

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

3 UNITED STATES OF AMERICA, Case No. 1:99CV1193  
4 Plaintiff, Cleveland, Ohio  
5 Wednesday, May 30, 2001  
6 9:20 a.m.

7 vs.

8 JOHN DEMJANJUK,  
9 a/k/a IWAN DEMJANJUK,  
10 Defendant.

11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE PAUL R. MATIA  
13 UNITED STATES CHIEF DISTRICT JUDGE

14 BENCH TRIAL  
15 VOLUME 2

16 APPEARANCES:

17 For the Plaintiff: Jonathan Drimmer, Esq.  
18 Michelle Heyer, Esq.  
19 Michael Anne Johnson, Esq.  
Susan Siegal, Esq.

For the Defendant: Michael E. Tigar, Esq.  
John H. Broadley, Esq.

20

21

Court Reporter: Bruce A. Matthews, RDR-CRR  
United States District Courthouse  
201 Superior Avenue  
Cleveland, Ohio 44114  
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1 MORNING SESSION, WEDNESDAY, MAY 30, 2001 9:20 A.M.

2 THE COURT: I didn't explain to counsel

3 yesterday, the reason we had to move is because they needed

4 our courtroom downstairs for a mass sentencing in a

5 criminal case, and this is not a terribly secure

6 courthouse, and rather than having to move the prisoners up

7 and down in the elevator along with the public and

8 everybody else, they wanted a first floor courtroom, so

9 that's why we ended up here.

10 MR. TIGAR: Thank you, Your Honor. I notice

11 the sound system in this courtroom and the room itself has

12 a kind of echo that's not -- when you get as I am into the  
13 seventh decade of life, you realize that's one of the  
14 things that makes it hard to hear. I would ask the Court's  
15 indulgence if from time to time during the day I ask to  
16 have something repeated, because I'm having a little  
17 trouble.

18 THE COURT: That's one of the reasons I  
19 didn't take this courtroom, because of the sound in it. I  
20 preferred the one I have.

21 MR. TIGAR: Thank you, Your Honor.

22 THE COURT: Okay. Mr. Drimmer, do you want  
23 to call your next witness?

24 MR. DRIMMER: Yes. Thank you, Your Honor,  
25 the government calls Larry Stewart to the stand.

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1 LARRY F. STEWART, of lawful age, a witness  
2 called by the Government, being first duly sworn, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION OF LARRY F. STEWART

5 BY MR. DRIMMER:

6 Q. Good morning, Mr. Stewart.

7 A. Good morning, Mr. Drimmer.

8 Q. Could you please state your name for the record?

9 A. Larry Stewart, middle initial F.

10 Q. What is your occupation, Mr. Stewart?

11 A. I am the laboratory director for the United States

12 Secret Service.

13 Q. And what is your -- what are your duties as the

14 laboratory director?

15 A. Well, I'm in charge of all the forensic operations of

16 the Secret Service. I am also the chief forensic examiner

17 in the area of document authentication.

18 Q. How long have you been employed in the field of

19 questioned documents, sir?

20 A. Since 1979.

21 Q. And how much of your time is devoted to forensic

22 document analysis?

23 A. Currently approximately 50 percent of my time.

24 MR. DRIMMER: Permission to approach, Your

25 Honor?

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1 THE COURT: Yes.

2 Q. Mr. Stewart, I'm showing you what's been marked as  
3 Government's Exhibit 13, Plaintiff's Exhibit 13. Do you  
4 recognize this document?

5 A. Yes, I do.

6 Q. Would you please state what it is?

7 A. It is my resume, curriculum vitae.

8 Q. Did you prepare this document?

9 A. Yes, I did.

10 Q. Mr. Stewart, what is your formal educational  
11 background?

12 A. I have obtained three formal degrees, an associate of  
13 arts degree from Florida Technological University, a  
14 bachelor of science in forensic science with a minor in  
15 chemistry and a minor in biology from the University of  
16 Central Florida, and a master's of forensic science from  
17 Antioch School of Law, Yellow Springs, Ohio.

18 MR. TIGAR: If Your Honor please, I've been

19 studying this. We are willing to stipulate that  
20 Mr. Stewart is an expert within the meaning of Federal Rule  
21 702 with respect to ink age and chemistry, paper age and  
22 manufacture, paper chemistry, and I'm willing to take  
23 suggestions about any other conclusions he's going to reach  
24 today.

25 I don't want to make a concession he can tell

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1 you a document is real.

2 THE COURT: I understand. Does that cover  
3 the areas you wanted to --

4 MR. DRIMMER: Yes, there is a computer  
5 enhancement analysis test that he did perform on these  
6 documents, and I would ask for a stipulation.

7 MR. TIGAR: We concede the computer  
8 enhancement analysis is reliably practiced expertise within  
9 the meaning of Rule 702, and any questions I would have  
10 would go to weight, not admissibility, and thus could be

11 preserved.

12 THE COURT: You are willing to stipulate he's  
13 an expert in all those areas?

14 MR. TIGAR: Yes, Your Honor.

15 THE COURT: That's fine. I appreciate that.  
16 Thank you very much.

17 BY MR. DRIMMER:

18 Q. Did you perform a forensic document analysis in  
19 relation to this case?

20 A. Yes, I did.

21 Q. Are the tests you performed regularly employed by  
22 professional forensic document examiners?

23 A. Yes, they are.

24 Q. Have you yourself performed these tests before?

25 A. Yes.

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1 Q. Do the tests produce reliable results if done  
2 correctly?

3 A. Yes, they do.

4 Q. Have these tests been subject to a peer review?

5 A. Yes.

6 Q. Is it possible to determine a rate of error regarding  
7 the tests that you performed in this case?

8 A. Yes.

9 Q. Can you please describe what that rate of error would  
10 be?

11 MR. TIGAR: Excuse me, Your Honor. I don't  
12 wish to interrupt counsel's examination, but rate of error,  
13 reliability, those are the Daubert findings, and since I  
14 conceded it meets Rule 702 as amended December 1, 2000, I  
15 suggest this is unnecessary.

16 MR. DRIMMER: Your Honor, my understanding  
17 was that Mr. Tigar was merely stipulating to the  
18 qualifications of the expert, not to the Daubert part of  
19 his analysis. That must be my mistake.

20 THE COURT: Okay. No.

21 MR. TIGAR: I am stipulating to Daubert as  
22 now codified in Rule 702 as it became effective December 1,  
23 2000, as to all four criteria in that rule.

24 THE COURT: Okay.

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1 Q. How many documents did you examine in reaching your  
2 conclusions in this case?

3 A. 22 documents.

4 Q. Did you examine other documents that were not used in  
5 reaching your conclusions?

6 A. Yes, I did.

7 Q. I'm showing you now what's been marked as  
8 Government's Exhibit 17. Can you identify this document,  
9 please?

10 A. Yes. This is the list of documents that I examined  
11 in this case.

12 Q. Is this the list of documents that you examined in  
13 reaching your conclusions?

14 A. Yes, it is.

15 Q. Of the documents that you examined in this case, how  
16 many did you regard as questioned or disputed?

17 MR. TIGAR: Your Honor, we have no objection

18 to the admission in evidence of this so that he can be  
19 asked about it. I would note that it isn't simply a list.  
20 There are some hearsay in here about his procedures, and so  
21 on, which I would regard as his prior statements. We waive  
22 the hearsay objection to that, Your Honor.

23 THE COURT: All right.

24 MR. TIGAR: That is, this document can come  
25 in, so far as we are concerned.

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1 THE COURT: All right.

2 BY MR. DRIMMER:

3 Q. I believe the question pending was of the documents  
4 you examined in this case, how many do you regard as  
5 questioned or disputed?

6 A. There were five documents that referred to  
7 Mr. Demjanjuk in some way, and those were considered  
8 questioned.

9 MR. TIGAR: Object, Your Honor, and ask that

10 it be stricken. He says the documents referred to  
11 Mr. Demjanjuk. I would ask that the witness be instructed  
12 to confine his answers to what he knows as an expert.

13 THE COURT: All right.

14 MR. DRIMMER: Your Honor, if I may respond.  
15 The defense in its filings in this case and its trial  
16 brief, et cetera, have stated that the documents do contain  
17 a name similar to the word Demjanjuk. I don't believe that  
18 Mr. Stewart said they referred to the defendant. I believe  
19 he said they referred to a Mr. Demjanjuk.

20 THE COURT: He didn't say a Mr. Demjanjuk.  
21 He said to Mr. Demjanjuk. I will sustain the objection  
22 only to the extent that it purports to tie this  
23 Mr. Demjanjuk to the people mentioned in the documents.

24 MR. DRIMMER: Thank you, Your Honor.

25 MR. TIGAR: Were there a jury here, I would

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1 care more about it, Your Honor, but we are making a record.

2 THE COURT: I understand that.

3 MR. TIGAR: Thank you.

4 BY MR. DRIMMER:

5 Q. Mr. Stewart, where did you conduct your examinations  
6 of the documents in this case?

7 A. Three locations. At my headquarters laboratory in  
8 Washington, D.C., and also at the Moscow archives and the  
9 Berlin archives.

10 Q. When you conducted your examinations, was a member of  
11 the defense present?

12 A. During some of the examinations.

13 THE WITNESS: May I refer to my notes, Your  
14 Honor?

15 THE COURT: Yes.

16 MR. DRIMMER: I'd like to represent for the  
17 record that these notes have been produced to the defense,  
18 Your Honor.

19 MR. TIGAR: Yes, Your Honor, notes have been  
20 produced. May I stand next to the witness just to see if  
21 they are the same ones we got?

22 THE COURT: You can see if they are, sure.

23 THE WITNESS: This is the list of documents I

24 was referring to.

25 MR. TIGAR: Your Honor, he's paging through a

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1 document that I do not recall having seen. I wonder if he

2 could show it to government counsel and then --

3 THE WITNESS: This is what I'm referring to.

4 MR. TIGAR: If Your Honor please, the witness

5 has shown me a document that I have never seen.

6 MR. DRIMMER: We are happy to make a copy and

7 produce it to the defense.

8 MR. TIGAR: I'd like to have it marked,

9 please, as an exhibit, our next in order.

10 THE COURT: All right.

11 MR. TIGAR: No exhibit stickers, Your Honor.

12 MR. DRIMMER: Write on the document, that's

13 fine.

14 MR. TIGAR: Government counsel authorizes me

15 to write on the document. May I consult?

16 THE COURT: Is that something that you have

17 written on?

18 THE WITNESS: No, Your Honor.

19 MR. TIGAR: May we just call it Defense AA,

20 Your Honor, to save time? And I offer it.

21 THE COURT: Okay.

22 MR. TIGAR: Let the record reflect I am now

23 returning it to the witness. I may have to retrieve it

24 again when I examine.

25 THE COURT: All right.

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1 MR. TIGAR: Thank you.

2 MR. DRIMMER: Could the court reporter read

3 back the question that was pending, please?

4 (Record read.)

5 A. In certain circumstances, and that's why I was

6 referring to my notes. My notes indicate that a defense

7 law clerk was present during the examinations of the

8 documents from Moscow, Berlin and Poland, but not during

9 the examination of the documents from the Ukraine,  
10 Lithuania, or Israel.

11 Q. In conducting your examinations, did you reach any  
12 conclusion as to the age and authenticity of the documents  
13 you looked at?

14 A. Yes, I did.

15 Q. Can you please state those conclusions?

16 A. I found no indication to suggest that the documents  
17 in question had been falsely dated. Instead, the evidence  
18 strongly suggested the documents were consistent with being  
19 legitimate with respect to their date.

20 Secondly, I found no indication to suggest  
21 that any of the 22 documents were falsely dated.

22 Thirdly, I found no evidence that any of the  
23 22 documents had been altered to make them appear older.

24 And lastly, I found no indication that the 22 documents had  
25 been recently created but made to look old.

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1 Q. Are those conclusions stated in an expert report that

2 you prepared in this case?

3 A. Yes, they are.

4 MR. DRIMMER: Your Honor, for the record,  
5 I'll represent that expert report is the hearsay document  
6 to which Mr. Tigar was referring earlier, Plaintiff's  
7 Exhibit 17.

8 THE COURT: Okay.

9 Q. Mr. Stewart, I'd like to turn to the procedures that  
10 you used in this case. Would you please describe how you  
11 began your examinations of the documents on Plaintiff's 17?

12 A. I began using nondestructive methods called physical  
13 examinations.

14 Q. And in physically examining the documents, what  
15 exactly did you do?

16 A. I handled the documents with gloves and looked at  
17 them. I visually inspected them using microscopes and  
18 various optical devices such as fiber-optic lights, which  
19 are just high-intensity lights. I used infrared  
20 radiation, which is a form of light, using infrared, the  
21 infrared region of light, and then ultraviolet radiation,  
22 which is another form of light.

23 Q. Did you perform these physical examinations on all of  
24 the documents on Plaintiff's 17?  
25 A. Yes, I did.

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1 Q. By perform these physical examinations, were you able  
2 to determine how the documents on Plaintiff's 17 were  
3 produced?

4 A. Yes, I was.

5 Q. How were these documents produced?

6 A. It was a combination of methods to include offset  
7 lithography, a duplication process most consistent with  
8 direct impression stencil, which is a type of mimeography,  
9 typewriting, stamp pads, fountain pens and pencils.

10 Q. Did these methods of producing documents exist in the  
11 early 1940s?

12 A. Yes, they did.

13 Q. Mr. Stewart, did you mention that you performed a  
14 visual and microscopic examination on these documents?

15 A. Yes, I did.

16 Q. Can you tell us what those tests revealed?

17 A. They revealed the appearance of old documents. When

18 I looked at the documents, there were many indications that

19 I was looking for to either tell me that they appeared old

20 or not, and some of the observations that I made are the

21 following: The paper used to produce the documents had the

22 1940 time era appearance. They had a brittle feel to them.

23 There was no indication that chemicals or dips were used to

24 change the appearance of documents. I'll explain that in a

25 moment.

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1 And no indication of induced aging in the

2 documents, and there's no breakage on the reverse side.

3 Would you like me to explain those?

4 Q. I would very much like you to explain those.

5 A. Okay. When I mentioned no indication that chemicals

6 or dips were used to change the appearance of the

7 documents, many times people if they are trying to create

8 the illusion of documents that are older, they will dip the  
9 documents in either chemicals or some kind of dipping  
10 solution, such as tea or coffee. I tested for that. There  
11 was no indication of that in these cases.

12 There was no breakage on the reverse, is  
13 another one of the things that I reported. If I were to  
14 try to create an old-appearing document today, let's say I  
15 was trying to create a document from the 1940s today, I may  
16 be able to go out and find old ink and old paper. The  
17 problem with that is if I'm using techniques such as  
18 typewriting or handwriting on those documents, I create  
19 breaking on the reverse side of the documents in many  
20 cases. The breakage occurs because the paper has lost a  
21 lot of its water weight over time.

22 Paper starts with about 7 percent water  
23 weight when it's first made, and during --

24 MR. TIGAR: Excuse me. You just said 7  
25 percent.

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1 A. When it's first made --

2 MR. TIGAR: 70 percent, don't you mean?

3 A. When it's first made right off the foudrinier

4 machine, when it's first made off the foudrinier machine it

5 is 70, and then before it's sold or at the point that it's

6 sold as paper, it is 7. And that 7 percent gradually

7 changes over time, and it changes because of evaporation.

8 By the time that paper is around 30 or 40

9 years old, it's lost most of that water weight, and what

10 happens is the pressure, the mere pressure of typewriting

11 or pushing a pen against the document creates breakage on

12 the reverse side.

13 Q. Mr. Stewart, did you perform a UV radiation test? Is

14 that one of the tests you stated you performed?

15 A. Yes.

16 Q. Could you state what UV radiation is?

17 A. Ultraviolet radiation is a form of light, if you

18 will. They call it radiation now. They don't use the term

19 light to describe ultraviolet. It is the wave lengths of

20 light just below those that we can visually see. We can

21 see between 400 and 700 nanometers of light. That's the

22 range of light we can see in. Ultraviolet light is 200 to  
23 400 nanometers of light. That's the length of the  
24 wavelength of light. And that's below what we can visually  
25 see in.

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1 Many people know ultraviolet like black  
2 lights. If you had posters and a black light and you want  
3 to have them fluoresce, you would use an ultraviolet light.  
4 What that does is, it causes the ink or the  
5 materials in the poster to absorb that light and give off  
6 light in a wavelength that you can see in the visible  
7 region. What I use ultraviolet for is I look for  
8 indications that the documents have been altered or changed  
9 in some way. I also look for things called optical  
10 brighteners in the documents, which are things that are  
11 added to paper in the 1950s to start making them look  
12 visibly more pleasant, whiter, and that is why I used  
13 ultraviolet in this test.  
14 Q. And what were your findings based on your ultraviolet

15 radiation examinations?

16 A. There was no use of titanium dioxide, which is the  
17 optical brightener that's used in papers from the '50s on,  
18 '50s to more recent times, and there was no indication that  
19 there had been any chemical-induced alteration to the  
20 documents.

21 Q. Mr. Stewart, I think you said that you viewed the  
22 documents under infrared radiation. Do I have that right?

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

24 Q. Could you explain how that process works?

25 A. Well, as I mentioned, ultraviolet radiation is below

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1 what we can see in. Infrared is above what we can see it.  
2 It ranges nanometers from the 700 range up to around 1200  
3 for the near infrared. And to explain infrared, some  
4 people are familiar with night vision scopes, those are the  
5 microscopes that police sometimes use if they are trying to  
6 look at someone at night where there's not much available

7 light. They will have a night vision microscope with them  
8 that takes the available light in the room and intensifies  
9 it, and it uses the infrared region to do that.

10 I use the infrared region to look at the ink  
11 and the documents as well as the paper, again looking for  
12 alterations or signs of changes in the documents.

13 Q. And what were your findings from that test?

14 A. My findings were that there were no indication of  
15 unusual aging characteristics, no indication of artificial  
16 watermarks or alterations.

17 Q. Did you mention before, and I apologize, did you  
18 examine the documents under fiber-optic lights?

19 A. Yes, I did.

20 Q. Why did you look at the documents under fiber-optic  
21 lights?

22 A. I was looking for watermarks, is one of the reasons.

23 A watermark is an advertisement or logo that's placed on  
24 many types of paper by the manufacturer, and it's a method  
25 that we can use to try to authenticate the document,

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1 determine when it was commercially available, the paper  
2 that is.

