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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

2

MIAMI DIVISION

3

CASE 04-60001-CR-COOKE

4

THE UNITED STATES OF AMERICA,

5

Plaintiff,

6

vs.

MIAMI, FLORIDA

7

JULY 12, 2007

THURSDAY - 9:00 A.M.

8

ADHAM AMIN HASSOUN,

KIFAH WAEL JAYYOUSI,

9

JOSE PADILLA,

a/k/a "Ibrahim,"

10

a/k/a "Abu Abdullah the Puerto Rican",

a/k/a "Abu Abdullah Al Mujahir",

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Defendants.

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE MARCIA G. COOKE,

14

UNITED STATES DISTRICT JUDGE

15

DAY 40

16



14 this witness would take on direct?

15 MR. SHIPLEY: I wouldn't think more than a half hour.

16 THE COURT: We are going to take a brief break. I
17 understand through Ivan that you didn't have a chance to submit
18 your lunch forms. To make sure they are ready for you, I am
19 going to excuse you for five minutes to fill out those forms
20 and we are going to come right back.

21 [The jury leaves the courtroom].

22 THE COURT: Mr. Shipley, I apologize. We promised the
23 vendor that we would get the forms by 10:30.

24 MR. SHIPLEY: That's fine.

25 [A brief recess was taken].

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1 [The jury returns to the courtroom].

2 THE COURT: Mr. Shipley, call your next witness.

3 MR. SHIPLEY: Gerry LaPorte will be the United States'
4 next witness.

5 COURT REPORTER: Do you swear or affirm the testimony
6 you are about to give is the truth, the whole truth and nothing
7 but the truth, so help you God?

8 THE WITNESS: I do.

9 THE COURT: Please state your full name for the
10 record, sir, and spell your last name.

11 THE WITNESS: Gerald, G-E-R-A-L-D, LaPorte,
12 L-A-P-O-R-T-E.

13 GERALD LAPORTE, GOVERNMENT'S WITNESS, SWORN

14 DIRECT EXAMINATION

15 BY MR. SHIPLEY:

16 Q. Good morning, Mr. LaPorte.

17 A. Good morning.

18 Q. Who do you work for?

19 A. I work for the United States Secret Service.

20 Q. Now, people know the Secret Service for protecting the
21 President, but does it also do some other things?

22 A. Yes, we do.

23 Q. What division or group are you in in the Secret Service?

24 A. I am employed with the forensic services division.

25 Q. Can you tell the jury, what is forensic services?

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1 A. We provide services of a forensic nature, of course,
2 whenever evidentiary materials are submitted and there is a
3 request to conduct any kind of forensic examination.
4 Typically, our division handles just about anything related to
5 documents, paper related things, or other types of documents,
6 like credit cards, travelers checks, identifications. We
7 typically handle everything that does not include currency or
8 Treasury obligations. We have another division that handles
9 that.

10 Q. Forensic means what?

11 A. Forensic typically means, or implies that a request is made
12 to conduct some sort of physical or chemical examination with
13 relation to a piece of material that has been obtained from a
14 crime.

15 Q. Now, what specifically do you do as part of the forensic
16 services division?

17 A. I am a senior document analyst, and I have is sub specialty
18 in chemistry.

19 Q. How long have you been employed by the Secret Service?

20 A. I have been employed for six years.

21 Q. Always as a document examiner?

22 A. Yes, sir.

23 Q. Do you do work just for the Secret Service or also for
24 other law enforcement agencies?

25 A. We have some unique resources, so we, on a regular basis,
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1 conduct examinations at the request of other law enforcement
2 agencies.

3 Q. Does that include the FBI?

4 A. It does, yes.

5 Q. Now, is there a particular type of document analysis that
6 you do?

7 A. Yeah, my specialty revolves around the examination of inks
8 and papers.

9 Q. What kind of documents do you analyze?

10 A. I analyze a variety of documents, anything from kidnapping,
11 threatening and extortion letters, counterfeit documents, such
12 as drivers identifications, travelers checks, birth
13 certificates, that sort of thing, financial agreements, the
14 whole gamut of -- anything that you could imagine would be a
15 document.

16 Q. What is the purpose of your analysis?

17 A. Typically, the purpose of my analysis is usually to try and

18 determine how the document was produced, where it may have
19 originated from, and often times the authenticity of the
20 document which, in most cases, relates to the date that it was
21 produced. For someone, if someone alleges that a document was
22 produced in 1999, it would be submitted to us to try and
23 determine if it really was produced in 1999.

24 Q. Have you heard the term "questioned document"?

25 A. Yes, I have.

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1 Q. Is that a term that you are familiar with in your work?

2 A. Yes.

3 Q. What does that mean in the context of your work with the
4 Secret Service?

5 A. First of all, that's a very common term that is used
6 generically throughout our community. Typically, it just means
7 a document that's submitted for examination where the submitter
8 is trying to ascertain information about the document.

9 Q. Can you tell the jury a little bit about your background
10 now? Did you attend college?

11 A. Yes, I did. I have a bachelor's of science degree, with a
12 major in biology. I also have a bachelor's of commerce degree
13 in business administration, both of those were from the
14 University of Windsor in Windsor, Ontario, Canada. Then I
15 attended graduate school at the University of Alabama,
16 Birmingham, and I obtained a master's of science degree in
17 forensic science from there.

18 Q. Have you had experience in your career with forensic

19 analysis?

20 A. Yes, I have.

21 Q. Can you tell the jury a little bit about that?

22 A. Yeah, I spent three and a half years as a forensic
23 technician, autopsy assistant, working in a medical examiner's
24 office. I then spent two years as a supervisor. My title
25 there was forensic and clinical toxicology specialist, in a

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1 private laboratory just outside of Dallas, Texas. I then spent
2 three and a half years as a forensic drug chemist, which is
3 usually the individual that examines substances that are
4 suspected to be controlled substances, like cocaine and
5 marijuana. Then I've spent the past six years with the Secret
6 Service.

7 Q. Your time with the Secret Service for the past six years,
8 this has been doing document analysis?

9 A. That's correct.

10 Q. By the way, are you a handwriting analyst?

11 A. No, I am not. I do not do handwriting examinations.

12 Q. That is not an area of your expertise?

13 A. That's correct.

14 Q. What kind of specialized training or education have you
15 received to become a document analyst?

16 A. In addition to my educational background, and to my
17 previous work background, which was very chemistry related, I
18 underwent a one year intensive training program with the Secret
19 Service and successfully completed that.

20 Q. The chemistry background that you mentioned earlier, did
21 that also -- is that something you use in your document
22 analysis work?

23 A. Yes, that background carries over into my everyday work.

24 Q. Do you have any certifications or professional affiliations
25 in your field?

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1 A. I am a member of the American Academy of Forensic Sciences.
2 I am also a member of the Mid Atlantic Association of Forensic
3 Scientists. I am a member of the American Society for Testing
4 Materials. I'm a regular participant in the Scientific Working
5 Group for Document Examiners.

6 Q. Have you received any honors or awards in your career?

7 A. Yes, I have. I received the Forensic Scientist of the Year
8 award from the Mid Atlantic Association of Forensic Scientists
9 in 2005.

10 Q. Have you been accepted as an expert witness before in the
11 area of document analysis?

12 A. Yes, I have.

13 Q. Have you also testified before that as an expert with
14 regard to other kinds of forensic analysis?

15 A. Yes, I have.

16 Q. Any of those in Federal Court?

17 A. Yes.

18 Q. Have you made any publications or given any lectures on the
19 subject of document analysis?

20 A. Yes, I have published six or seven papers in peer reviewed
21 journals, and then I have also conducted well over 50 training

22 seminars and lectures in ten different countries, typically to
23 other law enforcement agencies to do specialized training, or
24 to professional groups.

