -- as to the circumstances of 1991.

21 The potential prejudice and the potential confusion  
22 to the jury is that they are going to substitute the facts as  
23 they existed in 1986 to say, well, if it happened in '86, it  
24 happened in 1991. That would mean that the government would  
25 not be put to its burden.

1           The point is, this evidence is relevant and crucial  
2     with an appropriate instruction on the issue of identity and  
3     identity only. If it is then taken to show something else,  
4     the jury, I submit, will substitute the facts of 1986 to find  
5     the facts in 1991. And that would prejudice the defendant,  
6     your Honor.

7           THE COURT: Mr. Libby.

8           MR. LIBBY: Your Honor, this ground has been plowed  
9     many times before. We briefed this extensively. We argued it  
10    extensively.

11          THE COURT: The question is: What shall I tell  
12    jury?

13          MR. LIBBY: Tell them that it's relevant for their  
14    consideration on issues of knowledge, experience and skill of  
15    the defendant on the issue of identity and also his intent  
16    because of our position that there are uncanny similarities  
17    between the two scenarios.

18          THE COURT: Well, follow along, Mr. Libby, it is the  
19    case that the jury has to make an initial determination as to  
20    whether it believes the signature evidence. Correct?

21          MR. LIBBY: Correct.

22          THE COURT: Without the signature evidence, assume  
23    for the moment that the jury finds that the two bombs were  
24    not --

25          MR. LIBBY: Sufficiently similar.

1           THE COURT:  -- in the immortal words of Mr. Kline,  
2           single or unique, assume that they find that, that they are  
3           not singular or unique, then where is that -- where's the 1986  
4           evidence?  What can the jury use it for?

5           MR. LIBBY:  Well, they can us it for knowledge,  
6           experience and skill.

7           THE COURT:  What else?

8           MR. LIBBY:  That we have to prove that this defendant  
9           was prepared to do this.

10          THE COURT:  What else?

11          MR. LIBBY:  The intent in the '91 charge.  We have to  
12          show intent.

13          THE COURT:  How does it show intent in 1991 that he  
14          built a bomb in 1986?

15          MR. LIBBY:  First of all, we're breaking down the  
16          signature beyond the forensic.  You remember Mr. Kline  
17          wouldn't talk about beyond forensics, but our expert did, he  
18          talked about circumstantial similarities.

19          THE COURT:  Just answer my question:  If there is no  
20          signature, if the jury disbelieves Mr. Waskom, then how can --  
21          what should I tell them?  I mean, I think it's a two-step  
22          process.  No. 1, is there signature?  If not -- I mean, if  
23          yes, it's easy, if not, then how can the jury use the 1986?  
24          You say knowledge of electronics and bomb building.

25          What else?

1 MR. LIBBY: Again, your Honor, intent. And that's  
2 borne out by --

3 THE COURT: How?

4 MR. LIBBY: The circumstantial similarities. If you  
5 call it signature, okay, the handiwork, the actual real  
6 evidence, the tie-ins there, the wires twisted and taped and  
7 soldered, well, beyond that --

8 THE COURT: I'm hypothesizing they don't believe that  
9 it's signature.

10 I mean, first of all, do you agree that it is a  
11 two-step analysis for the jury?

12 MR. LIBBY: For them, they have to assess  
13 Mr. Waskom's credibility and his --

14 THE COURT: And they find no signature. Just assume  
15 that they find no signature. Then what?

16 MR. LIBBY: Well, when you say no signature, then  
17 you're saying absolutely no link between this defendant and  
18 this bomb. Is that what you're saying?

19 THE COURT: Well, I'm suggesting that they determine  
20 that the two are not singularly unique.

21 MR. LIBBY: It doesn't -- it doesn't occupy the  
22 waterfront here, your Honor. It's still probative on the  
23 defendant's motive here. The very thing that you pointed out  
24 here --

25 THE COURT: Well, motive isn't something --

1 MR. LIBBY: It cuts towards intent, your Honor. And,  
2 that is, he has a motive similar to the situation in 1986,  
3 which Mr. Waskom opined beyond the forensics, beyond the real  
4 evidence, the debris.

5 THE COURT: I don't want you to argue the issue. I  
6 just want you to tell me what I tell the jury.

7 MR. LIBBY: You may tell the jury on that, your  
8 Honor, that they may consider the evidence, the 1986, the  
9 circumstances surrounding it, as bearing on this defendant's  
10 intent in the '91 bombing insofar as motive is concerned, to  
11 assist his friend to target a third party.

12 THE COURT: Even if there was no signature?

13 MR. LIBBY: That's right.

14 THE COURT: What else?

15 MR. LIBBY: I think, knowledge, experience and skill.

16 THE COURT: And intent?

17 MR. LIBBY: And intent.

18 THE COURT: Have you reviewed the defendant's  
19 requested additional -- well, I guess requested instructions,  
20 period, or to the extent that the defendant has incorporated  
21 by reference, the instructions from the earlier case?

22 MR. KELLY: Yes, your Honor, there's four, as I  
23 understand it. There's the one that has just been discussed.

24 THE COURT: There's no problem with circumstantial  
25 evidence, is there?

1 MR. KELLY: Circumstantial, there's no problem. You  
2 cover that, anyway.

3 THE COURT: Guilt by association is appropriate, is  
4 it not?

5 MR. KELLY: You cover that, anyway. I think you  
6 cover that in your instructions about you have to have more  
7 than merely being present, you know, associating.

8 THE COURT: I do say all of that.

9 Missing witnesses?

10 MR. KELLY: I have a serious problem with that. I  
11 think that what they are trying to do is take a stab at the  
12 fact that we even put Mr. Shay on the stand here. Is that the  
13 effort here? I mean, they haven't even identified alleged  
14 missing witness.

15 MR. SEGAL: Absolutely not.

16 MR. KELLY: Well, who's the missing witness?

17 MR. SEGAL: We're saying that there are other people  
18 who were present at the November 6th interview, who aren't  
19 here.

20 MR. KELLY: That's baloney.

21 THE COURT: November 6th?

22 MR. SEGAL: Yes. Their ARCOM interview, there were  
23 eight police officers there who allegedly drew the diagram.

24 THE COURT: Oh.

25 MR. SEGAL: And they could have brought in those

1 people. Not Mr. Shay. I have no intention of saying he's a  
2 missing witness.

3 MR. KELLY: None of these people are missing, your  
4 Honor.

5 THE COURT: If you are going to argue that there are  
6 witnesses missing who saw the diagram, I think I would tell  
7 the jury that counsel are constantly under pressure from the  
8 Court not to put on unnecessary witnesses. I mean, cumulative  
9 witnesses.

10 I certainly would not have permitted Mr. Kelly to  
11 put on five witnesses who tell us the same thing.

12 If that's the argument, I think I would be bound to  
13 say that because he certainly knows the pressure he's under  
14 not to put on cumulative evidence.

15 MR. KELLY: In addition, your Honor --

16 THE COURT: Right? Just as you are under pressure  
17 not to put on cumulative evidence.

18 I mean, if that's what this goes to, then I think  
19 maybe you won't make the argument and I won't give the  
20 instruction.

21 Right?

22 MR. SEGAL: Well, I understand the instruction. I  
23 think I understand if I make the argument, I can get an  
24 instruction about cumulative evidence, too.

25 THE COURT: That is, if you make the argument about

1 missing witnesses, then, if it is November 6th, I will tell  
2 the jury that the government was under pressure not to put on  
3 anything that they didn't have to put on, and that I would not  
4 allow them to put on five witnesses to tell us about the same  
5 thing.

6 I have some questions that I need to clear with you.

7 First, have you decided what you want me to say about  
8 Mr. Shay and what happened at the first trial?

9 MR. SEGAL: My recommendation, your Honor, would be  
10 for you to repeat what you said before we opened in this  
11 case.

12 THE COURT: What was that?

13 MR. SEGAL: I simply will tell you this because I  
14 want you to be very clear that the fact Mr. Shay was convicted  
15 on some counts is absolutely nothing to say about whether  
16 Mr. Trenkler is guilty of the charges that have been brought  
17 against him.

18 You will need to decide whether he's guilty or not  
19 based entirely on the basis of the evidence you will hear, and  
20 in no way based on the fact that Mr. Shay was convicted on  
21 evidence that, I can guarantee, you is in some respects quite  
22 different from that which you will hear.

23 That's fine. You said that once and I'd be happy to  
24 have that again.

25 THE COURT: Any problem with that?

1 MR. KELLY: Well, he's reading from Page 2-3 and  
2 2-4. But what you said, the bottom line, he continued with  
3 what -- after what you said.

4 You said, quote, Mr. Thomas Shay, Jr., has already  
5 been tried and he was convicted on some but not all of the  
6 counts of the indictment.

7 And I think that states it fairly simply.

8 THE COURT: Well, I think I should tell them, also,  
9 that whatever happened in the trial of Mr. Shay has no bearing  
10 on this jury's determination with respect to Mr. Trenkler.

11 MR. KELLY: I think that's already in the  
12 instructions and obviously we have no objection to that.

13 MR. SEGAL: I just ask that you repeat that the  
14 evidence is different, as you said here in your opening.

15 THE COURT: I guess those are all the questions I  
16 had.

17 Anything else?

18 Yes, Mr. Kelly.

19 MR. KELLY: Yes, I have a couple, your Honor, I'm  
20 sorry.

21 I just happened to be flipping back through our  
22 requests, and I noted a couple of instances of, I assume the  
23 Court has already caught those that aren't applicable.

24 There was an issue last time about the  
25 attorney/client privilege with Mr. Pransky. That never came

1 up this time.

2 There was an issue of an audiotape recording in the  
3 first trial.

4 THE COURT: Oh, I know, that raises the second  
5 question.

6 During the last trial, I did talk about statements by  
7 the defendant.

8 Now, there are some statements by the defendant in  
9 evidence here, although, while I distinguished last time  
10 between statements that the jury heard Mr. Shay make on the  
11 video, and perhaps audio, as well, here there are none such.  
12 Here are only statements by Mr. Trenkler as reported by  
13 others.

14 I assume you wish me to give the instruction that  
15 they first have to decide whether the reporter, namely, the  
16 police officer or Mr. Lindholm, is correct, and then whether  
17 Mr. Shay -- Mr. Trenkler in fact said what he said, so that  
18 that instruction about the defendant's statements still needs  
19 to be given?

20 MR. SEGAL: Yes, your Honor.

21 THE COURT: Okay.

22 What else, Mr. Kelly?

23 MR. KELLY: The only other matter, obviously, there  
24 was an instruction on flight.

25 THE COURT: That, I won't give.

1 MR. KELLY: There was an instruction on consciousness  
2 of guilt by means of a false name.

3 Finally, I guess we have the flip side of an  
4 instruction of what we just discussed, in the first trial, it  
5 was disregarding the fact that Mr. Trenkler wasn't in the  
6 room. I guess we're getting the reverse of that with the  
7 embellishment that you pay no attention to Mr. Shay, the fact  
8 that you know he's been convicted. That would be the only  
9 exception.

10 I would just say one thing on the missing witness  
11 point, your Honor, which is, Mr. Segal well knows that he  
12 served trial subpoenas on a lot of those police officers.  
13 They were at all times ready, willing and able. If they were  
14 missing, it wasn't because the government somehow stashed  
15 these people away. He could have called those people, he  
16 chose not to.

17 THE COURT: Well, I suppose if he makes the argument,  
18 that would be appropriate for rebuttal. That, I would regard  
19 as proper rebuttal.

20 Anything else?

21 MR. LOPEZ: No, your Honor.

22 THE COURT: Well, we have five minutes before the  
23 jury was told to be here, so why don't we see if they are  
24 here, bring Mr. Trenkler down as soon as we can and start as  
25 soon as he gets here.

1           You said you wanted about an hour.

2           MR. KELLY: I think the government's main closing,  
3           which Mr. Libby will deliver, will be about 50, 55 minutes and  
4           we will reserve 15 minute for rebuttal. It may be shorter  
5           than that, but no more.

6           MR. SEGAL: I'll stay within an hour.

7           THE COURT: All right.

8           MR. SEGAL: I take it after each argument there is a  
9           short break just to set up, or what's the procedure?

10          THE COURT: Ad hoc.

11          MR. SEGAL: It will take me a couple of minutes just  
12          to set up.

13          MR. KELLY: Thank you, your Honor.

14          THE COURT: That way I keep you on your toes.

15          [Recess.]

16          [Whereupon, the jury entered the courtroom.]

17          THE COURT: Members of the jury, this is the last  
18          lap. You are about to hear counsel's argument, or their  
19          summation, and both words describe what they are about to do.

20                 You will first hear from the government, then from  
21          the defendant and then the government has an opportunity for  
22          brief rebuttal.

23                 What they will tell you is in the nature of argument  
24          in the sense that they will try to persuade you of their  
25          respective positions. They also will sum up the evidence,

1 recall it to you, interpret it for you. And all of that is  
2 entirely proper and appropriate.

3 Understand, however, that when you're in the jury  
4 room deliberating on your verdict, you must base your verdict  
5 on your interpretation and your recollection of the evidence.

6 So if you agree with counsel, fine, but if you do not  
7 agree with them, pay heed to your own recollection and your  
8 own interpretation of the evidence that you have heard.

9 So we will now hear first from, I think Mr. Libby,  
10 whom I can't see, on behalf of the government.

11 You may proceed.

12 Closing Argument by Mr. Libby

13 May it please the Court, counsel, and may it please  
14 you, ladies and gentlemen of the jury.

15 Good morning.

16 I'd like to start my remarks, ladies and gentlemen,  
17 by taking us back one final time to Eastbourne Street in  
18 Roslindale, that Monday in October 1991. You recall the  
19 scene, it is a quiet, dead end street, an elementary school a  
20 few houses down the block.

21 We see a Jeep Wagoneer bearing official Boston Police  
22 bomb squad markings drive up, pull up to the mouth of the  
23 driveway at 39 Eastbourne Street. Driving the Wagoneer is  
24 Officer Jeremiah Hurley, his partner Francis Foley is sitting  
25 shotgun, both veteran police officers and highly skilled bomb

1 technicians.

2           You recall that they received a report on the radio  
3 of a suspicious device lying in this driveway.

4           Now, because Officer Hurley's driving, you remember  
5 Mr. Foley testifying, he'll be the one to handle the device,  
6 Officer Foley will handle the interviews.

7           Now let me pause for a moment and make sure every  
8 everyone understands exactly what's happening here. This  
9 scene, ladies and gentlemen, at that moment depicts precisely  
10 what bomb squad officers are called on to do every day of the  
11 year. They are on call, they get a call of a suspicious  
12 object or a device, they respond to the scene, they are asked  
13 to check it out.

14           They appear in unfamiliar settings, they deal with  
15 people they've never met before. Sometimes they get no more  
16 information than a pointed finger and, there it is, I don't  
17 know what it is.

18           And in that landscape chock-full of uncertainty, it  
19 is their job to evaluate the scene, to assess the object or a  
20 device, and ultimately to render it safe for every one of us.

21           Ladies and gentlemen, it's difficult to conceive of a  
22 more perilous job than that on a Boston bomb squad officer.  
23 But it is one, ladies and gentlemen, that they do time and  
24 time again. And so it was on that bright Monday, midday, that  
25 Officers Hurley and Foley arrived on the scene.

1           Moments after arriving, they learn that the object  
2           had been discovered more than 24 hours before, so as you heard  
3           Officer Foley say, they concluded there wasn't any timer  
4           feature, 24-hour clock feature associated with the device.  
5           They also learned that it had been moved, not once, but  
6           twice. So they also concluded there wasn't any  
7           antidisturbance device associated with the object.

8           They continue with their preliminary risk assessment,  
9           ladies and gentlemen, until this quiet neighborhood is rocked  
10          by the shock waves of an enormous explosion, which you've  
11          heard in detail here.

12          By day's end, Officer Hurley has died of massive  
13          trauma suffered from the blast, Officer Foley lies in the  
14          hospital, clinging to life, maimed with a string of surgical  
15          operations lying head of him, and ultimately permanent  
16          disability and retirement from his chosen profession and his  
17          life of service to the City of Boston.

18          Now, in the course of this trial, ladies and  
19          gentlemen, you've heard that some months later, it was one  
20          man's opinion that these officers on that day were foolish,  
21          negligent, that it served them right what happened to them.

22          Those words, ladies and gentlemen, as you've learned  
23          were the words of this man, the defendant, Alfred Trenkler,  
24          one of two men charged in the indictment before you.

25          And it was this man, ladies and gentlemen, the

1 evidence has proven, who designed and constructed the device  
2 which exploded and left a grotesque scene in the driveway that  
3 day. And he built that device, ladies and gentlemen, for the  
4 sole purpose of killing.

5 He missed his intended target, but kill he did, as  
6 you've seen.

7 Now, let's go back for a moment, ladies and  
8 gentlemen, to that moment in time before the explosion, as the  
9 officers arrived at the driveway. As you've learned, Officers  
10 Foley and Hurley were shown this, about a foot long, six  
11 inches across, two, three inches deep, lying with these  
12 objects face up, tilted on the driveway. They saw flat black  
13 paint, smaller magnets surrounding two larger ring magnets.

14 Now, you've learned, as they did, that this object  
15 had been dislodged from the undercarriage of Shay, Sr.'s, '86  
16 Buick automobile, Shay, Sr., living at the address at  
17 39 Eastbourne. And he explained to them that it had been  
18 dislodged the day before from the motion of his pulling in,  
19 backing in and then pulling out on Sunday.

20 They also learned that it had been moved to the side  
21 of the house, you recall up by the corner, and then again he  
22 came back out after watching football for a moment or two, and  
23 putting it between the GTO and the panel van in the driveway.

24 Now, as to the components of this device, ladies and  
25 gentlemen, you've heard at great length from the government's

1 bomb expert, Explosives Enforcement Officer Thomas Waskom, and  
2 you've heard from the defendant's own expert, Denny Kline, as  
3 to the components and configuration of this device.

4           You recall, as in any remote control explosive  
5 device, it has three major components. The main charge here,  
6 two to three sticks of rewrapped dynamite with two blasting  
7 caps, concept known as dual priming, you remember. Has a  
8 fusing circuit, with this Futaba receiver, which we'll talk  
9 about more in a minute, and a firing circuit which featured a  
10 toggle switch, nestled up against the arm of this servo motor  
11 horn.

12           We also know that the device, as Mr. Waskom indicated  
13 to you, had a slide switch on the side. That was so that  
14 after it's all constructed, the bomber, all the bomber has to  
15 do is access the slide and it will be ready to receive a  
16 transmitted signal, a safe distance away for the trigger  
17 person.

18           Now, we know this, ladies and gentlemen, from the  
19 detailed testimony that the government has put before you,  
20 describing the very tedious and meticulous search of the area  
21 around 39 Eastbourne Street, the crime scene search from the  
22 National Response Team.

23           You recall Agents Dan Boeh, the National Response  
24 Team leader, and Chris Porreca, the evidence technician.

25           You recall the testimony of Mr. Tom Waskom who was

1 there on the scene and provided ongoing assistance and  
2 evaluation of what was found in the debris.

3 You recall Cynthia Wallace, the NRT forensic chemist  
4 who came before you to describe what she found, and her  
5 meticulous reconstruction of the certain of the material we  
6 had there.

7 The result is this reconstruction which even  
8 Mr. Kline concurred in was an accurate reconstruction of this  
9 device as it appeared moments before its initiation and  
10 detonation that day.

11 Now knowing this, knowing this, what do we also know  
12 about its maker? Well, certainly, the maker is highly  
13 proficient in electrical engineering. He understands the  
14 practical application of remote control. He understands  
15 circuitry and soldering. He's handy with tools. He's a  
16 patient woodworker with an eye for detail. He's knowledgeable  
17 about dynamite, its properties, and the blasting caps.  
18 Knowledgeable about all of that.

19 We also know matters beyond the expertise reflected  
20 in this device, ladies and gentlemen. And, that is, the maker  
21 was cunning and clever. After all, it was painted black, low  
22 profile, put under the undercarriage of the vehicle. He was  
23 cowardly. He certainly designed it so that he would stay a  
24 safe distance away at the time of the explosion.

25 And we also know that he had one purpose in mind and

1 one purpose only, and that was to kill Shay, Sr.

2 You recall first, with respect to killing, both  
3 Mr. Waskom and Mr. Kline explained to you in great detail the  
4 effect of two to three sticks of dynamite fashioned in this  
5 way, under the driver's seat of that '86 automobile, how that  
6 -- those button magnets would be propelled like shrapnel  
7 right through the floor pan, up through the driver's seat. It  
8 would rip of the roof back and below the windows out. Do you  
9 recall that testimony? Ladies and gentlemen, certainly,  
10 certainly intended to kill the occupant of that car.

11 And you recall that it was Shay, Sr.'s, car. Mary  
12 Flanagan had her own car, the Lincoln.

13 And we also know it was intended to kill Shay, Sr.,  
14 because it was affixed to his car. And we know that, also, if  
15 you recall from Shay, Sr.'s, testimony and the testimony of  
16 Officer Foley, with respect to the disturbed earth in the area  
17 of the crest of the driveway that day. You recall how the  
18 object came into contact as it was backing up at that point in  
19 the driveway.

20 You also recall the testimony of Dr. Christopher  
21 Shapley, the British fellow who came in and spoke generally  
22 about two different things. One had to do with the holding  
23 power of the magnets on the device, how he said that, although  
24 it was an irregular ribbing under the Buick, even if only a  
25 third of this surface area the magnets held or made contact

1 with the undercarriage, this would provide three times the  
2 amount of power, holding power to keep that in place, so it's  
3 going to stay in place.

4 He also explained to you the dislodging process, how  
5 when the car backed up, the dynamics of the '86 vehicle was  
6 such that it glanced, it gave a glancing blow to this device,  
7 not enough upwards pressure to detonate it, but just enough to  
8 dislodge it.

9 The marks, ladies and gentlemen, that Dr. Shapley,  
10 Mr. Waskom, and Ms. Cynthia Wallace spoke to, are right here,  
11 these fresh scrape marks; do you recall that? All consistent  
12 with the movement, backing up and pulling out, the fresh  
13 scrape marks. Not only that, we had the undercoating, it's  
14 like a thumb through butter, piling up in the direction of  
15 movement. We had the fresh paint marks, the original red  
16 markings on the button magnets left here, traces of it.  
17 Traces also of magnet particles. No question, ladies and  
18 gentlemen, but this device was affixed to the undercarriage of  
19 that car.

20 We also know that the device was planted sometime the  
21 weekend of the bombing. Do we know precisely when, did we  
22 have a hidden camera? No. Does it matter? No. It matters  
23 not, not with these charges, ladies and gentlemen.

24 But we do know though it was planted that weekend  
25 because, as you recall, Shay, Sr.'s, testimony, the

1 '86 Buick had been loaned out to a gentleman by the name of  
2 Rotman, Louis Rotman, I believe he's from Randolph or  
3 Stoughton, your memory controls.

4 He picked it up that Friday before the Monday  
5 explosion, mid-morning, about 10 o'clock in the morning, and  
6 returned it to Roslindale, where it stayed in the vicinity.

7 Now, from all this evidence, ladies and gentlemen,  
8 you may also infer more than a little bit about the bomber's  
9 thought process, this device is affixed to the automobile.

10 This bomber is standing there thinking, this has to  
11 be a perfect crime. This is one tightly constructed piece of  
12 work. It won't detonate until I say so, and when I do say so,  
13 it will, I've made sure, I've got five 9 volt batteries wired  
14 in series. Far more voltage than is necessary. My battery  
15 snap connectors are all soldered and taped. They are going to  
16 go when I pull trigger.