3 In my facility we have the world's largest  
4 collection of watermarks and inks, and we have around  
5 23,000 watermarks. So if I was able to find a watermark in  
6 this case, I would be able to compare it against that  
7 collection and get a history of the watermark.

8 Q. Is one of the reasons that document examiners use  
9 fiber-optic lights to test for chemical alterations?

10 A. Chemical alterations is another thing I looked for  
11 with the fiber-optic light. Erasures, obliterations,  
12 physical acts to the document, things that were changed on  
13 the document, photographs that were removed, things like  
14 that.

15 Q. What were the results of your examination using  
16 fiber-optic lights?

17 A. The most prominent observation was two-fold. One, I  
18 found watermarks on two of the documents. These would be  
19 Government's Exhibits 4 and 55, and the other observation  
20 involved a photograph on Government's Exhibit 3 having been

21 moved or changed or removed at some point.

22 Q. Okay. Do watermarks appear on all documents?

23 A. No, sir.

24 MR. DRIMMER: May I approach, Your Honor?

25 THE COURT: Yes.

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1 MR. DRIMMER: Your Honor, I'm showing

2 Mr. Stewart the original version of Government's Exhibit 4,

3 and I am also showing a copy of Plaintiff's Exhibit 55.

4 Q. Are these the two documents on which you found the

5 watermark?

6 MR. TIGAR: Excuse me, Your Honor. If he's

7 going to testify with respect to them, Plaintiff's Exhibit

8 55 is a government document that we received which is a

9 translation of a portion of the exhibit that the original

10 of which the witness is now handling.

11 We would offer this document for the limited

12 purpose of establishing that it is the government's

13 certified translation of the original that the witness is

14 now looking at. That is to say, we have not offered it for  
15 its truth or accuracy, or in any other respect. I want to  
16 make sure that the limited purpose admission is on the  
17 record.

18 MR. DRIMMER: Your Honor, I think that  
19 Mr. Tigar has, did you say -- I think you said 55.

20 MR. TIGAR: Yes, Plaintiff's.

21 MR. DRIMMER: I think you mean Plaintiff's 4.  
22 4 is the document that he has. 55 is the comparison, that  
23 was the Polish document.

24 MR. TIGAR: Now I am confused. Government  
25 counsel has handed me Plaintiff's 4 and Plaintiff's 55.

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1 THE COURT: Originally it was said, or I  
2 understood that 55 was a translation of 4.

3 MR. DRIMMER: That's not so, Your Honor.

4 THE COURT: All right.

5 MR. TIGAR: Well, Your Honor, we consent to

6 the admission for the limited purpose I just described of  
7 both 4 and 55. I just want to make sure these documents  
8 don't get in for more than the Court has ruled on.

9 THE COURT: All right. Well, I don't think  
10 you need to concede or admit anything at this point because  
11 I haven't heard enough about what these are.

12 MR. TIGAR: Thank you, Your Honor.

13 BY MR. DRIMMER:

14 Q. Mr. Stewart, are these the two documents that you  
15 found the watermarks on?

16 A. Yes, they are.

17 MR. DRIMMER: If I may show Your Honor the  
18 original.

19 THE COURT: Yes. Has Mr. Tigar seen it?

20 MR. TIGAR: Yes, Your Honor, I spent a happy  
21 morning in the Justice Department with this document, and  
22 it is the same one. Yes, I've seen it. Thank you.

23 Q. Mr. Stewart, what are you able to tell the Court  
24 about the watermark you found on these two documents?

25 A. The watermark is of the word "standard,"

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1 S T A N D A R D. And the watermark between the two  
2 documents is consistent in size, design and appearance. I  
3 researched that watermark through our records at the Secret  
4 Service and found that it has been manufactured by at least  
5 three different companies in the United Kingdom and England  
6 over the years, and prior to the 1940s and up until the  
7 early 1970s, a manufacturer by the name of Greenson &  
8 Waite, W A I T E, is the dandy roll, D A N D Y, R O L L,  
9 that produced it. That's the name of the company that  
10 manufactured the actual watermark. That was done for a  
11 company named arrest Joe Wiggins Fine Papers, W I G G I N  
12 S, Arjo, A R J O.

13 Q. Has that watermark you found on Government 4 and 55,  
14 has that been made in recent years, manufactured in recent  
15 years?

16 A. No. It has not been manufactured any time within the  
17 past 25 or so years.

18 Q. Are the watermarks on these two documents consistent  
19 with those found on paper of the early 1940s era?

20 A. Yes.

21 Q. What significance, if any, do you draw from the fact  
22 that there were not watermarks on the other documents you  
23 examined?

24 A. None at all. Watermarks are generally held for finer  
25 quality papers, and the two documents that we are speaking

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1 of, Government's Exhibit 4 and 55, were paper of higher  
2 quality, and so that's why you would find the watermark on  
3 those documents and not some of the other documents.

4 Q. Among the physical examinations you conducted, did  
5 you specifically examine the photograph on Government's  
6 Exhibit 3, the Trawniki service pass?

7 A. Yes, I did.

8 MR. DRIMMER: May I approach, Your Honor?

9 THE COURT: Yes.

10 Q. Mr. Stewart, is that the document on which you  
11 performed the photographic analysis?

12 A. Yes, it is.

13 MR. DRIMMER: Your Honor, I am once again  
14 giving you the original of Plaintiff's Exhibit 3.

15 Q. Mr. Stewart, can you describe the examination you  
16 performed on the photograph on this document?

17 A. Yes, sir. During the fiber-optic light analysis, it  
18 was apparent that the photograph didn't line up properly.  
19 It had either -- it was either a false document or had been  
20 moved sometime during the years. Those were the two  
21 options. That was apparent by looking at the rubber stamp  
22 impressions that were over the top of the photograph.

23 So I came up with the idea of trying to show  
24 whether or not that is, in fact, the case, whether or not  
25 the photograph was originally on the document or had it

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1 been altered in some way or moved. So I began using a  
2 computer and a scanner to assist me in making that  
3 determination.

4 Q. Okay. Did you prepare a chart to help illustrate

5 your testimony about the examination you performed?

6 A. Yes, sir, I did.

7 Q. Is that chart somewhere in this courtroom?

8 A. It's with me right here.

9 Q. Okay. Using the chart, can you please illustrate the  
10 examination that you did on this photograph?

11 A. Certainly.

12 THE WITNESS: May I stand, Your Honor?

13 THE COURT: Yes.

14 MR. DRIMMER: I believe we also have an easel  
15 set up if that will make life easier.

16 THE WITNESS: To help illustrate this as  
17 well, I created handouts for Your Honor and the lawyers, if  
18 that will assist.

19 Q. Please go ahead.

20 A. The first observation is simply that there was poor  
21 alignment. If we look at the photograph, you will see that  
22 there is a series of seals. There's a rubber stamp  
23 impression on the right-hand side and one that's in the  
24 lower portion of the photograph (drawing). That's done as  
25 a security measure when a document like this is created.

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1 If you're going to do rubber stamps, you do it over  
2 something like a photograph. That way you can show whether  
3 or not a document has been altered later on.

4 This lower seal actually is the product of  
5 two seals. There's a smaller seal in the middle of it that  
6 also transverses across the photograph and the card stock  
7 document. When you look at the image as it appears right  
8 now or the photograph and cards as they appear right now,  
9 you'll see that there's a slight break in the location of  
10 where the seal meets the photograph in all of the circles,  
11 all three of the circles. So I needed to determine whether  
12 or not that was the original photograph.

13 So what I did is, I began using a computer  
14 and a scanner. What I started with is the first image that  
15 you have in the upper left-hand side, and after scanning in  
16 the document I enlarged it rather large, and I drew a  
17 circle just on the area of the seal that went across the  
18 photograph at the bottom, the two parts that have the seal,

19 the small inner circle, and the outer large circle.

20 I then continued that and made it a  
21 continuous circle as if it had been on the card. I did the  
22 same thing in reverse by taking the portion of the  
23 photograph -- the portion of the circle that appears on the  
24 card and draw that in, drew that in, and then continued as  
25 if it had gone across the photograph. That's what the red

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1 and the green circles are on the image.

2 You'll see the green is the alignment of the  
3 stamp on the photograph and the red is the alignment of the  
4 stamp on the actual document. And you'll see that when you  
5 make it larger like that and you make the complete circle,  
6 you'll see truly that they do not line up.

7 The next image is where I took that green and  
8 that red seal and I physically moved them using the  
9 computer vertically to see if I could get alignment that  
10 way. You'll see that there is better alignment, but still  
11 not perfect alignment.

12           The next picture, Exhibit 4 there, shows the  
13 movement of the seals horizontally. After I moved them  
14 vertically, I then began moving them horizontally. Still  
15 you get better alignment, but not perfect alignment.

16           The next image shows what happens if I take  
17 those seals that I've moved both vertically and  
18 horizontally and then rotate them one degree  
19 counterclockwise. At that point, if you remove the red and  
20 the green seal, you get perfect alignment of all of these  
21 three seals, these three rubber stamps, to include the area  
22 that transverses across the photograph and is on the card.  
23 All three of the circles are in alignment now.

24 Q. And so based on the examination you performed and  
25 your illustration here, what are your conclusions regarding

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1 the stamps in the photograph?

2 A. My conclusions are not only that this is a card from  
3 the 1940 era, that this photograph is the original

4 photograph that was put on the card. I make that  
5 conclusion based on the lack of possibility of someone  
6 taking a photograph, putting seals on them, and have them  
7 perfectly line up as this does.

8 Q. Mr. Stewart, in addition to the physical test that  
9 you've talked about, did you also remove samples of the  
10 inks and papers from any of the documents in relation to  
11 this case?

12 A. Yes, I did.

13 Q. Could you describe the methods that you used to  
14 remove the ink and paper samples in this case?

15 A. I used a micro boring technique, B O R I N G, where I  
16 actually bore holes of ink out of the documents, and I use  
17 a hypodermic syringe that I have taken the end, cut off,  
18 and filed to where it's smooth. I use that as a cutting  
19 device onto a document, removing a small circle hole of ink  
20 and paper. And the size of that is about the size of a  
21 pinhole. If you were to hold it up to light, you would see  
22 a small amount of light coming through the hole after I was  
23 done. I used that on the areas of the document that I  
24 wanted to test for ink, paper or printing.

25 Q. What did you do after you collected those samples?

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1 A. Those samples that I removed, I placed in glass  
2 vials. These are small glass containers with screw cap  
3 lids.

4 Q. And what did you do with those vials?

5 A. I marked them with the exhibit and the location that  
6 I took the sample from, and then I secured them until I  
7 returned to the laboratory for testing.

8 Q. Is there any risk of contamination using that method?

9 A. Certainly, but I minimized that risk by using brand  
10 new vials that I have cleaned prior to taking on a site  
11 such as this, and they are kept sealed. They have rubber  
12 gasket lids on them. Not only -- after that, to further  
13 secure it after that, I put tape across the sealed lids so  
14 they could not come open during transit, and they were  
15 marked. So I minimized that risk.

16 Q. Did you also take duplicate samples of some of the  
17 inks and papers for the defense to test?

18 A. Yes, everywhere where it was conceivable, I took  
19 samples for the defense in case they want to have them  
20 tested.

21 Q. Where are those samples now?

22 A. I have them with me. They never requested them.

23 Q. Starting with Government's Exhibit 3, which Your  
24 Honor has the original, which is the Trawniki service pass,  
25 did you remove ink or paper samples from that document?

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1 A. Yes, I did.

2 Q. Can you describe the tests you performed on the  
3 samples on that document, including any comparison samples  
4 you used?

5 A. On that particular document, I used -- I did tests  
6 involving thin layer chromatography, which are tests  
7 involving the ink, and also x-ray fluorescence  
8 spectroscopy. That is a test that allows me to look at the  
9 inorganic composition.

10 THE COURT: Is that what has caused all the

11 holes in this document?

12 MR. DRIMMER: I think only some of the holes  
13 in this document, Your Honor. The ink and paper samples  
14 from Israel, from the mid 1980s, I think caused most of  
15 them. We tried to minimize our destructive testing on  
16 this, but those, the holes are the result of samples being  
17 taken for forensic testing.

18 MR. TIGAR: May I step across and look at the  
19 charts he was using, Your Honor?

20 THE COURT: Sure.

21 MR. TIGAR: I didn't want to cross in front  
22 of counsel without permission.

23 A. In reference to your question, Your Honor, I  
24 photocopied the document prior to and after I took samples,  
25 and one of the differences between now and when it was

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1 originally tested is the techniques have evolved some, and  
2 that may also address why there is additional obliteration

3 of the document prior to the testing.

4 BY MR. DRIMMER:

5 Q. I believe you mentioned that you performed a

6 spectroscopy and a microscopy exam. Is that so?

7 A. The x-ray fluorescence spectroscopy uses a scanning

8 electron microscope. What is that -- a scanning electron

9 microscope can magnify up to 100,000 times. It's mainly

10 used in the biological field, but what we use it for is to

11 zoom in and look at paper fibers, for instance, or

12 printing, or something that we are trying to test.

13 In this particular case, I used it to give me

14 information about the paper in that document, to look at

15 the inorganic composition, and then be able to compare that

16 against documents of that era, and also things that have

17 been added to paper since the 1940s that would indicate the

18 document had in some way been altered.

19 Q. What were your conclusions in performing those tests,

20 the microscopy and spectroscopy tests?

21 A. The conclusion of all of the tests in toto together

22 is that the document is consistent with being a legitimate

23 document from that era, the 1940 era, early 1940s. The

24 particular examination that we are speaking of, the x-ray

25 fluorescent spectroscopy and scanning electron microscopy

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1 yielded information concerning the inorganic composition of  
2 the paper, and at that point I was able to determine that  
3 that paper is composed of silicon, calcium, chlorine,  
4 titanium, aluminum, sulfur and potassium.

5 Q. Would you expect to find those elements in papers  
6 from the 1940s era?

7 A. Yes, I would.

8 Q. Did you find any traces of titanium dioxide in these  
9 tests?

10 A. I found titanium, but it's different than titanium  
11 dioxide. Titanium has been added to paper since around the  
12 turn of the century and it's added as a filler to paper,  
13 and it's commonly found in older papers. I did find that  
14 type of titanium.

15 I did not find titanium dioxide, which is an  
16 optical brightener that was added in the 1950s and later to

17 make paper that was brown appear more visibly pleasant,

18 make it more white.

19 Q. Did you also test any of the inks from Government's

20 Exhibit 3?

21 A. Yes, I did.

22 Q. What tests did you perform on those?

23 A. I did the thin layer chromatography that we spoke of,

24 looking at the dye composition of the inks.

25 Q. And what were your conclusions in conducting that

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1 test?

2 A. Well, I found a match between that exhibit and

3 Government's Exhibit 45.14 in the area of the black

4 printing ink that's used to produce the background of the

5 document. In other words, when that document was created,

6 it was done on an offset press, and it was produced with

7 black printing ink. And that black printing ink matches

8 between those two documents.

9 MR. DRIMMER: Permission to approach, Your

10 Honor.

11 Q. Mr. Stewart, I'm showing you what has been marked as  
12 Government's Exhibit 45.14, the service identification  
13 document for Nurgali Kabirow. Is this the document you  
14 found to have the same printing ink as Government's Exhibit  
15 3?

16 A. Yes, it is.

17 Q. What were your conclusions regarding the fountain pen  
18 inks, if any, that you tested?

19 A. The fountain pen inks were various different types of  
20 -- the one was an iron gallotonnate tape, which is a  
21 formula that has iron in it. Another one is a -- the  
22 colored inks, the more colorful inks are what we call  
23 aniline inks, and the aniline inks were used from the 1920s  
24 forward.

25 Q. Were these inks consistent with those in use in the

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1 early 1940s?

2 A. Yes, they are.

3 Q. Turning to Exhibit 4, Government's Exhibit 4, Your

4 Honor has the original of that, did you remove any samples

5 from that document?

6 A. Yes, I did.

7 Q. Could you please describe the tests that you

8 performed on the samples from Government's Exhibit 4?

9 A. Again, I did thin layer chromatography on that

10 exhibit, and the results of those tests indicated that the

11 green fountain pen ink matched between Government's Exhibit

12 4 and Government's Exhibit 55. The violet pencil matched

13 between the same two exhibits, and the gray pencil used to

14 produce Government's Exhibit 4 also matches that used to

15 produce Government's Exhibit 55, so we found three matches

16 between those two documents.

17 I found that the same paper and watermark was

18 used between the two exhibits, and that defects in the

19 rubber stamp match between the two exhibits. Defects are

20 things that are wrong with the rubber stamp. When a rubber

21 stamp is created, it's actually a piece of rubber that's

22 carved out to have a certain appearance. It's then stamped

23 with a water soluble ink, then that image is then placed on

24 a document. If there's any imperfections, things that are  
25 wrong with the cut image on the rubber stamp, those get

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1 transferred and become permanent defects in that stamp.

2 Q. I'd like to move to Government Exhibit 6, if we can.

3 MR. DRIMMER: I think you have the original  
4 of that, too, Your Honor, if you can indulge me for one  
5 moment.

6 (Pause.)

7 MR. DRIMMER: I've been corrected. We don't  
8 have the original of that document. That's one of the  
9 Russian documents.

10 Q. You have Government's Exhibit 6 in front of you.

11 Could you please describe any additional tests you  
12 performed on that document, including any samples that you  
13 took and tests that you performed on those samples?

14 A. I performed thin layer chromatography on that  
15 document, again looking at the dyes and the writing inks

16 that were used to produce it. And the results of those  
17 tests indicated that Government's Exhibit 6 contained the  
18 same black duplicating ink as was found on Government's  
19 Exhibit 64. That's the ink that's used to produce the  
20 printing in the document itself.

21 MR. DRIMMER: Your Honor, may I?

22 THE COURT: Yes.

23 Q. Showing you Government's Exhibit 64, is that the  
24 document on which you found the same duplicating ink?

25 A. Yes, it is.

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1 Q. Did you also take any samples from Government's  
2 Exhibit 7?

3 A. Yes, I did.

4 Q. I'm showing you what's been marked as Government's  
5 Exhibit 7, the original version. Is that the document that  
6 you tested?

7 A. Yes, it is.

8 Q. Would you please describe the tests that you

9 performed, including any comparison samples that you used?