25 Q. Any guess as to how many documents you have analyzed over
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1 the course of your career, just talking about Secret Service?

2 A. Thousands.

3 Q. In your job, do you ever do analysis of the kind of ink
4 that appears on a document?

5 A. Yes, I do.

6 Q. How about the type of printing or machine-generated
7 printing on a document?

8 A. Yes.

9 Q. Do you also do analysis of the indentations that are made
10 from writing on a piece of paper?

11 A. Yes.

12 Q. Those are all part of the analysis that you conduct in your
13 job?

14 A. That's correct.

15 MR. SHIPLEY: Your Honor, at this time the United
16 States would offer Mr. LaPorte as an expert in the area of
17 document analysis.

18 MR. NATALE: If I may voir dire briefly?

19 THE COURT: Briefly counsel.

20 VOIR DIRE EXAMINATION

21 BY MR. NATALE:

22 Q. Do you have this thing called a curriculum vitae, sort of

23 like a resume?

24 A. Yes, that's correct.

25 Q. Are you the same Gerald LaPorte who wrote an article called
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1 The Evaluation of Matching Unknown writing Inks with the United
2 States International Ink Library?

3 A. Yes, that's my article.

4 Q. That's you. You said you testified in other Federal Courts
5 as an expert?

6 A. That's correct.

7 Q. Would that be in the case of United States versus Hector
8 Rios on May 22nd, at approximately 9:30 a.m., in the year 2006?

9 A. I am not sure about that. Where was that trial?

10 Q. In Puerto Rico.

11 A. Yes, I did testify in Puerto Rico. I am not quite sure --
12 there were several defendants in the case.

13 Q. Yes, about five or six.

14 A. Yes.

15 Q. You testified in that case?

16 A. Yes. Once again, I am not familiar with the defendants,
17 but I did testify in Puerto Rico.

18 Q. Forget about the defendants. You testified in the case?

19 A. I assume so, yes.

20 Q. You put it on your CV, right?

21 A. Yes.

22 MR. NATALE: Thank you. No problem.

23 THE COURT: The witness is accepted. You may

24 continue, counsel.

25 BY MR. SHIPLEY:

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1 Q. Mr. LaPorte, did you examine any documents in this case?

2 A. Yes, I did.

3 MR. SHIPLEY: Your Honor, if I may approach?

4 THE COURT: You may.

5 BY MR. SHIPLEY:

6 Q. I am showing you what has been introduced into evidence as
7 Government's Exhibit 400. You already have some gloves up
8 there. I'd ask you to put them on. Take a look at that item
9 and tell me whether you recognize it and its contents.

10 A. Yes, I do.

11 Q. Does that item contain some of the documents you analyzed
12 in this case?

13 A. Yes, it does.

14 Q. Did you obtain that from the FBI?

15 A. I did.

16 Q. About when did you first receive that?

17 A. I believe it was on April 19, 2006.

18 Q. And were you asked to conduct an analysis of items in that
19 binder?

20 A. Yes, I was.

21 Q. Was there one particular document that was the focus of
22 your analysis?

23 A. Yes, there was.

24 Q. Is that the pages that were in the plastic sheaths as
25 Government's Exhibits 403A through E?

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1 A. That's correct.

2 MR. SHIPLEY: If the members of the jury have the
3 color copies of that exhibit, again, it's Government's Exhibits
4 403A through E, if you want to pull that out. We're going to
5 be talking about that.

6 MR. NATALE: Your Honor, may I have a color copy, too?

7 THE COURT: Which exhibit are you talking about?

8 MR. SHIPLEY: This is a color copy of 403A through E.
9 I don't have an extra copy, Tony.

10 MR. NATALE: That's okay. I will look at it later.

11 MR. SHIPLEY: Does everyone have that?

12 BY MR. SHIPLEY:

13 Q. Mr. LaPorte, before we start --

14 MR. NATALE: John, I have it. Thank you.

15 BY MR. SHIPLEY:

16 Q. Before we start taking a look more closely at that page, I
17 want you to just take a look at Government's Exhibit 403 as it
18 appears in the binder. Now, does that consist of five pages?

19 A. That's correct.

20 Q. As you see them there in front of you, are they in exactly
21 the same appearance as when you first got them?

22 A. No, they are not.

23 Q. How are they different as you see them today?

24 A. When I received them, 403A through 403E were not in the
25 plastic sheet protectors and they were part of the binder.

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1 Then, 403A through 403E did not have -- these documents have
2 purple staining on them. They did not have that as well. In
3 addition, there are some hole punches through the ink. That,
4 obviously, was not there as well at the time when I received
5 it.

6 Q. The hole punches, was that as a result of your analysis?

7 A. My analysis, yeah, and someone --

8 MR. NATALE: There is an objection I would like to
9 pose. May we come side bar?

10 [Proceedings at sidebar follow]:

11 MR. NATALE: Your Honor, we had an expert come and
12 look at it and that's also the reason why some of the holes are
13 there. I am concerned that he might say that because --

14 MR. SHIPLEY: All I was doing was clarifying.

15 THE COURT: He is saying that the expert just
16 inadvertently may say --

17 MR. SHIPLEY: I just wanted to show that the holes
18 were part of the analysis.

19 THE COURT: All right.

20 [Proceedings in open court follow]:

21 BY MR. SHIPLEY:

22 Q. Mr. LaPorte, the holes that you mentioned, those are part
23 of the document analysis, correct?

24 A. That's correct.

25 Q. The plastic sheath and the discoloration, do you know what

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1 that was the result of?

2 A. The discoloration appears to be from a chemical processing,

3 typically a compound that they use or a chemical called
4 ninhydrine that they use to enhance fingerprints. That's
5 usually where -- that's what I would assume the purple staining
6 is coming from. The sheet protectors, I would assume that the
7 documents were placed in those sheet protectors afterwards for
8 protection of the documents.

9 Q. Is it your understanding that was part of the fingerprint
10 analysis?

11 A. Yes.

12 Q. Was that done after you got through with your analysis?

13 A. That's correct.

14 Q. Now, when you first saw Government's Exhibit 403, and all
15 the other pages in the binder, did they have labels on the
16 bottom of them?

17 A. Yes, they had white labels on them.

18 Q. Are those the white labels that appear on the color copies
19 at the very bottom with the initial letters AFGP?

20 A. Yes.

21 Q. Do you see those same labels on those pages and other pages
22 in the binder today?

23 A. Yes.

24 Q. Now, the pages that you worked with, did you actually put
25 your initials on those white labels on the pages?

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1 A. Yes, I actually put a portion of my case number, the last
2 five digits of my case number, and then an assigned number and
3 my initials.

4 Q. Before coming to court, did you also visually examine all
5 of the pages in that binder?

6 A. Yes.

7 Q. Now, what's the very first thing you did as part of your
8 analysis?

9 A. The first thing that I do when I get documents is,
10 obviously I just look at them visually. I try and determine if
11 there may be any staining on the documents, that somebody
12 applied a chemical, maybe, to alter something. I get an idea
13 of how they are produced, if they are handwritten, if there's
14 writing notations on them, possibly the different type of pens
15 or writing instruments that may have been used. Just sort of
16 an overall visual inspection.