17 He's tested his circuitry, ladies and gentlemen, with  
18 a test bulb. And when it's ready, all I've got to do is move  
19 this slide switch and it's ready for action.

20 Now until that time comes, no one is going to find  
21 out about this because I've made sure it is low profile, it's  
22 black, and it's parked underneath the driver's seat of an '86  
23 Buick where nobody's going to find it, and it will stay put  
24 because I've made sure, I've got far more magnetic holding  
25 power than is necessary.

1           Best of all, thinks the bomber to himself, none of  
2 this comes back to me. I'll be a safe distance away. I've  
3 rewrapped my dynamite, there won't be any of the date, ship  
4 lot markings on the sticks, which could possibly come back to  
5 me, that's gone because I've rewrapped.

6           And with two to three sticks of dynamite, when that  
7 explodes, the best part is, all of the evidence vanishes in  
8 the crime. It will be reduced to dust.

9           And best of all, ladies and gentlemen, thinks the  
10 bomber to himself, I don't have any tie-ins to this vehicle,  
11 none, so none of this comes back to me. Perfect crime.

12           But you know, ladies and gentlemen, having heard the  
13 testimony before you, you know to the contrary, because you've  
14 learned from the testimony and details of the crime scene  
15 search and a full scale investigation which began immediately  
16 following the blast, which continued for months to follow, how  
17 mistaken the bomber was in his thoughts.

18           You've learned how the City of Boston Police  
19 Department, the Homicide Unit, federal resources of the Boston  
20 ATF and the National Response Team quickly joined forces, came  
21 to the scene. They established a working headquarters in the  
22 second floor conference room of the Boston Homicide Unit,  
23 which you've heard about.

24           And while the National Response Team began the  
25 tedious process of collecting minuscule remnants of evidence,

1 do you remember the magazine reconstruction? The body  
2 building magazine, how meticulously that was reconstructed.

3 The homicide unit began interviewing anyone and  
4 everyone even remotely knowledgeable about the scene. And from  
5 that information, ladies and gentlemen, were identified  
6 initially eight or ten subjects, including Shay, Sr.,  
7 obviously, this Barry Giamarco fellow that you heard about,  
8 that Shay, Sr., was suing, the Dedham Service Center people  
9 who had the explosion some years back, in the barrel, that  
10 quarter stick incident where Shay, Sr., suffered some  
11 injuries.

12 Now, the initial results of the examination of the  
13 debris, ladies and gentlemen, within a day or two, yielded  
14 some very significant findings. First, investigators learned  
15 it was remote control. They found a Futaba receiver label,  
16 ladies and gentlemen.

17 This yielded a very important, down the road, a very  
18 important piece of evidence, because, as you learned,  
19 ultimately, investigators came into possession of a report  
20 from the Quincy Police Department relating to a remote control  
21 explosion in 1986.

22 Came into the conference room on the second floor at  
23 homicide. No one paid any special significance to it at that  
24 time, but it was placed on file.

25 We also found from the detail forensic examination

1 which Cynthia Wallace told us about, this toggle switch, we  
2 found it was soldered. But more importantly, we could  
3 determine from the distinctive contacts points at the base of  
4 the toggle switch that it matched precisely a Radio Shack  
5 model, Model 275-602.

6 And this discovery, ladies and gentlemen, put into  
7 play, a review of all the local Radio Shack records of  
8 purchase of that toggle switch for a two-year period. You  
9 heard Agent Leahy testify about that.

10 Now, we all know that you can't buy anything at Radio  
11 Shack without being subjected to this customer information  
12 barrage, who are you, where do you live, telephone number, all  
13 that kind of thing, it's for the marketing.

14 Ladies and gentlemen, later on, as you've learned,  
15 that discovery led to a very astonishing discovery turn.

16 Now, while this search is going on, the hands and  
17 knees, you remember the photograph of the little yellow flag  
18 between the two houses, Boston homicide continues their  
19 interview process.

20 Shay, Sr., is being interviewed daily. He's asked  
21 about possible enemies, incidents in his past, Barry Giamarco  
22 interviewed. And you recall that in the early morning hours  
23 of the day following the blast, Shay, Jr., a long, gangling  
24 kid, shows up the second floor conference room. He wants to  
25 speak to the homicide detectives.

1           Now, as Mr. Segal told you at the outset of this  
2 case, there is no dispute but that Shay, Jr., was a bizarre  
3 gay male with a love/hate relationship with his father. And  
4 it is also clear from the evidence, ladies and gentlemen, that  
5 he wanted to kill his father. There's no dispute about that.  
6 The Court advised you at the outset of the trial, Shay, Jr.,  
7 in fact has stood trial and convicted on some, but not all of  
8 the charges.

9           But because there's charged here before you today, a  
10 two-person conspiracy, one Shay, Jr., and the other this  
11 defendant, let me summarize the evidence very briefly for you  
12 that you've heard as to Shay, Jr.'s, words, his conduct and  
13 the basis for his motivation in this deadly plot.

14           And from that backdrop, ladies and gentlemen, you'll  
15 see from the remaining evidence how it was that this defendant  
16 came together with Shay, Jr., in a conspiracy, an unlawful  
17 agreement, to kill the father.

18           So, first, the evidence as to Shay, Jr. Now, you've  
19 heard the parents testify. Shay, Sr., Mrs. Nancy Shay. Now,  
20 if there's ever a dysfunctional family, this was one, ladies  
21 and gentlemen, unhappy.

22           The marriage was a very bad one, as Mrs. Shay said,  
23 from Day 1. She suffered serious, severe beatings repeatedly  
24 at the hands of Shay, Sr., witnessed oftentimes by young Tom,  
25 Jr.

1           You heard story after story of abuse and neglect and  
2 suffering, how his father would do virtually nothing for him  
3 except to drag him along down to the tavern when he sat and  
4 drank with his friends.

5           You heard how effectively he was warehoused in social  
6 care facilities for years, from the age of roughly five to  
7 seventeen, and how his parents separated and then ultimately  
8 divorced.

9           Much later, you learned how, after being released  
10 from one of these social care facilities, he came to live with  
11 his father in Hyde Park. And they were living together until  
12 some months later, Shay, Sr., moves in with Mary Flanagan at  
13 39 Eastbourne. Shay, Jr., comes along. Shortly after coming  
14 in, he steals some cash from the father, takes off, you recall  
15 that, comes back, he's forgiven.

16           Within days, he does something far worse, he steals  
17 Mary Flanagan's mother's heirlooms, the jewelry, he hocks it  
18 for some thousands of dollars, takes off for Florida, comes  
19 back expecting the same treatment. He'll have none of that.  
20 Mary Flanagan says absolutely out, out of the house. Father  
21 agrees.

22           You've learned time and again how Shay, Jr., came to  
23 hate, loathe his father. You heard that from Detective Miller  
24 Thomas who came before you to describe briefly, part of the  
25 conversation that morning, the early morning hours of the

1 29th, how he talked about going to boys schools. Have you  
2 ever been to a boys school? Do you know what they're like?  
3 Maybe none of this wouldn't have happened hadn't I gone  
4 there.

5 You learned also how he came back after a Trailways'  
6 press conference when he visited with the press at the bus  
7 station two nights later. And how on three occasions, the  
8 detectives, using a legitimate police technique, said, your  
9 father's coming over to see you. Each occasion, each  
10 occasion, the son says, can I leave? Can I leave now?

11 He finally does on the third time, goes down the  
12 hallway, and he's placed under arrest on an unrelated matter.  
13 You recall that.

14 And as he comes back, his knapsack is examined, and  
15 the investigators pull this. Do you recall the address book?  
16 This is also placed on file, right there in the conference  
17 room. Three days after the blast. No special significance,  
18 again, paid to the address book, but they have it in place.

19 Now, you recall also, Mr. Robert Evans, the testimony  
20 of Robert Evans, he's about six-foot-six, big fellow, the  
21 boxer. He had the adjoining cell to Shay, Jr., in the Quincy  
22 lock-up the next morning. How Shay, Jr., told him -- or  
23 rather asked him, what do you get for murder in this state?  
24 Evans told him, life, no parole. Junior says, I can't, I'm  
25 out of here, I'm going to take off. Evans says, well, how

1 about bail? Will your father help you on bail? He said, are  
2 you crazy, after what had happened. You recall his testimony.

3 You recall the testimony of Mr. Edward Carrion, the  
4 large gentleman, openly gay, former police officer from  
5 California, now working in the computer field here. He lives  
6 in the Back Bay. His roommate at the time managed the Back  
7 Bay -- the 197 Mass. Ave. Radio Shack, if you recall.

8 He told you about his relationship with Shay, Jr.,  
9 dating back to 1988, up to mid-October 1991, and how he  
10 described the increasing anger and hostility what Shay, Jr.,  
11 expressed toward his father. Leading up to fall of 1991 where  
12 he testified clearly that Shay, Jr., expressed that his father  
13 was terminally ill and was going to die soon; that he was  
14 going to come into a substantial sum of money.

15 You'll also recall, interestingly, that Mr. Carrion  
16 testified to Shay, Jr.'s, interest in body building magazines.

17 Finally, you recall Mr. Carrion's testimony about the  
18 angry and almost violent outbursts that Shay, Jr., showed at  
19 the doorway that Friday night in October.

20 Pay attention ladies and gentlemen to that date.  
21 That was Friday night, the 18th of October 1991. Check your  
22 notes of Mr. Carrion's testimony.

23 You also heard Attorney Pransky testify how on  
24 September he took the kid to Charlestown for the deposition in  
25 the father's lawsuit. The two alone come back, they're going

1 along by Quincy Shore Drive, and a conversation ensued. And  
2 from that, Shay, Jr., learns that this lawsuit survives if my  
3 father is not around, and I'm an heir at law. There's 300 to  
4 \$400,000 insurance coverage available. And the lawyer  
5 believes that this is going to settle or go to trial, and if  
6 we go to trial, we're going to get recovery here.

7 Now, lastly, ladies and gentlemen, all of this comes  
8 together through the testimony of Mr. Larry Plant, the tall  
9 red-head fellow, double-breasted, blue blazer. He came in, he  
10 told you he was incarcerated in the Plymouth House of  
11 Correction with Shay, Jr., for a couple of weeks back in  
12 October of '92. He's the fellow that had the drug addiction,  
13 false scripts. He told you outright that  
14 Shay, Jr., had told him that he was involved with this crime.

15 He described his abusive childhood, teary eyed, in  
16 quiet, hushed tones, but he told him about how he was abused  
17 as a child, shipped off to these institutions. And that it  
18 was his passion, he used that word, he was passionate to get  
19 even with his father.

20 He described the crime. How the bomb was placed on  
21 the father's car by magnets, but it fell off. And then he  
22 spoke coldly and without a trace of remorse about the fate of  
23 the officers.

24 So there is no question as to Shay, Jr.'s,  
25 involvement, ladies and gentlemen, in this matter.

1 But what role did he play and what role did this  
2 defendant play?

3 The answer to that question, ladies and gentlemen,  
4 begins the pivotal point in the investigation as regards  
5 Mr. Trenkler. And that is the evening of the 4th of November,  
6 1991, when two pieces of information came together for the  
7 first time, the Lanergan report of the Quincy Police  
8 Department relating to the 1986 bombing and the address book  
9 from Shay, Jr.

10 You recall Agent D'Ambrosio telling us how the  
11 report, the 1986 report, reflected that the admitted  
12 perpetrator of the 1986 remote control explosion was one  
13 Alfred Trenkler. And while that bombing showed that the '86  
14 bombing in fact used magnets and a toggle switch, there  
15 weren't any injuries resulting, so no great significance was  
16 initially attached it to.

17 But you also remember how Agent D'Ambrosio said they  
18 were seated around the conference table, and somebody said,  
19 well, what if -- wouldn't it be interesting if somehow this  
20 Alfred Trenkler has any connection to Shay, Jr. So Agent  
21 D'Ambrosio pulls the notebook and he's looking for the Ts, he  
22 goes, well, you can't find anything in the Ts. Well, then he  
23 notices it's all alphabetical by first name. Goes back to the  
24 beginning and sees Al Trenkler, the admitted perpetrator of  
25 the '86 bombing.

1           Now, you know, ladies and gentlemen, as you've heard,  
2       it led investigators to Mr. Trenkler's door, at the basement  
3       apartment of 133 Atlantic Street in Quincy.

4           And in the months to follow as the details of  
5       defendant's background and his relationship of long-standing  
6       with Shay, Jr., became known, these details took on added  
7       significance, and the significant only grew.

8           Now, you've learned, as investigators had soon  
9       learned, that while the defendant's driver's license showed an  
10      address at 7 Whitelawn, he didn't live there, that was his  
11      parents' address. He lived in the basement apartment with  
12      John Cates. You recall the illegal basement apartment in  
13      Quincy.

14          You also learned, ladies and gentlemen, that the  
15      defendant is a well-educated man, the best schools, Park  
16      School, Milton Academy, Thayer Academy. He obtained a degree  
17      in electrical engineering from Wentworth Institute. He's  
18      skilled in circuit boards and soldering. He uses his own  
19      tools. He has expertise in this field, ladies and gentlemen.

20          He made several attempts to make a go of it in the  
21      business field, but failed. You recall Richard Brown talking  
22      about AWT in mid-Eighties. That went nowhere. How the  
23      defendant went to work for an outfit known as Atell in South  
24      Boston, where you have the small room above the shop. The  
25      ARCOM business which didn't pan out either.

1           There's no duty dispute in the case, ladies and  
2 gentlemen, as Mr. Segal pointed out in his opening, but that  
3 the defendant was not a great financial success.

4           But we also learned how he had in the past put his  
5 training and expertise to other than legitimate uses. He  
6 demonstrated his considerable skills, as well as his  
7 willingness to do so, when in 1986 he designed and built a  
8 remote control explosive device at the request of a friend,  
9 Donna Shea. She had a beef with the owners of the Capeway  
10 Fish Market.

11           And the result, ladies and gentlemen, was that this,  
12 the explosive device which was affixed to the undercarriage of  
13 the Capeway Fish truck in the early morning hours of September  
14 1, 1986, also by means of round magnets. You heard Officer  
15 Peter Turowska come in from the Quincy Police Department on  
16 that point.

17           You also heard the testimony of Todd Leach, eleven  
18 years old at the time, he was Donna Shea's nephew. You heard  
19 him testify about he got the magnet from the discarded speaker  
20 which was in a dumpster in the housing project in Quincy.

21           You heard him talk of an interesting trip to a local  
22 Radio Shack where he was sent in with a list of electrical  
23 components, he had difficulty reading them, the clerk began to  
24 help him, Mr. Trenkler came in. Do you remember the clerk  
25 jokingly asked, what are you guys going to make, a bomb, and

1 the chuckle that followed.

2           You recall Mr. Leach talking about the rectangular  
3 box with the magnet attached. It looked rectangular to him,  
4 about a foot across. And how Mr. Trenkler used a small bulb  
5 to test it. You recall him testifying about how it went on  
6 and off, on and off.

7           Mr. Craig also testified, ladies and gentlemen, about  
8 the '86 bombing. Mr. Trenkler's roommate for four years in  
9 the mid-Eighties, the thin, soft-spoken fellow now living in  
10 Florida.

11           He told us, in fact, that the defendant did this for  
12 Donna Shea; that he fashioned it, not in a house or in a  
13 workshop, but in a parking lot, in a parking lot outside the  
14 housing project; that he in fact used a speaker magnet and  
15 that he detonated it, according to Mr. Trenkler telling him so  
16 after the fact, seated in his car around the corner from  
17 Willard Street, the sight of the explosion.

18           Finally, you remember Detective Lanergan from the  
19 Quincy Police Department. He was assigned -- a veteran  
20 detective assigned to investigate this matter.

21           He shows up at the defendant's Union Street  
22 apartment, simply introduces himself, says he's assigned to  
23 investigate the matter. And what is he met with, a torrent of  
24 statements, a torrent of statements from the defendant.  
25 Without any further ado, he says, well, I'm a friend of Donna

1     Shea's and I was over there that night. And you must think  
2     that I'm a good suspect because I'm an electrical engineer and  
3     I work with microwave matters and so forth, but, you know,  
4     anybody can go to Chinatown and get an M80 and that kind of  
5     stuff.

6             Do you recall that testimony? He had just simply  
7     introduced himself and said he was investigating the matter.

8             And you recall Detective Lanergan's response, he  
9     said, look, I never mentioned any of that stuff to you.

10            And thereafter, followed what Detective Lanergan  
11    said, was the longest stare he'd ever seen in his life.

12            Now, you recall how Mr. Trenkler ultimately confessed  
13    to that crime. He explained its circuitry and components in  
14    very great detail to Detective Lanergan, who told him, stop,  
15    listen, I'm taking all this down.

16            And how John Cates, Mr. Trenkler's roommate, later  
17    came before you and testified it was some 4th of July kind of  
18    thing.

19            Well, ladies and gentlemen, you've seen it for  
20    yourself and you'll have it in the jury room. The video of  
21    the M21, Hoffman simulator, you saw it take that 55-gallon  
22    drum and send it out of sight, 30 some-odd feet in the air,  
23    and how both experts testified that if you held it in your  
24    hand, your arm would be gone.

25            I'm going to spare you the details of the 1986

1 bombing, ladies and gentlemen, which you patiently sat  
2 through, but I do want to point out a couple of things for  
3 you.

4 First, with respect to the forensic similarities  
5 which Mr. Waskom came before to you explain. The distinctive  
6 similarities in that the wires were twisted, soldered and  
7 taped, and the round magnets. Highly uncommon in his view.

8 Borne out, ladies and gentlemen, by Mr. Scheid's  
9 testimony the EXIS computer data base fellow, looking solely  
10 to the components, not how they were attached or if there's  
11 any distinctive circumstantial matters surrounding the  
12 bombings, but just the components. Out of 14,000 plus  
13 bombings in his geographical region, for twelve years, two  
14 shake down. Two. The 1986 Quincy bombing and this bombing,  
15 ladies and gentlemen. And they are ten miles apart, within  
16 ten miles apart.

17 Finally you recall the circumstantial similarities,  
18 Mr. Waskom talking about how this was meaningful to him.

19 Mr. Kline wouldn't tell you that, no. He told you, I  
20 only look at the forensic stuff, I don't pay any attention to  
21 the circumstances surrounding the bombings, even though he's  
22 the fellow that told you he's a terrorist bombing expert,  
23 which this was not. Clear. And that he did in fact rely on  
24 the phone calls and alerts that he got from the terrorist  
25 groups, after the fact. Each one of which wanted to have

1 their signature in their explosives devices.

2 Pay particular attention, ladies and gentlemen, to  
3 these two things which Mr. Waskom pointed out to you, one was  
4 that the vehicle, the target vehicle was owned and operated by  
5 somebody other than the maker, he distanced himself from the  
6 target, he also distanced himself from the point of purchase.  
7 Somebody else went in.

8 THE COURT: Can you put it over there, please?

9 MR. LIBBY: Now just as many features distinctive  
10 touches common to this 1986 bombing and the 1991 device and  
11 bombing inform you that they came from a common source? The  
12 string of relationships which this defendant has had with  
13 younger males gives you insight into his later lethal  
14 relationship with Shay, Jr.

15 You recall the testimony of Mr. Michael Coady. He's  
16 now in is his mid-Twenties, he's a prelaw student at Suffolk  
17 University. He had a relationship with Mr. Trenkler back in  
18 the early Eighties, he was fifteen at the time, he was a high  
19 school student. He told you about trips to California, trips  
20 to Florida, which the defendant purchased for him; how bought  
21 him a \$5,000 car, I believe it was a Thunderbird. And he  
22 parked it two blocks away from his family home. He didn't  
23 want his parents to know anything about this, for a good  
24 reason; how he received gifts of clothes and cash. And he  
25 also told us of outings, many outings to the Blue Hills, to a

1 bonfire one evening in a remote location, where the defendant  
2 had fashioned a remote controlled explosion again, which he  
3 said rang his ears, his ears hurt, it was the loudest thing  
4 he'd ever heard.

5 He also told us of the defendant's interest in the  
6 Tyco Jeep, the remote control toy Jeep, and how on one  
7 occasion, interestingly, he accompanied the defendant to a  
8 remote radio tower, where he went off to work, Trenkler went  
9 off to work, and Mr. Coady stayed in the car. To amuse  
10 himself, he's rummaging through the tool box, he comes up with  
11 a couple of quarter sized magnets, slashed across the top with  
12 a hole in the middle. He remembers this because took two of  
13 them and strung them on his jacket string, played with them.

14 Do you remember Mr. Craig again, Robert Craig, the  
15 former roommate, he told you how when he wasn't working,  
16 Mr. Trenkler would pick up the rent payments.

17 Now, these patterns, ladies and gentlemen, as you've  
18 heard in the testimony, defendant's relationships with these  
19 younger males and his readiness and inclination to cultivate  
20 and maintain these relationships, for example, with Mr. Coady  
21 Mr. Craig, extend, ladies and gentlemen, to his relationship  
22 with Shay, Jr.

23 You recall all the testimony from the witnesses who  
24 put them together, not in June of 1991, not starting in the  
25 summer of 1991, as Mr. Trenkler initially told investigators,

1 but beyond that, earlier, much earlier than that, to 1988,  
2 1989, as Mr. Carrion will tell you, when he saw Mr. Trenkler,  
3 Shay, Jr., together at least a couple of times in the area of  
4 the bus station known as the block, the cruising area.

5 You recall the testimony of Richard Brown, the  
6 balding, heavysset, former ARCOM business partner.

7 He recalls Shay, Jr., he gave him a ride in his car  
8 for 20 minutes or half an hour, he clearly recalls Shay, Jr.  
9 He also recalls visiting Trenkler, Mr. Trenkler, at his above  
10 the shop room at Atell in South Boston on a Friday night. He  
11 sees Shay, Jr., for the first time. He asks the defendant, is  
12 he gay? The defendant says, ask me later, I'll let you know,  
13 comes back Sunday night, Shay, Jr., is still there. He asks,  
14 well, is he gay? And the defendant says, yes, he is.

15 You recall also how he testified about visiting, he's  
16 three or four minutes away in Quincy and he pops in on  
17 Mr. Trenkler, John Cates isn't there. He's on vacation in  
18 London. Now, Mr. Brown couldn't tell you the precise month.  
19 Does it matter? No, he told you that was the time. Mr. Cates  
20 was on vacation in London, and he was surprised to see Shay,  
21 Jr., there again.

22 This was all corroborated, ladies and gentlemen, by  
23 the defendant himself in conversation, later conversation with  
24 Agent Leahy.

25 Now you'll also recall the testimony of a Paul

1 Nutting, the slightly built, well-spoken man in his early  
2 Thirties. He saw Shay, Jr., and the defendant together in the  
3 spring of 1991, coming up to the Blue Hills Reservation, a  
4 parking lot up at the top there.

5 Shay, Jr., gets out -- it's a small whitish car  
6 driven by the defendant. Shay Jr., gets out and begins  
7 talking with people, and Mr. Trenkler starts driving back and  
8 forth.

9 Finally, you recall, the mother, Mrs. Nancy Shay.  
10 She came -- her bias here was clear, ladies and gentlemen, but  
11 she grudgingly acknowledged her former testimony under oath,  
12 where she said that Mr. Trenkler appeared as early as 1988,  
13 back when she lived on Belvoir Road in Milton, and she saw the  
14 defendant pick up her son, a handful, as she put it, a handful  
15 of times.