10 A. I used thin layer chromatography, looking at the  
11 pencil entries on the document, and then also microscopic  
12 examinations looking at how the document itself was  
13 created.

14 As far as comparison standards, I utilized  
15 all of the exhibits.

16 Q. And what conclusions did you reach?

17 A. The gray pencil entries found on Government's Exhibit  
18 7 match those found on Government's Exhibit 55. The visual  
19 exam of the rubber stamp indicates matching defects to a  
20 stamp from Government's Exhibit 4. The watermark matches  
21 between Government's Exhibit 4 and Government's Exhibit 55,  
22 as we spoke of earlier.

23 Government's Exhibit 7 is a bound book, this  
24 is a bound book, and the questioned page was page number  
25 25, so it is not at the beginning of the book or the end of

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1 the book. It's in the middle of the book. That page is  
2 sewn into the document. There's no indication of removal  
3 or insertion of that page. The pages are sequentially  
4 numbered with no break at page 25. In other words, I can  
5 go to the page before and it's page 24. I can go to the  
6 page after, it's page 26. There's no indication that page  
7 25 was at some time not there.

8           To further examine that possibility, I looked  
9 at the thickness of the documents, of the pages in the  
10 book. The questioned page is .0032 inches thick on  
11 average, and that matches page 24 and page 26, the  
12 surrounding pages.

13           The black printing ink from the questioned  
14 page matches the black printing ink found on the previous  
15 page, page 24.

16           There's another page that's in this book,  
17 which is page 69, that I also treated as questioned. It  
18 has the same markings at the bottom edge of the page as the  
19 other documents. It's also sewn into the book with no  
20 indication of removal or insertion. It measures .0035  
21 inches thick, the same as pages 68 and 70, which are the  
22 surrounding pages.

23           The questioned entries on page 25 and 69 are  
24 consistent in pencil intensity, color, thickness and  
25 pressure to the surrounding entries, which is something I

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1 looked for to determine if this particular entry was added  
2 at a different time.

3           All of the pages are uniformly browned, with  
4 slight additional browning around the edges, which is what  
5 I would expect from a bound book, and the surrounding pages  
6 to the questioned pages show no differences in ultraviolet  
7 radiation reaction to pages 25 and 69.

8           There is no indication of any alteration or  
9 changes either around the questioned entries.

10 Q. In performing your tests on Government's Exhibits 3  
11 through 7, did you find certain ink or pencil samples that  
12 did not match comparisons that you drew or samples that are  
13 in the library of the Secret Service?

14 A. Yes, sir. There were many of these documents where

15 the ink or pencils did not match across the document. Is  
16 that your question?

17 Q. No. My question was -- you said that you took ink or  
18 paper samples from some of these documents. On some of  
19 your tests, did you find examples where comparisons that  
20 you were testing against didn't match or that there was no  
21 match with inks or papers in the Secret Service library?

22 A. Oh, yes, I did find that.

23 Q. And can you tell us what the significance of those  
24 findings were?

25 A. Well, actually adds to the likelihood of

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1 authenticity. Our standard library collection, our  
2 collection of writing inks is the world's largest. We have  
3 over 7,500 of them that go back to actually the 1800s. In  
4 the more recent years, the past 30 or 40 years, let's say,  
5 that collection is extremely complete and accurate. We go  
6 to great lengths to insure that.

7 So to find inks that don't match something in

8 our collection is very unusual. The fact that a number of  
9 pencils were used in these documents is very consistent  
10 with documents of that era. When I've examined documents  
11 from the Nuremberg trial, for instance, there are many  
12 documents where pencil entries were utilized, and one of  
13 the things that one finds if they examine documents from  
14 that era is that colored pencils were a favorite to be  
15 used.

16 MR. DRIMMER: Your Honor, if I could have a  
17 moment.

18 THE COURT: Sure.

19 (Pause.)

20 MR. DRIMMER: Your Honor, could I have a  
21 five-minute break?

22 THE COURT: Sure. We will take a five or  
23 ten-minute break.

24 (Recess had.)

25 BY MR. DRIMMER:

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1 Q. Mr. Stewart, I only have one more question for you.  
2 As a result of your examination in this case, what  
3 conclusions were you able to make about the authenticity of  
4 the documents listed on Government's Exhibit 17 and whether  
5 they were created later than the early 1940s?

6 MR. TIGAR: I object to the form of the  
7 question, Your Honor. The word authenticity.

8 THE COURT: Well --

9 MR. TIGAR: It's also compound, Your Honor.

10 THE COURT: Right. Break it up, Mr. Drimmer,  
11 and I think we will be able to handle this.

12 MR. DRIMMER: I'm sorry, Your Honor?

13 THE COURT: Just break up the question, and I  
14 think we will be able to handle it.

15 MR. DRIMMER: Yes, sir.

16 BY MR. DRIMMER:

17 Q. Mr. Stewart, as a result of your examination, what  
18 conclusions were you able to reach about the authenticity  
19 of the documents listed on Government 17?

20 THE COURT: No, leave that question aside.

21 MR. DRIMMER: That's the compound part to it?

22 THE COURT: That's the complicated one. Ask  
23 the individual question.

24 Q. As a result of your examination, what conclusions  
25 were you able to make about whether the documents listed on

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1 Government 17 were created later than the early 1940s?

2 A. I found no indication to suggest the documents in  
3 question had been falsely dated. Instead, the evidence  
4 strongly suggested the documents were consistent with being  
5 legitimate with respect to date.

6 Furthermore, I found indication of no photo  
7 substitution in Government's Exhibit 3. Instead, I found  
8 strong indications that the card and photograph are  
9 original and were from the same original document.

10 MR. DRIMMER: I have nothing further, Your  
11 Honor.

12 THE COURT: Okay.

13 CROSS-EXAMINATION OF LARRY F. STEWART

14 BY MR. TIGAR:

15 Q. First, sir, would you hand me AA?

16 A. Yes, sir.

17 Q. AA consists of a typed list of questions, does it

18 not, sir?

19 A. In part.

20 Q. And in addition to that, it contains some notes and

21 also some typewritten answers to those questions; is that

22 right?

23 A. That's correct.

24 Q. And during your direct testimony, sir, were you

25 reading the typed questions or typed answers in response to

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Stewart - Cross

1 Mr. Drimmer reading you the typed questions?

2 A. In some of the cases, I was.

3 Q. And thus, for your last answer, "I found no

4 indication to suggest," that's typed on AA; is that right,

5 that first part?

6 A. The beginning portion is typed. The remaining

7 portion I wrote.

8 Q. And that, the end portion written in blue ink you

9 wrote in your own handwriting?

10 A. Yes. I typed the original portion and I wrote the

11 bottom portion.

12 Q. And did you type the whole thing?

13 A. I did not type the questions. I typed the answers.

14 Q. What happened was that the government gave you,

15 somebody gave you the typed questions and you typed or

16 wrote the answers; is that right?

17 A. That's correct. That is something that I commonly do

18 in difficult cases to save the Court time, and it also

19 alleviates me from having to go through all the notes that

20 I have before me to achieve an answer.

21 Q. I'm not attacking you for it, sir. Go ahead and

22 complete your answer. I just want to make sure.

23 MR. DRIMMER: Thank you, Your Honor.

24 A. I'm just clarifying it for the Court. None of the

25 answers were previously given to the prosecution. They are

Stewart - Cross

1 all my answers, and I did that simply as a simplification.

2 All of that information also is found in the notes that you

3 were previously given.

4 Q. And I want to -- yes, it is my recollection that the

5 information was in the notes you gave us.

6 Now, you have been with -- in the document

7 examination field for how many years, sir?

8 A. Since 1979.

9 Q. And your current title gives you responsibility, does

10 it not, for questioned documents with respect to a broad

11 spectrum of cases; is that right?

12 A. That's correct.

13 Q. Now, in the examination of questioned documents, you

14 use a number of machines, is that correct?

15 A. You can.

16 Q. Did you use machines in this case?

17 A. In some cases, yes.

18 Q. For instance, you talked about chromatography, is

19 that correct?

20 A. Yes.

- 21 Q. Did you use chromatography?
- 22 A. Yes. However, that is not a machine.
- 23 Q. Well, a chromatograph is a machine, is that correct?
- 24 A. That's correct.
- 25 Q. Chromatography is what it does?

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Stewart - Cross

- 1 A. Thin layer chromatography is not a machine. It's a
- 2 form, if you'd like me to explain it, it's actually done on
- 3 a silica gel plastic or glass plate. It's not done in a
- 4 machine.
- 5 Q. But in order to interpret the results, what do you
- 6 do?
- 7 A. I look at the glass plates.
- 8 Q. And how do you make sure that the glass plate
- 9 chromatograph results you get is accurate, that is, that
- 10 your results are repeatable?
- 11 A. I make sure that I use consistent approaches with the
- 12 techniques that I utilize. I insure that the solvents that

13 I'm using are fresh. I insure that the equipment is clean  
14 that the solvents and the glass plate are kept in, and  
15 beyond that, it becomes the expertise of the examiner.

16 Q. Does your laboratory have a protocol with respect to  
17 the use of clean solvents, the cleaning of the machine, and  
18 the other things about which you've told us?

19 A. Yes, we do.

20 Q. Did you follow the protocol in this case?

21 A. To a T.

22 Q. Now, I don't want to prolong this then. You know the  
23 need for accuracy, correct?

24 A. Yes, sir.

25 Q. And you followed all your protocols, correct?

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Stewart - Cross

1 A. That's correct.

2 Q. And you're a fellow of the American Academy of  
3 Forensic Sciences, correct?

4 A. That's correct.

5 Q. You don't get to be a fellow by mailing in your \$10

6 and they send you back a card; is that right?

7 A. That's correct.

8 Q. What do you have to do to become a fellow?

9 A. Many years of experience, published articles, peer  
10 reviewed experience, that type of thing.

11 Q. You have to go to AAFS meetings and deliver papers  
12 and work your way up from trainee to whatever the various  
13 ranks are to become a fellow, correct?

14 A. That's correct.

15 Q. And you've done that?

16 A. Yes, sir.

17 Q. Now, in the process of examining documents and  
18 gaining your experience are you familiar with a work by  
19 Ordway Hilton called Scientific Examination of Questioned  
20 Documents?

21 A. Yes, sir. I own that book.

22 Q. Now, I'm holding on to the revised edition of that  
23 book. Do you recognize that one?

24 A. Yes, sir, I do.

25 Q. And is that the one you own?

Stewart - Cross

1 A. I actually own both editions, but yes, sir.

2 Q. And you acknowledge that to be a respectable treatise

3 in the field about which you've been talking to us today,

4 is that correct, sir?

5 MR. DRIMMER: Excuse me, Your Honor. I think

6 the witness has been talking about several different fields

7 of testimony.

8 Q. Do you acknowledge this to be a respected treatise in

9 the field of scientific examination of questioned

10 documents?

11 A. One of many, yes.

12 Q. When you were talking to the Court about your

13 examination of Government's Exhibit 4, you told us that you

14 wore gloves; is that right?

15 A. Yes.

16 Q. Why did you wear gloves?

17 A. To eliminate any additional damage to what I

18 considered may be a historical document.

19 Q. The documents about which you've told us date to the

20 1940s, is that correct?

21 A. Yes, sir.

22 Q. That's your conclusion, right? That's what you told

23 us, yes?

24 A. The five documents that we talked about in this case

25 date from the 1940s, and my conclusion was many-fold. The

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Stewart - Cross

1 specific conclusion, I can read it again to you if you

2 like.

3 Q. One of your conclusions was that they date from the

4 1940s, correct?

5 A. That's correct.

6 Q. All right. Now, isn't it the case that whoever it

7 was that handled these documents between the time they were

8 created and the time you first encountered them did not use

9 the same care with respect to them that you did?

10 A. I don't know.

11 Q. Well, sir, would you agree with me that according to

12 Ordway Hilton, there's a whole list of things you're  
13 supposed to do with respect to the care, handling, and  
14 preservation of documents? Would you agree he says that?

15 A. A forensic examiner should. I don't know his book  
16 verbatim, but --

17 Q. I'm going to show you the table of contents, sir, and  
18 I'll just ask you if you would agree with me that he talks  
19 about protective envelopes, early submission for  
20 examination, proper storage, avoid excessive handling, do  
21 not mark, do not fold, cut or tear; do not allow, quote,  
22 amateur, close quote, testing; and then he talks about  
23 charred documents and conclusions. Do you see that?

24 A. Yes, those are subjects in his table of contents.

25 Q. Now, beyond the subjects in his table of contents,

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Stewart - Cross

1 would you agree with me, sir, that those are wise counsels  
2 for people that are handling documents that one might wish  
3 to use in a judicial proceeding?

4 A. Those are some of the wise comments, yes. Things

5 have changed a bit since 1992.

6 Q. When you say they have changed a bit since 1992, why  
7 did you use that date?

8 A. I believe that's the date of his last revision.

9 Q. Well, are you referring to this copyright notice  
10 here?

11 A. That's his 1993.

12 Q. So that's the latest edition?

13 A. I assume so, yes. If I can elaborate a little bit,  
14 I'm on the board of directors of the American Society of  
15 Crime Laboratory Directors.

16 Q. Please do elaborate about what else has happened  
17 since these counsels or things have been put into effect.

18 MR. DRIMMER: I don't mean to interrupt, Your  
19 Honor, I'm entirely sorry, but I think he was in the middle  
20 of an answer.

21 THE COURT: When a witness is volunteering  
22 information it's not exactly the answer to the question, in  
23 which case I would let the witness answer.

24 MR. DRIMMER: Thank you, Your Honor.

25 Q. Please, go ahead and tell the Court what's happened

Stewart - Cross

1 in the years since 1993 with respect to this matter of the  
2 preservation of documents that may be used in a judicial  
3 proceeding.

4 A. Yes, sir. I believe, without reading that segment of  
5 Mr. Hilton's book, he's referring to the proper techniques  
6 for forensic examination of documents and how to prepare  
7 and protect them during that examination phase.

8 In my role on the American board or the board  
9 of directors of the American Society of Crime Laboratory  
10 Directors, that facility actually accredits laboratories,  
11 goes in and looks at their procedures, their manuals, as  
12 Mr. Tigar is speaking of, and evaluates whether or not they  
13 are consistent with what should be done in laboratory  
14 facilities.

15 They dictate to laboratories how to properly  
16 handle evidence, and that's something that's happened since  
17 Mr. Hilton's time.

18 Q. In fact, sir, one of the major disputes in forensic

19 evidence that has taken place since the World Trade Center  
20 bombing is the reexamination of how evidence is handled  
21 from the crime scene to the courtroom; is that right, sir?

22 A. That was one of the beginnings of it, yes.

23 Q. And the great United States Government has devoted a  
24 great deal of attention to that, correct?

25 A. As they should have.

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Stewart - Cross

1 Q. Now, with respect to the documents about which you  
2 have told us, sir, at some point after they were created,  
3 they were gathered up and taken someplace, correct?

4 A. At some point after the documents were originally  
5 created, they were gathered up and taken someplace? Is  
6 that your question?

7 Q. Yes.

8 A. I assume so. I was not there.

9 Q. And so you don't know either of your personal  
10 knowledge or if anyone has ever told you where, for

11 example, the two watermarked pieces of paper in  
12 Government's Exhibit 4 have been since they were created?

13 A. Only at the point of time when I examined them. I  
14 know where they currently are and where they were at the  
15 point of the examination, but I don't know prior to that.

16 Q. And they were in Lithuania, correct, or were they in  
17 Washington, D.C. when you saw them?

18 A. Which exhibits are we talking about again, please?

19 MR. TIGAR: Your Honor, may I have the book  
20 which was Exhibit 4 that was handed to the Court?

21 THE COURT: Which one?

22 MR. TIGAR: The red bound one. Thank you,  
23 Your Honor.

24 Q. I'm referring now to the red bound book, and I'm  
25 going to ask you if that is -- is that Government's Exhibit

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Stewart - Cross

1 4?

2 MR. DRIMMER: It is, Your Honor.

3 Q. This is Government's Exhibit 4. Now, let's look

4 specifically at this. You don't know who put these

5 documents in this book; is that correct?

6 A. No, sir.

7 Q. And you don't know when that was done; is that right?

8 A. That's correct, I do not know.

9 Q. Now, inside the red bound book there are blue pieces

10 of cardboard. Do you see that, blue pieces of

11 cardboard-type paper?

12 A. Yes, sir.

13 Q. Do you know what language those are written in?

14 A. No, sir, I do not.

15 Q. It is not the English language, is that correct?

16 A. That's right.

17 Q. And it's not the Cyrillic alphabet with respect to

18 the printed matters?

19 A. That's correct.

20 Q. The writing down below, the fountain pen writing,

21 what alphabet is that? Is that Cyrillic or some other?

22 A. I don't know, sir.

23 Q. Are you able to read the Cyrillic alphabet?

24 A. No, I'm not.

25 Q. What languages other than English do you speak, if

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Stewart - Cross

1 any?

2 A. Not very well, but Spanish.

3 Q. No Spanish documents here, right?

4 A. No, sir.

5 Q. All right. Now, then there's a rubber stamp on the

6 inside front page of Exhibit 4. Do you see that?

7 A. Yes, sir.

8 Q. Do you see the letters CCP there?

9 A. Yes, sir.

10 Q. Now, does that give you a hint based on your

11 experience who made that stamp?

12 A. I could guess, but I don't know if that's what you

13 would like me to do.

14 Q. Well, guess; give it your best shot.

15 MR. DRIMMER: Your Honor, I'd like to object.

16 I believe that's going to be speculation.

17 THE COURT: Well, the Court is aware that the

18 CCP is Cyrillic for USSR.

19 MR. TIGAR: Yes. If the Court will take  
20 judicial notice of that I'll not ask the witness.

21 Q. At some point, if the Court's version is right -- and  
22 I'll tell you something, inside this room it is -- that  
23 somebody in the USSR made that, right?