17 Q. Even before you do that, do you take some photographs?

18 A. Yes, I take photographs. Usually the photographs come
19 first. It's an immediate process. I take photographs and then
20 I take photocopies to use as working copies for my notes.

21 Q. In your analysis, before we get into the substance of it,
22 did you assign your own numbering system to the pages that you
23 looked at?

24 A. Yes, I did.

25 Q. I know you have referred to them by your own numbering

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1 system and the Bates numbers on this document are a little
2 different. I just want to make sure the record is clear on
3 that.

4 The 403A through 403E, those first five pages, what

5 numbers or letters did you assign to those pages?

6 A. 403A through 403E have been assigned Q1 through Q5
7 respectively.

8 Q. So, Government's Exhibit 403A, the first page of the form,
9 is your Q1, correct?

10 A. Correct.

11 Q. That goes through the rest of the pages up to Government's
12 Exhibit 403E is your Q5, correct?

13 A. That's correct.

14 Q. Did you also select some additional forms from that binder
15 for analysis?

16 A. Yes, I did.

17 Q. Did you label those K1 through K30?

18 A. That's correct.

19 Q. Were those basically six sets of the five-page document?

20 A. Yes.

21 Q. I am just going to read this to you, for the sake of the
22 record. Your K1 to 5, does that correspond to the labels AFGP
23 2002 80336-00115 through 24?

24 A. Yes, that's correct.

25 Q. Your K6 through K10, does that correspond, and I will just

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1 read the last two digits of those, 25 to 34?

2 A. Yes, sir.

3 Q. Your K11 through K15, that corresponds to the Bate's
4 numbers that end in 35 through 44?

5 A. Yes.

6 Q. Your K16 through 20, does that correspond to the Bate's
7 labels that end in 69 through 78?

8 A. Yes.

9 Q. Your K21 to K25, does that correspond to the Bate's labels
10 ending in 81 through 90?

11 A. Yes, sir.

12 Q. Your K26 to K30, does that correspond to the pages ending
13 in 93 through 102?

14 A. Yes, that's correct.

15 Q. How did you select those six forms of five pages each for
16 your comparison analysis?

17 A. Basically, I just looked through the binder and
18 representatively sampled or chose pages that were the same size
19 as the questioned documents and sort of the same type of paper.

20 Q. Now, after you did the copying and the photographs, tell
21 the jury again, what's the first thing you did as part of your
22 actual analysis?

23 A. The first part of my actual analysis, like I previously
24 explained, is just a visual examination, no microscope or
25 anything, just with some light and just my eyes. Look over the

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1 document, look for anything extraordinary on the document.
2 Sort of get an idea of how it was produced, the types of
3 writing instruments that may have been used, that sort of
4 thing.

5 Q. You did that for the five pages that are Government's
6 Exhibit 403A through E?

7 A. Yes, that's correct.

8 Q. After you did the visual examination, did you also do a
9 microscopic examination?

10 A. Yes, that's when I look at it under the microscope. Once
11 again, sort of doing the same type of thing, I try and
12 determine at that point how the documents were produced
13 generally or how they were printed. There is a variety of
14 methods that documents can be printed. It could be
15 typewritten. It could be produced on a photocopier. It could
16 be produced with an ink jet printer. They can be
17 professionally printed, that sort of thing.

18 So I get an idea of how it was produced or how it was
19 printed, and then I examine if there were any writing inks,
20 which in this case there were. I microscopically examine those
21 and a lot of times one can determine the type of ink that was
22 produced.

23 Q. Did you observe any pre-printed text or non-handwritten
24 text on Government's Exhibit 403A through E?

25 A. Yes.

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1 Q. Did you also observe what appeared to be handwriting on
2 those pages as well?

3 A. Yes.

4 Q. I want to first talk about the printed text. Is that in
5 Arabic?

6 A. Yes, it is.

7 Q. Did you attempt to compare the printed text on Government's
8 Exhibit 403 to the six other forms that you examined, your K1

9 to K30?

10 A. Yes, I did.

11 Q. Did you reach any conclusions about the source of the
12 printing on all of these pages?

13 A. Yes, I had determined that all of them were produced using
14 an office machine system that utilizes toner. Toner,
15 basically, is the type of material that is used in machines
16 like photocopiers, laser printers, and some types of fax
17 machines.

18 Q. Are you familiar with the term a "common source"?

19 A. Yes, I am.

20 Q. Were you able to determine whether those items came from a
21 common source?

22 A. Yeah, I determined that Government's Exhibits 403A through
23 403E had originated from a common source when compared to the
24 items that I had designated K1 through K30.

25 Q. Those are other forms that appeared in that binder,

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1 Government's Exhibit 400?

2 A. Yes.

3 Q. How can you tell that? What is the basis for that
4 conclusion that they came from a common source?

5 A. Like I had mentioned, these documents were produced using a
6 toner type process. A lot of times when one makes a copy on a
7 photocopy machine, there are markings on the photocopy machine
8 that can get transferred over onto the document. For example,
9 like a scratch on the glass or some dust, even like White Out
10 or Liquid Paper, if someone leaves some of that on the glass,

11 then when you put the document on top and you make a photocopy,
12 then all those defects will be transferred onto the final copy.

13 Q. Are you familiar with a term called "trash mark"?

14 A. That's the terminology, that's sort of the jargon, if you
15 will, that we use in the field to describe those types of
16 markings. What trash marks are, are basically physical defects
17 that are transferred onto a document.

18 Q. Did you take any photographs or images that showed the
19 trash marks that your analysis revealed?

20 A. Yes, I did.

21 Q. Did you put those together into an exhibit that we have for
22 the jury today?

23 A. I did.

24 MR. SHIPLEY: Your Honor, at this time I offer
25 Government's Exhibit 725.

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1 MR. NATALE: No objection.

2 THE COURT: You may proceed.

3 [Government Exhibit 725 received in evidence].

4 MR. SHIPLEY: If I may have the witness stand down.

5 THE COURT: You may step down. You need to use the
6 hand-held mike.

7 MR. SHIPLEY: Can everybody see these markings in
8 here?

9 ALL JURORS: Yes.

10 BY MR. SHIPLEY:

11 Q. That's what we are going to be talking about.

12 First of all, this is Government's Exhibit 725. What
13 does this show?

14 A. Okay. What this depicts is, first of all, I took
15 photographs of the top portions of these designated documents
16 which I have labeled here in the left third portion of the
17 page. You will notice I have Q1, which is Government's Exhibit
18 403A. Then K1, K6, K11, K16, K21 and K26.

19 Q. Let me just stop you. Where you have Q1, is that
20 Government's Exhibit 403A?

21 A. That's correct.

22 Q. What you have labeled K1, K6, K11, K16, K21 and K26, are
23 those the first pages of other forms from that binder?

24 A. Yes, that's correct.

25 Q. Okay. You may continue.

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1 A. What I have denoted here, or why I took this photograph, is
2 to depict that, as you can see in these areas, these are
3 markings on this document. You can see the same types of
4 markings. Once again, just to describe for the record, I guess
5 it would be in the left portion or the left corner of each of
6 the documents. You can see that the markings are similar on
7 each document here. Even some of the portions in some of these
8 other documents, sort of the swipe marks or the dirty area, if
9 you will, are reproduced as well.

10 Q. Are those what you call trash marks?

11 A. Yes, that's correct.

12 Q. Does this support your conclusion that Government's Exhibit
13 403A and the pages in it come from a common source as these

14 other documents you sampled?