16 You'll also recall that within a month of the October  
17 '91 explosion she came home in the early morning hours and  
18 saw a five-foot-eight stocky, balding man on the couch, with  
19 Shay, Jr., on the floor.

20 And, lastly, the testimony of the lover and companion  
21 John Cates. He testified that he met Shay, Jr., on his own,  
22 without the defendant present, back in 1988 up at the Blue  
23 Hills. He considered him whacky. He told his roommate to  
24 stay away from Shay, Jr., advice which he did not, as you  
25 know, the defendant did not accept, and follow.

1           You recall that Mr. Cates knew nothing about  
2   Shay, Jr.'s, visit to the basement apartment until after the  
3   bombing, until after the investigation had heated up, until  
4   after the defendant came clearly focused as a suspect.

5           You'll also recall how Mr. Cates told you  
6   Mr. Trenkler had been receiving voice mail tapes from  
7   Shay, Jr. at that number in the weeks before the explosion,  
8   multiple times.

9           Now, with an understanding of the 1986 bombing and  
10   his prior relationships, and most importantly that with Shay,  
11   Jr., you are, ladies and gentlemen, are now in position to  
12   appreciate the defendant's comments to investigators during  
13   this investigation, and his demeanor, how it changed at key  
14   points in the investigation.

15           You recall that in the basement apartment he told  
16   investigators that he first met Shay, Jr., only in June of  
17   '91; that he had never been inside the basement apartment,  
18   that he had only given him a couple of rides.

19           He's chatty, he's cooperative until one of the  
20   investigators says, hey, look, we know you did the  
21   1986 bomb. At that time, he turns red in the face, his jaw is  
22   clinched. He asks ultimately, am I under arrest? The answer  
23   is, no. He regains his exposure after a few moments, and  
24   continues to be chatty and cooperative.

25           He has at all times this front of bravado, coolness.

1 You recall he grabbed some smokes out the door. He stopped  
2 all the investigators to buy some cigarettes, he grabs Agent  
3 Leahy's arm going into ARCOM.

4 That's consistent, ladies and gentlemen, that  
5 demeanor is consistent with the defendant's drawing a  
6 schematic at Mr. D'Ambrosio's request, of the wiring of the  
7 1986 device, and later being asked to draw the wiring of a  
8 remote control device, being told only that it was remote  
9 control, and that it used dynamite.

10 And what did he draw? He drew two sticks of dynamite  
11 and two blasting caps, dual priming.

12 You recall some days later, on the 31st of January  
13 during the execution of the search warrant, Agent Leahy is in  
14 the driveway of Whitelawn, in front of the garage. The  
15 defendant appears in his car. Doesn't have to be there.  
16 He won't leave. Again, he's chatty, he's cooperative. Agent  
17 Leahy engages him in conversation. He says, okay, Shay, Jr.,  
18 in fact was in my apartment, but only once and then only to  
19 watch television.

20 He then boldly states to Agent Leahy, look, I know  
21 you found nothing on the sniffer, sniffer being that fancy  
22 instrument to measure presence of dynamite. Why would he say  
23 that to Agent Leahy, ladies and gentlemen?

24 You recall also by this time that the investigators  
25 had learned that the diagram which they left at ARCOM had been

1 shredded by the defendant. You recall Richard Brown telling  
2 you about that.

3 So Agent Leahy, asks him, look, we don't have that  
4 diagram, would you mind doing it again? He becomes flustered,  
5 he absolutely refuses. He regains is composure, again, after  
6 a few minutes to the point where he asks to use the portable  
7 phone of the federal agent who's executing a search warrant on  
8 his garage.

9 A few days later, ATF has prepared some documents  
10 which were taken in the search from ARCOM. They're ready for  
11 pick up. Who shows up but the defendant himself, alone.  
12 Again, he won't leave. He's there for two-and-a-half hours,  
13 he's chatty, he's asking questions, he's inquisitive, he wants  
14 to know where the investigation is going. Ultimately, Agent  
15 Leahy had to show him the door.

16 During the visit, however, you recall how Agent Leahy  
17 gave him his, what Agent Leahy terms his standard, come on, we  
18 know you did it kind of speech. He said, look, you confessed  
19 to the '86 bombing, come on in and talk about it with us, and  
20 how the defendant said, I'm not going to make the -- and then  
21 stopped, paused. After he regained his composure and the  
22 visit continued, the defendant learned nothing, absolutely  
23 valueless visit, notwithstanding his repeated questions to the  
24 agents.

25 As Agent Leahy is showing the defendant the door, he

1 stands in the doorway, ladies and gentlemen, and in an  
2 arrogant tone, says, if we did it and only we know about it,  
3 how will you ever find out if neither one of us talks?

4 Well, members of the jury, the answer to  
5 Mr. Trenkler's question to Agent Leahy can be found right  
6 here, Radio Shack receipt. A truly astonishing piece of  
7 police work, ladies and gentlemen. Didn't pop out of the sky,  
8 this was the result of tedious, tedious, meticulous search of  
9 files. And it confirms and ties in much of the evidence  
10 already known to you.

11 Let's take a look at what it tells us. First, the  
12 location. 197 Mass. Ave., across the Street from the  
13 Christian Science Church where the defendant's project is  
14 ongoing.

15 The components, the toggle switch, the model, 275602,  
16 which Cynthia Wallace tells you was found in the debris, the  
17 very model. The test lamp consistent with testing the  
18 circuitry, ladies and gentlemen, as the defendant did on the  
19 1986 device. Name, S A H Y, just transpose the two letters,  
20 you've got Shay. The telephone number, 3780. Here's the  
21 father's business card. Again, transpose those two digits and  
22 what do you have?

23 The time and date, it's 2:36 in the afternoon, it's  
24 the 18th of October. Ten days before the blast, more than  
25 enough time to make this device.

1           And recall Mr. Carrion's testimony about the violent  
2 outbursts from Shay, Jr. That's this day. Hours later, Shay,  
3 Jr., appears at Carrion's door.

4           D R A up in the corner, the clerk's initials. Dwayne  
5 Armbrister. He came before you. You recall he's a fairly  
6 tall black fellow. He recalls this sale. He recalls that the  
7 store was relatively quiet that day; that a tall six-foot-five  
8 customer came in, he was fidgety, he was walking around  
9 picking out items from the list. And he had seen this fellow  
10 before, he had seen this fellow two or three times before. He  
11 had also seen this individual, several times, as you recall.

12           Now, finally, ladies and gentlemen, if there remains  
13 any question at all about what took place here, and this  
14 transaction represented by the Radio Shack receipt, let's hear  
15 what Mr. Trenkler's co-defendant himself has to say. It takes  
16 about a minute.

17           (Videotape being played to the jury.)

18           MR. LIBBY: And what did this defendant, ladies and  
19 gentlemen, have to say about all of this, the purchase of  
20 these components from that store on that date, so close to his  
21 place of work? He called it regrettable.

22           Do you recall the testimony of David Lindholm who  
23 shared the orientation unit with the defendant down at the  
24 Plymouth House of Correction during the weekend of  
25 Mr. Trenkler's first incarceration?

1           Do you recall the scene Mr. Lindholm, the light hair,  
2 slightly build fellow, the marijuana smuggler, the lights were  
3 on 24 hours a day, there was an unbearable din all the time,  
4 the place is packed with people that neither Lindholm or  
5 Trenkler have anything to do with. They find each other, they  
6 learned that they've got some incredible coincidences between  
7 them; that he both grew up in Milton. They had Milton and  
8 Thayer Academy in common. Mr. Trenkler attended places,  
9 Mr. Lindholm's father went there. In fact they lived on  
10 Whitelawn Avenue together for a brief time. They spoke away  
11 from the others with lowered voices.

12           And during this period of great tension for  
13 defendant, Mr. Trenkler called upon Mr. Lindholm for his  
14 opinion and advice with respect to federal court criminal  
15 trials. After all, Mr. Lindholm had been there, he had had a  
16 full blown jury trial of his own in his marijuana smuggling.  
17 He told him about the importance of picking counsel and things  
18 of that nature, assisting in his own defense.

19           The defendant, at that time, ladies and gentlemen,  
20 very vulnerable, as I'm sure you can understand, he was like a  
21 moth to the flame, repeatedly approaching Mr. Linholm and  
22 commenting, including on other things, of his great dislike  
23 for Mr. Kelly, if you'll remember.

24           Now recall that that contact began on a Thursday  
25 night, by midday, Sunday the 20th, Mr. Trenkler concluded that

1 he simply could not contain his innermost thoughts. He craved  
2 reassurance from one who had been there before. And, finally,  
3 as Mr. Lindholm came before you under oath and testified, this  
4 defendant admitted his own involvement in the '91 bombing.

5 You recall that he told Mr. Lindholm, well, even if I  
6 did build the bomb, I did not place it on the car. And he  
7 paused for a moment and said, so I built the bomb. I built  
8 the bomb. I don't deserve to die or spend the rest of my life  
9 in prison for building this device.

10 Later, during the same conversation, Mr. Lindholm  
11 testifies again before you, that the defendant stated that the  
12 two bomb squad officers were foolish and negligent for not  
13 wearing body armor at the time that they were examining this  
14 device and, in essence, that it served them right for what had  
15 happened to them. It wasn't his fault. It wasn't his fault.

16 Now a few comments about the charges, a final remark  
17 or two, ladies and gentlemen, and then I will sit down. The  
18 Court will explain in detail for you the counts of the  
19 indictment. Very briefly, it's in three counts, Counts 2 and  
20 3 are the so-called substantive counts.

21 And let me just make a comment or two about federal  
22 jurisdiction for each of the two counts.

23 Count 2 has to do with receipt of explosives in  
24 interstate commerce, that's the federal hook here, interstate  
25 commerce.

1           What that deals with is this: The explosive device,  
2 as the statute defines it, are these blasting caps. What do  
3 we know about the blasting caps? Manufactured in Austria.

4           You remember Mr. Steven Adams came down from Austin  
5 Powder of New Hampshire, told you, manufactured in Austria,  
6 shipped to Ohio, assembled. And then where do these show up?  
7 One of them is sticking out the side of 35 Eastbourne. You  
8 remember that photograph Mr. Boeh pointed to. So clearly,  
9 interstate here.

10           Count 3, attempted destruction of property in an  
11 activity effecting interstate commerce. That is the auto body  
12 business. Shay, Sr., told you how he used the  
13 '86 Buick as a loaner to others who were free to go out of  
14 state; used the car to pick up products which were  
15 manufactured from out of state and brought into Massachusetts,  
16 and so forth.

17           So the focus in Count 2 it is on the blasting cap,  
18 Count 3 is on the car.

19           The conspiracy count is Count 1, ladies and  
20 gentlemen. And basically, as the Court will tell you, the  
21 gist of conspiracy is unlawful agreement, with an overt act.  
22 The overt acts which are pleaded to the indictment are a  
23 number, a couple of which are affixing the device and the  
24 purchase of the explosive materials.

25           Now, Congress recognizes greater potential for crime

1 when two or more people are involved in it, so they've  
2 outlawed conspiracy. And when you deliberate this count,  
3 ladies and gentlemen, in the jury room, please bear in mind  
4 the following: Does a toggle switch in the hands of this man  
5 present any potential of any harm to anyone under any  
6 circumstances? Absolutely not.

7 You heard the testimony of his parents. He had no  
8 special skills, no engineering skills.

9 You heard Mr. Lindholm, conversation with the  
10 defendant, he couldn't put the batteries in the flashlight.  
11 And the defendant agreed.

12 So do you believe for moment that this man purchased  
13 this toggle switch alone and for himself? Not for a moment,  
14 ladies and gentlemen.

15 Because this toggle switch, purchased by Shay, Jr.,  
16 at the direction of that man, ladies and gentlemen, results  
17 unquestionably in this case, in this. This is that toggle  
18 switch after the explosion which took Officer Hurley's life  
19 and maimed Officer Foley. That, ladies and gentlemen, is the  
20 essence of conspiracy.

21 Two final points. The job before you is a very  
22 serious one, no question about it. No one envies your job.  
23 But no group, no cross-section of the community, could better  
24 perform this task, you having sat through the four weeks of  
25 evidence in this trial. You bring to this court the wealth of

1 your life's experience, your common sense.

2 Ladies and gentlemen, as you go through the door, you  
3 don't check those things at the door, you call on them to  
4 resolve matters, to make determinations of fact, which is your  
5 job and your job alone.

6 And shortly the Court will release you to deliberate  
7 on your verdict. Now, verdict is a Latin term which means to  
8 speak the truth.

9 And I will leave you with this: From all the  
10 evidence that you've so attentively listened to over the past  
11 few weeks, there are two fundamental truths in this case. One  
12 is that two families have suffered grievous losses, and the  
13 City of Boston lost the valuable, invaluable services of two  
14 highly skilled bomb technicians.

15 The second is there can be no fault associated with  
16 those two dedicated, brave men.

17 The criminal responsibility, however, lies with that  
18 man, the defendant in this case.

19 The United States respectfully asks that you return a  
20 verdict of guilty on each of the three counts in the  
21 indictment.

22 And I thank you.

23 THE COURT: Members of the jury, we will change the  
24 order schedule for recesses, and take a brief recess now.  
25 When we come back, we will hear from the defense, and then

1 after the government's rebuttal. We'll take the longer coffee  
2 break recess before I charge you.

3 [Whereupon, the jury was excused.]

4 THE COURT: Please be seated. I need to talk to the  
5 lawyers for a moment before we take the recess.

6 Let me just tell you how I propose to deal with the  
7 1986 bomb.

8 I will tell the jury that there was evidence that in  
9 1986 the defendant built another explosive device and there  
10 was evidence concerning the circumstance surrounding its  
11 construction and placement.

12 I will tell the jury that they may use this evidence  
13 for only a limited purpose. If the jury believes that the  
14 defendant built the device in 1986, they may consider that  
15 evidence in determining his knowledge of electronics, remote  
16 control, and explosives devices of this type.

17 If the jury believes the evidence as to the  
18 circumstances under which the device was built and its  
19 purpose, then they may consider that evidence in deciding the  
20 defendant's intent in 1991.

21 If the jury believes the signature evidence, that is,  
22 that the 1986 and 1991 devices were singular unique, then they  
23 may use that evidence in deciding the identity of the builder  
24 of the 1991 device.

25 I will tell them that if they believe, if they

1 determine beyond a reasonable doubt, that the two bombings  
2 were sufficiently unusual and distinctive so as to constitute  
3 the handiwork of one and only one person, and I am essentially  
4 quoting your request, and so on, then they may consider it to  
5 be the defendant's handiwork.

6 I will tell them also that it is up to the jury to  
7 decide what weight, if any, they give this evidence. And I  
8 will also tell them that they may not use it to decide that  
9 the defendant is a bad person and because he is a bad person,  
10 he therefore built the 1991 device.

11 That, in substance, is what I will tell them on this  
12 issue. To the extent you disagree, I am sure you will let me  
13 know later on.

14 MR. LOPEZ: Your Honor, if I can just comment on one  
15 additional area?

16 If you could merely instruct them that they shall not  
17 substitute whatever facts they find with respect to 1986 for  
18 the facts of 1991.

19 THE COURT: I don't know what you mean by that.

20 MR. LOPEZ: Strike it.

21 THE COURT: We'll take a brief recess, shorter than  
22 the usual one, five minutes.

23 [Recess.]

24 [Whereupon, the jury entered the courtroom.]

25 THE COURT: Please be seated.



1 Mr. Segal, you may proceed.

2 MR. SEGAL: Thank you, your Honor.

3 Closing Argument by Mr. Segal

4 Denny Kline: I would submit to you that in almost  
5 every case that I have investigated, whether it be a terrorist  
6 group or an individual bombing, when we have reconstructed the  
7 bomb, whether it be an attempted bombing or an actual bombing,  
8 and we have identified in the rest of the subject, and  
9 conducted searches in connection with that bombing  
10 investigation, in every case that I have personally been  
11 involved in, physical evidence was collected and identified  
12 and helped us to establish that that individual was in fact  
13 the bomb maker of those bombings.

14 Mr. Libby: Mr. Kline, I've asked you to make some  
15 assumptions.

16 Mr. Kline, assuming my assumption is you should have  
17 found something, my assumption is you should have found  
18 something.

19 Al Trenkler is an innocent man, ladies and  
20 gentlemen. I said that in the opening a month ago, and I  
21 submit to you nothing in this last month has changed that.

22 There's no physical evidence, ladies and gentlemen,  
23 in this case that connects him in any way to this horrible  
24 crime.

25 This is a case, as I said in the opening, about guilt

1 by association. He's gay. He knows Tom Shay, Jr. His name  
2 was in Shay's address book. He was involved in the '86  
3 incident. And he happened to be working on a legitimate  
4 project across the Street from the Radio Shack on Mass. Ave.

5 As I said in the opening, physical evidence doesn't  
6 lie. You will have with you in the jury room, Exhibits 26 to  
7 64. Those are just some of the evidence. They are all here,  
8 taken from the six or seven searches of Mr. Trenkler's  
9 apartment, Whitelawn Ave., ARCOM.

10 Ladies and gentlemen, it is uncontradicted not one of  
11 those pieces of evidence matched the debris in '91.

12 I want to spend some time in this closing talking  
13 with you about the attempts by the government to fill in the  
14 huge gap caused by the lack of physical evidence in this case.

15 Let me deal with four or five attempts, the so-called  
16 1991 diagram, Agent Leahy's interviews, Mr. Lindholm,  
17 Mr. Waskom's attempt to make a signature identification  
18 comparing '86 and '91 and the EXIS computer.

19 Let's start with the so-called 1991 diagram. I would  
20 submit to you, ladies and gentlemen of this jury, that that's  
21 sort of like the 13th stroke on those grandfather clocks, it  
22 casts some doubt on the other 12 before it. Why do I say  
23 that?

24 November 5, Mr. Trenkler's a prime suspect. They've  
25 got the '86 Quincy report. They've got Shay's address book,

1 showing his name in it. They know they are both gay.

2 We have two experienced ATF agents, 34 years  
3 collective experience, interviewing Mr. Trenkler that night at  
4 ARCOM. He's fully cooperative. He takes them over there.  
5 They are going to ask you to believe he drew a so-called 1991  
6 diagram with two blasting caps. Yet they didn't arrest him  
7 that night. They never even took the piece of paper. They  
8 never asked him to sign it, date it and initial it. And yet  
9 this man was being fully cooperative, according to their own  
10 testimony.

11 Fifty pages of reports were written by ATF agents.  
12 You heard Agent D'Ambrosio's testimony. Between November 7th  
13 and January 17th, 1992, not one report even mentioned the  
14 alleged 1991 diagram.

15 Agent Leahy testified, significant investigation,  
16 important event we always write a report contemporaneously.  
17 Seventy days, is that contemporaneously?

18 Six or eight other officers in the room that night at  
19 ARCOM, those early morning hours. Detective McCarthy from the  
20 Boston PD, he wrote a report about the significant events.  
21 It's undisputed there's is nothing in that report about the  
22 alleged 1991 diagram, because it wasn't drawn, it never  
23 happened.

24 Detective O'Malley, Supervisor Palaza, plenty of  
25 people in that room.

1           Agent Leahy testified, ladies and gentlemen, that he  
2 sat at the same desk with the diagram, the alleged diagram,  
3 and he made out a receipt for 15 items, that they were taking  
4 from Mr. Trenkler, wire cutters, glue sticks, and yet he  
5 didn't take that alleged diagram, or he didn't even take an  
6 imprint of it, the page underneath it.

7           He didn't take it, I submit, ladies and gentlemen,  
8 even though he took these wire cutters and 14 other things  
9 like glue sticks, because it was ancient history, it wasn't  
10 drawn. All that was drawn by Mr. Trenkler was the '86  
11 diagram.

12           The next day, they would have you believe they  
13 realized they had made a mistake. What did they do? They  
14 didn't go out and get a search warrant. They didn't call  
15 Mr. Trenkler. They didn't go over to ARCOM. They didn't do  
16 anything, because it didn't happen.

17           November 20th, Agent D'Ambrosio calls Mr. Brown.  
18 Mr. Brown says, Mr. Trenkler didn't seem concerned about  
19 having drawn a diagram. No reason to be concerned, because  
20 all he drew was the '86 diagram.

21           You remember, ladies and gentlemen, the government  
22 didn't put this exhibit into evidence. We waited and we asked  
23 them to bring it up. We put it into evidence. This is what  
24 two agents say in May of 1993: They sat down and re-drew in  
25 their best collective judgment, and they say it's a wire

1 schematic drawn by Mr. Trenkler of 1991.

2 I submit it's a septic system, it never happened. He  
3 never drew the 1991 diagram.

4 They would have arrested him. They would have taken  
5 that piece of paper. But that paper was ancient history. All  
6 it contained was 1986. And that's why they never took it that  
7 particular night.

8 Let's look at other attempts to fill in the gaps of  
9 physical evidence.

10 Agent Leahy's interviews. January 31, the search at  
11 Whitelawn Avenue. Mr. Libby has told you, Agent Leahy said,  
12 Al Trenkler was fully cooperative, he signed the consent form  
13 to search the car, he talked with Agent Leahy. Agent Leahy  
14 says, I felt a layperson would not know what shunts and  
15 blasting caps are.

16 Well, the evidence is clear, ladies and gentlemen,  
17 Mr. Trenkler is not a, quote, ordinary layperson. He's an  
18 electronics engineer who works with shunts, whose part of his  
19 business was selling two-way radios and putting up microwave  
20 towers. The evidence is clear. We had Mr. Waskom testify.  
21 Agent Leahy. Radio transmission waves from two-way radios are  
22 dangerous near blasting sites. They can cause a blast to go  
23 off. It's not unusual, Mr. Trenkler, in that business, the  
24 two-way radio business with microwaves, would know things  
25 about blasting caps and shunts. Particularly somebody who

1 built microwave towers that you have to go into the ground.

2 That's not significant.

3 Let's go to February 4th. Now, let's put  
4 February 4th into context. This is two weeks after Agent  
5 Leahy finally writes the report about the alleged diagram that  
6 wasn't drawn and didn't exist. It's several days after  
7 there's an extensive search of Mr. Trenkler's home, his  
8 apartment, they had the sniffer there, they didn't produce any  
9 evidence, they have no physical evidence in this case.

10 There's intense pressure to solve this case to secure  
11 an arrest. One officer has been killed and one has been  
12 tragically maimed.

13 On February 3rd, Mr. Trenkler, who is not an  
14 unintelligent person, I think the evidence is clear on that,  
15 calls up and says, I'd like to come over and get my records  
16 that you took the other day, I need them to operate the  
17 projects I'm working on at MIT, at the Christian Science  
18 Church.

19 They are on notice at ATF that's he's going to come  
20 in the next day. They have plenty of opportunity. This isn't  
21 out on the Street now. They can videotape him, they can put  
22 in a hidden camera, they can wear a wire, they can tape record  
23 those conversations, because Mr. Trenkler was there for two  
24 and a half hours, ladies and gentlemen.

25 Being cooperative to the point, as Agent Leahy said,

1 I had to show him the door. A guilty person, have to show him  
2 the door?

3 But let's go to the those conversations that  
4 Mr. Libby dwells on. I submit to you they didn't quite happen  
5 that way. And the reason was obvious. They had to fill in  
6 the gap.

7 And I submit to you, ladies and gentlemen, they don't  
8 show a great consciousness of guilt, what the conversations  
9 show on that day are consciousness of innocence, the ones I'm  
10 referring to.