24 A. I'll take your word for it.

25 Q. But you don't know when, do you?

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Stewart - Cross

1 A. No, sir, I did not examine that document.

2 Q. Pasted to the inside front cover is another piece of  
3 paper, correct?

4 A. That's correct.

5 Q. And it says -- is that in the English or Cyrillic  
6 alphabet?

7 A. Again, I do not know.

8 Q. Well, the letters, do they look like English letters  
9 or Cyrillic letters?

- 10 A. I'm not familiar with Cyrillic letters.
- 11 Q. To they look like English letters?
- 12 A. Yes, they do.
- 13 Q. And there's some writing here, is that correct?
- 14 A. Yes.
- 15 Q. Do you know what that writing is?
- 16 A. Handwritten entries.
- 17 Q. Do you know who Mr. Domarkos is?
- 18 A. No, sir, I do not.
- 19 Q. Did you ever meet the man -- where did you first see
- 20 this document?
- 21 A. At the headquarters of the Secret Service.
- 22 Q. Who brought it to you?
- 23 A. A representative of the Lithuanian archives.
- 24 Q. Was he a slightly built gentleman with grayish brown
- 25 hair, approximately 5 foot 9 in height, of a gentle manner?

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Stewart - Cross

- 1 A. That sounds about right.
- 2 Q. Did he introduce himself?

3 A. He may have, sir. I had many things on my mind that  
4 day. I did not take note of his name.

5 Q. Would it refresh your recollection if I suggested his  
6 name was Domarkos?

7 A. It wouldn't refresh my recollection, no. I don't  
8 know.

9 Q. Doesn't do a thing for you?

10 A. No, sir.

11 Q. Now, did you understand that Mr. Domarkos was the man  
12 who had brought this from Lithuania?

13 A. That's what you're telling me.

14 Q. What was your understanding about why this gentleman  
15 was there?

16 A. The document was delivered to my facility by a  
17 representative of the Lithuania archives, and he was the  
18 protector of the document.

19 Q. All right. And you understood, therefore, his  
20 purpose to be the protector of the document, right?

21 A. Yes, sir.

22 Q. And as such, he would have information, would he not,  
23 about where it had been and who had kept it and why certain

24 markings were made on it? Might he have had that  
25 information?

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Stewart - Cross

1 A. He might have.

2 Q. Did you ask him?

3 A. No, sir.

4 Q. Did you concern yourself with that?

5 A. No, sir.

6 Q. Did anyone ever provide you with any information,  
7 either from the Lithuanian archivist or elsewhere, about  
8 where this document had been, who had kept it, and under  
9 what circumstances it was maintained?

10 A. No, sir, and in fact, if they had, I would have  
11 discounted most of that information.

12 Q. Why would you -- all right. Let me understand here.  
13 You're saying that had someone told you that this  
14 Lithuanian gentleman had provided information about the  
15 care and custody of this document, you would have  
16 discounted it; is that right?

17 A. I would have placed the same weight on that as if you  
18 had told me that. I don't know that to be the truth, and  
19 so I would have to forensically examine the document.

20 Q. So in your law enforcement efforts, are you telling  
21 this Court that you're never concerned with what a live  
22 witness tells you about where a document has been?

23 A. I'm not an investigator. I'm a forensic scientist.

24 Q. When someone brings you a document to test in your  
25 laboratory in connection with a Secret Service

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Stewart - Cross

1 investigation, another investigator, one of your  
2 colleagues, do you ever ask them "Where did you get this?"

3 A. No. In fact, that's one of the accreditation  
4 guidelines, is that we remove ourself as much as we  
5 possibly can from the investigative side of the house, so I  
6 do not ask where the documents came from or their history,  
7 and that's by design.

8 Q. So you, in your job, you are not able to tell us

9 anything about how the document was kept and who kept it  
10 and where it was from the moment it was created until the  
11 time you saw it; is that correct?

12 A. No. I believe that's my job as a forensic scientist  
13 to determine. All I can tell you is how the document was  
14 kept and maintained from the point it entered my facility  
15 to the point that it left my facility.

16 Q. So the answer is yes, you don't know about anything  
17 before it came to you, correct?

18 A. That's correct, I do not know.

19 Q. Now, when you teach -- do you teach people in your  
20 service or elsewhere about how to handle documents that may  
21 wind up in a judicial proceeding?

22 A. Yes, I do.

23 Q. Do you tell them not to mark on the documents?

24 A. No, I do not.

25 Q. Well, what markings do you tell them to make, if any?

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1 A. If it is possible in a particular case, we try to

2 mark the document with our initials and the date, and if  
3 possible a case file number, so we can later identify the  
4 document. In this particular case, because of the  
5 potential of the historic value of the documents, we chose  
6 not to mark the documents.

7 Q. So if you're securing a crime scene, documentary  
8 evidence like any other evidence, you want to have the  
9 seizing agent mark it, preferably on the item of evidence  
10 itself in a nondestructive way so that its chain of custody  
11 can be verified; is that correct?

12 A. If that's possible. If it's not possible, there are  
13 alternative measures.

14 Q. And among those alternative measures would be to  
15 place it in a protective envelope, correct?

16 A. And mark the envelope, correct.

17 Q. Now, if someone asked you, "Mr. Stewart, I have an  
18 investigation of some -- I'm investigating some Cubans who  
19 are doing something, and I'm seizing documents in Spanish,"  
20 would you advise them to write out English translations on  
21 the seized documents?

22 A. No, sir.

23 Q. Why wouldn't you?

24 A. Because what they wrote on the document is immaterial

25 to my examination.

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Stewart - Cross

1 Q. And it also alters the document, correct?

2 A. Well, putting your initials on a document alters a

3 document, as well.

4 Q. It alters it in a way you don't approve of, correct?

5 A. What an investigator does when he seizes a document

6 is no concern of mine.

7 Q. Well, we just read some things about how to preserve

8 documents, and it's your testimony they don't have anything

9 to do with how documents are seized, is that your

10 testimony?

11 A. No. My testimony is that what Mr. Hilton was talking

12 about there are twofold. The primary point he was making

13 is how documents are maintained once they are in a

14 laboratory setting and a forensic scientist is examining

15 the documents. My point was that I remove myself from the

16 investigation to the point that it doesn't matter to me  
17 what the investigator does. That's up to them for their  
18 methods and procedures to decide what's best.

19 Q. Now, continuing now with Government's Exhibit 4, we  
20 see here bound in -- some pages handwritten in purplish ink  
21 in the Cyrillic alphabet, do you see that, or not in an  
22 English alphabet?

23 A. Yes, sir, I do.

24 Q. Now, do you know anything about how those got in  
25 there?

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Stewart - Cross

1 A. No, sir, I do not.

2 Q. Did you examine the ink in that -- that purple ink?

3 A. No, I did not.

4 Q. Does it appear -- would you look at it now? Does it  
5 appear to be an aniline ink as opposed to an  
6 iron-containing ink?

7 A. I would not pose a guess to that without doing a

8 chemical examination. Most iron gallotannate inks are  
9 black or brown in appearance, and over time they actually  
10 look like they have rusted on the document, and that's why  
11 they stopped being used in the early part of the century.

12 Q. Now, as we look through this piece of paper here, we  
13 see a number of different -- or as we look through this  
14 book, we see a number of different documents of different  
15 sizes and descriptions; is that fair to say?

16 A. Yes, sir.

17 Q. And someone has numbered the pages that are in here  
18 in pencil. Do you see that?

19 A. Yes, sir.

20 Q. Now, they are named -- the pages appear to be  
21 numbered consecutively, correct?

22 A. I don't know. Would you like me to examine it?

23 Q. Yes. Would you look? And I'm also going to ask you  
24 whether the consecutive numbering includes the purplish  
25 nonEnglish writing that is also contained there.

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1 (Pause.)

2 Q. I'm not asking you to verify, sir, for the whole  
3 thing, just from the part -- you are now to page, what, 54?

4 A. Yes, sir.

5 Q. And it's consecutive up to there, is that right?

6 A. Except for one insertion of page 32 A.

7 Q. All right. Let's look at page 32 A because -- 32 A  
8 insertion is part of this purple ink part, is that right?

9 A. That's correct.

10 Q. All right. Now, let's start with page 92, and if  
11 you'll just read along with me. That document at page  
12 92 --

13 MR. DRIMMER: Could I just stand over here?

14 MR. TIGAR: Of course.

15 Q. -- is dated 29 November 1943, correct?

16 A. That's correct.

17 Q. Page 93 is dated 1 December 1943, correct?

18 A. That's correct.

19 Q. And then the next page, page 93 A, is dated December  
20 1, '43, correct?

21 A. That's correct.

22 Q. The next page, 39, is dated 17 November 1943,  
23 correct, or excuse me, the next page is dated 29 November  
24 1943?  
25 A. Correct.

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Stewart - Cross

1 Q. Then the next page, what number is that, can you read  
2 that, 95?  
3 A. 95, I believe.  
4 Q. Yes, is dated 29 November, correct?  
5 A. 1943.  
6 Q. 1943. 96 is also dated 29 November 1943, correct?  
7 A. That's correct.  
8 Q. 97 is dated 17 November 1943, correct?  
9 A. Correct.  
10 Q. And do you know what 97 is about?  
11 A. No, sir, I do not.  
12 Q. Did anyone ask you -- now, there appear to be on the  
13 back of 97 some names written in a nonEnglish alphabet,  
14 correct?

15 A. There are names that are handwritten. Since they  
16 look like signatures or in different writings, it's  
17 difficult to tell what alphabet, but it doesn't look to me  
18 like that's English.

19 Q. Now, on the front page, that, the typewritten part is  
20 in German, correct?

21 A. I don't know.

22 Q. Well, it is in the English alphabet but not the  
23 English language, correct?

24 A. That's correct.

25 Q. Do you recognize the word Wachmanner there?

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Stewart - Cross

1 A. No.

2 Q. That's not a name you know?

3 A. No, sir.

4 Q. You don't know anything about that, okay. Then I'm  
5 going to skip a little further along. What page is this,

6 1-0 -- can we read that?

7 A. 107.

8 Q. 107. And that's dated 11 November 1943, correct?

9 A. Yes, sir.

10 Q. So would you agree with me, sir, that the pieces of  
11 paper in this book that I'm holding are not in any date  
12 order? Whoever put them in there wasn't paying attention  
13 to that, correct?

14 A. The dates on the documents are not in order, that's  
15 correct.

16 Q. Now I want you, please, to turn to the pages there  
17 that reflect the documents about which you testified on  
18 direct examination, and those would be Government's  
19 Exhibits -- well, is one of them Government's Exhibit 7?

20 A. From the archives of Lithuania, the exhibit I  
21 examined is Government's Exhibit 4.

22 Q. Government's Exhibit 4. Thank you very much. I'm  
23 sorry. Government's Exhibit 4. Now, you found that to be  
24 a watermarked paper, is that right?

25 A. Yes, sir.

Stewart - Cross

1 Q. Is that one of your watermarked papers?

2 A. Yes, sir.

3 Q. Now --

4 THE COURT: Excuse me one minute. I'm a  
5 little confused. I thought the book was Exhibit 4.

6 MR. DRIMMER: No, Your Honor. The only --  
7 the questioned document in the book is Exhibit 4.

8 THE COURT: So the book is not an exhibit,  
9 it's only one of the documents in the book that's an  
10 exhibit.

11 MR. DRIMMER: That is the case, Your Honor.

12 MR. TIGAR: Yes, Your Honor. May the record  
13 now reflect the questioned document is Exhibit 4. As soon  
14 as we can, Your Honor, we will take our copy of the entire  
15 exhibit, mark it with a separate number, and place it in  
16 evidence.

17 THE COURT: Okay.

18 MR. TIGAR: It is, as we said yesterday, I  
19 think, on the record, but I'm not sure, after I've examined  
20 Mr. Stewart and Mr. Smith we will have gotten everything

21 out of this original that we need to, and it can leave the  
22 Court so far as we are concerned.

23 Your Honor may wish to keep it, but we won't  
24 need it.

25 THE COURT: All right

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Stewart - Cross

1 BY MR. TIGAR:

2 Q. Would you then take a look at what is in evidence as  
3 Government's Exhibit 4, which is the document from the  
4 Lithuanian archives, correct?

5 A. Yes, sir.

6 Q. By the way, when you refer to it as the document from  
7 the Lithuanian archives, how do you know that's where it's  
8 from?

9 A. It was brought to my facility with a Lithuanian  
10 archivist presenting it to us for examination.

11 Q. So at least to the extent of saying "Hello, I'm the  
12 Lithuanian archivist, this is my document," you did rely on  
13 what he said, correct?

14 A. I had an official request from the Department of  
15 Justice to examine the documents from the Lithuanian  
16 archivist, so I relied on that document to give me the  
17 authority to examine the document.

18 Q. Now that document, Government's Exhibit 4, and  
19 Government's Exhibit 55 -- Government's Exhibit 55 is also  
20 in the book, is that correct?

21 That is not correct, government counsel tells  
22 me. What is the other document that's in there? Is there  
23 another one?

24 In the book that you have in front of you --  
25 excuse me, Your Honor, for the confusion -- how many of the

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Stewart - Cross

1 documents about which you've testified are in this book,  
2 one or two?

3 A. One document.

4 Q. One document. One document, fine. Stay with one.  
5 Government's Exhibit 4?

6 A. That's correct.

7 Q. You also testified about a Government's Exhibit 55,  
8 correct?

9 A. Yes, sir.

10 Q. Now, let's look at Government's Exhibit 4, let's  
11 start with that. Now, Government's Exhibit 4 is a sheet of  
12 paper with pen writing on it, correct?

13 A. In part, yes.

14 Q. And the pen writing is -- is that an aniline ink or  
15 does that ink contain iron?

16 A. Again, it would require testing to do that, and I'm  
17 not equipped to do that at this point.

18 Q. You did not test it, is that correct?

19 A. To determine aniline versus iron, no, I did not.

20 Q. Does the document contain pen writing, what appears  
21 to be pen writing in both the Cyrillic and English  
22 alphabets? I'm pointing to the darker point here. Does  
23 that appear to be Cyrillic, the darker part?

24 A. As I testified before, I am not an expert as  
25 recognizing Cyrillic writing.

Stewart - Cross

1 Q. Were you asked to examine, to see whether or not the  
2 writing in the darker part was different in any way from  
3 the lighter part?

4 A. No, sir.

5 Q. And there's also marks on here in pencil, is that  
6 correct?

7 A. Yes, sir.

8 Q. And were you asked to make any examinations with  
9 respect to those?

10 A. I wasn't directed to make any examinations in this  
11 case, only those that I felt necessary to prove the  
12 authenticity or fraudulence of the document, so I chose  
13 which tests I was going to conduct.

14 Q. Did you choose to examine the -- excuse me. You did  
15 not choose to examine the chemical composition of the ink,  
16 correct? Is that right?

17 A. If I may refer to my notes, I'll tell you exactly  
18 what I did.

19 Q. Of course. You are paging through some notes on a

20 yellow sheet?

21 A. Yes, sir. You have a copy of these notes.

22 Q. Those are the notes with your copy. May I look over

23 your shoulder to see? Oh, yes, thank you very much.

24 A. I examined the purple rubber stamp area on the

25 exhibit.

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Stewart - Cross

1 Q. That's where we see the pinholes or the holes you

2 made to take the core samples, correct?

3 A. That's correct.

4 Q. All right.

5 A. I also took samples of the violet-colored pencil and

6 the green fountain pen areas, as well as a gray pencil

7 entry and a paper blank.

8 Q. Now, would you agree with me, sir, that the top of

9 this document is not rectilinear with respect to the side?

10 A. Yes, sir, I would.

11 Q. Now, what is remarkable, if anything, about the top

12 of the document?

13 A. That it's not rectilinear with the rest of the  
14 document.

15 Q. Well, do you have an opinion about whether it started  
16 out rectilinear?

17 A. With documents of this era, I would not render an  
18 opinion about that. You'll notice, if you examine many  
19 documents from that era, that many pages were cut to use  
20 more pieces of paper for other notes or whatever, I don't  
21 know the reason, but it's not something that's remarkable  
22 to me.

23 Q. The top of the document appears to have been cut, is  
24 that correct?

25 A. Yes, sir.

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Stewart - Cross

1 Q. Now, that document has a watermark, does it not?

2 A. Yes, sir.

3 Q. It's the same watermark that appears in Government's  
4 Exhibit 55, is that correct?

5 A. That's correct.

6 Q. You were able to identify the watermark, correct?

7 A. Yes, sir.

8 Q. And the watermark says "standard," is that right?

9 A. That's correct.

10 Q. Where was the paper manufactured?

11 A. The paper was most likely manufactured in England.

12 Q. England?

13 A. United Kingdom.

14 Q. And when was, in your opinion, when was the paper

15 manufactured in England?

16 A. Between the 1920s and the 1940s is when they

17 manufactured that watermark.

18 Q. Does the particular paper manufacturer that

19 manufactured it in England during this period of time, did

20 they produce the paper in standard sizes or do you know?

21 A. That I do not know.

22 Q. You have no idea what sizes of paper they produced as

23 a standard matter, correct?

24 A. No, sir, I do not.

25 Q. Did you do any research about the attempt to

Stewart - Cross

1 determine to whom the manufacturer sold the paper?

2 A. No, sir, I did not.

3 Q. And you're not an expert in foreign affairs, are you,

4 sir?

5 A. No, sir, but if I could elaborate a little bit on

6 that, by examining many consistent documents in the

7 Nuremberg trial and other similar cases, it's quite common

8 in the early 1940s in the German possession to have not

9 only papers from American and United Kingdom sources, but

10 also inks. They were quite fond of many of the inks that

11 were being used in America and England at the time.

12 Q. Let's concentrate on papers. You just told us about

13 Nuremberg documents, correct, sir?

14 A. Yes, sir.

15 Q. Did you regard that as something important that you

16 came here prepared to tell me today?

17 A. I don't --

18 Q. Do you remember talking to government counsel about

19 Nuremberg and documents you looked at from the Nuremberg  
20 era before you came here today?

21 A. I find it important to explain my answer to you.

22 Q. Sir, did you talk to government counsel about your  
23 examination of Nurnberg documents before --

24 MR. TIGAR: Your Honor, may I ask that  
25 government counsel not be making faces? He was shaking his

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Stewart - Cross

1 head from side to side as I was asking the question, Your  
2 Honor. I ask that he not do that.

3 THE COURT: We are getting pretty far afield.

4 Q. Please answer the question, sir.

5 A. I have not had any discussion with the government  
6 side of this case concerning Nuremberg documents.

7 Q. When you made the report of the documents here, were  
8 you attempting to tell us the complete basis of your  
9 conclusions here?

10 Let me ask you this: Tell the Court, please,  
11 whether you've ever seen a document with a "standard"

12 watermark manufactured by this English company in an  
13 archival file related to the Nazis?