15 A. Yes, at some time there was an original document that was
16 used to create these documents. Once again, what that comes
17 back to was that there was a common source at one point that
18 was used to produce all of these documents.

19 Q. Thank you very much. You may stand down.

20 [Witness resumes the witness stand.]

21 BY MR. SHIPLEY:

22 Q. That was one phase of your analysis. Let me ask you about
23 another phase regarding the ink that appears on Government's
24 Exhibit 403A through E. Did you analyze the ink that appears
25 in the handwritten portion of this document?

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1 A. Yes, I did.

2 Q. Can you tell the jury, how did you do that?

3 A. Once again, the first thing, just to sort of recap, I
4 visually examined. I then look at it with a microscope.
5 Thirdly, which we haven't discussed at this point, is that I
6 examine the inks using an apparatus called the video
7 spectrocomparator. What that is used for is, basically, to
8 look at the inks under different types of lighting conditions.
9 The apparatus that we use is made up of different filters and
10 so forth.

11 Although a lot of times inks, when you look at inks,
12 you may see five inks that are black. A lot of times the
13 blacks are actually differently. They are made up of different
14 dye components to actually have different hues. I don't know

15 if you have ever gone to a store like Home Depot and you get
16 paint made and then they put all the different colors and so
17 forth in there to develop a certain color. Inks are
18 essentially the same way. There are a lot of different
19 colorants used. Once again, when you go to the store, if just
20 a little bit different color is added to your paint, it can
21 change the color completely.

22 So, the apparatus that we use kind of helps us, in
23 essence, to look at very subtle differences that you couldn't
24 notice with the naked eye.

25 Q. Is it possible to observe whether different inks are used
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1 simply using the naked eye?

2 A. Yes, absolutely.

3 Q. Now, in this case, you went a little further than that,
4 correct?

5 A. Yes, it's one of many, or one of a gamut of tests that we
6 use during the ink analysis.

7 Q. Did you actually perform a chemical analysis of the ink in
8 this document?

9 A. Yes, I did.

10 Q. Can you tell the jury how you go about doing that?

11 A. Yes, the procedure that I used in this particular case is
12 called thin layer chromatography. I will just use the acronym
13 TLC. Basically, what chromatography is, from a chemical
14 perspective it is a way to divide up the different components
15 of the ink. Like I talked about when you go to Home Depot and
16 they add these different colors to their paints, chromatography

17 will actually allow you, in many instances, to separate those
18 different colorants.

19 Another common example is anything from a soft drink,
20 like a Coke or something like that. Coke is actually made up
21 of several different things, colorants, sugar, caffeine and so
22 forth. What chromatography would allow you to do is actually
23 to separate all of those different components and identify
24 them.

25 Q. Based on your chemical analysis, did you draw any

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1 conclusion about the type of ink or inks used in the
2 handwritten portion of the document?

3 A. Yes, I determined that at least two different writing inks
4 were used to produce the written notations on Government's
5 Exhibit 403A through 403D. There were no written notations on
6 403E.

7 Q. Now, were you able to tell where each ink was used on this
8 document?

9 A. Yes, I was.

10 Q. Let's look at the first page of the exhibit that the jury
11 has in color copy, which is 403A for you. First of all, can
12 you tell the jury the two types of ink or writing instrument
13 that you found? What were they?

14 A. The two types of inks that were used, one of them was a
15 ballpoint ink, which I am sure most people are familiar with,
16 just your standard ballpoint pen or writing instrument. The
17 other was a non-ballpoint ink. When I say non-ballpoint ink,

18 what that typically means is that can encompass different types
19 of writing instruments, which may be gel writing pens, roller
20 ball type pens, felt tip markers. The way we divide things up
21 in the laboratory is, we categorize them as ballpoint and then
22 basically everything else, if you will, which is non-ballpoint.

23 Q. First of all, the ballpoint ink, does that appear on the
24 first page, which is Government's Exhibit 403A?

25 A. Yes, the ballpoint ink, you can actually see the physical

0050

1 differences between the different writing inks. The ballpoint
2 ink exists on lines 1 through 3, not including -- there is a
3 check mark on the right one third portion, the first check mark
4 in there, which is a light blue ink. That was not a ballpoint
5 there.

6 Q. The writing that appears in the balance of the page, is
7 that done with non-ballpoint ink?

8 A. That's correct.

9 Q. Government's Exhibits 403B, 403C, are those non-ballpoint
10 ink also?

11 A. That's correct.

12 Q. Let's take a look at 403D, which is the fourth page of the
13 color copy set. Is there any ballpoint or non-ballpoint ink on
14 that page?

15 A. The check mark up on the top portion of 403D, you can see
16 it's kind of a different color blue. That was done in
17 non-ballpoint, and then the remaining written entries on the
18 bottom portion of 403D was in ballpoint ink.

19 Q. Now, can you tell the jury again, where else does the
20 ballpoint ink appear on this document?

21 A. It appears, I guess, down in the -- to physically describe
22 it, there is a double line in the middle of the page or so.

23 All the ink that was written under the double line.

24 Q. Does it also appear on Government's Exhibit 403A, which is
25 the first page?

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1 A. Yes, it was determined that the ballpoint ink used on 403A
2 and the ballpoint ink used on 403D in the bottom portion, they
3 were determined to match each other.

4 Q. So we are clear, that's the writing up here at the top of
5 Government's Exhibit 403A, and it's your conclusion that
6 matched the ink used at the bottom of 403D?

7 A. That's correct.

8 Q. Take a look, while we're on 403D, if you'd look at the date
9 that's written on the left-hand side at the bottom, does that
10 appear to correspond to July 24, 2000?

11 A. That's what it appears to read, yes.

12 Q. Did you investigate at all whether the inks that appeared
13 in this document were available on July 24, 2000?

14 A. Yes, I did.

15 Q. Can you tell the jury, how do you go about investigating
16 that?

17 A. Well, the U.S. Secret Service actually maintains the
18 largest collection of writing inks, or forensic collection of
19 writing inks in the world. At the time of this analysis, we
20 had 8500 inks in a reference collection, or a standard

21 collection, if you will.

22 How that works is, on an annual basis we petition all
23 the different pen and ink manufacturers throughout the world.
24 We ask them if they could supply us with any new formulations
25 of ink that they produced in the past year. Then, once they

0052

1 send those to us, we chemically analyze them and put them into
2 the database. The samples that we have in the database
3 actually date back to the 1920s. We have a variety of writing
4 inks from -- I mean, it's a global collection, if you will.
5 It's a worldwide collection. We collect from all over the
6 world, not just the United States. So, I used that as my
7 standard collection.

8 From this point on, I do the chemical analysis of the
9 inks. I will call them the questioned inks. I will use the
10 short form, the Q inks. I do the chemical analysis of the Q
11 inks and then I see if they match other inks in our collection.
12 Based on if they do or they don't, then I can ascertain
13 information further about those inks.

14 A lot of time what we use the collection for is, if
15 someone produces something -- let's say they purport to create
16 some sort of financial agreement. I will use a contract as a
17 common example. Someone purports to have signed a contract in
18 2003, but they really didn't, and then they go and sign it in
19 2006. What we can do is we can find out if that ink was
20 actually available in 2003, and sometimes we find that the ink
21 was not available in 2003, so it couldn't have been signed in

22 2003. That's sort of the purpose of the collection.

23 Q. Is that the kind of investigation you did in this case?

24 A. Yes, that's exactly what I did.

25 Q. Let's talk first about the ballpoint ink that appears on
0053

1 403A and 403D. Were you able to determine whether that ink was
2 available on July 24th of 2000?