11 You heard my questioning of Agent Leahy, this is  
12 February 4th, I said to him, didn't Mr. Trenkler offer to wear  
13 a wire to talk to Mr. Shay for you? And he said, yes, in  
14 substance, that's right.

15 Well, think about that, ladies and gentlemen. An  
16 innocent man or a guilty man? Somebody who is guilty going in  
17 offering to wear a wire, I'll put on a wire, I'll go in and  
18 talk to Tom Shay for you, I know him. He goes in and talks to  
19 Tom Shay, Shay says, well, you and I built this device. It is  
20 all there on the tape recorder, it's all been picked up.  
21 What's the risk of that if you are innocent?

22 And if you are guilty, I submit to you, it shows a  
23 consciousness of innocence, offering to wear that wire,  
24 offering to talk to Mr. Shay for the government.

25 Let's also look at the other attempt to fill in the

1 gap of no physical evidence. Enter Mr. Lindholm. I submit to  
2 you, ladies and gentlemen, his testimony is inherently  
3 unreliable and not worthy of belief.

4 Why do I say that?

5 Twenty years smuggling drugs, twenty years defrauding  
6 the IRS, no talks, returns. But it gets better. He admitted  
7 very candidly, ten times he gave lending institutions phony  
8 tax returns, returns he had never filed, so he could secure a  
9 bank loan secured by phony documents.

10 And why did he do it? To complete the package.

11 Let's look at the package, because in August 1991, he  
12 was sentenced to 97 months in jail. He went down to the jail  
13 at Big Spring, Texas. He had a court appointed lawyer for his  
14 appeal. That means he didn't have to pay for the lawyer.

15 Now let's look at the very interesting sequence with  
16 Mr. Lindholm in 1992, over a year after he's been sentenced,  
17 and a year becomes very significant.

18 December 1992, December 15th, he's no longer in jail  
19 in Big Spring, Texas, he's up in Northampton, Massachusetts.  
20 And what does he do, he drops his appeal with his court  
21 appointed lawyer, and now let's see what happens.

22 December 17th, he's here in the U.S. Attorney's  
23 Office for a debriefing on, quote, old drug activities.  
24 Mr. Lindholm is a very intelligent man. He told you, and he  
25 knew the only way to get his sentence reduced, after you serve

1 more than one year of it, is to provide new information. And  
2 if there's any doubt about that, it's your recollection that  
3 governs, ladies and gentlemen, but let me read you my question  
4 to Mr. Lindholm.

5 Question: You understood that after one year goes  
6 with by in that sentence, the only way your sentence could be  
7 reduced is if you supplied new information to the government;  
8 is that correct?

9 Mr. Lindholm: Yes.

10 Now, let's see what happens, with Mr. Lindholm on  
11 December 17th.

12 Lo and behold, where does he end up, in the lockup  
13 here at the Federal Courthouse. Who is he with? Of all  
14 people, Thomas Shay, Jr.

15 Mr. Lindholm would have you believe he never spoke to  
16 Mr. Shay. But yet he tells us he told Mr. Trenkler Shay  
17 didn't have the capacity to put batteries in a flashlight.  
18 He's either psychic or he used the EXIS computer, ladies and  
19 gentlemen. But let's go to the rest of the events of December  
20 17th and that weekend.

21 He doesn't end up back in Northampton, he's now down  
22 in Plymouth. But he's a three-day wonder, he's gone by  
23 Monday. But in the meantime, let's see what happens.

24 He tells us about bonding. About how he read one  
25 newspaper article that told about where Mr. Trenkler lived in

1 Milton. He says he didn't read the massive publicity over  
2 that week about this case and Mr. Trenkler being arrested.  
3 Why? Maybe there are too many details in those stories that  
4 fit the situation. He didn't want to be confused by that,  
5 might ruin his story. Because let's hear the story.

6 See C4 explosive, failing to wear protective gear.

7 Does it sound familiar? It should. Because that's  
8 the story Shay, Jr., told Mr. Plant. Mr. Lindholm, I submit,  
9 is no fool. He realized somebody like Shay's probably talking  
10 to the whole world, Plant and four inmates who were up there,  
11 too. That doesn't help him provide new information. That's  
12 old stuff. He has to come up with new information to complete  
13 the package. So he attributes that statement to Mr. Trenkler.

14 Contrast Mr. Lindholm with Mr. Plant. There I submit  
15 to you, is a person who was truly rehabilitated, short  
16 sentence, genuine person, believable person.

17 Ask yourself about Mr. Lindholm, because he told  
18 us he was rehabilitated in December 1992 having serve about 16  
19 months. He only had about 83 to go, but he was  
20 rehabilitated.

21 I suggest to you, ladies and gentlemen, Mr. Lindholm  
22 in December 1992, conceived of a way to sort of nudge or help  
23 that rehabilitation along. To come up with a story from  
24 whatever source, whether it was Shay, Jr., the newspapers,  
25 inmates or whatever, to provide, quote, new information in the

1 hope of reducing his sentence. He's told he's got no deal  
2 with the government.

3 Imagine if you're Mr. Kelly, though, sitting at your  
4 office one day soon, you get a phone call, this is  
5 Mr. Lindholm, do you remember me? I'm the fellow that was  
6 rehabilitated after about a year, I provided some new  
7 information, I want you now to reduce that sentence.

8 Ask yourselves, ladies and gentlemen, how believable  
9 this man is? There for three days, my client was arrested  
10 December 16th. Al Trenkler's put in jail. It's undisputed he  
11 wasn't released until he was permitted to go home in August,  
12 eight months later. They don't produce anybody else from that  
13 jail, just this one three-day wonder, who's instantly been  
14 rehabilitated.

15 I submit to you, Mr. Lindholm has spent 20 years  
16 defrauding drug authorities, 20 years defrauding the IRS, and  
17 spent ten times defrauding banks, and that he's here now  
18 attempting to defraud you, your intelligence, and your common  
19 sense. Don't permit it.

20 Let's talk about the lack of physical evidence and  
21 the government's expert, Thomas Waskom. Retired Sergeant  
22 specialized in rendering safe explosives, three years with  
23 ATF. He testified very honestly that he never has testified  
24 on the key issue in this case, signature, identification  
25 between two devices.

1           He said, I was involved in one case where signature  
2           was an issue, though. I wasn't formally requested to make an  
3           opinion, but I was involved. The Judge Vance bombing, five  
4           pipe bombs, '72, and then four in 1989, I was in the military  
5           then, but I came in and helped reconstruct the device in '92.

6           You remember him testifying. Five pipe bombs, not  
7           just two here, as here, a typewritten extortion note in each  
8           bomb an anti open switch in each one and the same initiators,  
9           very distinctive unique features, singular unique, that's what  
10          a signature is.

11          Mr. Waskom spent painstaking detail reconstructing  
12          the '91 device, ladies and gentlemen.

13          You didn't see him build the '86 device. Ask  
14          yourselves why. Because these are two entirely different  
15          devices.

16          Let me spend a minute on his chart. Forensic  
17          similarities, wires, twisted, soldered and taped.  
18          Mr. Kline, that's not uncommon. That's fairly usual.

19          Duct tape. That's not unusual. Very common.

20          Undercarriage, devices affixed to the undercarriage.  
21          Mr. Kline, that's the normal place you put a device.

22          Think now about the government's expert,  
23          Dr. Shapley, a very distinguished English gentleman. Recall  
24          his testimony now, because it's very important on the next  
25          item, round magnets which Mr. Waskom placed such great

1 significance on.

2 Dr. Shapley testified the 1991 bomb maker first used  
3 button magnets. Those couldn't hold the device, from the  
4 government's own expert. He then used round magnets as an  
5 afterthought. This highly distinctive thing that Mr. Waskom  
6 pointed to. '86 is one large round magnet. Mr. Waskom, the  
7 bomb maker repeats himself.

8 I submit to you, ladies and gentlemen, if Al Trenkler  
9 made the 1991 device, he would have used round magnets first.  
10 He wouldn't have had to experiment.

11 I submit to you, Dr. Shapley's own testimony shows Al  
12 Trenkler didn't make the '91 device and round magnets are very  
13 common.

14 Toggle switch used in each firing system. Another  
15 item he relied on. You heard the testimony from Mr. Kline,  
16 the toggle switches were different types, one's a double throw  
17 microswitch in '86, the '91 one was a single throw from the  
18 Radio Shack.

19 More importantly, a different purpose. In '86 it was  
20 a safety to arm the firing system, in '91 was it was a trigger  
21 to fire the device, activated by remote control.

22 Small lamps were used to test the circuitry. Another  
23 forensic similarity according to Mr. Waskom.

24 I submit to you, ladies and gentlemen, that is pure  
25 speculation. There's no evidence in this case, and I

1 challenge Mr. Kelly, who will have the last word here because  
2 the government has the burden of proof, to come up and show  
3 you what evidence there is that there was a small lamp found  
4 in the debris of 1991. There wasn't.

5 It's a huge leap, I submit to you, from here to  
6 Cambridge, to say because a small lamp was purchased on  
7 October 18th, it somehow was used to test the system. There  
8 is no evidence of that.

9 Device built with remote control. Mr. Kline, that's  
10 not uncommon.

11 Now, Mr. Waskom relies on circumstantial  
12 similarities. Mr. Kline says, no, no, I rely strictly on  
13 forensic.

14 But let's look at a couple of circumstantial  
15 similarities that Mr. Waskom relies on.

16 Each device was the product of a conspiracy. Let's  
17 look at '86. Just remember, we don't have the debris, we  
18 don't even have photos of '86. It's clear that that device  
19 went off on September 1st, the debris, if it was the debris,  
20 didn't even get to the lab until October 17. The person who  
21 brought it there has passed away, Mr. Voight.

22 Any problems making a signature? Oh, no.

23 Mr. Waskom, I have a report here, that's good enough  
24 for me. I can compare a report with the debris in '91.

25 Mr. Kline, the best comparison is when you have two unexploded

1 devices. I think it's very difficult to make a signature when  
2 you don't even have the debris on one device, you haven't even  
3 seen it.

4 Government in its opening, Mr. Kelly said there was  
5 damage to the vehicle in '86. You look at those photos,  
6 please, ladies and gentlemen, remember Officer Turowska's  
7 report, there was no damage to that vehicle.

8 There was testimony from Mr. Craig about '86. Donna  
9 Shea intimidated Al Trenkler to build this device. Donna Shea  
10 or a friend of hers supplied the M21. This isn't something  
11 Mr. Trenkler went around and picked up. It was supplied to  
12 him.

13 Contrast that with Mr. Waskom's statement that  
14 Mr. Trenkler must have had access to the National Guard.  
15 Somebody gave him that device.

16 I submit to you, ladies and gentlemen, there's no  
17 evidence, and I emphasize the word no evidence, that in 1991  
18 Mr. Shay intimidated or requested or asked Mr. Trenkler to  
19 build anything for him.

20 Mr. Kelly talked in his opening about a motive, and  
21 he said, well, friendship, sexual friendship and financial  
22 motive. I submit there's no evidence of either, there's no  
23 evidence of any motive for Mr. Trenkler to be involved  
24 building this device.

25 One of the other circumstantial similarities is the

1 builder utilized another to purchase, according to Mr. Waskom.

2 I submit to you there's absolutely no evidence that  
3 Mr. Trenkler had Mr. Shay purchase anything on October 18th.

4 THE COURT: Mr. Segal, would you mind putting it  
5 back?

6 MR. SEGAL: Let me spend a minute with you on  
7 computers and the EXIS compute system, if I might. Another  
8 attempt to fill in the huge gap caused by the lack of physical  
9 evidence.

10 When we look at statistics, I think of Mark Twain,  
11 that great philosopher, he talked about statistics, and he  
12 said, there are three things, lies, damn lies and statistics.

13 Why do I say that's applicable here? The purpose of  
14 the EXIS system is to develop investigatory leads, you heard  
15 Mr. Scheid. It wasn't used for that purpose here, ladies and  
16 gentlemen, it was used to reach a conclusion already made by  
17 investigators, that Mr. Trenkler was involved in. Why do I  
18 say that?

19 Well, the 1986 Quincy incident, that wasn't reported  
20 to EXIS in 1986 by Officer Turowski or anybody. The evidence  
21 is clear from Mr. Scheid, that was put into the system after  
22 October 28th, 1991, after the Roslindale bombing, where the  
23 investigators wanted to obtain a specific result, matching  
24 Quincy and Roslindale, not for a lead.

25 Now why do I say this was manipulated?

1           Mr. Libby told us about 14,252, and, to use his  
2 famous phrase, they marry up to two.

3           Look at the second query in this, to get down to  
4 2504.

5           They put in cars and trucks. You have to put in  
6 trucks, otherwise you don't get the Quincy incident. You  
7 don't get a match.

8           But, now, we even get down more, we go from 2504 to  
9 428, they put in under vehicles -- this one is fascinating,  
10 ladies and gentlemen. Mr. Scheid testified, the only report  
11 that he relied on to put information into this system about  
12 '86, was Mr. Hankard's report. You remember that nice  
13 gentleman who testified, the chemist, Exhibit 39. You will  
14 have that report. You'll have all the exhibits. There is no  
15 mention in that report where the device was placed.

16           And I asked Mr. Hankard, is there any mention? No.  
17 There isn't.

18           I submit to you, that Mr. Scheid must have been  
19 psychic, he must have been clairvoyant or he wanted to get a  
20 certain match, so he said, put it under the vehicle, otherwise  
21 we don't get the right match.

22           Now, we're down to 428. And they put in remote  
23 control, ladies and gentlemen, come up with 19. That tries to  
24 show that remote control and the use of remote control is  
25 highly uncommon. But look at the whole system, ladies and

1 gentlemen. Is that 19 out of 14,252? No, that's after you've  
2 had three or four queries. It's out of 428. It's about 5  
3 percent. If you put in remote control up here at 4,252, you  
4 would come up with 700 under the same numbers. Not unusual.  
5 Mr. Kline said that's a normal way you detonate these devices.

6 But they don't do it that way because they want to  
7 get a match and make it look like remote control is so  
8 unique.

9 Now we go down from 19 to 7. We add the famous words  
10 magnets. And we have 7 cases with magnets. You'd think this  
11 was rare. 7 out of 19? That's almost  
12 50 percent. If you queried magnets before you made these  
13 4 queries and brought this thing down, you'd have about 7,000  
14 cases out of 14,252. That's not unusual. Magnets aren't  
15 unusual, Mr. Kline testified.

16 I submit to you the reason Mr. Waskom didn't rely on  
17 the EXIS for his signature analysis is clear, it's not  
18 reliable for this purpose. You don't see EXIS on his chart.

19 Let me talk a little bit about two other incidents  
20 that relate to EXIS.

21 You'll recall Mr. Kline's testimony, I investigated  
22 these two cases, New York and Florida bombings. The Cuban  
23 Ambassador, it's Exhibit 41A in the EXIS materials that you'll  
24 have with you. It's in the system. It's incomplete though.

25 Mr. Kline said, you put his testimony with

1 Mr. Scheid's, there's 21 matches between the New York Cuban  
2 Ambassador's bombing, attempted bombing, and Roslindale.  
3 Twice as many as between Quincy and Roslindale.

4 Hialeah, Florida, I investigated that. That was  
5 another attempted bombing. You recall he said, when you want  
6 to do a signature, the best time is have two nondetonated  
7 bombs. But we had two here, New York and Florida.

8 Hialeah, not even produced by the search in that  
9 great EXIS system. Yet, ladies and gentlemen, when you take  
10 Mr. Kline's testimony with Mr. Scheid's, 17 matches with  
11 Roslindale.

12 You look at Exhibits 41C and G, which are in  
13 evidence, the EXIS for Quincy and Roslindale. The government  
14 tells you about the matches, there are  
15 18 differences between those two incidents, ladies and  
16 gentlemen. That's why I say, lies, damn lies, and statistics  
17 in this case.

18 Let me spend a minute on the Shay family, if I might.

19 Thomas Shay, Sr., heavy gambler, nasty lawsuit, half  
20 a stick thrown in a barrel by Giamarco and Berry. Prime  
21 suspects, Giamarco, Berry, Shay, Sr. He denies it. Three  
22 police officers testified he threw the device against the  
23 house. He claims to have discovered the device Sunday  
24 morning.

25 Mr. Kline tested the batteries, saying they were run

1 out after 22 hours. Now the government brought in an expert,  
2 their battery expert, Mr. Gleason, said that wasn't a valid  
3 test because you run down the batteries when you test every  
4 two hours.

5 The government's theory in the case is that this  
6 device was put on the automobile on Saturday night, 40 hours  
7 before it detonated. Do you honestly think those batteries  
8 lasted 40 hours?

9 His story, Shay, Sr.'s, doesn't add up. It's  
10 untruthful. It shows an incomplete investigation and a rush  
11 to judgment here.

12 Let's talk about Shay, Jr., because I suggest  
13 Mr. Libby in his closing did an excellent job implicating  
14 Shay, Jr., and a terrible job implicating my client.

15 Her Honor told you at the initial part of this case  
16 the evidence against Shay, Jr., in his trial is different than  
17 the evidence against my client, and that's the way it should  
18 be considered.

19 Shay, Jr., told people he made the bomb. He told  
20 people like Mr. Plant, I know how to make a bomb. He was over  
21 there begging Mr. Carrion to tell him about remote controls,  
22 and how to work those. And where did Mr. Carrion send him?  
23 To the Radio Shack. He was over there, as Mr. Libby says,  
24 October 18th, he goes to Carrion's apartment after being at  
25 the Radio Shack.

1           Did he do it on his own? You've seen those diagrams  
2 that are in the press from Paladin Press, readily available.

3           Did he have help? That's a good question. But if he  
4 did, ladies and gentlemen, I submit to you, and this is the  
5 key point, there is no evidence that Al Trenkler helped him in  
6 any way. It's one thing to know another person, it's another  
7 to go around building a bomb for another person.

8           Mr. Kelly talked in his opening about the motive,  
9 sexual friendship and business. I submit to you there was no  
10 motive for Al Trenkler to do this for Thomas Shay.

11           The government's evidence shows Al Trenkler knew Tom  
12 Shay, Jr. before June 1991. I submit to you the evidence is  
13 also clear that as of October 1990, Al Trenkler had a stable  
14 relationship with John Cates.

15           Mr. Kelly said in his opening, we'll show evidence 30  
16 days before, Mr. Shay was with Mr. Trenkler. It's your memory  
17 that governs, but I don't recall that evidence.

18           Look at the address book. There are stars next to  
19 certain names of real good friends. See if Mr. Trenkler has a  
20 star in that book.

21           Nancy Shay, the government's own witness. I swear to  
22 god I never saw Al Trenkler, this person, before this day.  
23 Mr. Libby said, well, you testified differently before. Yes,  
24 but all I saw was photographs.

25           I asked her, did Al Trenkler ever call? You had a

1 party, your son had a party with a number of gay friends, was  
2 he there? I don't -- I never met him. He wasn't there. He  
3 never called.

4 Let me talk a little about the defense case.

5 The defense, we had no burden to put on any  
6 evidence. The government has the burden to prove this case  
7 beyond a reasonable doubt.

8 And that's why you'll hear from Mr. Kelly when I  
9 finish. He and Mr. Libby are excellent lawyers. But just  
10 remember, they have to work with evidence, and there's no  
11 physical evidence here in this case.

12 Denny Kline testified for the defense, leading bomb  
13 expert in this country. Investigated Pan Am Flight 103 that  
14 exploded over Lockerbie, Scotland. Numerous other key  
15 investigations. 20 years with the Federal Bureau of  
16 Investigation. Only the second time he's ever testified for  
17 the defense. Still works for the government. Lectures the  
18 CIA. Works for law enforcement. Was over in Greece in April  
19 testifying for the prosecution in a bomb case.

20 Mr. Waskom's never made a signature comparison before  
21 this case. Never testified. Mr. Kline, I've testified 15  
22 times before on the signature issue.

23 Mr. Libby said, well, he's involved in terrorism,  
24 he's not a specialist in this. I submit to you, a bomb is a  
25 bomb, ladies and gentlemen.

1           Mr. Kline has examined 350 for signature, for  
2 comparison purposes. And he doesn't deal just with  
3 terrorists. He told you, individuals, organized crime,  
4 motorcycle groups. The more bombs you see, the better you are  
5 at comparison.

6           Mr. Kline made this mock-up. You recall this sort of  
7 Rube Goldberg device. He took Mr. Lanergan's and  
8 Mr. Hankard's report. No one's challenged this mock-up. You  
9 didn't see the government make one. It's obvious why, because  
10 it's so different than the 1991 device.

11           Mr. Libby, Mr. Kline, well, you didn't talk to  
12 Mr. Trenkler about it. Mr. Kline said, no, I didn't.  
13 Mr. Segal told me not to.

14           Imagine what the government would have said if  
15 Mr. Kline had talked to Mr. Trenkler before building this. He  
16 would have said, oh, obviously, it's so different, Trenkler  
17 told him to make it differently.

18           Mr. Kline did it the right way, he took the reports,  
19 he relied on forensic reports of Mr. Hankard to build this  
20 device. And I submit to you it's an accurate building and  
21 it's totally different than the 1991 device.

22           Mr. Kline compared the two devices. He testified  
23 extensively. I'm not going to go through each item and cover  
24 them all. I just want to tell you, there are  
25 13 differences that he pointed out, ladies and gentlemen. The

1 main charge, initiator, fusing system, power source, battery  
2 connections' toggle switch, toggle switch's purpose, wires,  
3 wire connections, container, magnet, tape and adhesive.

4 I won't go through the individual details, but you  
5 recall his testimony, 13 differences between these two  
6 devices.

7 He said when he looked at these two devices, when he  
8 rebuilt from the reports, because you didn't have photos, you  
9 didn't have debris in 1986, when he rebuilt this Rube Goldberg  
10 device and compared it with this 1991 reconstruction by  
11 Mr. Waskom, he said, there was no signature. There was an  
12 absence of unique similarities and a preponderance of  
13 differences. There was nothing singularly unique about these  
14 two devices when he compared them.

15 That's key testimony in this case, ladies and  
16 gentlemen. And I ask you to weigh it carefully.

17 We put on some other witnesses. October 17th to the  
18 19th, we put on witnesses to show Mr. Trenkler had a project  
19 putting up the dishes at the Christian Science Church on the  
20 17th and then taking them down on the 19th. You see logs from  
21 the Christian Science.

22 What's the point of all that?

23 Simply to show, you don't see Mr. Shay in any of  
24 those logs. Mr. Trenkler is there working on a project, a  
25 legitimate project.

1           Then October 18th is the day in between. Now, the  
2 government would sort of like suggest to you, well, he was  
3 around the area. He had to be around to give Shay this note.  
4 They asked you to believe he was probably in the vicinity of  
5 the Radio Shack on the 18th, because he, in '86, sent somebody  
6 into the Radio Shack to get a list of parts.

7           There is no evidence, ladies and gentlemen,  
8 Mr. Trenkler was anywhere near the Radio Shack on  
9 October 18th, the day Mr. Shay purchased that toggle switch.

10          And I defy the government to show you one bit of physical  
11 evidence.

12           We had Mr. Rambolli, an accountant, a precise fellow,  
13 I just blew up Exhibit 123, his diary. He said, well, I left  
14 at 2, quarter of 2, 2:15.

15           You'll have this exhibit in the jury room.  
16 Accountants are very precise. When you look at this exhibit,  
17 it shows he leaves at 2:30. And when you look at his bill,  
18 that's consistent. Whether it's is 2:15 or 2:30, 2 clock, it  
19 doesn't matter. Mr. Trenkler was not at the Radio Shack.