14 A. Yes, Government Exhibit 55, I believe it was, which I  
15 think was in the Moscow archives.

16 Q. All right. I know you already told us about that.  
17 How about a Nuremberg document? Give us a citation to a  
18 Nuremberg document that's got the "standard" watermark.

19 A. No, I do not have a citation for that.

20 Q. All right. I'll go on to something else. Another  
21 thing that you examined, sir, was the Government's Exhibit  
22 3, correct?

23 A. Yes, sir.

24 Q. And you prepared a chart for us. Do you remember  
25 that?

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1 A. That's correct.

2 Q. Now, when you examined it, did you notice that it had  
3 staple holes in it?

4 A. I noticed it had holes. I did not determine they  
5 were from a stapler, no.

6 Q. Were there holes of that character in any other  
7 service passes that you examined?

8 A. I don't know.

9 Q. You never looked for that?

10 A. It was not material to my examination, so I did not  
11 choose to look for holes in the document, no.

12 Q. Why wasn't it material to your examination?

13 A. I was looking at the ink, the paper, and the  
14 photograph, and the holes didn't have anything to do with  
15 that in my opinion.

16 Q. Didn't you tell us a little while ago, sir, that you  
17 were free to conduct any tests that you thought were  
18 necessary?

19 A. Yes, sir.

20 Q. Would you agree with me that over time there's been  
21 some question about that photograph on that card? Right?

22 A. I had a question about the photograph on the card, so  
23 yes.

24 Q. Would you agree with me that whenever it is suspected  
25 that pages have been substituted in a document bound with

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1 staples a careful examination of all staple holes in each  
2 sheet should be made? Would you agree with that statement?

3 A. If it's pertinent to the examination, yes. It is not  
4 pertinent to determining whether or not that photograph was  
5 originally on that card, and they both date back to the  
6 1940s.

7 Q. May I ask you, sir, what I just said, the beginning  
8 is "Whenever," that's what your expert, Mr. Hilton says,  
9 "Whenever it is suspected"; that's what I read, right?

10 A. That's what your expert has said in this book.

11 Q. Right. And not only is he my expert, he's your  
12 expert, isn't he, sir?

13 A. He is a person that is widely regarded for his  
14 ability in that field, but I believe we are taking some  
15 things out of context here. Again, if I can direct you  
16 to --

17 Q. I'm going to give you the book and I'm going to --

18 excuse me, Your Honor?

19 THE COURT: We are getting way far afield

20 here.

21 MR. DRIMMER: Thank you, Your Honor.

22 MR. TIGAR: Thank you, Your Honor.

23 Q. I'd like you now to look at Government's Exhibit 3

24 and your charts. Now, you did a computer movement in order

25 to look at these stamps, correct?

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1 A. You could call it that, yes.

2 Q. Now, did you do the computer movement with respect to

3 one stamp or both stamps?

4 A. Both stamps. And just for clarification, the

5 swastika imagine in the lower stamp is part of that

6 original stamp.

7 Q. When I say two stamps, you notice that on the front

8 of the card there are two big rubber stamps, one in the

9 lower left and one in the upper right; do you see that?

10 A. That's correct.

11 Q. Now, did you do your computer examination with  
12 respect to both of those big ones?

13 A. No, sir, I did one, and I did that for a reason.

14 Q. What was your reason?

15 A. If you take the computer and ask it to draw a circle  
16 on the one rubber stamp, it was important to determine what  
17 effect moving that rubber stamp would have on the other  
18 image, and so all of that was useful in obtaining my final  
19 conclusion.

20 Q. Just to make sure, sir, did you do or authorize or  
21 ask for any fingerprint examination of any of these  
22 documents?

23 A. No, sir, I did not.

24 Q. Were you authorized to ask for that if you had wanted  
25 to have it done?

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1 A. I believe at one point we discussed it. However, I  
2 felt that with handwriting analysis, if handwriting

3 analysis was shown on identification, that the fingerprint  
4 analysis would be creating undue wear and tear on the  
5 documents.

6 Further, that with the amount of time that's  
7 passed and the number of people that may have touched this  
8 document in the past, the chances of getting fingerprints  
9 from the early 1940s would be very slim.

10 Q. You say you discussed it. Who did you discuss it  
11 with?

12 A. When we were beginning our analysis scheme on the  
13 documents, I discussed potential analysis that my  
14 organization could conduct on this document.

15 Q. With whom did you -- go ahead. I'm sorry.

16 A. The prosecution team, specifically, Mr. --

17 Q. With whom did you discuss whether or not to do a  
18 fingerprint examination?

19 A. I believe it was with Mr. Stutman and Mr. Drimmer.  
20 It may have been just one of the two.

21 Q. And what did they say to you and what did you say to  
22 them about whether to do a fingerprint examination?

23 A. I discussed with them the pros and cons to trying a  
24 fingerprint and handwriting analysis on the documents, and

25 I explained to them the type of destruction that would

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1 occur, and --

2 Q. What type of destruction would occur if you did a

3 fingerprint analysis?

4 MR. DRIMMER: Excuse me, Your Honor, I think

5 he was still in his answer.

6 MR. TIGAR: I'm sorry. I didn't mean to

7 interrupt.

8 Q. Go ahead.

9 A. The document would turn completely purple with

10 ninhydrin, which is a chemical that's used.

11 N I N H Y D R I N.

12 Q. Excuse me. If you hadn't finished, go ahead. Excuse

13 me.

14 A. That would be completely unnecessary in my opinion to

15 a, again, possibly historic document if other forensic

16 tests could be conducted that would conclusively show

17 either fraudulence or legitimacy.

18 Q. You referred to a chemical called ninhydrin, is that  
19 correct?

20 A. Yes, sir.

21 Q. Ninhydrin is used to lift latent fingerprints from  
22 absorbent surfaces, is it not, sir?

23 A. Lift is the incorrect term.

24 Q. To reveal?

25 A. Yes, sir.

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1 Q. It's used to reveal latent fingerprints from  
2 absorbent surfaces, correct?

3 A. That's correct.

4 Q. Whereas from nonabsorbent surfaces a powder may be  
5 used to lift the latent, is that correct?

6 A. That's one of the techniques, yes.

7 Q. Ninhydrin is used in solution with either alcohol or  
8 water, is that correct, sir?

9 A. I do not know, sir. I have experts that do that test

10 for me. I believe there's other solvents that it can be  
11 used in, so I can't answer your question.

12 Q. And when you tell us, when you tell the Court that it  
13 harms the document, do you mean to say that it turns it  
14 purple?

15 A. It would turn any proteins that are on the document  
16 purple, and that would basically make the entire document  
17 obscured or obliterated.

18 Q. And so is it fair to say that one reason you didn't  
19 want to do the fingerprints is that you had concluded that  
20 the document had passed through an unknown number of hands  
21 in an unknown number of places since it was created?

22 A. No, sir, not at all. I anticipated that many  
23 forensic tests were going to be conducted on the document,  
24 and I suggested that if other tests that were  
25 nondestructive could yield a positive result one way or

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1 another that the destructive methods would not be useful.

2           That is why in my methodology I chose the  
3 physical examinations first, which were the nondestructive  
4 methods, before I started taking any physical samples out  
5 of the documents.

6 Q. Is it your testimony, sir, as an experienced Secret  
7 Service agent, that fingerprint testing defaces or destroys  
8 a document?

9 A. I'm not an agent, number one.

10 Q. Excuse me.

11 A. It doesn't destroy all documents, no. In some cases,  
12 it can.

13 Q. Are you familiar with a laser-based method of lifting  
14 or of revealing latent fingerprints on absorbent surfaces  
15 that doesn't harm the document at all and doesn't involve  
16 the use of ninhydrin?

17 A. I'm familiar with that technique, sir, and you're  
18 incorrect about what it does to the document. We actually  
19 have that technique at the Secret Service. It requires  
20 treating the document with various chemicals prior to using  
21 the laser, and the laser simply reacts with the chemicals  
22 that were placed on the document.

23 Q. Is Mr. Gideon Epstein an expert in this field of

24 revealing latent fingerprints on documents?

25 A. I do not believe so. I believe he's an expert in

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1 documents.

2 Q. Well, if he told you something about it, would you

3 believe him?

4 A. As opposed to talking to one of my experts? I don't

5 understand the question.

6 Q. Not as opposed to anything. My question is simple.

7 If Mr. Epstein told you about it would you believe him?

8 A. If he told me something about fingerprints, I would

9 discuss it with him. I don't know if I would believe it.

10 Q. Have you ever heard of the case of a man named

11 Ftrifa, F T R I F A, a Romanian?

12 A. No, sir.

13 Q. So you don't know anything about the fingerprint

14 evidence in the Ftrifa case, is that correct?

15 A. No, sir.

16 Q. All right. Now, after you discussed with Mr. Stutman  
17 and Mr. Drimmer whether or not to perform fingerprint  
18 testing on this card, a decision was made not to, is that  
19 correct?

20 A. I believe the decision that was made was to delay  
21 fingerprint analysis to determine if other techniques were  
22 successful in determining their fraudulence or legitimacy.  
23 If one of the nondestructive tests were able to show that,  
24 then the fingerprint test would be unnecessary.

25 Q. And who made that decision? You say a decision was

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1 made. Who made it?

2 A. A decision to wait was made by the Department of  
3 Justice.

4 Q. When you say the Department of Justice, that's a  
5 building at 10th and Constitution, sir. Who made the  
6 decision?

7 A. Again, Mr. Stutman and Mr. Drimmer would have made  
8 that decision.

9 Q. They told you not to do a fingerprint test, right?

10 A. They didn't specifically tell me not to do a  
11 fingerprint test. The discussion was that we would wait  
12 and determine what other tests revealed.

13 Q. In your discussions with them, did you talk about  
14 whether the fingerprint testing had been considered back  
15 when the document first arrived in the United States in  
16 1981?

17 A. No, sir, that was not discussed.

18 Q. Are you aware of any discussions about whether or not  
19 fingerprint tests should be conducted when the document  
20 first arrived in the United States in 1981?

21 A. No, I'm not aware of that.

22 MR. TIGAR: Your Honor, may I have a brief  
23 recess? I'll continue if the Court wishes, but I think it  
24 would shorten the examination if I could just look at my  
25 notes. I think I'm just about done.

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1 THE COURT: You can look at your notes. I'll  
2 wait.

3 MR. TIGAR: Thank you.

4 (Pause.)

5 MR. TIGAR: Your Honor, may I please have the  
6 card itself, Exhibit 3?

7 THE COURT: Yes.

8 MR. TIGAR: Thank you, Your Honor.

9 BY MR. TIGAR:

10 Q. I'm placing before you what has been marked as  
11 Government's Exhibit 3, and it's actually the original  
12 card, sir, and it's in a plastic envelope.

13 Now, do you see the purple on the front of  
14 the photograph.

15 A. Yes, sir, I do.

16 Q. Now, and that purple, was that -- do you think that's  
17 fountain pen ink?

18 A. I could not tell you without doing a chemical test on  
19 it.

20 Q. Did you do a chemical test?

21 A. No, sir, I did not.

22 Q. Now, the fountain pen writing that's in a black

23 color, you did test that fountain pen writing, correct?

24 Just take a look and see if that's what you did.

25 A. Yes, sir, I did.

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1 Q. You did test. Now, does that ink contain iron?

2 A. I did not test it for that aspect of its composition.

3 I tested to see if that ink matched other inks on other

4 documents. My assumption from its general appearance is it

5 probably does contain iron.

6 Q. Now, did you do a chemical analysis of it?

7 A. Yes, sir, I did.

8 Q. Help me out. If you didn't find out every chemical

9 that it contained, how are you able to compare it with inks

10 on other documents?

11 A. What you're talking about is a completely different

12 array of tests. One thing that some document examiners

13 would look for in an ink was the general composition of it,

14 whether or not it was an iron gallatonnate type of ink or

15 an aniline type of ink as we discussed earlier.

16 That is a gross determination of the  
17 possibility of dates. It's not a very accurate test and it  
18 doesn't really give me information that I could reach a  
19 conclusion from in this case. So I chose not to do that  
20 particular test.

21 I chose to examine that ink and compare it  
22 against other of the identity documents to determine if the  
23 same inks were used in other cases, and I used that as the  
24 basis of the conclusion on the ink.

25 Q. What physical or chemical tests did you perform to

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1 make the comparison? That's what I'm asking.

2 A. I'm sorry, sir. It's a dye test where we are looking  
3 at the composition of the organic components. Iron, as you  
4 were speaking of, is an inorganic component.

5 Q. So that the tests that you did could validate only  
6 that the inorganic component of the inks across the  
7 document are the same -- excuse me, strike that.

8           The tests that you did could confirm that the  
9 same organic chemicals were in the documents that you  
10 tested, correct?

11 A. That's correct.

12 Q. The tests would not reveal whether or not the  
13 inorganic components of the ink were the same, is that  
14 correct?

15 A. That's correct. Now, following --

16 Q. If -- go ahead.

17 A. Following ASTM, American Society for Testing  
18 Materials E.30, which is the forensic science portion of  
19 their testing, actually I was the chairperson who wrote  
20 those standards, and that's used in forensic laboratories  
21 to determine the methodology used to identify inks. It  
22 indicates that in most cases, the analysis of the organic  
23 composition is sufficient to do what I was trying to do.

24 Q. Is there a forensic guideline that tells you when to  
25 look for fingerprints and when not?

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1 A. No, sir. That's experience.

2 Q. So by the same token, the ink, the purple -- you did

3 not attempt to determine whether the purple on the

4 photograph is the same as the purple on the ink that's

5 elsewhere on the card, is that right?

6 A. No, sir, I did not conduct that test. I did not see

7 a need for that.

8 Q. Now, you said that --

9 MR. TIGAR: Your Honor, would the Court like

10 the card back?

11 THE COURT: I'll keep it. If you need it

12 again, you can get it.

13 MR. TIGAR: Thank you very much, Your Honor.

14 May I hand it directly to you? Thank you.

15 Q. Just one more question about this fingerprint

16 decision. Did you say that you wanted to determine whether

17 or not you were successful using other techniques before

18 you decided about fingerprints?

19 A. I wanted to determine if any of the techniques were

20 successful in determining authenticity or fraudulence of

21 the documents before deciding on whether or not

22 fingerprints was needed.

23 Q. Now, when you say fraudulence, you have no way of

24 knowing whether the person who wrote the document had

25 personal knowledge, correct?

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1 A. That's correct.

2 Q. You have no way of knowing whether the person who

3 provided the information was telling the truth or not

4 telling the truth, correct?

5 A. The information on the card?

6 Q. Yes.

7 A. No, sir, I do not.

8 Q. So that is not part of your success?

9 A. No, sir.

10 MR. TIGAR: I have nothing further, Your

11 Honor.

12 THE COURT: All right.

13 MR. DRIMMER: I don't have much, Your Honor.

14 REDIRECT EXAMINATION OF LARRY F. STEWART

15 BY MR. DRIMMER:

16 Q. Mr. Stewart, did the defense ask you to perform any  
17 tests on Government's Exhibit 3?

18 A. Yes, sir, I believe they did.

19 Q. Government's Exhibit 3 is the Trawniki service pass  
20 1393.

21 A. Give me a moment and I'll be able to tell you.

22 I'm sorry, no. The only test that the  
23 government asked -- or the defense asked me to do in  
24 addition to those that I planned was on Exhibit 7,  
25 Government's Exhibit 7.

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Stewart - Redirect

1 Q. What were the results of that test?

2 A. On the additional tests that the defense asked me to  
3 run on Government's Exhibit 7?

4 Q. Yes, sir.

5 A. The results were -- there were many results in that  
6 particular case. It actually showed quite a bit towards

7 the authenticity of the bound document. That was the test  
8 on page 69, whereas I looked at the surrounding pages,  
9 pages 68 and 70, and used them as comparison standards  
10 against page 69.

11 I showed that the page was actually bound in  
12 the book, had not been removed, had not been altered in any  
13 way. There was no indication from ultraviolet or infrared  
14 readings that there were any manipulations in the document  
15 or any changes in the entries. There was no indication of  
16 obliteration of any of the entries, and the paper itself  
17 tested to be the same size as the surrounding pages as  
18 well.

19 Q. Did the defense ask you to examine any staple holes  
20 on Government's Exhibit 3?

21 A. No, they did not.

22 Q. Did the defense ask you to examine any staple holes  
23 in the photograph of any other service passes?

24 A. No, they did not.

25 Q. Did the defense ask you to perform any tests on

## Stewart - Redirect

1 Government's Exhibit 4?

2 A. No, sir.

3 Q. Did the defense ask you to perform any type of  
4 fingerprint exam?

5 A. No.

6 Q. Are you aware whether the defense itself performed  
7 any type of fingerprint exam?

8 A. Based on the appearance of the documents that we have  
9 before us today, the original documents, I would say that  
10 they did not.

11 Q. Did the conditions of any of the Government's  
12 Exhibits 3 through 7 inhibit your ability to conduct the  
13 tests that you performed in this case, the physical  
14 condition of the documents inhibit your ability to conduct  
15 the tests that you did?

16 A. No, sir.

17 Q. For the tests that you performed in this case, how  
18 important is it for you to know the chain of custody of a  
19 document from its point of creation until it reaches your  
20 laboratory?

21 A. It's immaterial to me because in a case like this,  
22 what I am looking at is I'm trying to determine whether or  
23 not the document is consistent with the date that's on the  
24 document and whether or not there's been any alterations to  
25 the document that would make it not original.

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Stewart - Redirect

1 So the prior history of the storage of this  
2 document meant nothing to me in this particular case.

3 MR. DRIMMER: May I have one moment, Your  
4 Honor?

5 THE COURT: Yes.

6 (Pause.)

7 MR. DRIMMER: Your Honor, except for asking  
8 that Government's Exhibit 27 be moved in, I have no further  
9 questions.

10 THE COURT: Okay.

11 MR. TIGAR: May I have just a moment, Your  
12 Honor?

13 (Pause.)

14 RE-CROSS EXAMINATION OF LARRY F. STEWART

15 BY MR. TIGAR:

16 Q. Mr. Stewart, I'm not sure I understood, did you say

17 that you performed tests at the defense's request?

18 A. Yes, sir.

19 Q. Did you include the results of those tests in your

20 report?