3 A. Yes, that ballpoint ink was determined to match other inks
4 in our collection produced by a number of -- at least two or
5 three manufacturers. That ink was available before July of
6 2000.

7 Q. Can you tell the jury a little bit more about that type of
8 ink, where it was manufactured, how it was distributed?

9 A. One of the companies that we identified there was Bic,
10 which obviously is an international producer of inks and they
11 distribute their inks worldwide. There was a German company as
12 well, which was Mittenwald Chemy, and another company that
13 merged, eventually merged, they're one company now. But that
14 ink as well which is produced in Germany. So, we determined
15 that those inks also were available prior to 2000, as well.

16 Q. Based on your information and the library and your
17 knowledge, would that ink have been available worldwide in July
18 of 2000?

19 A. Yes, absolutely.

20 Q. Now, how about the non-ballpoint portion of Government's
21 Exhibit 403, were you able to determine whether that ink was
22 available in July, 2000?

23 A. Yes, I was.

24 Q. What was your conclusion?

25 A. My conclusion in that case was something that I should

0054

1 probably preface before I answer this. Another way that we
2 collect samples is, we call them open market purchases. What
3 we do is we buy pens from different retailers and we do it
4 quite regularly. When people travel throughout the world, we
5 have them purchase pens in different regions and so forth. We
6 always bring those back, analyze those and put those into our
7 the library. We sort of use that as a check and balance to
8 make sure that we have as many inks as possible.

9 The non-ballpoint ink actually matched an ink that was
10 purchased on the open market. Actually, one of the pens was
11 brought back from Japan and the other one was brought back from
12 Korea. That was back in the late '80s. So, that ink was
13 obviously available prior to 2000.

14 Q. Would that ink have been available in the Asian market at
15 that time?

16 A. Yes.

17 Q. So, based on your analysis of the ink in the handwritten
18 portion of this document, do you have an opinion as to whether
19 this document could indeed have been filled out on July 24,
20 2000?

21 A. Yes, my opinion is that the written entries could have been
22 completed on July 24, 2000, as it has been purported to be.

23 Q. So this is not an example that you gave the jury of a
24 document that was purportedly signed in 2003, but was really

25 signed in 2006. This is not that kind of example?

0055

1 A. That's correct.

2 Q. Now, can you tell from your results exactly when ink was
3 put to paper on this document?

4 A. No, we can't.

5 Q. Are you aware of any scientifically reliable way to make
6 such a determination looking only at the ink for a document
7 like this?

8 A. There is no scientifically reliable methodology that could
9 be used to determine the age of the ink or to determine when
10 exactly they were placed on that piece of paper.

11 Q. Can you tell from your results when the ballpoint portion
12 was written relative to the non-ballpoint portion?

13 A. No, it would be impossible to tell which was done first.

14 Q. Are you aware of any scientifically reliable way to make
15 that determination?

16 A. No.

17 Q. Can you tell from you ink analysis whether or not the
18 document was written by more than one person?

19 A. No, I can't do that also.

20 Q. Any scientifically reliable way to determine that?

21 A. No, not based on the ink analysis.

22 Q. By the way, did you observe whether any other forms from
23 the binder, including K1 through 30, had a page with more than
24 one ink?

25 A. Yes, I visually went through some of the documents. I

0056

1 believe there is another document in there that was produced
2 with two inks as well.

3 Q. Similar to, for example, Government's Exhibit 403A?

4 A. Yes.

5 MR. SHIPLEY: Your Honor, may I approach?

6 THE COURT: You may.

7 MR. SHIPLEY: Your Honor, for the record, I am
8 removing a page that we previously put in plastic that is
9 actually in the binder and it's already in evidence. That
10 page, using the Bates label, is AFGP 2002 8003360010093. I am
11 just going to give that its own exhibit label as Government's
12 Exhibit 409, but it is already in evidence, Your Honor.

13 May I approach the witness?

14 THE COURT: You may.

15 BY MR. SHIPLEY:

16 Q. Do you recognize that page, Mr. LaPorte?

17 A. Yes, I do.

18 Q. The Bates label at the bottom, do your initials appear down
19 there?

20 A. Yes, they do.

21 Q. Does that correspond to one of the pages that you reviewed
22 in your analysis?

23 A. Yes, it corresponds to the page that I had designated as
24 K26.

25 Q. Based purely on a visual examination of that document, can
0057

1 you reach any conclusion about whether there is more than one

2 ink on that page?

3 A. Yes, just visually inspecting, there are two different inks
4 that were used to produce the written notations of this
5 document.

6 Q. In the same fashion as Government's Exhibit 403A?

7 A. Yes.

8 MR. SHIPLEY: Your Honor, may I publish that to the
9 jury? I can't really put that up on the ELMO.

10 THE COURT: You may.

11 BY MR. SHIPLEY:

12 Q. Are there other examples that you observed involving the
13 use of more than one ink on a single page in that binder?

14 A. Yes, I believe there was one other document.

15 Q. Now, we talked about the printing and the common source of
16 this document. We talked about the availability of the inks.
17 Did you also perform any analysis regarding what are called
18 indentations on Government's Exhibit 403?

19 A. Yes, I did.

20 Q. Can you tell the jury, what are indentations?

21 A. When you write on something and if there is a piece of
22 paper under that, there will actually be indentations that get
23 transferred onto the underlying document. I don't know if you
24 remember when you were young and you'd take a document and
25 you'd have indentations on it and take a pencil and just sort

0058

1 of go over it very lightly, and then you could bring out the
2 indentations that way to see them.

3 Often times, sort of if you are looking at them the

4 right way with what we call oblique lighting or side lighting,
5 so you light it from the side, then you can actually see
6 indentations. That will indicate what was written on the page
7 above it at one time.

8 Q. What causes an indentation to be made? If I have this
9 right, if I am writing on this page of my notes and it would
10 leave an indentation on the page below it, how would that
11 happen?

12 A. It's sort of a combination. For example, if I write on
13 here, what happens is the pressure that I apply with my pen
14 will actually get transferred onto this next page. We have a
15 procedure that we use to actually develop those indentations so
16 that they are visible.

17 Q. Do indentations always occur, and are they always
18 detectable?

19 A. Not necessarily. There are a lot of factors that may
20 affect them. It could be the pressure, it could be the type of
21 paper that you are writing on, it could be the angle of the
22 pen, the type of pen. So there are a number of factors.

23 Q. What can those indentations tell us about where a page was
24 relative to another piece of paper?

25 A. Essentially, as you could sort of visualize, it just tells
0059

1 you -- not tells you, but gives an indication of the page that
2 was on top of it, what was written on top of it.

3 Q. Can it tell us whether two pages were together at a
4 particular of time?

5 A. Yes, that's essentially what it does. It tells you that
6 those two pages were together.

7 Q. Did you analyze any pages of Government's Exhibit 403 for
8 indentations?

9 A. Yes, I did.

10 Q. What techniques did you use to do that?

11 A. The first technique I used was, like I had mentioned, the
12 oblique lighting or side lighting to visualize it. Then I used
13 an apparatus called the electrostatic detection apparatus. I
14 used that procedure to sort of enhance the indentations, if you
15 will.

16 Q. Based on that, did you reach any conclusions about the
17 presence of indentations on these pages?

18 A. Yes, I did.

19 Q. Specifically, let me ask you about the first page of
20 Government's Exhibit 403, which is 403A. Did you find any
21 impressions from the handwriting on page 403A on 403B, which is
22 the second page of the exhibit?