20           Nurden Cagdis, the saute chef: I was working all day  
21 at ARCOM with Mr. Trenkler. We went out and cashed a check in  
22 the afternoon.

23           Mr. Kelly said, well, do you remember the  
24 accountant? Yes, I remember some accountant coming there that  
25 day. Physical evidence. Mr. Cagdis's check,

1 Exhibit 133, he cashed it in Quincy at All Town Checking, with  
2 Mr. Trenkler at the end of the day. And it says, and you'll  
3 have it in evidence, N D R A, Nurdan, a hundred eight, David,  
4 David Flaherty, 35, R, Rich Brown, 50, Al Trenkler, 50.

5 No evidence, ladies and gentlemen, putting him  
6 anywhere near the Radio Shack. Any doubt about that?

7 Recall Mr. Armbrister's testimony. He says, Mr. Shay  
8 came in, spent five minutes before he even spoke to him. Then  
9 he said, it was another 15 minutes before he came back to the  
10 counter with a number of items. That was my question.

11 Answer: Right.

12 And how long did it take at the counter? How long  
13 did the transaction take when he came to the counter and  
14 purchased the items?

15 Four minutes.

16 Fifteen, four, and five. When you subtract that from  
17 2:36, it's 2:12, so all this stuff. And maybe I fell into the  
18 morass, too, how long does it take you, Agent D'Ambrosio to  
19 get from ARCOM to Radio Shack. Well, under a good wind, 18  
20 minutes if you take Mass. Ave.

21 Mr. Kennedy: Well, I took the earlier exit, I went  
22 off Southampton, took 27.

23 18, 27, 25, it doesn't matter. There's no  
24 evidence that Mr. Trenkler was near the Radio Shack that day,  
25 gave this note to Shay, or had anything to do with

1 that October 18th purchase, ladies and gentlemen.

2 We put on evidence about October 26th. The  
3 government's theory, one of their theories, well, that's when  
4 the device was affixed. Mr. Cates and Mr. Miller, we were at  
5 a Halloween dinner.

6 I submit to you, ladies and gentlemen, there's no  
7 evidence, and ask the government what evidence is there that  
8 puts Mr. Trenkler in the South End on October 27th? Mr. Shay  
9 said he was double parked down there on a busy street. Or  
10 puts him near Eastbourne Street on October 26th, Saturday  
11 night?

12 We put on evidence about October 28th. Why? Guilt  
13 by association again.

14 Mr. McKernon testifies for the government: I was  
15 walking down the Street on October 26th, I noticed something  
16 unusual, a small car parked in the intersection at Eastbourne  
17 and Beach Street. I made a note of that because it wasn't  
18 during school hours, I thought it was unusual.

19 11:40 in the morning. Mr. Trenkler has a small car.  
20 We put on -- and Mr. McKernon was very straightforward, it  
21 wasn't a white car, it didn't have that distinctive decal that  
22 Mr. Trenkler had on his car, and you'll see photos in  
23 evidence. It wasn't rusty. It didn't have the antenna. It  
24 was a different color.

25 There's no evidence Mr. Trenkler was there on that

1 morning, ladies and gentlemen. I defy the government to give  
2 you one scintilla of evidence. But we put on some people to  
3 show what Mr. Trenkler was doing that day. Not every moment  
4 because how many people can remember what they did last week.

5 Mr. Davidson testified, Mr. Trenkler and Mr. Brown  
6 came down to pick up a tool at 1 p.m. that day. And there's a  
7 check to Mr. Davidson, and there's a receipt that says pickup,  
8 physical evidence. Government would have you believe this man  
9 detonated something and then went down and just picked up a  
10 tool at Weymouth with Mr. Brown. No evidence of that, ladies  
11 and gentlemen.

12 Mr. Davidson is a very believable person. You heard  
13 his testimony, how they were there for about an hour.

14 Mr. Cagdis: Maybe I don't remember the day of the  
15 week, but I remember getting this check. Physical evidence,  
16 October 28. I went to South Boston to a check cashing service  
17 with Al Trenkler. We were working that day. We stopped on  
18 the way to Videocom or one of those places, we were working.

19 That's why we put on that evidence, ladies and  
20 gentlemen, to show it's inconsistent with somebody who is out  
21 trying to detonate a bomb.

22 Woodworking. Mr. Kelly in his opening said, we will  
23 prove Mr. Trenkler had knowledge of woodworking. Mr. Libby  
24 said, he was a patient woodworker. I wrote that phrase down.  
25 Patient woodworker.

1           We put on Brian O'Leary, you'll have the photographs  
2 of the Christian Science project where they took those dishes  
3 up on the roof. All those boxes were made by Brian O'Leary.  
4 You heard his testimony, whenever Al Trenkler needed  
5 carpentry, he did it. There is no evidence that Mr. Trenkler  
6 was a patient woodworker or a woodworker.

7           But the government needs some sort of inference on  
8 that or association, because Mr. Waskom said, this was well  
9 constructed, took a lot of effort by somebody who had real  
10 skill with woodworking. Ask yourselves: What evidence Al  
11 Trenkler had any skill with woodworking?

12           Motive. Mr. Kelly in the opening, failing  
13 businesses. We put on evidence Mr. McNamara, Scott Davis from  
14 the Christian Science Church, Al Trenkler in September and  
15 October was working on a \$38,000 project at the Christian  
16 Science Church. He had other projects with Bill McNamara on  
17 the drawing board. A five meter dish, a satellite link hook  
18 up with Channel 2 between the Christian Science broadcasting,  
19 and a ten meter dish. Those projects had a potential of  
20 \$100,000. Financial motive to get involved with somebody like  
21 Tom Shay?

22           Rich Brown testified, hard-working, we didn't fail  
23 because of Al Trenkler, we failed because of the  
24 investigation.

25           Ed Elviro, Channel 25, testified, ladies and

1 gentlemen, Mr. Trenkler came down to discuss moving a dish.

2 Mr. Libby, you never saw him on the grounds before  
3 October 1991?

4 Oh, yes, he was there for the Boston Catholic  
5 Archdiocese TV station, he'd come down and put up the wires so  
6 that they could broadcast mass.

7 Is that the type of person who would build a bomb for  
8 Tom Shay? Ask yourselves, ladies and gentlemen.

9 Frank Kavalo, Videocom: Al Trenkler was involved in  
10 every major project. We were a satellite communications  
11 company. He was involved in the start-up company, it started  
12 in February '91. He was working hard. Do you honestly think  
13 he'd risk all that to get involved in something like this?

14 Ladies and gentlemen, the government has the burden  
15 of proof. They must prove this beyond a reasonable doubt, not  
16 beyond a reasonable suspicion, a reasonable speculation, a  
17 reasonable association, because I submit that's what this case  
18 is about, guilt by association.

19 He knew Shay, he was gay, he was involved in '86, he  
20 worked near the Radio Shack, he had a small car, he knew this  
21 fellow Coady ten years ago.

22 There's no physical evidence in this case, ladies and  
23 gentlemen. Mr. Kline said it best, every time we investigate  
24 and arrest a bombing suspect, we find physical evidence.  
25 There is none in this case.

1           Consider some of the alleged statements in the light  
2 of the pressure, the intense pressure to solve this case.  
3 October 28th was a horrible day, it was a horrible crime. I  
4 agree with Mr. Libby, it was a grievous loss, it wasn't the  
5 officers' fault. That's not the issue. Two brave officers  
6 were struck down in the line of duty. Please don't, however,  
7 let sympathy or concern for them or their families decide this  
8 case. Decide it on the testimony and exhibits presented.

9           The jury system, ladies and gentlemen, really is a  
10 higher form of democracy. It's what distinguishes this  
11 country from a dictatorship. It's derived from England. And  
12 in fact, if you go to England and go to the Old Bailey  
13 Courthouse in London, which is probably the oldest courthouse  
14 in England, if not the Western World, there is a very simple  
15 plaque that's on the wall at Old Bailey that I'd like to read  
16 to you, the wording of the plaque is simple and it's is to the  
17 point.

18           It says: Near this site, William Penn and William  
19 Meade were tried in 1670 for preaching to an unlawful assembly  
20 in Grace Church Street. This tablet commemorates the courage  
21 and endurance of the jury. Thomas Via, Edward Bushel and ten  
22 others who refused to give a verdict against them, although  
23 they were locked up without food for two nights, and were  
24 fined for their final verdict of not guilty. The case of  
25 these jurymen was reviewed on a writ of habeas corpus. And

1 Chief Justice Vaughn delivered the opinion of the Court, which  
2 established the right of juries to give their verdict according  
3 to their convictions.

4 This case, ladies and gentlemen, isn't U.S. versus  
5 Thomas Shay, it's United States versus Alfred Trenkler.

6 I just want to leave you with one final thought.  
7 There's a saying, in inscription on a building in this country  
8 that's very important to the administration of justice. It's  
9 the Justice Department building in Washington, D.C.

10 As you come into that building, over the archway  
11 there's an inscription and it says, ladies and gentlemen of  
12 the Jury: The United States always wins when justice is done  
13 to its citizens.

14 I respectfully submit, ladies and gentlemen, when you  
15 return a verdict of not guilty in this case, you will be doing  
16 justice.

17 Thank you.

18 THE COURT: Let us stretch for a moment and then we  
19 will hear the rebuttal.

20 **Rebuttal Argument by Mr. Kelly**

21 Counsel, ladies and gentlemen, I now have a brief  
22 opportunity to respond to certain of the points made by  
23 Mr. Segal on behalf of the defense. And my compliments to Mr.  
24 Segal, he has complimented us a couple of times, and I  
25 compliment him, as well, he's a fine lawyer.

1           Let me begin with Mr. Segal's point about the lack of  
2 any physical evidence tying that defendant, Alfred Trenkler,  
3 to the bombing.

4           In 1986, the defendant is careful. He builds the  
5 bomb in a parking lot. He doesn't build that bomb in his  
6 apartment. He doesn't build that bomb at his business. He  
7 doesn't build it at his parents' garage or in the trunk of his  
8 car. But still he goes gets caught.

9           It's now five years later, it's 1991. He's more  
10 clever. He's also building a far more sinister and deadly  
11 device, ladies and gentlemen. He's going to be very careful  
12 this particular time around.

13           He's not going to walk into the Radio Shack store  
14 this time. He's going to let someone else do that for him.  
15 He's not going to have other people around when he constructs  
16 that device. And he certainly is not going to build that bomb  
17 at his apartment or in his business or in his parent's garage  
18 or in his car.

19           And what does the defendant say to Agent Leahy on  
20 this that one occasion, this defendant, this man who works on  
21 radio towers in remote wooded locations, I know you found  
22 nothing with the sniffer. Now why does he say that, ladies  
23 and gentlemen?

24           I submit he says that because he knows that he didn't  
25 build that bomb at any of the locations where the searches

1 were conducted, the apartment, the garage, or the business.

2 And should the lack of any physical links to this  
3 defendant surprise you or slow you down in this case?

4 Absolutely not.

5 Now, Mr. Segal says that with respect to this  
6 diagram, it wasn't drawn, it never happened. Ladies and  
7 gentlemen, if you believe that, you must believe that two  
8 veteran federal agents with better than 15 years experience  
9 apiece, knowingly came before you and perjured themselves.

10 Now, you saw and heard Agent Leahy and Agent  
11 D'Ambrosio testify.

12 I ask you, based on what they said and how they  
13 appeared, whether you believe that that's really what went on  
14 in this courtroom, ladies and gentlemen. Or as Agent  
15 D'Ambrosio told to you, it was a regrettable, honest oversight  
16 on his part.

17 Mr. Segal talks about an alleged alibi for  
18 October 18th, and he went in and showed you this ledger from  
19 this Mr. Rombolli fellow, and for a long time nobody really  
20 knew what all this was all about. Do you remember that?

21 Now, why does he raise this?

22 He raises this because the purchase of that toggle  
23 switch which he admits was inside the bomb, occurred on  
24 October 18th at 2:36 p.m., and Mr. Trenkler wants to you  
25 believe that he wasn't around this store at the time that was

1 bought.

2 Now, ladies and gentlemen, this is what we in the  
3 business called a smoke screen. It's an effort to deflect  
4 your attention away from something that's really important.  
5 And it is for a couple of reasons.

6 One, the government never offered any evidence  
7 to suggest that he was at the store at 2:36 p.m. on  
8 October 18th. I mean, he could well have provided the  
9 defendant Mr. Shay, with this list sometime earlier in the day  
10 or the previous day. He didn't have to be there.

11 But talk about it for a minute. Does their alleged  
12 alibi actually hold any water? I mean, in fact I think their  
13 evidence suggests that he could very well have been at the  
14 presence of the Radio Shack store at the time.

15 What have you learned about it? Mr. Rombolli, the  
16 accountant who's still owed five hundred bucks by the  
17 defendant, tells you that he did meet with the defendant on  
18 October 18th, but the meeting could have ended as early as  
19 1:45. He didn't leave at 2:30. He told you that, contrary to  
20 what Mr. Segal said. He said he tacked on an extra hour  
21 because he showed up the previous day and they didn't show.  
22 Do you remember that?. So he didn't leave at 2:30. He said  
23 left as early as 1:45 or 2 o'clock.

24 And then you heard all this evidence about driving  
25 times and traffic lights and all that kind of good stuff.

1 The bottom line of all that stuff, ladies and gentlemen, it  
2 takes something between 18 and 27 minutes to travel from that  
3 guy's business over to the Radio Shack store on Mass. Ave. So  
4 if you left at 1:45, you'd certainly make it before 2:30. In  
5 fact, if you left at 2 o'clock, you'd still make it before  
6 2:30. So what does all that mean? Absolutely nothing. Does  
7 it provide that defendant with an alibi? It does not.

8 And then he wants to give you an alibi for the  
9 evening of Saturday, October 27th, 1991. And why is that  
10 important? Because nobody knows when this horrible, horrible  
11 dangerous device was stuck on that car.

12 But based on all the evidence, the most reasonable  
13 inference is that it was attached sometime between 6 o'clock  
14 on Saturday night the 26th and probably 6 o'clock the next  
15 morning. So the defendant has to try to account for his  
16 whereabouts during that time frame. So what does he present  
17 to you? Ah, the Dorchester dinner party. How convenient.

18 And what does he want you to rely upon to believe  
19 that he was at the Dorchester dinner party all that night?

20 First, he wants to you rely upon the testimony of  
21 John Cates, his former roommate and lover, who previously  
22 testified that he would lie for the defendant, who for  
23 18 months following the bombing was specifically questioned  
24 about his whereabouts that night, Saturday, October 22nd, and  
25 told everybody that his memory, that he and the defendant had

1 stayed home that night. And who, during Mr. Shay's trial in  
2 July, recalled the alleged Dorchester dinner party for the  
3 first time.

4 And who does he want you to rely upon? This fellow  
5 David Millette who came in and fought with me, if you recall,  
6 Mr. Cates's former lover from Texas, who comes up from Texas  
7 to Massachusetts, and becomes an acquaintance of Mr. Trenkler,  
8 although he can't remember his last name. And then who also  
9 tells you that he coincidentally remembers the alleged  
10 Dorchester dinner party just a few months ago, around the same  
11 time that Mr. Cates happens to testify at the Shay trial.

12 Now, did he recall that when he was specifically  
13 questioned about this matter by investigators months earlier?  
14 He did not.

15 Now it's is up to you to judge a witness's  
16 credibility or believability. But I submit to you, ladies and  
17 gentlemen, this is precisely the kind of testimony that you  
18 should view with a very sceptical eye.

19 Now while we're on subject of credibility, let me  
20 respond do Mr. Segal's comments about David Lindholm and Denny  
21 Kline.

22 When you judge a witness's credibility, ladies and  
23 gentlemen, you look at a number of factors. You look at  
24 whether the witness has a motive to testify falsify. You look  
25 at whether or not that witness brings any bias or prejudice

1 with them into the courtroom. Whether they have an interest  
2 in the outcome of the lawsuit? Whether they've received  
3 anything in exchange for their testimony. You look at their  
4 demeanor on the stand, how they appeared to you while they  
5 were testifying. You look at whether there's corroboration,  
6 support for what they are telling you, from other evidence in  
7 the case.

8 And when you are looking at the testimony of experts,  
9 you also look at their background, their experience, the  
10 specific areas of their expertise. And you look at whether or  
11 not their opinions are logical and whether their opinions are  
12 based on the factual evidence in the case.

13 Now, Mr. Segal would have you believe that on the one  
14 hand, Mr. Lindholm's testimony should be ignored and  
15 completely disregarded. And at the same time, he offers  
16 Mr. Denny Kline as the guru of bomb experts, whom you should  
17 accept entirely simply because at one point in time he worked  
18 for the FBI.

19 Now let me start with Mr. Lindholm. The United  
20 States didn't pick Mr. David Lindholm. It was the defendant  
21 who chose to speak with that gentleman one night in  
22 December 1992 at the Plymouth County House of Correction.

23 And what was Mr. Lindholm's demeanor as he appeared  
24 before you, ladies and gentlemen? Did he look comfortable?  
25 Did he look like he really wanted to be here, that he was

1 anxious to tell his story? This is a guy that goes back to  
2 prison for another six years, remember? You know, testifying  
3 against somebody else and going back to prison carries with it  
4 certain weight. Did he look real comfortable about being  
5 here?

6 Ask yourselves about that. Was there any incentive  
7 for this fellow to falsify anything he told you?

8 The answer is no.

9 You heard him testify. He's received no promises, no  
10 rewards, no inducements for coming forward, and he will not  
11 ask for any in the future.

12 And, finally, as you consider his testimony, ladies  
13 and gentlemen, take note of the fact that there is  
14 corroboration for what he told you from other evidence in the  
15 case.

16 For example, he told you about Mr. Trenkler's  
17 background, how Trenkler told him he went to Milton Academy  
18 and the Park School and Wentworth Institute. Did he know that  
19 of his own volition? No, he did not, he learned it from the  
20 defendant. You heard it from the mother.

21 He told you about Mr. Shay, how he used to hang  
22 around a certain part of the Boston. Did he know that out of  
23 thin air? No, he heard it from the defendant. You heard it  
24 from other witnesses.

25 He told you about what he knew about the 1986 bomb,

1 about what it involved and things like that. Did he just  
2 happen to know, did it just kind of enter his head? No, he  
3 heard it from the defendant.

4 He repeated it to you, and you know from other  
5 evidence in the case that he did it pretty accurately.

6 In short, ladies and gentlemen, you are not being  
7 asked to accept the testimony of this Mr. David Lindholm in a  
8 vacuum. The reliability of Mr. Lindholm's statements to you  
9 may be considered in light of other corroborative evidence in  
10 the case, evidence that strongly suggests that he was  
11 attempting to accurately restate what had been told to him by  
12 that defendant, including the comment, I made the bomb. I  
13 made the bomb, but I don't deserve to die or spend the rest of  
14 my life in prison for that.

15 And now you have Denny Kline, a man who was trained  
16 and acquired his experience at the expense of the United  
17 States taxpayers' while on the government payroll at the FBI  
18 for 20 years, who despite this 20 years of public service, and  
19 contrary to various government regulations, demonstrated a  
20 willingness to disseminate official FBI records while serving  
21 as a private consultant, a man whose experience is not in  
22 homemade bombs, bombs made by the occasional bomber, the  
23 loaner, but rather with terrorist bombings.

24 And notwithstanding Mr. Segal's comment, a bomb is a  
25 bomb is a bomb, you know that's not the case. With terrorist

1 bombings like the Omega 7 group, they mass produce bombs in a  
2 short time frame. They want the authorities to identify their  
3 group with the bomb. They often call or write to take  
4 credit. And of course if they're mass producing bombs and you  
5 happen to find that place with a search, of course you're  
6 going to find physical evidence.

7 Now how about the occasional bomber? He doesn't want  
8 to take credit. He doesn't want to be identified with the  
9 bomb. He certainly doesn't want to get caught. He uses  
10 available materials that happens to be around him at the  
11 time. But notwithstanding his effort to avoid the detection,  
12 he still uses certain distinctive touches in what he selects,  
13 in how he combines those things.

14 My point is, ladies and gentlemen, that Mr. Kline's  
15 experience with this idea of signature is very different from  
16 what we have in this case. And of course the defendant -- I  
17 mean Mr. Kline never spoke to the defendant. Not only did he  
18 never talk to the defendant, he wanted nothing to do with  
19 him. He wouldn't even acknowledge that he was his client.

20 And finally, when you think about Denny Kline, think  
21 about the fact that he has been paid \$200 an hour and nearly  
22 \$15,000 as a private consultant by the defense.

23 And having accepted that money, ladies and gentlemen,  
24 ask yourselves two things, one, does that guy have an interest  
25 in the outcome of this case? And, two, what would you expect

1 him to say?

2 My last point. In his opening statement, Mr. Segal  
3 repeatedly described this case as a case of guilt by  
4 association. He implored you to hold the government to its  
5 burden of proof, and he's repeated that phrase ad nauseam here  
6 today, guilt by association, guilt by association.

7 Now that this is over, ladies and gentlemen, what  
8 associations of the defendant have we learned about?

9 One, the defendant's close association with Thomas  
10 Shay, Jr., which dates, not to June of 1991, but all the way  
11 to the spring of 1982 -- 1989, excuse me.

12 Two, the defendant's association with electronics and  
13 with woodworking. Mr. Segal said no evidence, but of course  
14 you heard Rich Brown, the business partner, come in and say he  
15 worked with wood all the time. His association with  
16 electronics, with woodworking, with soldering, with circuitry  
17 work and with remote control.

18 The defendant's association with his wiring diagram  
19 that the defense would just as soon have evaporate, which  
20 shows the two blasting caps or this very distinctive touch  
21 called a dual priming.

22 The defendant's association with the 1986 bomb, which  
23 he designed, which he constructed, and which he then detonated  
24 as a favor for a friend.

25 The defendant's association with the purchase of a

1 four or \$5,000 automobile for a young male friend, also  
2 provided as a favor for that person.

3 The defendant's association with the Radio Shack  
4 store on Mass. Ave. on or about October 18th, that he was not  
5 only working across the Street on that day, but had been in  
6 the store countless times in the same time frame, according to  
7 the clerk.

8 And, finally, the defendant's association, one I am  
9 sure that he regrets, but the defendant's association with  
10 David Lindholm in December of 1992 at the Plymouth House of  
11 Correction, in which he admitted that it was he who made this  
12 bomb that took the life of Officer Jeremiah Hurley and  
13 severely and permanently maimed Officer Frank Foley.

14 Now, Mr. Segal, he can come before you, he can scoff  
15 and he can call this a case of guilt by association, ladies  
16 and gentlemen; however, you should call it a case of guilt  
17 beyond a reasonable doubt on each and every charge of this  
18 indictment.

19 And on behalf of the United States America, I again  
20 thank you for your patience and attention.

21 THE COURT: Members of the jury, we will now take the  
22 morning recess. I will thereafter instruct you in the law.

23 Court is in recess.

24 [Whereupon, the jury left the courtroom.]

25 [Recess.]

1 THE COURT: Please be seated.

2 Mr. Libby, I won't say anything either about singular  
3 unique nor spatial agents.

4 MR. LIBBY: Thank you, your Honor, that was my sole  
5 concern.

6 MR. SEGAL: How about particularly idiosyncratic,  
7 your Honor, which is the Ingraham case. Sufficiently  
8 idiosyncratic.