21 A. Yes, sir.

22 Q. All right. To the Court?

23 A. Yes, sir.

24 Q. And that's the report that we have?

25 A. Yes, sir.

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Stewart Recross

1 Q. What document was it you were referring to? I'm

2 sorry, I missed that entirely. That was Government's

3 Exhibit what, 7?

4 A. Government's Exhibit 7, when we were in Berlin, I was

5 requested to add an additional examination to the scheme

6 that I had planned.

7 Q. Now, 7 is the black bound book?

8 MR. TIGAR: May I borrow that from the Court?

9 I'm sorry, Your Honor, I've lost my way here.

10 Q. I'm going to show you now an exhibit. Is this

11 Government's Exhibit 7?

12 A. Yes, sir, and the two pages examined are marked in

13 here.

14 Q. And with respect to those, you performed the same

15 sorts of tests you described for the rest of the book; in

16 other words -- is that right?

17 A. That's correct.

18 Q. And you determined that this book has not had any

19 pages removed or reinserted, correct?

20 A. No, sir, that's not what I determined. I determined

21 that page 25 and page 69 had not been reinserted or altered

22 in any way.

23 Q. Just those two pages?

24 A. Yes, sir.

25 Q. And with respect to that -- well, now I understand.

## Stewart Recross

1 MR. TIGAR: Excuse me, Your Honor. I did not  
2 understand before. If I may, I'll return this to the  
3 Court.

4 Q. Did you in the process of investigating Government's  
5 Exhibit Number 3 remove any samples at the defense's  
6 request?

7 A. No, sir. For that particular document, I explained  
8 where I was going to be taking samples, and gave the  
9 defense an opportunity to look at that before I did the  
10 test.

11 Q. And did anyone ever communicate to you a defense  
12 request to take samples from other places?

13 A. No, sir.

14 MR. TIGAR: No further questions.

15 THE COURT: All right.

16 MR. DRIMMER: Nothing further. Thank you,  
17 Your Honor.

18 THE COURT: All right. You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.)

21 MR. TIGAR: Your Honor, I have the red taped  
22 bound book which I am now handing to Mr. Drimmer.

23 THE COURT: All right.

24 MR. DRIMMER: Your Honor, if I may keep it in  
25 your safekeeping.

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1 THE COURT: Sure.

2 THE COURT: Do you want to call your next  
3 witness?

4 MR. DRIMMER: Yes. Thank you, Your Honor.  
5 Before putting him on I would like to just take a very  
6 brief necessities break.

7 THE COURT: All right. We'll take a  
8 five-minute break.

9 MR. DRIMMER: Thank you, Your Honor.

10 (Recess had.)

11 THE COURT: All right. We will resume.

12 MR. DRIMMER: Your Honor, the government's  
13 next witness is Thomas Smith.

14 THE COURT: All right.

15 THOMAS J. SMITH, of lawful age, a witness called  
16 by the Government, being first duly sworn, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION OF THOMAS J. SMITH

19 BY MR. DRIMMER:

20 Q. Good morning, Mr. Smith.

21 A. Good morning.

22 Q. Could you please state your name for the record?

23 A. Thomas J. Smith, S M I T H.

24 Q. And where are you employed, Mr. Smith?

25 A. I'm employed with the United States Secret Service in

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Smith - Direct

1 Washington, D.C.

2 Q. What is your job title at Secret Service?

3 A. I am the chief of the Questioned Document Branch of

4 Forensic Services Division of the U. S. Secret Service.

5 Q. Excuse me, Your Honor, if I may clear out from the  
6 last witness.

7 And what are your official duties at Secret  
8 Service?

9 A. I supervise the Questioned Document Branch, which is  
10 responsible for the forensic examination of documentary  
11 evidence involving handwritten and typewritten documents.  
12 I examine any document that's questioned by the Secret  
13 Service or other agencies of the federal government. These  
14 documents usually include United States treasury checks,  
15 United States savings bonds, credit cards, credit card  
16 applications, financial documents, as well as threatening  
17 correspondence to the president of the United States.

18 Q. I'm showing you what's been marked as Government's  
19 Exhibit 12.

20 MR. DRIMMER: May I, Your Honor?

21 THE COURT: Yes.

22 Q. Could you please identify that document for the  
23 record?

24 A. Yes. This is a resume which I submitted of my  
25 experience.

Smith - Direct

1 Q. Did you -- I didn't mean to cut you off.

2 A. This is a resume, which is Government's Exhibit 12.

3 Q. Did you prepare this document?

4 A. Yes, I did.

5 Q. Mr. Smith, in conducting your examinations, do you  
6 have a particular specialty?

7 A. As a forensic document examiner, I conduct  
8 examinations in handwriting and typewriting.

9 MR. TIGAR: Excuse me, Your Honor, we are  
10 just conferring. Your Honor, to the extent that Mr. Smith  
11 is going to give an opinion today consistent with his  
12 report as furnished to us that the testing procedures  
13 showed that the typewriting appearing on the questioned  
14 documents is consistent with typewriting used during 1942,  
15 '45, it's an Olympia typewriter, Your Honor, we have no  
16 question about his qualifications within the meaning of  
17 Rule 702, that he's qualified to give that opinion as  
18 stated in the first sentence of his conclusions.

19           The government may wish to -- and I have no  
20   objection to them putting in evidence the other two  
21   sentences. I'll cross-examine as to those because they go  
22   to weight, not admissibility.

23           THE COURT: Okay.

24           MR. TIGAR: I'm sorry, Your Honor, I was  
25   asked if I'm stipulating to the Daubert piece. 702 is

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Smith - Direct

1   Daubert is 702 for me.

2           THE COURT: It takes a while to get used to  
3   that because everybody calls it Daubert, and when they  
4   incorporate those rules they confuse everybody.

5           MR. TIGAR: It's like the old joke about the  
6   comedians who use numbers instead of telling the whole  
7   joke, Your Honor.

8           THE COURT: Yes. Right.

9   BY MR. DRIMMER:

10   Q.   Mr. Smith, did you perform a typewriting analysis in

11 this case?

12 A. Yes, I did.

13 Q. I'm going to show you Government's Exhibit 16. Can  
14 you please state what that is?

15 A. This is a list of documents which I examined.

16 Q. Which documents on this list did you consider  
17 questioned or disputed?

18 MR. TIGAR: Excuse me, Your Honor. 16 is his  
19 report minus the first two pages. So in fact, it is the  
20 list of documents, the testing procedures and the  
21 conclusions. I would respectfully suggest we -- I would  
22 respectfully say we put the first two pages on so we have  
23 one piece of paper from Mr. Smith.

24 MR. DRIMMER: That will be fine, Your Honor,  
25 we will supplement.

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1 THE COURT: All right. That's fine.

2 Q. I believe the question pending was which documents on  
3 the list did you consider questioned or disputed?

4 A. I considered number 151, which is Q 151 of the  
5 Moscow, listed under Moscow, Russia, May 29, 2000; Q 151, Q  
6 303, and underneath Berlin, Germany, 5/31/2000, there are  
7 three documents listed there.

8 The second document did not require a  
9 typewritten comparison.

10 MR. DRIMMER: Your Honor, for the record, Q  
11 151 is Government's Exhibit 6. Q 303 is Government's  
12 Exhibit 5. On the Berlin, Germany documents, we have the  
13 originals for those, and I will be talking about those in a  
14 second.

15 THE COURT: All right.

16 Q. Mr. Smith, would you please describe how a  
17 typewriting analysis is conducted?

18 A. I examine the document physically using a handheld  
19 magnifier or microscope. Then with the aid of a typewriter  
20 test plate I measure the escapement or linear spacing of  
21 the typewriting to determine if it's an elite or pica style  
22 of type.

23 Q. In this case, did you determine whether the  
24 questioned documents were elite or pica?

25 A. I examined the questioned material and found out that

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1 it was a pica style of type with the spacing of 10

2 characters per linear inch.

3 Q. And after making that determination, that initial

4 determination, elite or pica, what's the next step in a

5 typewriting analysis?

6 A. I then examined each of the typewritten characters,

7 the design of the character, and then I compare that

8 typewritten material to other typewritten material or to

9 known standards.

10 Q. Mr. Smith, did you prepare a chart or some type of

11 demonstrative exhibit to help illustrate your testimony?

12 A. Yes, I did.

13 Q. Using that chart which we have marked as Government's

14 Exhibit 26, Your Honor, would you please describe how you

15 analyzed type characteristics and how you did it in this

16 case?

17 A. As I stated previously, I examined the spacing, the

18 linear spacing of the typewriting, and then compare the  
19 typewriting appearing on the questioned material against  
20 the typewriter standards or known material.

21 Q. I believe my question was if you have prepared a  
22 summary or a chart or a demonstrative to help illustrate  
23 your testimony.

24 A. Yes.

25 Q. Using that chart, would you describe this process

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1 that you are talking about?

2 A. I would like, first of all, to state that I did not  
3 conduct my examination from this chart, that I used the  
4 original documents for comparison, and I simply highlighted  
5 some of the features in this to better give an idea of some  
6 of the characteristics that I observed in my comparison.

7 On the right-hand side of the document is the  
8 questioned document which I examined. I highlighted some  
9 of the features that I compared. I measured the

10 typewriting, found the out that it was a pica style of type  
11 with a linear spacing of 10 characters per inch, and I  
12 examined each one of the characters to study the design of  
13 the characters.

14           And then I made a search through our  
15 typewriter standards file which is maintained in the  
16 Forensic Services Division of the Secret Service. We  
17 maintain a collection of the Interpol standards as well as  
18 the Haas typewriting system. After a thorough search of  
19 those standards, I found that the questioned typewritten  
20 material appearing on this document was most closely  
21 resembling the standard of type which was maintained for an  
22 Olympia typewriter.

23           Some of the features that I highlighted here  
24 is the shape of the 1 with a very long serif extending from  
25 the left-hand side, and there is no serif on the bottom of

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1 the typewritten character. The typewritten 7 begins with a  
2 downward serif on the left-hand side with a curved portion

3 on the right. I found this to be consistent with the  
4 Olympia standards.

5 The numeral 5 I found did not curve up but  
6 curved downward. I found this to be consistent with the  
7 typewritten standards. The lower case G, in the lower  
8 portion, the loop portion of the G, I found to be  
9 consistent inasmuch as the oval portion was somewhat  
10 flattened.

11 The lower case M, I found to have a serif on  
12 all three of the legs, the vertical legs. The 3, the  
13 numeral 3 I found to be consistent; in other words, it was  
14 flat on the top, and the bottom portion of the 3 did not  
15 curve upward but slanted downward.

16 The lower case R, I found to be consistent  
17 inasmuch as the arm on the right-hand side of the R was  
18 rather long, and I found that to be consistent.

19 And after I conducted my comparison I  
20 determined that the questioned typewritten material most  
21 closely resembled a standard maintained for an Olympia  
22 style of type.

23 Q. Mr. Stewart -- excuse me, Mr. Smith, was that Olympia

24 standard of type used in Europe in the early 1940s?

25 A. Yes, it was.

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Smith - Direct

1 Q. I'm handing you what have been marked as Government's

2 Exhibits 45.4, 45.11 and 45.17. Did you perform a

3 typewriting analysis on these documents?

4 A. I don't see any marks on these documents.

5 Q. We haven't actually marked these documents. If you'd

6 like, I can provide you with copies which are marked.

7 MR. TIGAR: May I take another look at the

8 ones he just showed him, Your Honor?

9 THE COURT: Yes.

10 MR. TIGAR: Thank you.

11 (Pause.)

12 Q. I believe the question pending was, did you perform a

13 typewriting examination on Government's Exhibits 45.4,

14 45.11 and 45.17?

15 A. Yes, I did.

16 Q. What were the results of that examination?

17 A. I concluded that the questioned typewritten material  
18 appearing on those documents, Exhibits 45.4, 45.11 and  
19 45.17, were consistent with an Olympia style of type.

20 Q. I'm showing you what's been marked as Government's  
21 Exhibit 5, which was your 303. Did you perform a  
22 typewriting examination on that document?

23 A. Yes, I did.

24 Q. And what were your conclusions?

25 A. I determined that the questioned typewritten material

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1 appearing on Exhibit 5 was also consistent with a type from  
2 an Olympia typewriter.

3 Q. An Olympia typewriter?

4 A. Yes.

5 Q. Was that typewriter also available in Europe in the  
6 1940s?

7 A. Yes, it was.

8 Q. I'm showing you what's been marked as Government's

9 Exhibit 6, which we were talking about earlier with  
10 Mr. Stewart, Mike. Did you perform a typewriting  
11 examination on this document?

12 A. Yes, I did.

13 Q. And what were your -- what were the results of your  
14 examination?

15 A. An examination of Exhibit 6 revealed that the  
16 typewritten material appearing on that document appeared on  
17 Olympia typewriters, and also it was available on other  
18 typewriters, as well.

19 Q. I'm sorry, could you repeat that?

20 A. An examination of Exhibit 6 revealed that the  
21 questioned typewritten material appearing on that document  
22 was consistent with an Olympia as well as other typewritten  
23 material, other typewritten documents.

24 Q. Thank you. The acoustics are not great over here.

25 I'm sorry.

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1 I'm showing you what has been marked as

2 Government's Exhibit 8. We do have an original of this.

3 Showing you what's been marked as Government's Exhibit 8,

4 did you perform a typewriting analysis on that document.

5 A. Yes, I did.

6 Q. What were the results of your examination?

7 A. I determined that the style of type appearing on

8 Government's Exhibit 8 was consistent with an Olympia

9 typewriter.

10 Q. And was that typewriter available in Europe in the

11 1940s?

12 A. Yes, it was.

13 MR. DRIMMER: Your Honor, this is an

14 original. I'm going to pass it to the bench.

15 THE COURT: Okay.

16 Q. I'm going to show you what's been marked as

17 Government's Exhibit 9, which is another original, Your

18 Honor. I'm showing you the original of Government's

19 Exhibit 9. Did you perform a typewriting analysis on this

20 document?

21 A. Yes, I did.

22 Q. What were the results of your analysis?

23 A. I determined that the questioned material, the  
24 questioned typewritten material appearing on Government's  
25 Exhibit 9 was consistent with an Olympia style of type.

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Smith - Direct

1 Q. Okay. I'll hand that up to the Court.

2 In performing your examination on the  
3 questioned documents, did you look for significant textual  
4 alterations or substitutions.

5 A. Yes, I did.

6 Q. What were your findings regarding that?

7 A. I found no significant textual substitutions other  
8 than in 45 -- that's Exhibit 45.17.

9 Q. What were your findings there?

10 A. I believe it was one of the -- the name portion I  
11 believe appeared where I think nationality should have  
12 been. It appears to have been erased and substituted.

13 Q. And that was 45.17?

14 A. Yes, I believe that was the correct number.

15 Q. Would you please define what you mean as a

16 significant textual alteration or substitution?

17 A. Well, where there was evidence of typewritten  
18 characters being removed and substituted with other  
19 characters or words.

20 Q. So based upon your examination that you conducted,  
21 would you please state any opinion that you have regarding  
22 the typewriting in question on the government exhibits that  
23 I just showed you?

24 A. I determined after my examination that the questioned  
25 typewritten material that appeared -- or should I say was

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1 consistent with an Olympia style of type which was  
2 available during the 1940 period.

3 MR. DRIMMER: Your Honor, I have no further  
4 questions for this witness at this time.

5 THE COURT: Okay.

6 CROSS-EXAMINATION OF THOMAS J. SMITH

7 BY MR. TIGAR:

8 Q. Hello, Mr. Smith.

9 A. Good morning.

10 Q. You visited Moscow May 29th, 2000; is that correct,

11 sir?

12 A. That is correct.

13 Q. And you were there on May 29th and 30th?

14 A. I believe so, yes.

15 Q. And along with you were Mr. Stewart, Mr. Epstein,

16 Mr. Drimmer, an archival historian -- was that a Justice

17 Department historian?

18 A. That's correct.

19 Q. Who was that?

20 A. I don't know, sir.

21 Q. And a defense law clerk, as well?

22 A. Yes.

23 Q. And a translator, correct?

24 A. Yes, that's correct.

25 Q. And Miss Wilk was there to observe, as you

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1 understood, correct?

2 A. Yes.

3 Q. She didn't ask you to perform any tests?

4 A. Oh, no, sir.

5 Q. Now, in Moscow, did you actually go into the archives  
6 and select things or were you in a reading room?

7 A. I would call it a reading room.

8 Q. And who was it that selected the materials that you  
9 were to look at? Did you do that yourself or did someone  
10 bring them to you?

11 A. They were brought to me.

12 Q. Who brought them to you?

13 A. I believe it was Mr. Drimmer.

14 Q. Now, in your report, which is Plaintiff's Exhibit 16,  
15 there's a list of dozens of documents from the commander of  
16 the Trawniki training camp. What's the purpose of that  
17 list in your report?

18 A. I reviewed those documents to examine those to see if  
19 they were consistent with the material that was questioned.

20 Q. And when you say consistent, you mean typed on the  
21 same brand of typewriter, is that correct?

22 A. On the same kind, exactly.

23 Q. We have all read about Algerhiss. Have you?

24 A. Somewhat, yes.

25 Q. Were you asked to perform one of those examinations

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Smith Cross

1 to determine whether the same typewriter typed one document

2 as opposed to another?

3 A. No, sir.

4 Q. So all you are here to tell us is it's the same

5 brand, correct?

6 A. That is correct.

7 Q. And you have no opinion over whether the same

8 typewriter typed all of these service passes you were

9 shown; is that right?

10 A. That is right.

11 Q. Do you have the service passes in front of you?

12 A. I don't believe so.

13 THE COURT: I think they are over here.

14 Q. I'm going to place those in front of you, the four of

15 them. First, Government's Exhibit 3. Now, did you notice  
16 anything -- did you examine that document to look for  
17 erasures?

18 A. Yes, I did. I examined the document primarily to  
19 determine the style of type and to see if there were any  
20 significant substitutions of the typewritten material.

21 Q. Did you find any erasures on 3, Government 3?

22 A. I didn't find any meaningful erasures there. There  
23 was on the front page, I couldn't -- on the front portion,  
24 there appeared to be some sort of abrasion on the capital  
25 letter I, but I didn't find anything substituted other than

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Smith Cross

1 that.

2 Q. Now, you also said that on Exhibit Number 45.17,  
3 there was a mistake, and I believe that counsel could  
4 correct me if I'm wrong, that's the Bondarenko card?