23 A. Yes, I did.

24 Q. Can you tell the jury about what you found? Before you do
25 that, let me be clear. In the color copy packet 403B is the

0060

1 next page with writing on it, which is the Bates label 005.
2 The copies that the jury has, Your Honor, has the backs of the
3 document as well, so the second page in the color copy is
4 simply the back of 403A.

5 Tell the jury now, what conclusions did you reach
6 about impressions from 403A onto 403B?

7 A. I had determined that a portion of the written entries
8 found on 403A were indented onto 403B. I could specifically
9 make out the 10/18/70, and then, most of the written notations
10 above the 10/18/70. I couldn't really make out any of the
11 notations that were produced with the non-ballpoint ink. So,
12 mostly the ballpoint ink notations is what I could decipher.

13 Q. So we are clear, you were able to determine indentations
14 from the ballpoint ink portion of the document from
15 Government's Exhibit 403A onto 403B?

16 A. That's correct.

17 Q. What does that tell us about whether these pages were
18 together at the time they were written?

19 A. That would indicate that 403A was on top of 403B when the
20 individual that wrote those notations, when they did that.

21 Q. Did you conduct a similar examination of other pages in
22 this exhibit?

23 A. Yes, I did. I actually did that same examination for all
24 the pages.

25 Q. If we look at page 403D, which has the signature block,

0061

1 could you determine whether any indentations from 403D appeared
2 on page -- on 403E?

3 A. Yes, I determined that a portion of those, the entries
4 written in the bottom portion of 403D, like the 2007-7-24, a
5 portion of those entries were indented onto 403E.

6 Q. Again, this basically corresponds to the ballpoint writing?

7 A. That's correct.

8 Q. What does that conclusion tell us about the relationship
9 between 403D and 403E at the time they were completed?

10 A. Once again, that would indicate that when someone filled
11 out 403D, 403E was under it.

12 Q. That's your conclusion with regard to 403A and 403B also?

13 A. That's correct.

14 Q. That's the case even though there were two inks used on
15 both of those pages?

16 A. Yes.

17 Q. So we are clear, your testimony is that the printed
18 material on all of those pages came from a single common
19 source?

20 A. Yes.

21 MR. SHIPLEY: That's all for right now, Your Honor,
22 thank you.

23 THE COURT: Cross-examination, Mr. Hassoun's counsel?

24 MR. SWARTZ: No, Your Honor.

25 THE COURT: Cross-examination, Dr. Jayyousi's counsel?

0062

1 MR. LOUIS: No, Your Honor.

2 THE COURT: Counsel for Mr. Padilla?

3 MR. NATALE: Yes, thank you.

4 CROSS EXAMINATION

5 BY MR. NATALE:

6 Q. Good morning, Mr. LaPorte. Did I hear you correctly to say
7 that, based on your analysis, that the date which appears on
8 Government's Exhibit 403A through E, that that date of, I think
9 it's July 24, 2000, that that date could -- you used the word

10 could have been written on that date, right?

11 A. Yes.

12 MR. SHIPLEY: Your Honor, just for clarification, I
13 think he meant the inks.

14 MR. NATALE: The inks, yes.

15 BY MR. NATALE:

16 Q. So, that means that it could have been written before that
17 date, right?

18 A. Correct.

19 Q. It could have been written after that date?

20 A. That's correct.

21 Q. If I understand it correctly, you don't want to leave this
22 jury with the impression that your testing determined that the
23 ink was actually placed there on the date that it said it was
24 placed there?

25 A. No, absolutely I do not want to leave here with that

0063

1 impression.

2 Q. So it could have been placed on there at any time prior to
3 when you actually looked at the documents, right?

4 A. Yes, in theory, yes. When I received it April 19th of
5 2006.

6 Q. I am not saying that you would have played with it after
7 that. Before April 19th, when you received it, the ink could
8 have been placed on there any time from April 19th back, right?

9 A. That's correct. Just to clarify, we were determining
10 that -- if the ink was available. If the ink was available

11 prior to 2000, it could still be available today as a matter of
12 fact.

13 Q. Exactly. You couldn't differentiate between whether it was
14 the Bic or the two German companies, could you?

15 A. That's correct.

16 Q. And sometimes the -- Bic sells their ink to other companies
17 and then they send it out?

18 A. The ink industry is very complex. They sell to each other.
19 The way the industry works, I am not an expert on the industry,
20 but I know from my dealings that, basically, what it comes down
21 to a lot of times is what is the most economical way to do
22 this. Sometimes it may be economical for a company to buy ink
23 from another company. So, yes, that happens all the time.

24 Q. Bic is one of the biggies, right?

25 A. It's a large company.

0064

1 Q. Now, you get information from the manufacturers to put in
2 your library. They will say, here is an ink we're coming out
3 with and here is a sample of it. That's one of the things you
4 get, right?

5 A. That's correct.

6 Q. Then you do your testing and you basically have a chemical
7 profile of that?

8 A. That's correct.

9 Q. Then, when you get these questioned documents with
10 questioned inks on them, you do the same chemical analysis and
11 you say, it looks about the same or it looks different?

12 A. That would be a simplified way of saying that, yes.

13 Q. In fact, we don't have to get into it, but when we're
14 talking about thin layer chromatography, you are talking about
15 the height and rate at which certain chemicals migrate up a
16 piece of silica; is that correct?

17 A. That's correct.

18 Q. You get one piece of silica here where they went up so high
19 and you get another piece, and then you compare to see if they
20 went up to the same heights?

21 A. That's correct. But there is also the videospectro
22 examination, too, looking at optical properties.

23 Q. That's the other one.

24 A. That's a portion of the exam as well.

25 Q. We are going to get to that one. What we're getting at is

0065

1 that you have, if you will, for lack of a better term, a
2 profile for your inks in different chemical and visual testing
3 modes, right?

4 A. That's correct.

5 Q. Whatever testing mode you use, you compare it and you say,
6 look, this is resonating, or this is looking exactly like this
7 one, it looks like we've got a match?

8 A. Yes, but then also, too, once again to clarify, because I
9 think it's only fair for the jurors to understand this, what we
10 are doing is, we are comparing to 8500 other standards in our
11 collection. So, the way we use that, is we use that profile,
12 which is a good terminology -- I refer to it as the analytical

13 profile. I compare that with the other analytical profiles in
14 the profile and basically was able to, in this case, eliminate
15 8498 other inks with only two left. So, that's part of it.
16 Also, the important part is that you have the collection to
17 compare it to.

18 Q. You compare it to your collection and then you decide
19 whether you have a match?

20 A. Right.

21 Q. In this case, did you determine when Bic first began to
22 make commercially available the darker blue ink?

23 A. Based on --

24 Q. When your library received it?

25 A. Yes, we received it prior to 2000.

0066

1 Q. Was it in 2000, in July of 2000? Was it prior to July of
2 2000, or was it in January or February of 2000?

3 A. Can I refer to my notes on the exact date?

4 Q. Yes.

5 A. In my notes, I have indicated that, based on an e-mail that
6 I received from Bic, that it was at least 1999.

7 Q. 1999 that it came out?

8 A. Correct.

9 Q. So, either one of these two inks is the sort of inks that,
10 I guess, some government agent or someone could have access to,
11 right?

12 MR. SHIPLEY: Objection to form and speculation.

13 THE COURT: Overruled.

14 BY MR. NATALE:

15 Q. They could have access to these inks, right?

16 A. Anybody can have access to these inks.

17 Q. Absolutely. In fact, you told this jury that when people
18 go to Asia and they go to different places, you told the jury
19 that the agents will go out, buy some pens, bring them back so
20 you can put them in the library?