9 [Whereupon, the jury entered the courtroom.]

10 THE COURT: Please be seated.

11 If there's anyone in the courtroom who wishes to  
12 leave during the next half hour, 40 minutes, please do it now  
13 because the courtroom will be closed, and you cannot go out or  
14 come in.

15 Members of the jury, we traditionally close the  
16 courtroom during the charge to the jury, or the instructions  
17 to the jury, and --

18 Do we have a verdict slip?

19 [Pause.]

20 It has to do, I think, with the fact that what I have  
21 to tell you tends to be complicated, and I want to -- we want  
22 to minimize the distractions that, unfortunately, were so  
23 apparent during counsels' argument. One of these days, we may  
24 even close the courtroom while they argue, but, then, their  
25 late friends won't be able to hear them.

TO Jury

Charge to the Jury

You have now heard all of the witnesses, you have received all of the evidence in the case. The next job will be for you to find the facts and, ultimately, to determine your verdict in this case and, specifically, to determine whether the government has proven the defendant guilty beyond a reasonable doubt on one or more of the charges that it has made against him.

In doing that, I ask you, please, to apply the law as I shall give it to you and consider all of these instructions as a whole. Do not pick one here and there and leave the others behind.

Do not be concerned about any errors that I might make as I outline the law to you. And please accept the law as I give it to you, even if you think it is unwise. If I am in error, then, there is a higher court that can, and will, reverse my interpretation of the law.

But understand, also, that just as I am a judge in this case, so are you. I am the judge of the law, but you are the judges of the facts, and you are the only judges of the facts. There will not be a higher court that will review your judgment of the facts in the case that has been presented to you.

It is your sworn duty to find the facts from the evidence in the case, and I will explain to you in a moment

1 what I mean by the evidence, but you must do it in light of  
2 the law that I'm about to explain to you.

3 You may not base your verdict on any feelings of bias  
4 or prejudice or sympathy or emotion. You may not allow  
5 personal feelings either about the defendant or about the  
6 nature of this crime to interfere in any way with your duty  
7 that you have sworn to uphold. Your verdict must be based  
8 entirely on the evidence or the lack of evidence.

9 Now, the evidence is in this case really in three  
10 parts. One, are the stipulations that the parties have  
11 made. And I explained to you earlier in the case that a  
12 stipulation is nothing more than an agreement that certain  
13 facts are not in dispute. I don't remember what they all  
14 were, except I do remember there was one about the date of the  
15 arrest of this defendant, and there may be others. And to the  
16 extent that the parties have stipulated that the facts are not  
17 in dispute, you may, of course, accept those facts that they  
18 have agreed are not in dispute.

19 Second, the second part of the evidence are all of  
20 the exhibits that have been offered and admitted into  
21 evidence, the photographs, pieces of the device, some checks,  
22 records, all of the evidence that has been admitted and  
23 perhaps even some of the chalks, we call them chalks, these  
24 charts, really, will be with you in the jury room, and you  
25 should consider them, use them, review them, and take from

1       them whatever assistance they can give you in reaching your  
2       verdict.

3               The third and final part of the evidence is the  
4       testimony of all of the witnesses who have appeared before  
5       you.

6               Now, with respect to the witnesses' testimony, you  
7       will need to decide whether you believe what they told you,  
8       either in whole or in part. There is nothing mysterious about  
9       it. You do it every day. Somebody tells you something, and  
10      you make a judgment, probably almost instinctively, as to  
11      whether you believe what the person told you. I ask you to  
12      make a similar -- the same judgment with respect to each and  
13      every one of the witnesses.

14              I will tell you some of the tests that we usually  
15      tell jurors they may consider; indeed, Mr. Kelly, I think, had  
16      mentioned some in his rebuttal. Understand, however, that any  
17      test that you have found to be a reliable test in making this  
18      judgment about whether the person who speaks to you is  
19      believable, is a test that you may use in judging the  
20      witnesses' testimony.

21              You may, for example, consider the demeanor of the  
22      witness on the witness stand. You may consider the  
23      relationship that the witness had either to the government or  
24      the defendant or to the events in the case and how that  
25      relationship may have colored the witness's testimony.

1           You may consider whether the witness has an interest  
2 in the outcome of the case. You may consider the witness's  
3 ability to observe the events about which the witness  
4 testified and, then, that witness's ability to recall the  
5 events to you. You may consider the witness's bias or  
6 hostility either against the government or against the  
7 defendant.

8           In some cases, one or the other of the parties tried  
9 to show that the witness gave inconsistent testimony here and  
10 on earlier occasions. There, you need to decide whether, in  
11 fact, the testimony or the statements made were inconsistent;  
12 and, if so, you may consider in judging the believability of  
13 the witness, the fact that the witness told different stories  
14 on different occasions.

15           You may consider the extent to which a witness's  
16 testimony is either supported or contradicted by  
17 uncontroverted facts or by facts that you find to have been  
18 established.

19           Let me briefly recall to you some particular  
20 witnesses and give you some particular cautions as to those  
21 particular witnesses. First, the experts, Ms. Wallace,  
22 Mr. Waskom, Mr. Shapley and Mr. Kline. I think they were the  
23 only people who testified as experts.

24           You should judge their credibility as you judge the  
25 credibility of anybody else. In deciding whether to give

1 credence to their opinions, however, you may take into account  
2 their training, their education, their experience, their  
3 expertise in the area in which they were offered as experts.

4 To the extent that their opinion was based on  
5 assumptions they were asked to make, again, I remind you, be  
6 sure that the assumptions are in accordance with the facts as  
7 you find them. Because if they are not, then the opinion is  
8 of absolutely no value to you in reaching your verdict.

9 You should give the expert testimony the weight that  
10 you decide it deserves, and you do not have to accept it just  
11 because a person is styled as "expert."

12 Law enforcement officials. As we discussed, I  
13 believe when you were being impaneled a month ago, a person is  
14 neither more nor less believable because a person works for a  
15 law enforcement agency; that is, just because someone is a  
16 police officer or an ATF agent, doesn't mean that the person  
17 is more credible or less credible than anybody else.

18 There were a number of people who testified who have  
19 admitted that they are convicted criminals: Mr. Evans,  
20 Mr. Plant, Mr. Lindholm. With respect to them, you may in  
21 judging their credibility take into account the fact that they  
22 are convicted. It is a fact that you may take into account  
23 only in judging their credibility.

24 There is some evidence in the case that I need to  
25 explain to you more particularly. First, there was evidence

1 about statements that Mr. Trenkler made to various people.  
2 With respect to that evidence, you need to decide, first,  
3 whether you believe the witness's account of what Mr. Trenkler  
4 said; that is: Did the witness hear correctly what he said?  
5 Did the witness accurately report to you what, what he had  
6 said? And this applies to the testimony by the inmates, as  
7 well as to testimony by police officers, about what  
8 Mr. Trenkler -- what they testified Mr. Trenkler said to them.

9 With respect to statements made to police, you have  
10 also to determine whether the statements were made knowingly  
11 and voluntarily. And in that connection, you should consider  
12 all the circumstances surrounding the making of the statements  
13 by Mr. Trenkler to any police officer. And if you find that  
14 any statement was not made knowingly and voluntarily, then you  
15 may not consider it at all in reaching your verdict. You  
16 simply need to strike it from your minds and not pay any  
17 attention to it whatsoever in reaching your verdict.

18 Now, once you have sorted out what statements you  
19 believe the defendant did make, of both categories, that is,  
20 to inmates or to police, then you must next determine whether  
21 they indicate guilt or not; that is, you should, in this  
22 connection, consider: Are these statements reliable? Have  
23 they been in some way corroborated? And if you find that they  
24 are reliable, then, you may consider the defendant's  
25 statements with all the other evidence, to decide whether the

1 government has proven the defendant guilty beyond a reasonable  
2 doubt.

3 The second category of evidence that requires  
4 particular mention is that concerning the 1986 device. There  
5 was evidence that in 1986, the defendant built another  
6 explosive device, and there was evidence concerning the  
7 circumstances surrounding its construction and placement.  
8 Now, this evidence may be used by you for a limited purpose.  
9 And the purpose depends on what you find, so listen carefully.

10 If you believe, and find, that the defendant built  
11 that device in 1986, then you may consider that evidence in  
12 determining the defendant's knowledge of electronics, remote  
13 control, and explosive devices with remote control.

14 If you find and if you believe the evidence as to the  
15 circumstances under which this device was built and its  
16 purpose, then you may consider that evidence, also, in  
17 deciding what if any intent the defendant may have had in  
18 1991.

19 If you believe the so-called signature evidence, that  
20 is, that the 1986 and 1991 devices were unusual and  
21 distinctive or idiosyncratic, then you may use that evidence  
22 in deciding the identity of the builder of the 1991 device;  
23 that is, if you determine beyond a reasonable doubt that the  
24 two bombings were sufficiently unusual and distinctive so as  
25 to constitute the handiwork of one, and only one person, you

1 may, but you do not have to, infer that the 1991 bombing is  
2 the defendant's handiwork.

3 It is up to you to decide what weight, if any, you  
4 give to this evidence. You may not, however, simply decide  
5 that the defendant did it once and, therefore, he must have  
6 done it again; or, that the defendant is a bad person and,  
7 therefore, he must be guilty of the charges that are now  
8 before you.

9 Evidence may be direct or circumstantial. Direct  
10 evidence is testimony by a witness about what the, what the  
11 witness personally saw, heard or did. Circumstantial evidence  
12 is indirect evidence; that is, it is proof of one or more  
13 facts from which you may infer and find another fact.

14 Let me give you an example. In one scenario, the  
15 witness testifies that he left some fish on the counter to  
16 defrost, and he left the room for a while; and when he came  
17 back into the room, there was the cat sitting on the counter,  
18 eating the fish. That would be direct evidence of the fact  
19 that the cat ate the fish.

20 Change that a little bit. The person leaves the fish  
21 on the counter, leaves for a while; and when the person comes  
22 back, he sees pieces of fish on the floor and he sees the cat  
23 sitting in the corner, licking its whiskers and looking fat  
24 and happy. That would be circumstantial evidence of the fact  
25 that the cat ate the fish. And, contrary to Perry Mason,

1 circumstantial evidence is, in law, just as good as direct  
2 evidence.

3 Note, however, that -- and circumstantial evidence  
4 really means nothing more than drawing inferences from  
5 evidence that you have.

6 Note, however, that the inferences must be  
7 reasonable; they must be based on common sense. You must be  
8 certain that the chain of inferences is not broken at any  
9 point along the way to the ultimate fact that you infer.

10 And in a chain of circumstantial evidence, it is not  
11 required that every one of your inferences or conclusions be  
12 inevitable. But each must be reasonable, and they must be  
13 consistent with the each other, and they must be based on  
14 facts that have been proven by direct evidence. You may not  
15 draw inferences, unless you are convinced of the truth of the  
16 inference beyond a reasonable doubt.

17 So, you may consider both direct and indirect, that  
18 is, circumstantial evidence; you may give both equal weight,  
19 and it is for you to decide as to all of the evidence what  
20 weight you give it.

21 And finally, consider all the evidence. Draw  
22 reasonable inferences. But do not guess. Do not speculate.  
23 That you may not do. And I urge you to use your common sense  
24 as you go about sifting the evidence in reaching your verdict.

25 Let me very briefly outline to you what is not

1 evidence because much of what you heard, particularly today  
2 and on the first day of trial, is not evidence.

3 The opening statements by counsel were simply their  
4 outline of what they expected to present; the opening  
5 statements are not evidence in and of themselves. The closing  
6 arguments that you just heard are not evidence; they are  
7 counsels' recollection and counsels' interpretation, as I told  
8 you earlier, of the evidence. And you must now do your own  
9 separate job of recalling and interpreting the evidence when  
10 you're in the jury room.

11 Any testimony that was ordered stricken is not to be  
12 considered by you in reaching your verdict.

13 There were times, and I think I explained this to you  
14 during the trial, as well, there were times in the course of  
15 the questioning when counsel would put a question to the  
16 witness in the form of a statement, and the witness said no.  
17 That is not evidence of the statement that counsel, perhaps,  
18 had hoped that the witness would say yes to.

19 Anything you may have heard about this case outside  
20 the courtroom is not to be considered by you in reaching your  
21 verdict. And nothing that I have said is evidence, and I am  
22 not in any way trying to influence your verdict one way or the  
23 other.

24 There were, in the course of the trial, objections by  
25 counsel. You should not hold that against them. They not

1     only have a right to object but, in fact, that's their duty.  
2     Part of the job of the lawyer is to call to the attention of  
3     the judge when the lawyer thinks that what the other lawyer is  
4     offering is not in accordance with what you now know are very  
5     complicated rules. Then, it is up to the judge to decide  
6     whether the evidence comes before you or not.

7             To the extent that the objection was overruled, you  
8     have heard the evidence, and you should consider it. To the  
9     extent that the objection was sustained, I ask you, please,  
10    not to speculate about what you didn't hear but simply decide  
11    the case on the basis of what is, in fact, before you.

12            When you next leave the courtroom, take your  
13    notebooks with you, and I hope that they will assist you in  
14    reaching your verdict. One final caution on the notebooks,  
15    sometimes when we take notes, we paraphrase. And it just may  
16    be that one of you remembers more exactly what a witness said  
17    than what another one wrote down. So, I ask you, please, in  
18    your deliberations not to ignore the memory of one of you  
19    about what may have occurred in the courtroom just because  
20    somebody else wrote it down differently.

21            You will not be able to have transcripts of any of  
22    the testimony, although it has been transcribed. I regard it  
23    as unfair to highlight the testimony of any one witness. So,  
24    besides, there is not much point in your spending hours and  
25    hours rereading what you have already heard.

1           A transcript of this charge will be available later.  
2   And if you feel that you must have it, then we will supply it  
3   to you.

4           A defendant in a criminal case is presumed to be  
5   innocent, which means really much more than that, it means  
6   that the defendant is innocent. He is innocent until the  
7   government proves him guilty. And that means that a defendant  
8   does not have to prove his innocence, he does not have to  
9   offer any evidence whatsoever, he does not have to take the  
10   stand and testify in the trial. And you may draw no inference  
11   of guilt from the fact that this defendant did not testify.  
12   He did offer evidence, and the evidence is before you, and it  
13   should be considered by you in reaching your verdict.

14           But there are many reasons why a defendant might  
15   choose not to testify, including, very simply, that he can  
16   just say to the government: You, Government, have accused  
17   me. Now, you, Government, prove my guilty. But you may draw  
18   no inference of guilt from the fact that this defendant chose  
19   not to testify in this case.

20           Now, the government has to prove him guilty beyond a  
21   reasonable doubt. Proof beyond a reasonable doubt is not, is  
22   not, proof beyond all possible doubt. It is not proof to a  
23   mathematical certainty. Proof beyond a reasonable doubt is  
24   proof that leaves you firmly convinced of the defendant's  
25   guilt.

1           A reasonable doubt is not a doubt in the mind of a  
2 juror who is looking for doubt as an excuse to acquit. It is  
3 doubt in the mind of a reasonable juror who is earnestly  
4 seeking the truth. It is doubt based on reason and common  
5 sense.

6           Note that a reasonable doubt may arise both from the  
7 evidence adduced or from the lack of evidence. It's not  
8 sufficient for the government to establish a probability, even  
9 a strong one, that the defendant is guilty. And the defendant  
10 may not be convicted on the basis of suspicion or conjecture.

11           If you view the evidence in the case as reasonably  
12 leading to one of two conclusions, either that the defendant  
13 is guilty or that the defendant is not guilty, then you cannot  
14 convict. You must find the defendant not guilty.

15           If after examining all of the evidence as to a  
16 particular count and drawing reasonable inferences therefrom,  
17 you are left with a clear and settled conviction of the  
18 defendant's guilt as to that count, then you may find the  
19 defendant guilty on that charge. If, on the other hand, you  
20 are left with a reasonable doubt about the defendant's guilt,  
21 he is entitled to the benefit of that doubt, and you must find  
22 him not guilty on that charge.

23           In reaching your verdict, do not consider what the  
24 punishment might be, if you find the defendant guilty. I will  
25 need to deal with that if you do find him guilty. Your only

1 job is to determine whether the government has proven him  
2 guilty or not.

3 You will have with you in the jury room, a copy of  
4 the indictment in the case. Understand that the indictment is  
5 nothing more than a piece of paper that contains the  
6 accusation. That's all it is, the accusation. It is not  
7 evidence of guilt and it is not proof of guilt.

8 I need to tell you a little bit about some of the  
9 conventions of drafting indictments which are different from  
10 other documents. When an indictment says "on or about certain  
11 dates," it means dates reasonably near the date that is set  
12 forth therein. If the government says that something happened  
13 on or about June 1st, it doesn't have to prove that it  
14 happened exactly on June 1st between 12:01 a.m. and  
15 11:59 p.m.

16 When an indictment says "and," it means "or." So,  
17 when the indictment says the defendant did this and this and  
18 this and this, it probably means, almost certainly, means the  
19 defendant did this or this or this or this; that is, the  
20 government has to prove one but not every one of the things,  
21 and I will come back to that later on.

22 There are in this indictment three counts. You have  
23 to consider each of them separately, and your verdict as to  
24 each should not dictate the verdict as to each other one; that  
25 is, the evidence is different, the elements are different as

1 to each of them, so you need to look at each of them  
2 separately and consider the evidence as it applies to each of  
3 the counts.

4 The indictment charges not only Mr. Trenkler but also  
5 Mr. Shay, Jr. And as I told you, earlier, Shay, Jr., was  
6 tried earlier; he was convicted on some but not all of the  
7 counts. The fact that he was convicted is no evidence bearing  
8 on the guilt of Mr. Trenkler. You will need to decide whether  
9 he's guilty or not based entirely on the evidence that you  
10 have heard in this trial and in no way based on the fact that  
11 the co-defendant, Mr. Shay, was convicted on some of these  
12 counts.

13 Let me review, now, the indictment by first giving  
14 you an overview of the three counts.

15 Count 1 is the count that charges conspiracy. It  
16 says that the defendant conspired with Mr. Shay to commit two  
17 offenses: (1) to receive explosives in interstate commerce  
18 with the knowledge and intent that these explosives would be  
19 used to kill, injure or intimidate another person. I think  
20 this is one of those -- yes, this is one of those "ands" --  
21 kill, injure and, which means kill, injure or.

22 I don't know why they do that, but they always do  
23 that.

24 And second, that they conspired to damage and  
25 destroy -- that they conspired to attempt to destroy, by means

1 of an explosive, an automobile used in and affecting commerce.

2 Count 2 is what we call a substantive offense. And  
3 it harkens back to the first of the objects of the  
4 conspiracy. It charges that the defendant and Mr. Shay -- but  
5 here, you need to be concerned about the defendant -- received  
6 an explosive, an explosive material, with the knowledge and  
7 intent that the explosive material would be used to kill,  
8 injure and intimidate Shay, Sr., and cause damage and  
9 destruction to his real and personal property. That's  
10 count 2.

11 Count 3 says that the defendant attempted the  
12 malicious destruction of property used in and affecting  
13 interstate commerce, namely, a 1986 Buick, by means of an  
14 explosive. And counts 2 and 3 also allege that the unlawful  
15 conduct of the defendant caused the death of Mr. Hurley and  
16 injuries to Mr. Foley, both public service officers,  
17 performing their official duties.

18 Now, counts 2 and 3 do not say that Mr. Trenkler did  
19 this alone or that Mr. Shay did it alone, but it says that  
20 they did it together, that they aided and abetted each other.

21 One section of the Criminal Code says that an  
22 individual may be found guilty of an offense, even though he  
23 did not himself commit it, if, if, he either assists someone  
24 else to commit the offense or gets somebody else to do it.  
25 Then, if two or more persons do so associate in a criminal

1 venture, each is responsible for the acts of the other that  
2 are part of that venture.

3 But the law imposes that responsibility for the acts  
4 of another only if the defendant knowingly and willfully  
5 associates himself with a venture, and it is not enough to  
6 show that he was present or even that he knew what was going  
7 on. The government has to prove that he knowingly became a  
8 participant to some degree. It doesn't have to prove that he  
9 was the prime mover, that -- if you find that the defendant  
10 knowingly and willfully participated in the building and  
11 placing of the bomb in some way, he may be found to be  
12 responsible for the acts of any coventurer. And a person  
13 cannot insulate himself from criminal responsibility by  
14 leaving to others his dirty work.

15 Knowingly means voluntarily, with knowledge, and not  
16 by mistake or accident. Willfully -- and these words will  
17 recur throughout the rest of this -- means purposely, with the  
18 intent to do something that the law forbids. It means  
19 operating with the intent to disobey the law.

20 Now, intent and knowledge is a state of mind. You  
21 need to infer that. It is the quintessential thing that is  
22 proven by circumstantial evidence. You will need to look at  
23 what the defendant did, what the defendant said, the  
24 circumstances surrounding the defendant's conduct, and his  
25 statements, and from all of that infer what was in his head,

1     what did he know, what was his intention.

2             There have been references in the course of the  
3     trial, not only to intent but also to motive. Motive is  
4     different from intent. Intent refers to a state of mind with  
5     which an act is done. Motive is what prompts a person to act,  
6     a reason a person acts. The government does not have to prove  
7     the defendant's motive, although evidence as to the  
8     defendant's motive may shed light on his intent, which the  
9     government does have to prove.

10            Let me start by giving you the elements of count 2.  
11     Because count 1, the conspiracy count, harkens back to  
12     counts 2 and 3, I will start with count 2.

13            In count 2, the government has accused the defendant,  
14     it says that on -- in or about October, 1991, Thomas Shay and  
15     Alfred Trenkler did receive in interstate commerce certain  
16     explosive materials, including dynamite and detonators, with  
17     knowledge and intent that said explosive materials would be  
18     used to kill, injure and intimidate Thomas L. Shay -- that's  
19     senior -- and cause damage and destruction to his real and  
20     personal property, including a 1986 Buick automobile. And  
21     then it goes on about Mr. Hurley's death and Mr. Foley's  
22     injuries.

23            There are three elements that the government has to  
24     prove: (1) that the defendant actually or constructively  
25     received or participated in receiving an explosive; (2) that

1 he did so with the knowledge and intent that it would be used  
2 to kill, injure or intimidate Shay, Sr., and/or unlawfully  
3 damage and destroy his property; (3) that the explosive has  
4 been transported in interstate or foreign commerce. Those are  
5 the three elements.

6 The first one, that the defendant actually or  
7 constructively received or participated in receiving an  
8 explosive, to receive something means to acquire control of  
9 it. If you take physical control of an object, if you were to  
10 take this pencil that I'm holding, you have actually received  
11 it. If you have the power and the ability to control the  
12 disposition of an object, that is, you would tell the store to  
13 deliver the coffee pot to your house, for instance, you have  
14 constructive receipt of that coffeepot. An object may be  
15 received by one person, in which case, we talk about sole  
16 receipt; or, it may be received by more than one person, then  
17 we talk about joint receipt. The government has to show that  
18 the defendant actually or constructively received an  
19 explosive; that he did so either alone or jointly with  
20 another.

21 And an explosive, you must understand, is defined by  
22 the statute as a device or material that is designed to  
23 explode. And it includes blasting caps, detonators, and high  
24 explosives.

25 The second element, I told you, is that the defendant

1 received the explosive with knowledge and intent that it would  
2 be used to kill and commit a -- or injure Shay, Sr. So after,  
3 you if you find that the defendant did receive an explosive,  
4 either actually or constructively, then you must next  
5 determine his state of mind. The government has to prove that  
6 he knew and intended that the explosive would be used to harm  
7 Shay, Jr.'s, father.