5 MR. DRIMMER: That's my understanding.

6 THE COURT: Yes.

7 Q. Would you please show me where that is, because I  
8 wasn't able to find it.

9 A. Here in I guess Nationalitat, you can find where the  
10 first name was typed in and then eradicated or erased.

11 Q. Okay.

12 Oh. Oh. I'm sorry, Your Honor, I shouldn't  
13 be exclaiming in the courtroom like that.

14 Do you see somebody typed in M Y K O L A, and  
15 then erased it? Is that what it looks like?

16 A. That's how it appears, yes.

17 Q. Does it look like there's a Geboren in -- that  
18 there's an erasure before Kloschko?

19 A. Yes, it does.

20 Q. Is that consistent, based on your experience as an  
21 examiner, with carelessness on the part of the person  
22 preparing the card?

23 A. It appears that way. I imagine if someone is sitting  
24 down filling out a number of those things that they just  
25 put it in the typewriter and just start typing.

Smith Cross

1 Q. Now, the documents, the original documents that  
2 you've been shown that were from Germany were all in these  
3 folders that say Bundesarchiv, correct?

4 A. That's correct.

5 Q. Were they in such folders when you looked at them?

6 A. I can't say that they were. I can't say that they  
7 weren't. I don't remember.

8 Q. Do you see on the front of this one, and it's not in  
9 evidence but we can describe it, that there are a number of  
10 signatures across here and it's crossed out, correct?

11 A. That's correct.

12 Q. Now, from your experience in the way that you keep  
13 documents, does that look like a system for determining who  
14 charged out the file and then brought it back?

15 A. That's how it appears, yes.

16 Q. And that's a typical way that the German documents  
17 came to you, or do you remember?

18 A. I don't remember.

19 Q. Now, in Moscow, were you also interested in looking  
20 at something called the catalogs or tables of contents of

21 various volumes of archival documents?

22 A. I was given various documents. I don't remember the  
23 exact titles of those documents.

24 Q. Well, do you remember anyone in your group asking to  
25 see Opisi, O P I S I, catalogs or table of contents?

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Smith Cross

1 A. I don't remember the titles of the documents. I  
2 remember the documents that I looked at in Moscow, I  
3 believe, were Exhibits 5 and 6.

4 Q. I'm not asking you about numbers, sir. I'm asking  
5 you to think back to when you are sitting in that reading  
6 place with all of these people, and you are being shown  
7 documents.

8 A. Yes.

9 Q. Do you remember a conversation, and perhaps it was  
10 between government counsel and the Soviet people, about  
11 Opisi or catalogs?

12 A. I don't believe that title. I was shown documents  
13 that I examined and whether they were questioned documents,

14 but I don't remember the titles of those documents.

15 Q. Do you remember the people, the Russians that were  
16 there, refusing to give certain documents to the team from  
17 the United States on the grounds that they related to  
18 so-called internal matters?

19 A. No, sir, I don't remember that.

20 Q. Did you have any part in preparing any formal request  
21 by the United States to the Russian authorities with  
22 respect to that matter, documents that the Russians had  
23 refused to give?

24 A. No, sir.

25 Q. Now, your report does not have page numbers on it,

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1 and I'm not criticizing, but I would like to go to this  
2 page here that starts "Berlin, Germany, 5/31/2000." Do you  
3 have a copy of your report with you?

4 A. No, sir, I don't.

5 Q. Well, then I'm giving you mine then, and I'll go back

6 and find another.

7           Down about a third of the way down that page,  
8 there's a reference to a protocol, or I guess halfway down  
9 the page, a protocol of interrogation, do you see that,  
10 dated 8 February 1945?

11 A. Yes.

12 Q. Did you look at that document?

13 A. Yes, sir, I did.

14 Q. Where did you look at it?

15 A. I believe I looked at it in Berlin.

16 Q. Now, was that also a typed document?

17 A. I believe it was, sir, yes.

18 Q. In what language was it?

19 A. I imagine it was written in German.

20 Q. Well, please don't imagine. As you sit here today,  
21 do you remember?

22 A. No, sir, I don't.

23 Q. Do you remember anything else about it?

24 A. No, sir.

25 Q. Now then, turning back in your report to the page

Smith Cross

1 that begins in -- the top item on there is number 3, 3,  
2 report of commander. Now, beginning with number 3 and all  
3 the way down to the page that begins "Berlin, Germany,"  
4 were those all the documents you saw in Moscow, that is to  
5 say, up to the number 306?

6 A. Yes.

7 Q. And on each such document you have a source, file  
8 number K something, 16, inventory, et cetera. Who put that  
9 material on there? How did you know that's the description  
10 of the document?

11 A. This was a list of documents that was provided to me.

12 Q. Who provided the list to you?

13 A. Mr. Drimmer did. Mr. Drimmer's office.

14 Q. So do you have any personal knowledge or any  
15 knowledge at all from any source as to how these documents  
16 are archived?

17 A. No, sir.

18 Q. Do you have any knowledge from any source as to what  
19 these numbers mean?

20 A. No, sir.

21 Q. So far as you know, sir, Mr. Drimmer handed you  
22 documents and you looked at them, correct?

23 A. That is correct.

24 Q. You had no interaction with your Russian  
25 counterparts, is that right?

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Smith Cross

1 A. That's correct.

2 Q. You don't speak Russian, do you?

3 A. No, sir.

4 Q. Did Mr. Drimmer tell you anything about how it was,  
5 what basis he was using to select the things he was showing  
6 to you?

7 A. No, sir.

8 Q. Did anyone else from the government party, the  
9 historian or Mr. Drimmer or anybody, Mr. Epstein, anybody,  
10 tell you how the documents were being selected?

11 A. No, sir.

12 Q. Now, then turning to the page that's Berlin, Germany,

13 was that the same procedure as in Moscow, that is, someone  
14 would hand Mr. Drimmer or someone would hand you the  
15 document to look at?

16 A. That is correct.

17 Q. You had no role in selecting these documents, right?

18 A. That is correct.

19 Q. And as you sit there today, you don't know how they  
20 were selected?

21 A. I think the only criteria was documents that were  
22 available during that time period.

23 Q. Do you know a man named Charles Sydnor?

24 A. Do I know him?

25 Q. Yes.

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Smith Cross

1 A. No, sir.

2 Q. Was he by any chance the -- was he the historian that  
3 was with you? Was he with you? Was anybody named that  
4 with you during any part of that?

5 A. There was a historian there, but I don't remember the  
6 name of the individual.

7 Q. Would it refresh your recollection if I said Mr. Coe,  
8 does that sound familiar?

9 A. That name sounds familiar, yes.

10 Q. Turning to the next page, the documents from Ukraine,  
11 how do you know these are from Ukraine?

12 A. Because the gentleman from the Ukraine visited, I  
13 believe, Forensic Services Division with these documents.

14 Q. So when you say interpreter and archivist, the  
15 archivist was a Ukrainian, is that correct?

16 A. That is correct.

17 Q. And you don't speak Ukrainian?

18 A. No, sir.

19 Q. Were you given any information as to how these  
20 particular documents were selected?

21 A. No, I was not. No, I did not, I should say.

22 Q. Now, the next one is a document from Poland. Do you  
23 see that?

24 A. Yes, sir.

25 Q. Now, you did not examine that, correct?

Smith Cross

1 A. That is correct.

2 Q. And then the next thing says "Trawniki cards from  
3 Israel," and you were told those were from Israel, correct?

4 A. That's correct.

5 Q. Now, do you know how those Trawniki cards from Israel  
6 got to the United States?

7 A. No, sir.

8 Q. Did anyone tell you that Mr. Rosenbaum had personally  
9 brought them?

10 A. No, sir.

11 Q. Then turning to the last page of your report, sir,  
12 you say in your second sentence, "I found no indication to  
13 suggest that the documents were falsely dated."

14 Other than the forensic tests you have  
15 described, you performed no other tests, is that right?

16 A. That is correct.

17 Q. So the only thing you can tell us about the date is  
18 that they were typed on a machine that was manufactured and

19 available in Germany between 1920 or so and 1945?

20 A. That is correct.

21 Q. And I don't want to put words in your mouth, sir, can

22 you be any more precise than that?

23 A. No, sir, I cannot.

24 Q. Now, this Olympia typewriter company, you say in your

25 report that somebody else manufactured the type for them,

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Smith Cross

1 is that right?

2 A. Olympia manufactured some of their type, but a lot of

3 type is also manufactured by another company.

4 Q. Is it your opinion that the type here was

5 manufactured by one of those other companies?

6 A. The only document that appears to have been typed

7 possibly -- or should I say manufactured by another

8 company was the typewriting appearing on Exhibit 6. That

9 is a style of type that is found not only on Olympia

10 typewriters but also on a number of other typewriters, so I

11 couldn't be more specific on 6.

12 But all the other documents, Exhibit 3,  
13 Exhibit 5, 7, or should I say, I'm sorry, 8, 9, they appear  
14 to have been typed on an Olympia typewriter.

15 Q. Just a little more, sir, because it's important. I  
16 want to be precise. You say one of the documents, number  
17 6, might have been typed on a typewriter manufactured by  
18 somebody else other than Olympia?

19 A. Yes.

20 Q. Now, was the type manufactured by somebody else, as  
21 well?

22 A. Yes, it's the type. Usually it's the type that is  
23 manufactured --

24 Q. So the type is manufactured by this Ransmayer  
25 Rodrian, correct?

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Smith Cross

1 A. That's correct, Ransmayer Rodrian.

2 Q. And that is put on a number of different typewriters,  
3 correct?

4 A. That is correct.

5 Q. And these typewriters were sold in different parts of  
6 Europe, correct?

7 A. That is correct.

8 Q. And all of the typewriters that you examined had the  
9 German alphabet, correct?

10 A. That's correct.

11 Q. Now, did they have the SS runes as one of the  
12 characters?

13 A. Some of the typewritten -- or should I say some of  
14 the typewritten documents had those characters.

15 Q. And some did not?

16 A. That's correct.

17 Q. Now, was it the case that sometime during the Nazi  
18 period the Nazis started ordering typewriters that had  
19 these SS things on them?

20 A. I would imagine so, yes.

21 Q. But some of the typewriters didn't have them and some  
22 did, correct?

23 A. It appears that way. I mean, the characters could  
24 have appeared on the machines but they weren't used, so I  
25 have no way of knowing.

Smith - edirect

1 Q. Some of the documents you had that somebody wouldn't  
2 have occasion to type the SS runes, and if they weren't  
3 there, you don't know whether that's because the person  
4 decided not use it and it was there or it just wasn't  
5 there, correct?

6 A. That's correct.

7 Q. All you have is what you can examine, correct?

8 A. Yes, sir.

9 MR. TIGAR: Thank you very much, sir. I  
10 don't have any further questions of this witness, Your  
11 Honor.

12 THE COURT: All right. Thank you, Mr. Tigar.

13 MR. DRIMMER: Your Honor, just a couple  
14 follow-up questions.

15 REDIRECT EXAMINATION OF THOMAS J. SMITH

16 BY MR. DRIMMER:

17 Q. Mr. Smith, you mentioned the Ransmayer Rodrian type

18 regarding Government's Exhibit 6. Was that type available  
19 in Europe in the 1940s?

20 A. Yes, it was.

21 Q. You mentioned a slight abrasion, I believe, on  
22 Government's Exhibit 3 near the I? Let me see if I have 3  
23 for you. Between the K and the I on the front of the card,  
24 did you mention seeing a slight abrasion?

25 A. Yes, I did.

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1 Q. Did you find that abrasion to be a significant  
2 textual alteration as you defined that term?

3 A. In fact, I barely even listed it. I noticed it but I  
4 didn't write it down as being significant.

5 Q. Mr. Smith, from the Russian archive in Moscow, do you  
6 recall a Russian archivist named Larissa, a tall blond  
7 woman?

8 A. I remember the woman, but I don't remember her name.

9 Q. Do you recall whether it was she that brought out the  
10 documents for you to examine in that archive?

11 A. She brought out some documents, yes.

12 Q. Was Miss Wilk with you and with us in that archive?

13 A. Yes.

14 Q. Do you recall seeing Miss Wilk ask that archivist any  
15 questions?

16 A. I don't remember.

17 MR. DRIMMER: I have no further questions.

18 MR. TIGAR: Your Honor, at this time I would

19 like to either publish or hand up to the Court marked

20 government's second supplemental request to defendant's

21 second set of interrogatories, which deals with this issue

22 of the document visit about which I was asking Mr. Smith.

23 The government had provided it, and that was the basis for

24 my questioning. It's probably just as easy if I put an

25 exhibit sticker on it and hand it in rather than taking the

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1 time to read it.

2 THE COURT: You can do that.

3 MR. TIGAR: All right. May I call it BB,

4 Your Honor?

5 THE COURT: Okay. The last one was marked as

6 AA.

7 MR. TIGAR: Yes. That way we will have a

8 consistent numbering for exhibits marked during the course

9 of examinations.

10 THE COURT: All right.

11 MR. TIGAR: We have marked it BB because it's

12 an admission of a party opponent and requires no further

13 foundation. We will have copies made for the Court.

14 THE COURT: All right. Do you have any

15 questions for the witness?

16 MR. TIGAR: Oh, I'm sorry, Your Honor. I get

17 a little punchy. No, I have nothing further of the

18 witness.

19 THE COURT: All right. Then you may step

20 down, sir.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: We will recess for lunch. We

24 will reconvene at -- you have something you have to say?

25

MR. DRIMMER: No, I was going to ask if I

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1 could give you the originals of the cards back.

2 MR. TIGAR: May I inquire of counsel through

3 the Court, who will the next witness be?

4 MR. DRIMMER: The government's next witness

5 is going to be Dr. Charles W. Sydnor, Jr.

6 THE COURT: Okay. We will reconvene at 1:45

7 today.

8 (Whereupon, at 12:30 p.m., the luncheon

9 recess was had, to reconvene at 1:45 p.m., the same day.)

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1 AFTERNOON SESSION, WEDNESDAY, MAY 30, 2001 1:50 P.M.

2 THE COURT: Okay. Mr. Drimmer.

3 MR. DRIMMER: Thank you, Your Honor. Our

4 next witness is Charles W. Sydnor, Jr.

5 CHARLES W. SYDNOR, JR., of lawful age, a witness

6 called by the Government, being first duly sworn, was

7 examined and testified as follows:

8 DIRECT EXAMINATION OF CHARLES W. SYDNOR, JR.

9 BY MR. DRIMMER:

10 Q. Good afternoon, Dr. Sydnor.

11 A. Good afternoon, sir.

12 Q. Would you please state your name for the record?

13 A. Yes, sir. Charles, my middle name is Wright, W R I G  
14 H T, and my last name is Sydnor, S Y D N O R, Jr.

15 Q. Where are you currently employed, Dr. Sydnor?

16 A. Commonwealth Public Broadcasting Corporation in  
17 Richmond, Virginia.

18 Q. And what is your job title there?

19 A. President and chief executive officer.

20 Q. How long have you held that position, Dr. Sydnor?

21 A. For almost ten years.

22 Q. In one moment I'm going to show you Government's  
23 Exhibit 14.

24 MR. DRIMMER: And Your Honor, at this point,  
25 given the number of exhibits that are flowing back and

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1 forth, we are going to be referring to our binders.

2 THE COURT: Okay.

3 MR. DRIMMER: If it's easier for Your Honor,  
4 I can present individual paper copies.

5 THE COURT: No, I can use the binder. It  
6 might be also helpful, considering the number of exhibits,  
7 if you would occasionally refer to them by title, if  
8 there's an easy description.

9 MR. DRIMMER: Yes, Your Honor. Government  
10 Exhibit 14, I believe the witness will say is his resume,  
11 Dr. Sydnor's resume.

12 THE COURT: All right.

13 MR. DRIMMER: I hope that's what he says,  
14 Your Honor.

15 MR. TIGAR: We've got it. Thank you.

16 BY MR. DRIMMER:

17 Q. Can you please identify that document, Government's  
18 Exhibit 14?

19 A. Yes, sir. Government's Exhibit 14 is the latest copy  
20 or the most recent copy of my professional resume.

21 Q. Did you prepare that document?

22 A. Yes, sir.

23 Q. Dr. Sydnor, would you please describe your

24 educational background?

25 A. Yes, sir. I attended elementary school and high

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1 school in Richmond, Virginia. I enrolled at Emory & Henry  
2 College in southwestern Virginia as a freshman in September  
3 of 1961 and graduated with a bachelor of arts degree in  
4 history with a minor in Spanish in May of 1965.

5 I then enrolled at Vanderbilt University in  
6 August of 1965 as a beginning graduate student in the  
7 department of history's graduate program working towards a  
8 Ph.D. degree. I went to Vanderbilt on a National Defense  
9 Education Act fellowship, which is an accelerated program  
10 for course work in the residential requirement.

11 I was in residence as a graduate student at  
12 Vanderbilt from August of 1965 until about the 1st of July,  
13 1968. I completed a master's degree and received a  
14 master's of arts in history in January of 1967.

15 I completed my course work for the Ph.D. and

16 took the qualifying exams in April of 1968 because I had  
17 been awarded a German government exchange fellowship  
18 through the Fulbright program to complete graduate study  
19 and do Ph.D. dissertation research in the Federal Republic  
20 of Germany.

21 I left Vanderbilt in July of '68, went to  
22 Germany, enrolled in the Goethe's Institut of Accelerated  
23 Intensive Study in German and was a student at the Goethe  
24 Institut from mid 1968 until early October of the same  
25 year, 1968.

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1 I then, as per the requirements of the  
2 graduate fellowship, enrolled in the University of  
3 Freiburg, F R E I B U R G, in southwestern Germany, took a  
4 language exam to qualify to enroll as a regular student,  
5 and spent two semesters, the winter semester of 1968 and  
6 the spring semester of 1969, as a graduate student at the  
7 University of Freiburg.

8 While enrolled at Freiburg, I worked on

9 dissertation research and German archives, but I spent two  
10 semesters at the University of Freiburg and studied under  
11 the German historian Andreas Hillgruber, H I L L G R U B E  
12 R, who at that time was ordinarius or senior professor in  
13 history at the University of Freiburg.

14 I returned to the United States in October,  
15 September of 1969, and began teaching as an instructor in  
16 history at Ohio State University and completed the research  
17 and the writing of my Ph.D. dissertation while I was  
18 teaching at Ohio State, and was awarded my Ph.D. in history  
19 by Vanderbilt University, I believe in August of 1971.