21 A. I am not saying the agents. I do the same thing when I
22 travel internationally. I just go to a local store, buy a
23 whole bunch of pens and bring them back. So, it's a lot of
24 people that travel throughout the world.

25 Q. Now, you did not compare the inks that you found in Q1

0067

1 through 5, either the dark blue or the light blue inks, you
2 didn't compare those inks to any of the other inks that you
3 found in the binder, did you?

4 A. No, I did not.

5 Q. Now, if I understand this correctly, there is a test that
6 can be done to determine the time in which ink was placed on a

7 document, right?

8 A. No, there is no scientifically reliable test to determine
9 exactly when an ink was put down on a piece of paper.

10 Q. Have you ever run a phenoxyethanol test?

11 A. Yes, it's called phenoxyethanol.

12 Q. Easy for you to say.

13 A. We can use the terminology PE if you would like, to keep it
14 simple.

15 Q. Let's do PE. Now, PE is a test which you're able to sort

16 of measure the rate at which an ink dries, right?

17 A. It's a lot more complex than that, but, essentially, yes.

18 Certain inks have a component known as phenoxyethanol that is

19 present in them, and there have been studies to show that

20 phenoxyethanol basically evaporates at a predictable rate

21 somewhat. It really depends on the type of document that it's

22 on, the storage conditions of that document, the type of ink

23 that has been used and so forth.

24 Q. In fact, in other cases, haven't you performed that test

25 and testified about that test?

0068

1 A. I have never testified about using that particular -- like,

2 then I found a positive result. I have testified about the

3 procedure itself, yes.

4 Q. You have testified about the procedure, right?

5 A. Yes.

6 Q. In fact, you explained it to a jury where you said it's

7 like paint drying, right?

8 A. Correct, yes.

9 Q. You put it on, you touch it, and it's wet. Two days later,

10 you touch it and it may not come off on your hand, but you can

11 still smell it because it hasn't dried quite enough?

12 A. Yes.

13 Q. In fact, that's what you did when you explained to another

14 jury about this test, which is one way of determining how much

15 the ink could have dried?

16 A. The only time that we would use that test, there would have

17 to be certain circumstances around that document. First of
18 all, we would use it to compare. Let me just provide an
19 example for simplicity. Let's suppose that someone has a diary
20 of entries and they are purported to have been done in 2001,
21 2002, 2003, 2004. So we have written entries. It may be
22 purported that they were done at different times, but if it is
23 suspected that they did it all at once, then we can go back and
24 analyze all four of those inks and then try and determine if
25 those inks have significant differences to indicate that they

0069

1 were put down at a different time, or if they are all basically
2 the same.

3 So, if you would like to go back to the paint example,
4 it would be like putting down four -- paint at four different
5 times and then sort of measuring the tackiness or how much it
6 has dried for each of them. That requires the entries to be
7 produced on the same document so that we would know that it was
8 under the same storage conditions, that it was exposed to the
9 same environmental factors and so forth. Even paper can have
10 an effect. There are a lot of factors that have to --

11 Q. There are a lot of factors that you can consider. But, in
12 fact, you even wrote an article about this, didn't you?

13 A. Yes, I published an article.

14 Q. And you testified to a jury as part of your expertise about
15 this article you wrote and you told them the same thing that I
16 am saying and you are saying here today, right?

17 A. That's correct.

18 Q. Now, if we look at Government's Exhibit 403A through E --

19 A. Yes.

20 Q. -- With the naked eye you can tell there are two different

21 inks, right?

22 A. Correct.

23 Q. You did your tests on them, right?

24 A. That's correct.

25 Q. Now, on page one, or let's call it A, page A, and actually

0070

1 on page four there are two different inks on those pages,

2 right?

3 A. Correct.

4 Q. Two different inks on 403A and two different inks on 403D?

5 A. Correct.

6 Q. On the same page?

7 A. Yes.

8 Q. One of the criteria that you just told us about was that

9 you want to have the ink on the same page, right?

10 A. That's correct.

11 Q. In order to say, this way we have got one ink here, we've

12 got another ink, it's on the same page, to see if they could

13 have been placed there at the same time or at different times;

14 isn't that correct?

15 A. That's correct, but the key --

16 Q. Let me ask you this. You must have told these government

17 lawyers that there was this other test you could do, right?

18 A. The key, though, is that phenoxyethanol is found only in

19 ballpoint inks and we have a non-ballpoint ink here, so there
20 is no way that that analysis would have -- obviously I would
21 have conducted that examination. I have published articles on
22 it. I have written procedures for it. Obviously, I would have
23 done that examination had I thought it would have been a
24 pertinent thing for this type of examination. This doesn't
25 qualify at all for that type of test.

0071

1 Q. Okay. Well, you are saying because the light blue ink is a
2 non-ballpoint ink --

3 A. Correct.

4 Q. -- you can't compare the ballpoint ink to the non-ballpoint
5 ink?

6 A. They are two completely different formulations.

7 Q. Perfect. But you could compare the ballpoint ink, which is
8 the dark blue ink, right, to the known samples which you have
9 in your library which you've already testified about, right?

10 A. No, I can't do that because, as I had explained, the inks
11 have to be stored in the same condition. The inks that we have
12 in our reference collection are stored on different types of
13 paper, they are stored in a humidity and temperature control
14 environment. They are stored in binders. So, you can't do the
15 test and compare it to a standard. It's called relative
16 comparison. You have to do it relative to the other inks on
17 that particular document.

18 Q. So, then, you could have done it from the ballpoint ink
19 that appeared on the front page to the ballpoint ink which is

20 on the signature page, right?

21 A. No, because, once again, as I explained, we like to have
22 them on the same document. Now we have got inks that are on
23 page one and inks that are on page four. If I had done that
24 type of examination, I would be getting cross-examined about
25 the validity of that testing because page four could have been

0072

1 stored in a different environment versus page one.

2 Q. Or they could have been written at different times by
3 different people, right?

4 MR. SHIPLEY: Objection, speculation.

5 THE COURT: Overruled.

6 THE WITNESS: Well, of course. I can't tell you when
7 these entries could have been created. I am a scientist, so I
8 can't speculate on when the entries were put down.

9 BY MR. NATALE:

10 Q. And it would be wrong for anyone to speculate, or to want
11 people to speculate that the date which purports to be on this
12 document was, in fact, the actual date that all of the writing
13 occurred?

14 MR. SHIPLEY: Objection to form. Is he asking about
15 based on his ink analysis or in general, because the question
16 is broader than that.

17 MR. NATALE: On his ink analysis.

18 THE COURT: Based on your ink analysis, sir.

19 THE WITNESS: Based on my ink analysis, I can't render
20 a conclusion at all. There is nothing to indicate that this
21 document was not created on the purported day, and there is

22 nothing I can say that it wasn't created on the purported date.
23 There is certainly nothing consistent on this document to
24 indicate to me that it was not created on its date.

25 BY MR. NATALE:

0073

1 Q. I understand that, which is something that I want to get
2 at. Now, just so I am clear, let's say if -- let's pick some
3 dates just so I am real clear on this. Let's say that back
4 in -- let's say from the year 2000 to 2006, you were in
5 Washington, D.C., you were never here in this courtroom during
6 that entire time.