8 I had explained to you earlier what knowledge and  
9 intent means. You need to review the evidence of the  
10 defendant's conduct, of his statements, and infer from his  
11 conduct and statements and the surrounding circumstances, what  
12 knowledge he had and what his intent was.

13 The government, as I told you a moment ago, does not  
14 have to prove that he intended to kill and intimidate and  
15 injure and to damage the property. Anyone of these is  
16 sufficient. So, that is, "and" really does mean "or" in the  
17 context of count 2.

18 The third element, that the explosive had traveled in  
19 interstate or foreign commerce, is a jurisdictional one. The  
20 Constitution assigns certain responsibilities to the states  
21 and other responsibilities to the federal government. This is  
22 a federal court, and it can only hear those matters that are  
23 within the purview of the constitutional grant of authority to  
24 the federal government. One of the authorities that the  
25 United States, as opposed to the individual states, has, is

1 the power to regulate commerce between the states and between  
2 the United States and foreign governments. Therefore, in  
3 order for this case to be in this court at all, the government  
4 has to prove that some interstate element exists with respect  
5 to the events in question.

6 So here, what the government has to show is that the  
7 explosive at some time moved from one state to another. It  
8 doesn't have to prove that the defendant moved it. It doesn't  
9 even have to prove that he knew it came from another state.  
10 All it has to prove is that the explosive, either the dynamite  
11 or the detonator caps, had at one time been outside of  
12 Massachusetts and then came into the state. So, if you find  
13 that the explosive or one element of the explosive was  
14 manufactured outside of Massachusetts and was received or  
15 possessed within the Commonwealth, then this element is  
16 satisfied.

17 So, if you find that the government has proven each  
18 one of the three elements beyond a reasonable doubt, then you  
19 may find the defendant guilty of count 2. But if the  
20 government has not proven every one of the three elements,  
21 then you must find him not guilty on count 2.

22 Count 3 charges that the defendant and Mr. Shay  
23 knowingly attempted to maliciously damage and destroy, by  
24 means of fire and explosive, a 1986 Buick automobile which was  
25 owned by Thomas L. Shay and used in interstate commerce and in

1 activities affecting interstate commerce. You will have, as I  
2 told you, the indictment with you, so that you can review that  
3 when you are in the jury room.

4 Again, there are three elements: (1) that the  
5 defendant participated in using an explosive in an attempt to  
6 damage or destroy Shay, Sr.'s, Buick; (2) that the Buick was  
7 either used in interstate commerce or used in an activity  
8 affecting interstate commerce; and (3) that the defendant  
9 acted maliciously.

10 With respect to the first element, that the defendant  
11 participated in using an explosive in an attempt to damage or  
12 destroy Shay, Sr.'s, Buick, explosive has the same meaning  
13 here as it does in count 2; it includes blasting caps,  
14 detonators and dynamite.

15 To prove an attempt, the government has to show that  
16 the defendant intended to commit the crime charged, namely,  
17 destroy the Buick, and that he took some action that was a  
18 substantial step to accomplish the crime. Merely planning an  
19 offense does not constitute a substantial step. But some  
20 preparation may. A substantial step is an act which  
21 corroborates that the defendant did, in fact, intend to  
22 destroy the car.

23 The second element, that the car was used in  
24 interstate commerce or in an activity affecting interstate  
25 commerce, you see here, the interstate element is somewhat

1 different. In the first count, the explosive had to be in  
2 interstate commerce; here, it is the car that had to have been  
3 used in interstate commerce.

4 The government has to show either that Shay, Sr.,  
5 from time to time drove out of state on some business-related  
6 activity or that he used the car in the autobody business and  
7 that that is a business that affects interstate commerce. Any  
8 business, I can tell you, that uses materials manufactured in  
9 other states is a business affecting interstate commerce.

10 And now, here, again, the government doesn't have to  
11 prove that the defendant knew about the interstate commerce or  
12 that he intended to affect it. All it has to prove is that  
13 the car, in fact, was used in interstate commerce or in a  
14 business affecting it.

15 The third element, I told you, is that the defendant  
16 must have acted maliciously. Malicious, in this context,  
17 means willful, which I've already defined to you, that is,  
18 with a bad purpose to disobey, to violate the law. The  
19 government does not have to prove that the defendant acted  
20 with spite, hatred, or ill will, only that he acted purposely  
21 with disregard for the practical certainty of damage and with  
22 the intent to break the law.

23 Let me go back to count 1, which is the conspiracy  
24 count. And here, the indictment says that in or about  
25 September and October, 1991, the defendants did knowingly and

1 willfully combine, conspire and agree with one another --  
2 which means "or," -- to commit certain offenses against the  
3 United States, and then it lists the two that we have just  
4 discussed.

5           The essence of conspiracy is agreement, an agreement  
6 by two or more persons to commit a crime, here, to receive  
7 explosives with intent to injure or kill or to destroy  
8 property by means of explosives.

9           Because the charge of conspiracy is directed to the  
10 agreement to commit a crime, the government doesn't have to  
11 prove that the defendant actually committed or participated in  
12 committing the underlying crime. It does have to prove,  
13 again, three elements: (1) that there was an agreement about  
14 the time alleged by Shay, Jr., and Mr. Trenkler to accomplish  
15 some unlawful purpose, here, the two mentioned, to receive  
16 explosives with intent to injure and/or to destroy the  
17 property, the Buick; (2) that the defendant knowingly and  
18 willfully entered into the agreement, the conspiracy; and (3)  
19 that one of the conspirators, during the existence of the  
20 conspiracy, willfully committed at least one overt act at  
21 about the time alleged.

22           Go back to the first element, that there was an  
23 agreement to accomplish these unlawful objectives.

24           The government doesn't have to prove that there was  
25 some formal written contract. Conspiracy is established if

1 the evidence and the reasonable inferences drawn therefrom  
2 show beyond a reasonable doubt that the conspirators in some  
3 way either explicitly or tacitly came to an understanding to  
4 achieve their unlawful plan.

5 Conspiracy is by nature usually secret. It may be  
6 shown by the conduct of the alleged conspirators, conduct that  
7 evidences a shared purpose to violate the law. It may be  
8 inferred from the movements of the conspirators, what they  
9 did, how they acted, how they interacted. It may be inferred  
10 from their statements, what they said to each others and what  
11 they have may have said to others, all in the context of the  
12 circumstances surrounding their acts and their statements.

13 The government does not have to prove both  
14 conspirators played an equal role, doesn't have to prove that  
15 the defendant, Mr. Trenkler, initiated the conspiracy. It  
16 does have to prove that there was some agreement between  
17 Mr. Shay and Mr. Trenkler to achieve the object of the  
18 conspiracy as set forth in the indictment.

19 If you find that -- now, we go to the second  
20 element. If you find that the defendant and Mr. Shay had come  
21 to some agreement, then the government must still prove that  
22 the defendant joined in the unlawful plan knowingly and  
23 willfully and with an understanding of its unlawful character.

24 Knowingly and willfully have, again, the same meaning  
25 here that I explained earlier, that is, voluntarily,

1 intentionally, and with a bad purpose to disregard the law.

2 The government does not have to show that this  
3 defendant knew all the details of the scheme, does not -- it  
4 does have to prove that the defendant, knowing of the  
5 existence and general outline of the unlawful plan,  
6 intentionally joined in by advising, assisting, participating  
7 with Mr. Shay, and that he did so with the intent to violate  
8 the law.

9 Understand that a person does not become a member of  
10 a conspiracy merely by associating with another person or  
11 merely by knowing about an unlawful plan or merely by being  
12 present at the scene of an alleged crime, or happening, even  
13 happening, to do something that advances an unlawful plan or  
14 assists someone who is planning a crime.

15 The government has to show that Mr. Trenkler  
16 knowingly and willfully participated in the building of the  
17 bomb and the placing of it under the car.

18 An overt act, the third element, is any act knowingly  
19 and intentionally committed by one conspirator to achieve the  
20 object of the conspiracy. It doesn't have to be a criminal  
21 act, but it must be one that is designed to achieve the object  
22 of the conspiracy.

23 Although the government has alleged five separate  
24 overt acts, it need prove only one. And it doesn't have to  
25 prove that this defendant committed it. It is enough if the

1 government proves that either Mr. Shay or Mr. Trenkler  
2 committed at least one of the overt acts and that he did so  
3 knowingly and willfully. And you will find the overt acts on  
4 pages 2 and 3 -- well, really, mostly 3 of the indictment --

5 I mean -- well, you can read them. It says, as the  
6 first one, that in or about September, 1991, Shay solicited  
7 the assistance of Trenkler in a plan to kill his father,  
8 Thomas L. Shay. The second one, in or about September, 1991,  
9 Trenkler, who had a background in electronics, agreed to  
10 construct a remote control explosive device, knowing the same  
11 would be used by Shay in an attempt to kill his father, and so  
12 on.

13 If you find that one of these was committed by one of  
14 the two -- by either one of the two conspirators, alleged  
15 conspirators, then this element has been satisfied.

16 Here again, if you find that the government has  
17 proven each one of the three elements, then you may find the  
18 defendant guilty of the count of conspiracy. But if you find  
19 that it has not proven every one of the three, then you must  
20 find him not guilty of count 1.

21 Your verdict must be unanimous. All twelve of you  
22 must agree to your verdict as to each of the three counts.

23 And the first order business when you're in the jury  
24 room should be to elect from among the twelve of you who will  
25 deliberate, a foreperson, who would then be in charge, in

1 general charge, of the deliberations, make sure that you do  
2 not come to blows. If you have any questions, I would ask you  
3 to write them out, let the marshal know, your foreperson  
4 should sign the question, and I will answer either in writing  
5 or by calling you back down and explaining whatever you may  
6 not have understood.

7 The marshal will take to you lunch when you leave  
8 here. And you should not talk about the case while you are at  
9 lunch but use that time to relax and get ready for the work of  
10 the afternoon.

11 Once you are back in the jury room, then you should  
12 begin your deliberations in earnest. And we will, in the  
13 meantime, send up the exhibits so that you will have them all  
14 ready and waiting for you when you are actually going to start  
15 working.

16 Ms. Shippie, Mr. Woo, Ms. Walsh, and Mr. Corelle, you  
17 will be excused when we finish now. Understand, that we are  
18 all most appreciative for your presence here every day. We  
19 needed you. We desperately needed you because we had to have  
20 twelve people at the end of the case. We must have twelve  
21 people during the deliberations. And the only way we could  
22 assure -- be sure of having twelve, is by starting with more  
23 than twelve. You were our very important safety valve, and  
24 for that I thank you.

25 Don't go away quite yet because I need to talk to the

1 lawyers before I actually send you off to your deliberations.

2 [Conference at the bench, as follows:

3 THE COURT: Any objections?

4 MR. LIBBY: The government is satisfied, your Honor.

5 MR. SEGAL: Defense is satisfied.

6 THE COURT: Imagine that.

7 ...end of conference at the bench.]

8 THE COURT: Members of the jury, one other thing, you  
9 will also have with you, in addition to the exhibits and the  
10 indictment, a verdict slip. It gives the name of the case,  
11 and then it says: We the jury find the defendant, Alfred  
12 Trenkler, blank as to Count 1, blank as to Count 2, blank as  
13 to Count 3.

14 Your foreperson should fill in, as you find, either  
15 the word "guilty" or the words "not guilty" on each of these,  
16 and then sign and date the verdict slip when you have a  
17 verdict.

18 And when you have a verdict, please let the marshal  
19 know that, and we will reassemble, so that you may deliver  
20 your verdict in open court.

21 Members of the jury, you are now charged to commence  
22 your deliberations. And the alternates are excused and  
23 discharged with the great thanks of the Court, and I think I  
24 speak for the parties, as well.

25 [Whereupon, the jury was excused.]

1           THE COURT: Will counsel please assist the clerk in  
2 assembling the evidence, so we can send it up to the jury?

3           MR. KELLY: Your Honor, point of clarification, I  
4 take it that anything marked for identification, including  
5 charts, does not go upstairs?

6           THE COURT: Well, I don't know. I sort of indicated  
7 that some of it might because I wasn't sure how you were going  
8 to come out on that.

9           MR. KELLY: For example, the charts that show the  
10 photographs are actually in evidence. So there are some  
11 charts that will go upstairs. But at the last trial, and it  
12 would be our position, that the same should hold true here,  
13 that the I.D. exhibits should not go upstairs.

14          THE COURT: Why don't you see what you can work out.  
15 I won't go away quite yet. I want to give the certificates of  
16 appreciation to the alternates before they disappear.

17                 [Whereupon, a recess was taken at 12:45 p.m.]

18                 [Whereupon, the jury trial adjourned.]

19  
20  
21  
22  
23  
24  
25

**CERTIFICATE**

we certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

\_\_\_\_\_  
James E. McLaughlin

\_\_\_\_\_  
Laura K. S. Walker

I N D E X

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Charge to the Jury, Page 101

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

4  
5  
6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9  
10 Eighteenth Day of Hearing

11  
12 APPEARANCES:

13 For the Government:

14 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
15 Assistant United States Attorneys, Federal Courthouse,  
16 Boston MA 02109.

17 For the Defendant:

18 Terry R. Segal Esq., Scott P. Lopez, Esq., and  
19 Brenda Ruel Sharton, Esq., SEGAL & FEINBERG,  
20 210 Commercial Street, Boston, MA. 02109.

21  
22 Courtroom 3  
23 Federal Courthouse  
24 Boston, Massachusetts

25 November 23, 1993

Computer-Aided Transcription

1           THE COURT: Let the record reflect that Mr. Segal has  
2 kindly agreed that the defendant didn't have to be here while  
3 I send the jury off again, and that counsel will work out  
4 something about the missing hapless drawing.

5           [Whereupon, the jury entered the courtroom.]

6           THE COURT: Good morning, please be seated.

7           Members of the jury, I hope that you have adhered to  
8 the admonition that I gave you yesterday, not to talk about  
9 the case overnight. You shall now continue your  
10 deliberations.

11           The cafeteria will send up the morning refreshments.  
12 I will ask the marshal to take you to lunch at about 1  
13 o'clock. And again while you are out downstairs at lunch,  
14 don't talk about the case, just continue your deliberations  
15 when you return to the jury room.

16           I will again be guided by your desires as to when you  
17 wish to quit if you do not have a verdict. Although I hope  
18 that you will work as long as possible today.

19           You are now charged to continue your deliberations.

20           [Whereupon, the jury was excused to continue their  
21 deliberations at 9:05 a.m.]

22           MR. SEGAL: In future sessions, I would like the  
23 defendant here, if possible.

24           THE COURT: Oh, yes, yes. I mean, if anything  
25 happens, a question or anything, of course we'll have him

1 here. I just had hoped you would agree so we could get them  
2 going.

3 MR. SEGAL: I meant if we're in tomorrow, it seems  
4 they can have him here at 9.

5 THE COURT: The problem is they can't begin to bring  
6 him down until all jurors are here.

7 Off the record.

8 [Recess.]

9 (Question by the jury at 10:35 a.m..)

10 THE COURT: The jury has asked whether it might have  
11 a copy of Detective, I think it's Lanergan, Lanergan's notes  
12 from his conversation with Mr. Trenkler.

13 It is my understanding that they did not come into  
14 evidence. However, if counsel agree that the jury can have  
15 them, then they can have them.

16 MR. SEGAL: I would not agree to it.

17 THE COURT: All right. I will simply tell them that  
18 they are not in evidence.

19 Now, I have also asked Mr. McLaughlin to prepare the  
20 charge, and he has done that. I have reviewed it and  
21 corrected a couple of typographical errors and he will have  
22 it. And I have asked that he prepare a copy that doesn't  
23 include the colloquy with Mr. Libby about singular unique and  
24 spatial agents and that doesn't include the colloquy with  
25 counsel about having no objections. And if you want, we can

1 send it to the jury, together with a note in response to this  
2 question, telling them that those notes are not in evidence  
3 and therefore not available to them.

4 MR. SEGAL: I would have no objection to just sending  
5 the charge. In fact, I think you mentioned that.

6 THE COURT: I did mention it to them.

7 MR. SEGAL: I think it makes sense.

8 MR. KELLY: No problem.

9 THE COURT: I should also tell counsel that the jury  
10 had earlier requested that each of them have a copy of the  
11 indictment, and we have made copies sufficient so that each  
12 juror has an indictment.

13 Any reason I can't respond to the note in writing?

14 MR. KELLY: No, your Honor, not on behalf of the  
15 government.

16 MR. SEGAL: No, that's fine, I agree.

17 [Pause.]

18 THE COURT: Were they offered into evidence?

19 MR. LIBBY: No, your Honor, we used it to refresh his  
20 recollection.

21 THE COURT: Okay, have a look and see if this is  
22 okay.

23 (Pause.)

24 MR. LIBBY: They were, however, used to refresh his  
25 recollection on the stand. I don't know if the Court wants

1 to --

2 THE COURT: I don't think I need to say anything more  
3 than that. Members of the jury, I regret that I cannot give  
4 you Detective Lanergan's notes as they were not offered nor  
5 admitted into evidence.

6 If you wish it, I will send you a copy of the charge,  
7 however. Sort of a small promise.

8 MR. SEGAL: They understand what the word charge  
9 means, assume they do, the Court's charge.

10 THE COURT: We mentioned the word several times.

11 [Recess.]

12 THE COURT: The jury says it will cease its  
13 deliberations at 4.

14 MR. SEGAL: My question is how you plan to handle  
15 tomorrow.

16 THE COURT: Wisely.

17 MR. SEGAL: We always knew that. I guess the  
18 question is, I think you told the jury they might be here part  
19 of Wednesday. My question is, I don't know.

20 THE COURT: Well, one of the jurors was overheard to  
21 worry about her two turkeys. Frankly, so am I worried about  
22 my two turkeys, on the other hand, I understand that this  
23 takes precedence.

24 So what do you want me to do?

25 MR. SEGAL: I'm not sure I have -- I think there are

1 a couple of possibilities. One, you can bring them in and say  
2 at noon, do you want to go home? That's one possibility. Or  
3 you could say, we are going to deliberate till noon tomorrow.  
4 I'm not sure I want to say that in advance.

5 THE COURT: Well, I suppose the alternative is simply  
6 to leave it to them.

7 Mrs. Dello Russo reminds me a juror has a flight to  
8 catch at 3.

9 MR. SEGAL: 3 tomorrow?

10 THE COURT: Yes.

11 Which means that they have to be out of here by 2 at  
12 the latest.

13 So we had previously told them they would not be here  
14 on Friday, so I think we assume that they want to suspend  
15 their deliberations sometime between 2 and 3 tomorrow. I  
16 think 3 clock is ample time to get to the airport from here by  
17 subway.

18 MR. SEGAL: The flight is at 3.

19 THE COURT: 2 o'clock. Did I say 3? 2 o'clock. An  
20 hour is more than enough time to get to the airport.

21 MR. SEGAL: You're talking about a very tricky  
22 holiday.

23 THE COURT: True.

24 Why don't we inquire, let's inquire from them. My  
25 guess is that they will want to accommodate the juror who has

1 to catch a flight.

2 MR. SEGAL: I guess my thought would be --

3 THE COURT: The jury is coming. We haven't assembled  
4 them yet, so you can rest.

5 That is what I will do, Mr. Segal, I will inquire of  
6 them and tell them that we will honor their earlier  
7 commitments and that if they do not finish by whatever time  
8 tomorrow they wish to suspend, which I assume will be sometime  
9 between 1 and 2, then we will start again on the following  
10 Monday. I don't know what else to do.

11 MR. SEGAL: Except, I'd give them the option if they  
12 want to leave at noon tomorrow. It's a busy day.

13 THE COURT: And forego lunch on the government.

14 MR. SEGAL: I don't think it's Maison Robert that  
15 comes in here, your Honor.

16 THE COURT: I will ask them.

17 MR. KELLY: Reflecting on the discussion here, is it  
18 possible that in discussing the scheduled for tomorrow, that  
19 you can explain to the jury that you are happy to be guided by  
20 what their wishes are, you understand there is at least one  
21 juror who has a flight commitment and, therefore, if they  
22 haven't reached a judgment by say, whatever, 1:30 or 2:00,  
23 that obviously we will suspend, rather than put a hard time on  
24 it of 12 clock?

25 THE COURT: Yes.

1 MR. KELLY: Thank you.

2 [Whereupon, the jury entered the courtroom at  
3 4:05 p.m.]

4 THE COURT: Please be seated.

5 Members of the jury, you have indicated again that  
6 you wish to suspend now. And as I told you I would, I'm  
7 honoring your request.

8 We need to pay some attention to tomorrow. I  
9 understand one of you has a flight at 3?

10 A JUROR: At 4.

11 THE COURT: Do you have some idea collectively,  
12 Ms. Casero, you're the Foreperson of this jury, as to when you  
13 wish to suspend tomorrow?

14 A JUROR: 2:30.

15 THE COURT: All right, that's what we will do.

16 We will then reconvene at 9 o'clock tomorrow morning  
17 and you will work until 2:30, and then if you do not have a  
18 verdict at that point or earlier, we will suspend then, not to  
19 reconvene until the following Monday at 9.

20 So subject to the admonition that I have gave you  
21 yesterday, you are now excused until 9 o'clock tomorrow  
22 morning.

23 Thank you very much.

24 [Whereupon, the jury was excused at 4:07 p.m.]

25 THE COURT: Court is in recess until 9 o'clock

1 tomorrow morning.

2 [Whereupon, the jury trial adjourned at 4:08 p.m., to  
3 be resumed on Wednesday, commencing at 9 o'clock a.m.]  
4

5 **CERTIFICATE**

6 We certify that the foregoing is a correct  
7 transcription of our computer-aided stenographic notes of the  
8 proceedings in the above-entitled matter.

9 \_\_\_\_\_  
10 James E. McLaughlin

11 \_\_\_\_\_  
12 Laura K. S. Walker  
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## 1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 CR 92-10369-Z

ZOBEL, D. J.

6 UNITED STATES OF AMERICA

7 v.

8 ALFRED TRENKLER

9 Nineteenth Day of Trial10 Jury Deliberations

## 13 APPEARANCES:

14 For the Government:15 Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
16 Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.18 For the Defendant:19 Terry Philip Segal, Esq., Scott Lopez, Esq.,  
20 and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
210 Commercial Street, Boston, MA. 02109.23 Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

November 24, 1993

25 **Computer-Aided Transcription**

P R O C E E D I N G S

THE COURT: Good morning.

Let me state for the record that I will not do anything about this at this late date. Your letter will be filed.

I believe to the extent that the reference to beyond a reasonable doubt has to do with signature, the jury in fact has defined beyond a reasonable doubt that Mr. Trenkler did it based on this evidence.

You will note that as I went down the 404(b) evidence I was very careful in the three-step analysis not to say beyond a reasonable doubt in the first two steps but only in the third step. I believe it is a correct charge. In any event, it's too late to change it.

The jury is coming.

[Whereupon, the jury entered the courtroom.]

THE COURT: Please be seated.

Well, you do look refreshed. Good morning.

I hope that your renewed energy will enable you to reach a verdict. But in any event, you are now charged to continue your deliberations. Let me know if you have a question or need anything.

Is 1 o'clock all right for lunch or do you wish to leave somewhat earlier, having in mind that we are going to suspend at 2:30 in any event?

1 THE FOREPERSON: Earlier, 12.

2 THE COURT: Okay, lunch at 12. And you shall now  
3 continue your deliberations.

4 Thank you.

5 [Whereupon, the jury was excused at 9:18 a.m., to  
6 continue their deliberations.])

7 THE COURT: Court is in recess.

8 [Whereupon, the jury entered the courtroom at  
9 2:24 p.m.]

10 THE COURT: Please be seated.

11 Members of the jury, I did not wish to be responsible  
12 for anybody missing a plane, so I wanted to make sure that you  
13 are out of here at 2:30. You are now excused until Monday  
14 morning at 9.

15 Given the rather long hiatus, I ask you urgently,  
16 please, not to talk about the case, not to think about the  
17 case, certainly not to make up your minds about any aspect of  
18 the case, but just to forget about it until you return on  
19 Monday morning, and at which point you will again commence  
20 with your deliberations. I mean, the jury room that you are  
21 in now is your jury room. We will probably impanel another  
22 jury, but don't worry, they will not evict you.

23 So have a good weekend, have a pleasant holiday, and  
24 I will see you at 9 clock on Monday morning.

25 Thank you very much.

1 [Whereupon, the jury was excused.]

2 THE COURT: Court is in recess.

3 I wish you all a Happy Thanksgiving.

4 [Whereupon, the jury trial adjourned at 2:30 p.m., to  
5 be resumed on Monday, November 29, 1993, commencing at  
6 9 o'clock a.m.]

7

8 **CERTIFICATE**

9 We certify that the foregoing is a correct  
10 transcription of our computer-aided stenographic notes of the  
11 proceedings in the above-entitled matter.

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James E. McLaughlin

Laura K. S. Walker

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CR 92-10369-Z

ZOBEL, D. J.

UNITED STATES OF AMERICA

v.

ALFRED TRENKLER

Twentieth Day of Trial

Verdict

APPEARANCES:

For the Government:

Paul V. Kelly, Esq., and Frank A. Libby, Jr., Esq.,  
Assistant United States Attorneys, Federal Courthouse,  
Boston MA 02109.

For the Defendant:

Terry Philip Segal, Esq., Scott Lopez, Esq.,  
and Brenda R. Sharton, Esq., SEGAL & FEINBERG,  
210 Commercial Street, Boston, MA. 02109.

Courtroom 3  
Federal Courthouse  
Boston, Massachusetts

November 29, 1993

Computer-Aided Transcription

P R O C E E D I N G S

THE COURT: Good morning, please be seated.

[Whereupon, the jury entered the courtroom.]

THE COURT: Good morning, members of the jury. I do hope that you had a good holiday and that you are now refreshed and able to carry on with your work in this case.

Again, I ask you please to review the evidence carefully and to tell us when you have a verdict or when you have a question, and we will attempt then to answer the question or assist you in any way that we can.

When do you want to have lunch, 12:30 again or 1:00?

THE FOREPERSON: 12:30.

THE COURT: Lunch at 12:30.

You are now charged to continue your deliberations. Thank you.

[Recess.]

[Whereupon, there was a question from the jury at 2:11 p.m.]

[Conference at the bench, as follows:

THE COURT: Have you seen the note?

MR. SEGAL: Yes, your Honor.

MR. LOPEZ: Yes.

THE COURT: What do you want me to tell the jury?

MR. LOPEZ: Well, your Honor, I believe that the charge is accurate with respect to --

1           THE COURT: Well, they want elucidation, they want to  
2 be reassured, so what do I tell them?

3           MR. LOPEZ: That they have to be convinced by each  
4 chain in the link of circumstantial evidence in order to find  
5 a fact beyond a reasonable doubt.

6           MR. KELLY: Your Honor, there seems to be two  
7 issues. One is the relative importance, the importance of or  
8 difference between --

9           THE COURT: The jury's question is as follows:

10           One, we are having difficulty weighing the difference  
11 between and relative importance of direct and indirect, paren,  
12 or circumstantial, end paren, evidence. Would it be possible  
13 for us to receive a clarification of these concepts vis-a-vis  
14 the law? How tight does the web of circumstantial evidence  
15 have to be?

16           Two, we anticipate ceasing deliberations at 6 p.m.

17           MR. KELLY: Your Honor, it seems to us, the  
18 government, that there are effectively two issues. One is the  
19 importance of or difference between direct and circumstantial  
20 evidence.

21           And the second --

22           THE COURT: None.

23           MR. KELLY: Right, none.

24           And the second is this, how tight does the web of  
25 circumstantial evidence have to be?

1           You spoke to both of those issues. You've  
2 already spoken to the first in the charge that you gave at  
3 Page 17-11, where you talked about the chain of circumstantial  
4 evidence must be reasonable, must be consistent, must be  
5 proven by direct evidence. I think that the way the Court  
6 framed the circumstantial evidence charge was in fact  
7 accurate.

8           Now I understand that they are looking for some --

9           THE COURT: Let me suggest that we think up an  
10 example of a series of facts, I mean, maybe the cat with the  
11 fish, but maybe another one, think up an example that I can  
12 give to them.

13           And then I will simply explain to them in terms of  
14 the example that the government would have to prove Fact A,  
15 Fact B, Fact C, and only then can they infer Fact D. If, you  
16 know, if you can think up an example, then perhaps that's the  
17 way to do it.

18           MR. LIBBY: If I may, there seems to be a couple of  
19 different types of scenarios that would be at work here.

20           One is where there are -- there is a chain, okay, for  
21 example, the milkman with the snow and the footprints, I think  
22 that's perfect for a chain, you know, they went to bed, there  
23 wasn't anything on the ground, you woke up and saw footprints,  
24 you saw milk in the container. That's a chain type of  
25 scenario.

1           There's also a singular type scenario where you see  
2 one fact, where you see one thing and you may deduce certain  
3 things from it. And I'll give you an example. This is the  
4 turtle and the tree stump example.

5           THE COURT: What's that?

6           MR. LIBBY: If you see -- you're in the woods and you  
7 see a turtle, a box turtle on stump, you can deduce that it  
8 didn't get there by itself. You can deduce that. Something  
9 or somebody put it on the stump. So that's a singular fact  
10 from which you may deduce something.

11          MR. SEGAL: Because turtles can't climb, is that it?

12          MR. LIBBY: Because they can't climb. Now, you may  
13 joke, but it points out the notion that it is separate and  
14 apart from a chain of inferences.

15          THE COURT: Then we should explain that, that  
16 inferences may be drawn from one fact known or from a series  
17 of facts, known facts.

18          MR. LIBBY: For the record, your Honor, that was  
19 standard circumstantial type example where I clerked in  
20 Virginia.

21          Now the second thing is, your Honor, I think --

22          THE COURT: I think it is correct to say that,  
23 whether the inference is drawn from one fact or whether a  
24 series of facts are given from which an ultimate fact can be  
25 deduced, in each instance the fact, the single fact or series

1 of facts have each to be proven beyond a reasonable doubt.

2 MR. LIBBY: I don't know that that's -- well, let's  
3 see if we can be a bit more precise, your Honor, if I may.  
4 First of all, the first notion, the first issue is the Court's  
5 spoke to specifically in the instructions saying that  
6 circumstantial evidence is as good as direct evidence.

7 THE COURT: Do we have any jurors from our other case  
8 here? Has somebody told them to go into the room next door?

9 THE CLERK: I don't think so, but I don't see anyone.

10 THE COURT: Are any of you jurors in the case that  
11 we're currently impaneling?

12 (Pause.)

13 THE COURT: Which is also a criminal case, so I'm  
14 concerned about shouting about circumstantial evidence.

15 MR. LIBBY: The first question dealt with relative  
16 importance. When I saw that term, relative importance,  
17 between the --

18 THE COURT: That one dis --

19 MR. LIBBY: Just as good, just as the Court has  
20 pointed out.

21 Secondly, how tight does the web have to be? To me  
22 it speaks of a concern as to, is there a different burden or  
23 standard of proof when you're using circumstantial as opposed  
24 to direct?

25 THE COURT: What's the answer?

1           MR. LIBBY: There isn't. It's the same burden of  
2 proof as to the essential elements of the offenses charged,  
3 your Honor.

4           THE COURT: If the jury isn't persuaded of each fact,  
5 if it isn't persuaded that the turtle what was on the stump,  
6 then it can't deduce that somebody put the turtle on the  
7 stump.

8           MR. LIBBY: And you spoke to that in the  
9 instructions.

10          THE COURT: But I have to tell them something now.  
11 And you cavil with my suggestion that the government has to  
12 prove every underlying fact in order for the -- beyond a  
13 reasonable doubt -- in order for the jury to be able to draw  
14 an inference of the ultimate fact. And I just don't know why  
15 that's correct. I think it's not correct for you to cavil  
16 with that because I think the government does have to prove  
17 every fact.

18          MR. LOPEZ: The direct fact -- if I might, the  
19 direct --

20          THE COURT: I'm with you, so let him try to argue me  
21 out of it.

22                 Why is that incorrect?

23          MR. LIBBY: More precisely, your Honor, regardless of  
24 how many different underlying predicate facts or circumstances  
25 the jury has to take into account, the government's burden is

1 to establish elements of the charged offenses. That's it.

2 They look at the evidence as a whole as you  
3 instructed them --

4 THE COURT: What do I tell them? What do I tell them  
5 in answer to this question? That's what I want to know.

6 MR. LIBBY: Let me talk to Mr. Kelly.

7 [Pause.]

8 MR. LIBBY: May I make a couple of points, your  
9 Honor?

10 THE COURT: Just tell me what to say to them.

11 MR. LIBBY: In a round about way let me see if I  
12 can --

13 THE COURT: Well, please tell me directly. What do  
14 you want me to tell them?

15 MR. LIBBY: First of all, there's two concerns,  
16 one is, if we start telling the jury that they have to  
17 determine --

18 THE COURT: Tell me what you want me to tell them.

19 MR. LIBBY: That they are to determine the essential  
20 elements of the charged offenses beyond a reasonable doubt.  
21 Beyond that, however, whatever facts underlie their assessment  
22 of those elements, has no precise or has no formal burden  
23 associated with it. Otherwise, your Honor, the jury would be  
24 inclined to look at Witness A, do we believe everything he  
25 says beyond a doubt, and if so, if not then it is --

1 THE COURT: When they have -- assume for the moment  
2 there are Facts 1 through 3 from which the jury infers X.

3 MR. LIBBY: Right.

4 THE COURT: If in fact -- can the jury infer X from  
5 Facts 1 through 3 that have only been proven at most by a  
6 preponderance of the evidence?

7 MR. LIBBY: I think that's where we're getting bogged  
8 down. I think if the Court says, give weight to the  
9 particular evidence, testimony, exhibits, documents, whatever  
10 it may be, as you see fit, in the totality of all of that  
11 evidence, you then determine whether the government has proven  
12 each essential element beyond a reasonable doubt.

13 THE COURT: I think that's correct.

14 MR. KELLY: That is.

15 THE COURT: I think that's also correct.

16 MR. LOPEZ: Your Honor, I would also suggest that in  
17 explaining this, that there would be another restatement of  
18 the jury's obligation that in the event there are inferences  
19 which can be drawn with respect to innocence, that they are  
20 obligated to do that; that the defendant is --

21 THE COURT: I'm going to answer their question and no  
22 more. My inclination -- restate it again.

23 MR. LOPEZ: In light of the fact that we're talking  
24 about circumstantial evidence here, in the light of the  
25 government's statement that, and I believe what they're saying

1 is that there's no obligation in which to prove the subsidiary  
2 facts upon which an inference is based beyond a reasonable  
3 doubt.

4 THE COURT: We're not saying that. We're not saying  
5 that at all. I think what we're saying in response to the  
6 second part of the question, is that the government has the  
7 burden of proving every element beyond a reasonable doubt.

8 MR. LOPEZ: That's a fair statement.

9 MR. KELLY: Every element of the three charged  
10 offenses.

11 THE COURT: Of each of the three charged offenses.

12 MR. LIBBY: Viewing the evidence underlying  
13 that --

14 THE COURT: Hold it.

15 MR. LIBBY: Sorry.

16 THE COURT: I want to get this right.

17 And in deciding whether it has proven each element,  
18 you should consider all of the evidence.

19 MR. LIBBY: For example, testimony, exhibits.

20 THE COURT: Draw reasonable inferences from all of  
21 the evidence. And you may draw.

22 MR. LOPEZ: But are not required to.

23 THE COURT: You may draw reasonable inferences from  
24 all evidence.

25 What else did you say, Mr. Libby?

1           MR. LIBBY: I think that was it, your Honor. I mean,  
2 just you view it in the totality and you may give it such  
3 weight as you see fit, each piece of evidence.

4           THE COURT: All of the evidence viewing it in its  
5 totality.

6           And giving such weight to each piece as you deem it  
7 deserves.

8           MR. LIBBY: That's right.

9           MR. LOPEZ: Your Honor, if I may, that is  
10 inconsistent with the charge that you had given earlier.

11          THE COURT: How?

12          MR. LOPEZ: Well, your Honor, their question goes to  
13 how tight of a chain or a logical link does there have to be.  
14 In your earlier charge, you specifically referenced that  
15 inferences can only be from direct facts that they find.

16          And this seems to lessen that burden by saying that  
17 now they don't have to look at whether or not the facts are  
18 proven but whether looking at the totality of the  
19 circumstances, they believe the ultimate fact is proven beyond  
20 an a reasonable doubt.

21          That's a very different -- with circumstantial  
22 evidence, they have to be convinced that the direct fact from  
23 which they are drawing a reasonable and rationale inference --

24          THE COURT: I didn't say that before. I don't think  
25 I said that before. I said that the facts had to be proven by

1 direct evidence. I did not say they had to be proven beyond a  
2 reasonable doubt.

3 MR. LOPEZ: No, I'm not saying that they have to, but  
4 they have to find that fact before they can -- they can only  
5 -- in other words, you can't draw an inference from an  
6 inference. You can only draw an inference from a fact that  
7 they find to be -- that they find.

8 THE COURT: And having in mind that you have to find  
9 the underlying --

10 MR. LOPEZ: You may draw inferences from facts that  
11 they find.

12 THE COURT: So confusing.

13 MR. LIBBY: That guts it, your Honor. What is  
14 important --

15 THE COURT: I did say something like that before.

16 MR. LOPEZ: Yes, you did, your Honor.

17 MR. LIBBY: What's important to keep in mind is the  
18 standard of proof bears solely on the essential elements of  
19 each charged offense. What we're talking about beyond that is  
20 an evidentiary matter.

21 THE COURT: But I think it's correct to say that they  
22 can't draw an inference from an inference; that inferences  
23 must be drawn from facts.

24 MR. LIBBY: Okay. And they find the facts based on  
25 the evidence, your Honor.

1           THE COURT: Understand, you cannot draw inferences  
2 from inferences, but inferences must be drawn from facts you  
3 find.

4           MR. LIBBY: As you find them. And that's from the  
5 evidence.

6           MR. KELLY: Not all inferences arise from a chain of  
7 circumstances.

8           MR. LIBBY: Which are the two examples.

9           MS. SHARTON: Your honor, if I might have a shot. The  
10 question is directly asking about circumstantial evidence and  
11 to give such a general answer back, I think might confuse  
12 them.

13          THE COURT: I'll give them examples. Inferences may  
14 be drawn from a single fact, turtle on the stump, or from a  
15 chain of facts.

16          MR. KELLY: A series of facts.

17          THE COURT: Or a series of facts.

18          MR. LIBBY: Right.

19          THE COURT: The example of the cat and the fish.

20          MS. SHARTON: Each chain in the link.

21          MR. KELLY: Mailman or the milkman in the snow.

22          MR. LIBBY: Your Honor has used that successfully.

23          MR. LOPEZ: Newspaper in the snow. Footprints in the  
24 snow with the newspaper.

25          THE COURT: And footprints going the other way.

1 MS. SHARTON: I think your Honor was correct  
2 originally in the bare position that each chain in the link  
3 has to be proven beyond a reasonable doubt.

4 THE COURT: I didn't say that. I never said that.  
5 The time I talked about reasonable doubt was in connection can  
6 the identity evidence. Only.

7 And that was not -- and that was in my view, not  
8 circumstantial evidence, but was direct evidence that, if  
9 believed, would convict the defendant; if not, then it is just  
10 something that doesn't go. That is why I thought the  
11 government was wrong in the letter it wrote and that's why I  
12 think you're wrong now.

13 Insofar as I understand the question to be in two  
14 parts, there is no difference in the weight to be given direct  
15 and circumstantial evidence.

16 Two, insofar as you are seeking guidance about the  
17 concept, the government has the burden of proving each element  
18 of each of the three charged offenses beyond a reasonable  
19 doubt.

20 In deciding whether the government has proven each  
21 element beyond a reasonable doubt, consider all of the  
22 evidence, and you may draw reasonable inferences from all of  
23 the evidence -- that's the circumstantial -- from all of the  
24 evidence viewing it in its totality. Understand that you  
25 cannot draw inferences from inferences, but inferences must be

1 drawn from facts you find.

2 Now, inferences may be drawn from a single fact,  
3 turtle, or they may be drawn from a series of facts,  
4 footprints and newspaper.

5 So, hopefully, that will do it.

6 ...end of conference at the bench.]

7 (Pause.)

8 [Whereupon, the jury entered the courtroom at  
9 2:33 p.m.]

10 THE COURT: Please be seated.

11 Members of the jury, you have sent a note which reads  
12 as follows:

13 We are having difficulty weighing the difference  
14 between and relative importance of direct and indirect, in  
15 parentheses, or circumstantial evidence. Would it be possible  
16 for us to receive a clarification of these concepts vis-a-vis  
17 the law? How tight does the web of circumstantial have to be?

18 First, I see the question as in two parts. And the  
19 answer to the first question which is, is there a difference  
20 in relative importance, the answer is, no. As I told you  
21 during the charge, where Perry Mason always says, oh, it's  
22 just circumstantial evidence, Perry Mason is just plain  
23 wrong. There is no difference in the weight that may be given  
24 to direct or circumstantial evidence.

25 The second part of the question asks for

1 clarification of the concept of circumstantial evidence in the  
2 context of this case.

3 Let me tell you, first, that the government has the  
4 burden of proving each element of each of the three offenses  
5 charged beyond a reasonable doubt.

6 In deciding whether the government has proven each  
7 element beyond a reasonable doubt, you should consider all of  
8 the evidence, and you may draw from all of the evidence,  
9 reasonable inferences, viewing the evidence in its totality.

10 Understand that you cannot draw inferences from  
11 inferences, but you have to draw inferences from facts that  
12 you find.

13 Now you may draw an inference from a single fact.  
14 And the example that counsel suggest, which I confess I had  
15 not heard before, is the famous example of the turtle on the  
16 tree stump. If you walk in the woods and it is shown, the  
17 witness testifies, that there was a turtle on a tree stump  
18 three feet high, then you may infer from that that somebody  
19 put the turtle there because we know, at least in this example  
20 we know that turtles can't climb trees.

21 So this is an inference drawn, an inference that  
22 somebody put the turtle there, drawn from the single fact that  
23 there is a turtle on tree stump. Or inferences may be drawn  
24 from a series of facts.

25 If the witness were to tell you that the witness

1 observed footprints in the snow going toward the house and  
2 observed a newspaper by the back door, and then observed  
3 footprints going away from the house, that is a series of  
4 facts from which you may infer that the newspaper person came  
5 and delivered the newspaper.

6 So you may draw inferences from a single fact, you  
7 may draw inferences from a series of facts that you find, but  
8 you may not draw inferences from inferences.

9 Does that help?

10 You may now continue your deliberations. And I am  
11 aware of Part 2 of your note which says that you anticipate  
12 ceasing deliberations at 6, and will at that time excuse you,  
13 if you do not have a verdict before then.

14 Thank you.

15 [Whereupon, the jury was excused at 2:37 p.m.]

16 THE COURT: This case is now recessed.

17 [Whereupon, the jury entered the courtroom.]

18  
19 Verdict

20 THE COURT: Please be seated, except for your  
21 foreperson who should kindly remain standing. You may be  
22 seated.

23 Madam foreperson, has the jury agreed upon its  
24 unanimous verdict?

25 THE FOREPERSON: Yes, we have, your Honor.

1 THE COURT: Please hand it up to the Court.

2 Please be seated.

3 Thank you.

4 Members of the jury, hearken to your verdict as the  
5 Court has recorded it: We the jury find the defendant Alfred  
6 Trenkler guilty on Count 1, guilty on Count 2, guilty on Count  
7 3.

8 So say you Madam Foreperson?

9 THE FOREPERSON: Yes, your Honor.

10 THE COURT: So say you all?

11 THE JURY: Yes.

12 MR. LOPEZ: Your Honor, at this time, we'd ask that  
13 the jury be polled.

14 THE COURT: As I call your names would you please say  
15 whether you agree or disagree with the verdict.

16 Ms. Kasirer?

17 JUROR: Yes.

18 THE COURT: Ms. Lapson?

19 A JUROR: Yes.

20 THE COURT: Mr. Thomas?

21 A JUROR: Yes.

22 THE COURT: Ms. O'Hare?

23 A JUROR: Yes.

24 THE COURT: Ms. Spinelli?

25 A JUROR: Yes.

1 THE COURT: Mr. O'Rourke?

2 A JUROR: Yes.

3 THE COURT: Mr. Ramond?

4 A JUROR: Yes.

5 THE COURT: Ms. Hanlon?

6 A JUROR: Yes.

7 THE COURT: Mr. Anderson?

8 A JUROR: Yes.

9 THE COURT: Ms. Mitchell?

10 A JUROR: Yes.

11 THE COURT: Ms. Tisdale?

12 A JUROR: Yes.

13 THE COURT: Mr. Woods?

14 A JUROR: Yes.

15 THE COURT: Members of the jury, I cannot say how  
16 much I thank you for the long time that you've spent here, for  
17 your attention to the evidence and the responsible way in  
18 which you've gone about sifting it and ultimately reaching  
19 your verdict.

20 It's been a privilege to try this case with you. But  
21 I do want you to understand that you, too, have been  
22 privileged. It was a well-presented case. Counsel all did  
23 this in a most professional way, and for that I thank all of  
24 them.

25 You are now excused with the thanks of the Court. If

1 it wouldn't be too much of an inconvenience, I would very much  
2 appreciate your waiting for moment so I can thank you  
3 individually and give you your certificates of appreciation.

4 Members of the jury, you are now excused.

5 [Whereupon, the jury was excused at 5:23 p.m.]

6 THE COURT: Please be seated.

7 The government has filed a motion for revocation of  
8 defendant's release and for an issuance of an immediate  
9 detention order. I don't see that I have any choice but to  
10 allow it, do I?

11 MR. LOPEZ: Your Honor, for the record, we would note  
12 our objection to this. There will be motions filed with  
13 respect to this, although the conviction stands.

14 THE COURT: I understand that.

15 Government's motion is allowed.

16 Mr. Marshal, the defendant is in your custody  
17 pursuant to that order.

18 Disposition, this is necessarily a tentative date  
19 because I don't have all my calendars here.

20 Tentatively February 15th at 2 clock, but I need to  
21 confirm that, and I will asks Mrs. Dello Russo to confirm it.

22 Thank you.

23 Court is in recess.

24 [Whereupon, the jury trial was concluded at  
25 5:25 p.m.]

**CERTIFICATE**

We certify that the foregoing is a correct transcription of our computer-aided stenographic notes of the proceedings in the above-entitled matter.

\_\_\_\_\_  
James E. McLaughlin

\_\_\_\_\_  
Laura K. S. Walker

**I N D E X**

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