7 A. Okay.

8 Q. Let's assume that on that day, say that on December 20th,
9 in 2001, I am in the courtroom with everyone else who is here
10 except you, right, and I write on a piece of paper. I write
11 data form, right?

12 A. Okay.

13 Q. I write July 24, 2000, and I write Ross Appleman on it,
14 right?

15 A. Right.

16 Q. Now, they all saw me do this, right, everyone saw me do it,
17 but you didn't, you are in Washington.

18 A. Right.

19 Q. Let's say hypothetically, on April 19, 2006 --

20 MR. NATALE: May I approach?

21 THE COURT: You may.

22 BY MR. NATALE:

23 Q. -- someone comes to you in your lab and they say, hey, look
24 at this, and I want you to do the same test that you did in
25 this case here, right?

0074

1 A. Correct.

2 Q. Let's assume that the ink used was in existence from 1997?

3 A. Okay.

4 Q. You would come in and you would tell this jury that you
5 have no evidence to show that July 24, 2000, wasn't the correct
6 date that the writing appeared?

7 MR. SHIPLEY: Objection, Your Honor, to form again.

8 We have to be clear whether we're talking about based --

9 MR. NATALE: Based on your ink analysis.

10 THE COURT: The objection is sustained.

11 BY MR. NATALE:

12 Q. Based on your ink analysis, the test that you did on this
13 case, the ink analysis you did on this case, you would analyze
14 it and compare it and you'd say, ladies and gentlemen, the ink
15 that was used on here was in existence in 1999, therefore, this
16 document could have been written on July 24, 2000, and I see no
17 evidence that it wasn't written on that date?

18 A. It's also important to note that there were other
19 examinations that I did like with regard to the trash mark
20 examination. I am comparing those documents with other
21 documents, so if you did that and you substituted that page in
22 with a bunch of other documents, then I could say that there is
23 an indication that that page was substituted in there as well.

24 Q. These forms were printed on a copy machine, right?

25 A. Correct.

0075

1 Q. They were printed in blank and then someone filled them
2 out?

3 A. You'd have to do the same blank form as well.

4 Q. Let's say if I found a binder and I have all of this stuff,
5 some are blank, some are filled in, right?

6 A. You would have to get the exact same pages, blank pages
7 that were used to fill out the original form, too.

8 Q. There is a whole binder here of different stuff, right?

9 A. Yes.

10 Q. You don't know anything about where it came from?

11 A. No, I don't.

12 Q. Let's say it has the same mark on these others, but you get
13 this. Based on your ink analysis, you would look in front of
14 this jury and say, you know, this could have been written on
15 July 24, 2000, correct?

16 A. Correct.

17 Q. And you would say, I, being you, have no evidence that it
18 was written at any other time other than July 24, 2000, when in
19 reality everyone in this courtroom, including the jury, would
20 know, one, that it was written at a different time, at a
21 different date, at a different location, and by the way, my
22 name is Tony Natale, it's not Ross Appleman, that it was
23 written by a different person?

24 MR. SHIPLEY: Objection, speculation. We are talking
25 about Mr. Natale's hypothetical.

0076

1 MR. NATALE: Your Honor, this is a hypothetical.

2 THE COURT: The objection is overruled.

3 THE WITNESS: Can you rephrase the question? It was
4 kind of long.

5 BY MR. NATALE:

6 Q. I will make it shorter for you. If you don't understand,
7 tell me. We've gone through when this was really written, but
8 you were in D. C., you don't that, right?

9 A. Yes.

10 Q. Based on your ink analysis, you come into court and some
11 government lawyer says, well, could it have been written on
12 July 24, 2000, and you say, yes, it could have. They say,
13 well, did you, by your ink analysis, find anything that could
14 say that it wasn't created on July 24, 2000, and you'd say, no,
15 I found nothing to refute that. Isn't that what your testimony
16 would be?

17 A. My testimony is that, yes, I can't render a conclusion as
18 to when it was produced.

19 Q. Even though these people know what the whole truth really
20 is, right?

21 A. That's a question?

22 Q. Yes.

23 A. Yes.

24 MR. NATALE: No further questions. Thank you very
25 much.

0077

1 THE COURT: Redirect, Mr. Shipley.

2

REDIRECT EXAMINATION

3 BY MR. SHIPLEY:

4 Q. Your testimony on cross concerned ink analysis, right?

5 A. That's correct.

6 Q. There are other tests, including some of which you
7 performed on this document, that may establish when a document
8 was created or whether it is genuine, correct?

9 A. That's correct.

10 Q. There might be facts completely unrelated to scientific
11 analysis that establish whether a document is authentic in its
12 date?

13 A. Yes, that's correct.

14 MR. NATALE: Your Honor, objection, beyond the scope
15 of my cross-examination. I just asked about his ink analysis.

16 THE COURT: Overruled.

17 BY MR. SHIPLEY:

18 Q. Let's talk specifically, if you want, about the
19 hypothetical that Mr. Natale gave. Other facts, independent of
20 your scientific analysis, determined whether the document had
21 the date on it that was correct?

22 A. Yes. Of course, what I was trying to do in this case is to
23 show that, in trying to prove that this document was somehow
24 inconsistent in nature with some of the other documents and its
25 preparation, I could not find anything to show that this

0078

1 document had the lookings of being not authentically produced
2 or anything like that.

3 Q. You were not able to date the document more specifically
4 because you could not perform those kind of tests?

5 MR. NATALE: Objection, leading.

6 MR. SHIPLEY: I'll rephrase.

7 THE COURT: For the record, sustained.

8 BY MR. SHIPLEY:

9 Q. Do you remember Mr. Natale asking you about the tests or
10 procedures that may, in some circumstances, allow you to date a
11 document more precisely?

12 A. I have to reiterate, because I feel it's very important,
13 obviously, I have published about this particular procedure
14 that Mr. Natale has mentioned, the phenoxyethanol procedure. I
15 would have been more than happy and very excited to do that in
16 this type of case. I am a scientist and I want to do as much
17 as I can from a scientific standpoint to try and prove or
18 refute whatever the allegations are. I would have done that
19 had I thought that would have been a meaningful analysis.

20 In addition, which we didn't really talk about, the
21 document, as far as my understanding --

22 MR. NATALE: Your Honor, I would object to him
23 testifying as to any knowledge as to the origin or process of
24 the document.

25 THE COURT: Sustained.

0079

1 BY MR. SHIPLEY:

2 Q. Are you aware of any information related to -- we don't
3 even need to go there.

4 You mentioned, in response to Mr. Natale's questions,
5 that the common source analysis that you did may be relevant to
6 determining when this document was created. Can you tell the
7 jury again why that is so?

8 A. Right, if someone was, say, trying to substitute a document
9 into a whole pile of documents like this, they would have to
10 get the original form. It would have to have the same trash
11 marks and so forth. Like I said, there are no inconsistencies
12 here. This form didn't stand out on its own. There were other
13 forms in this book that were filled out with different inks.

14 If I opened this book and this paper was bright white
15 and everything else was not bright white, or everything was
16 done all in the same type of inks, or the forms were filled out
17 consistently, like all the different areas on the forms, if all
18 the same areas were completed in the same way with the same
19 pen, that would raise more suspicion to me. I do this day in
20 and day out. 95 percent of my job is to authenticate
21 documents.

22 Q. You have looked through the pages in that binder, correct?

23 A. Yes.

24 Q. Are there any blank pages in that binder?

25 A. Not that I recorded. I actually looked through every one

0080

1 of the pages.

2 Q. There are no blank pages?

3 A. No.

4 MR. SHIPLEY: Nothing further.