20 That in summary is my educational history.

21 Q. As part of receiving your doctorate, did you write a  
22 dissertation?

23 A. Yes, sir.

24 Q. What was the topic of that dissertation?

25 A. The dissertation was entitled Totenkopf, T O T E N K

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1 O P F, a History of the Waffen SS Death's Head Division, I

2 think 1933-1945. That was the title of the dissertation.

3 Q. What does the word Totenkopf translate to?

4 A. Death's head, German word for death's head. That's

5 the skull and cross bones insignia.

6 Q. Did that doctoral dissertation discuss concentration

7 camp guard units in any way, sir?

8 A. Yes, sir.

9 Q. Can you please describe how so?

10 A. The first chapter of the dissertation is a discussion

11 of the early history of the Nazi concentration camp system

12 which was run by the SS in the prewar period between 1933

13 and 1939, and the principal SS figures who were responsible

14 for organizing the model of the German concentration camp,

15 and then building the network of concentration camps that

16 supported the permanent system of terror that the Hitlerian

17 dictatorship was based upon.

18 Q. Following your doctoral dissertation, did you hold

19 any academic faculty positions in your career?

20 A. Yes, sir.

21 Q. What were they?

22 A. At the time I received the Ph.D. degree I was

23 teaching at Ohio State in Columbus, main campus, Columbus,  
24 in what was a terminal program. It was a program for  
25 young scholars who were completing Ph.D.s at a maximum

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1 period of four years contractual teaching at Ohio State.  
2 In those days the theory was that you could finish your  
3 degree, have some teaching experience, and leave the  
4 university and go on someplace to a tenure track position.

5 So I taught at Ohio State from late  
6 September, 1969 until the end of the spring quarter in  
7 1972, and then I secured a tenure track position at  
8 Longwood College in Farmville, Virginia. And I left Ohio  
9 State in June of '72 and began teaching at Longwood College  
10 that summer, and I taught at Longwood College from June,  
11 1972 until June, 1980.

12 I left Longwood College in June, 1980 to  
13 accept a joint appointment at Hampden-Sydney College, H A M  
14 P D E N hyphen S Y D N E Y, Hampden-Sydney College in

15 Virginia, as assistant to the president and associate  
16 professor of history at Hampden-Sydney, and I was at  
17 Hampden-Sydney from 1980 until 1982, and I did not have  
18 another academic appointment until I was elected president  
19 of Emory & Henry College in February of 1984.

20 Q. Dr. Sydnor, in your career have you taught classes in  
21 modern German history, particularly the Nazi era from 1933  
22 to 1945?

23 A. Yes, sir.

24 Q. Have you taught classes that covered the Nazi  
25 concentration camp system?

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1 A. Yes, sir.

2 Q. Have you taught classes that covered the Holocaust,  
3 the Nazi Holocaust?

4 A. Yes, sir.

5 Q. I'd like to ask you some questions about historical  
6 methodology.

7 A. Sure.

8 Q. Are you familiar with the terms primary and secondary  
9 sources?

10 A. Yes, sir.

11 Q. What is a primary source, Dr. Sydnor?

12 A. To the historian, generally a primary source is a  
13 contemporaneous document, that is a record that was created  
14 at a time and place in the past that can be within the  
15 range of the period or the subject or the time that the  
16 historian is interested in studying or learning about.

17 Those are primary sources generally.

18 Primary sources can also be -- well, primary  
19 sources can be unpublished documents, they can be published  
20 documents. Primary sources can be diaries, they can be  
21 chronicles or accounts written by somebody at the time  
22 about something. They can be eyewitness accounts to events  
23 at a particular time.

24 Those generally are primary sources.

25 Q. What is a secondary source then, sir?

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1 A. The historians generally consider secondary sources  
2 to be published works that are written by other historians  
3 or by journalists or by interested parties who for whatever  
4 reason are -- have studied or written about a particular  
5 period of history.

6 Q. In reaching reliable conclusions, do historians rely  
7 on both primary and secondary source evidence?

8 A. So far as possible, yes, sir. I think the rule of  
9 thumb is if there are secondary sources available, you try  
10 to consult the secondary literature to inform the context  
11 of the period of history or the history itself that you  
12 might not know about. If there are primary sources  
13 available, you certainly consult the primary sources.

14 Q. So then which do historians typically value more,  
15 primary sources or secondary sources?

16 A. Well, I value primary sources more. I mean it's  
17 always important to know what other scholars particularly  
18 have found out or written about a period, but the primary  
19 sources, I think, are preferable because you can go  
20 directly to the document and study the document, or  
21 whatever the primary source is, and then form your own

22 opinion about it or come to your own conclusions with  
23 respect to it, and use your own judgment to place it in the  
24 context of the time or the period without having it go  
25 through the filter of what another historian has concluded

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1 about it or without having your own opinion maybe colored  
2 by that of another historian.

3 Q. When is it appropriate for historians to rely on  
4 secondary sources, Dr. Sydnor?

5 A. Well, I mean if there is an extant secondary  
6 literature or secondary sources that are available for a  
7 period of history or for a subject, I mean you certainly  
8 want to know about them. You have to use your own judgment  
9 in determining whether or not secondary sources are  
10 reliable.

11 Usually what I do is if there's a book of  
12 some kind that's just been published about something in  
13 relation to the history of the Third Reich, I pick it up, I

14 look at the footnotes first, and then the bibliography, and  
15 then read the text or the narrative itself, but you have to  
16 use your own professional judgment and you have to rely on  
17 the experience that you've accumulated over a number of  
18 years of studying a certain period of history, and you have  
19 to fall back on the kinds of things you were taught in  
20 graduate school about historical methodology and sources.

21 Q. How do historians then evaluate the reliability and  
22 authenticity of primary source evidence?

23 A. Well, when you look at primary sources and you look  
24 at any period of history, both -- I mean I use three  
25 yardsticks usually. The first is chronology. Things

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1 happen in chronological order, and when I was teaching full  
2 time, graduate students would invariably ask before a test  
3 or examination if they had to learn dates or if they had to  
4 know dates for an examination, and my answer usually was I  
5 would highly recommend it, because learning what happened  
6 and in the order it happened is generally pretty useful in

7 trying to figure out the history of something or why  
8 something happened.

9 So chronology is important. I mean that's  
10 what in a sense history is. That's the foundation of  
11 history.

12 Chronology informs and is informed also by  
13 context. It's not just enough to know that Hitler became  
14 chancellor of Germany on January 30th, 1933, and the  
15 enabling act was passed by the last session of the German  
16 parliament on March 23rd, 1933, and the concentration camp  
17 inspectorate was officially organized as an SS office on  
18 July the 1st, 1934, but you look at the context of what is  
19 around those events, the context within which those events  
20 occurred.

21 And then the third thing, I think, is common  
22 sense. I don't think that history is any great mystery,  
23 and it certainly is not rocket science, and generally as a  
24 historian, you know, I like to try to write in a style and  
25 with a methodology that a literate informed layperson can

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1 understand. I like to try to reach an audience or inform a  
2 readership with historical narrative.

3 History is part art, it's part science, but I  
4 feel like chronology, context and common sense generally  
5 serve you pretty well as an approach to both looking at  
6 documents, primary sources themselves, and to the history.

7 In this case, there's a well-known document  
8 that's a Nuremberg record that I think is an exhibit in  
9 this case, a report written by the SS and police leader in  
10 Lublin District of the general government of Poland, SS  
11 Lieutenant General Odilo Globocnik, G L O B O C N I K.

12 To under the importance of that document, you  
13 have to understand the context and understand the context  
14 means understanding the use of language or the misuse of  
15 language in that document and the sort of camouflage  
16 terminology that the SS adopted as bureaucratic and  
17 clerical euphemism during the Second World War. They said  
18 certain things that really meant other things.

19 So chronology, context, common sense, if you  
20 get a document put in front of you or you find a document,

21 you know, what was the date on the document? Who are the  
22 people involved in the creation of the document? Who does  
23 the document describe or what does it describe? Can you  
24 fit that document into a context that's informed by other  
25 documents or other primary sources from the time? And then

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1 what is common sense, that to some degree or other I think  
2 all of us are either wealthy with or sort of -- to what  
3 degree does common sense enable you to take the chronology  
4 and the context and draw certain conclusions.

5 Q. Is this methodology that you've just described an  
6 accepted means among historians of determining the  
7 authenticity and reliability of primary sources?

8 A. Well, I don't know that another historian might put  
9 it in the same terminology that I would, but the men whose  
10 work has influenced my own over the last 30 years in one  
11 way or another I think take pretty much the same approach.

12 Q. Specifically focusing on post-war statements or

13 accounts, how do historians evaluate the reliability of  
14 those documents?  
15 A. Well, I think you have to be a lot more careful now  
16 than historians maybe were 20 years ago about that, and  
17 partially with me, this is a function of advancing  
18 mortality. All of us are suffering a process by which  
19 brain cells are dying out up there, and memory plays tricks  
20 on virtually everybody. So when you look at a post-war  
21 statement, I mean, I look at a number of things.

22 First of all, is the document itself  
23 something that deals with a subject that might be  
24 controversial or that might be potentially incriminating or  
25 that might in some way be the kind of thing that would

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1 be -- that would deal with activities that were in the less  
2 admirable part of the agenda of Nazi Germany. In other  
3 words, is there any motive on the part of whoever is making  
4 the statement to say certain things.

5 And that's, you know, that can be very

6 tricky. For example, in looking at the huge corpus of  
7 post-war German war crimes trials material, a statement  
8 made by an SS man who is a defendant in a trial may be less  
9 reliable than a statement made by an SS man who has already  
10 been tried and sentenced and who is serving a long sentence  
11 and who has been called as a witness in a case because he  
12 may or may not have anything to win or lose, whereas the  
13 defendant in the trial may.

14           So what I'm getting at here is you have the  
15 statements of perpetrators. Then you have the statements  
16 of victims. Well, these can be loaded, too. Does the  
17 victim have an ax to grind? Is the person someone who lost  
18 a relative or lost a family member? Is the person someone  
19 who has a particular motive against someone who is named in  
20 another document or is named in another eyewitness  
21 statement? Or is the witness someone who is trying to --  
22 trying with a sense of urgency to call for things that he  
23 thinks he remembers or she thinks she remembers but they  
24 really don't remember in order to put something into the  
25 record.

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1           See, perpetrators, victims and then  
2 bystanders, there are eyewitness accounts from this period  
3 that will be under discussion here that were made by people  
4 who were not members of the SS and who were not prisoners  
5 in a concentration camp or victims in a death camp who were  
6 in a position to observe certain things, and you have to  
7 judge the reliability of what they said.

8           And then you have to look at, I think, how  
9 close the statement is in time to the event that it  
10 describes. Sometimes a statement that's made in 1947 or  
11 '48 may be more reliable than a statement that's made in  
12 1979 or 1980. It's not always the case, but it can be,  
13 because people's memories dim with time and people forget  
14 details, and you have to -- you just have to use your own  
15 best judgment as a historian in trying to figure out how  
16 reliable the eyewitness may be.

17 Q. Is that the methodology that you just described, is  
18 that the methodology that applied to post-war statements or  
19 recollections?

20 A. Yes, sir.

21 Q. To be a little more specific, do you have experience  
22 in evaluating post-war statements relating to the Trawniki  
23 training camp system and the activities of the men who  
24 trained there?

25 A. Yes, sir.

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1 Q. In practical terms, Dr. Sydnor, when you have a  
2 post-war statement that is in conflict with a  
3 contemporaneous wartime document, how do you resolve that  
4 conflict?

5 A. Well, I think the conflict almost has to be resolved  
6 by going to the contemporaneous document as the first  
7 standard of reliability rather than placing your trust or  
8 your faith in the statement itself. If you've got a  
9 document, an order for the loading of a train at a  
10 deportation center in France with a telex that directs that  
11 that train is going to a certain destination in Poland, and

12 you know that the train was carrying, according to the  
13 orders, the train is carrying a certain number of people,  
14 and you know according to the rail schedule the train is  
15 supposed to take a certain amount of time to get to its  
16 destination, that is usually more reliable than if there is  
17 a statement from a survivor of that train that says  
18 something else.

19 Q. Dr. Sydnor, have you conducted historical research in  
20 any archives?

21 A. Yes, sir.

22 Q. Could you please state the archives in which you've  
23 conducted research?

24 A. Well, I began in the 1960s in the National Archives  
25 or National Archives and Records Service in Washington,

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1 D.C., in the Captured Records Branch and in the Modern  
2 Military Division of the Captured Records Branch of the  
3 National Archives. That's where all of the German and Nazi  
4 records from the Second World War that had been taken into

5 custody of the U. S. armed forces and that had become part  
6 of the Americans' disposition after the Second World War,  
7 they were brought over here and microfilmed, and in the  
8 1960s, the originals of those documents were restituted to  
9 the Federal Republic of Germany after they had been  
10 microfilmed.

11           During the process of restitution there were  
12 still hard copies or original copies of many of those  
13 records that were in the National Archives, so there were  
14 those kinds of records I did research in, and the records  
15 that had already been restituted had been microfilmed, so I  
16 did a lot of research in microfilm, as well.

17           So the National Archives was the first place.  
18 In the 1960s I also went to the Columbia University Law  
19 Library in New York City. There was a good bit of -- there  
20 were published collections of Nuremberg documents there  
21 along with some other things that were easily accessible,  
22 so I worked there.

23           I then worked in Germany during the year I  
24 was a resident of Germany, I worked in the military archive  
25 of the federal archive system which is in Freiburg. I

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1 worked in the main archive of the Bundesarchiv system,  
2 which at that time was in the city of Koblenz on the Rhine  
3 River. It's now been moved to Berlin.

4 So I worked in the military archives in  
5 Freiburg, the main archive in Koblenz. I worked in the SS  
6 personnel records in the Berlin Document Center, which at  
7 that time was a repository of the United States Department  
8 of State. I worked in the Institute for Contemporary  
9 History in Munich.

10 I worked in the Leo Baeck Institute and the  
11 Wiener Library, W I E N E R, the Wiener Library, which was  
12 in London. That repository at that time had a fairly  
13 extensive collection of eyewitness and victim testimony  
14 that had been collected from Jews who had emigrated from  
15 Germany in the period between 1934 and about 1939,  
16 particularly German Jews who had fled after the night of  
17 broken glass in November of 1938.

18 And in subsequent years I had occasion to do

19 research in the library at the Auschwitz death camp complex  
20 in Poland, this is in June of 1987, the library at the  
21 Mauthausen concentration camp in Austria. I went to Israel  
22 three times in the 1980s, and on either the first or second  
23 occasion visited in the archive at Yad Vashem in Jerusalem.

24 I went to the museum and archive of the  
25 ghetto fighters in northern Israel. This is a special

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1 library and learning resource center that was created as  
2 part of a kibbutz by the Jewish survivors of the armed  
3 uprising in the Warsaw ghetto in 1942 and 1943.

4 Let's see, Yad Vashem, the museum and archive  
5 of the ghetto fighters. I've also done research in the  
6 relocated Bundesarchiv, which is now in Berlin. It's in  
7 the suburb of Lichterfelde in Berlin, and I have done  
8 research in Moscow in the archive of the Federal Security  
9 Service, which is the archive of the former KGB.

10 Q. Dr. Sydnor, have you performed historical research in

11 the archive at Flossenburg?

12 A. Yes, such as it is. It's a very small archive.

13 Flossenburg is about ten years behind the other

14 concentration camp memorial sites in developing. There's a

15 small staff and a small archive there that worked with camp

16 records, some of which are in original form, but most of

17 which are in microfilm or microfiche.

18 So yeah, I've been to Flossenburg,

19 Sachsenhausen, Mauthausen, Auschwitz, Dachau. There's not

20 really an archive at Dachau, but I've been to the site five

21 or six times.

22 Q. Dr. Sydnor, in your recitation of the archives in

23 which you've done research, did you mention the Berlin

24 Document Center?

25 A. Yes, sir.

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1 Q. Can you please explain what the Berlin Document

2 Center is?

3 A. Well, now it's part of the Bundesarchiv, because we

4 turned it back over to the Germans by virtue of either a  
5 treaty or diplomatic agreement, I think on the 1st of July,  
6 1994, but from the end of the Second World War until we  
7 gave it back to the Germans, it had been a repository where  
8 a huge volume of personnel and biographical material was  
9 stored: The card indexes of the Nazi party, the records of  
10 the SS officer core, the files by ethnic Germans from  
11 different parts of Europe who applied for German  
12 citizenship during the period of the Third Reich, other  
13 kinds of personnel material.

14           It is a very substantial repository that has  
15 records that are now available in the United States on  
16 microfilm through the National Archives in Washington, but  
17 I worked on it when it was still the Berlin Document  
18 Center.

19 Q. Dr. Sydnor, I believe in your list you mentioned  
20 working in the former KGB archive in Moscow, is that right?

21 A. Yes, sir.

22 Q. Can you please describe some of the pertinent  
23 collections that you examined in that archive?

24 A. I examined two collections of materials related,

25 these are German documents that the Soviets had captured

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1 during the Second World War, and they had ended up in the  
2 custody of the NKVD and its subsequent incarnations, the  
3 longest of which, the longest term of which was the KGB,  
4 the Soviet state secret police. These were captured German  
5 records that were housed in this archive after the KGB had  
6 used them as investigative records and prosecution  
7 documents in a series of legal proceedings that the Soviets  
8 had undertaken between about 1946 and really the end of the  
9 1960s, about 1969 or 1970.

10 What I saw were the volumes that contained  
11 individual personnel records from the Trawniki SS training  
12 camp in the Lublin District of Poland. These are files of  
13 individual men of eastern, different eastern European  
14 nationalities who had been processed through the Trawniki  
15 camp to become guards, as SS auxiliaries.

16 That's in a collection number 20869. The  
17 other set of volumes I examined is under a general archival

18 signature called K 779. Those are fragmentary  
19 administrative records from the Trawniki training camp.  
20 They are roster lists of people who were being transferred  
21 in and out of the place, routine correspondence, all sorts  
22 of matters that deal with the camp itself and the personnel  
23 in the camp.

24 Q. Dr. Sydnor, in your opinion, how reliable are  
25 historical documents housed in former Soviet archives?

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1 A. Well, they appear to me to be reliable. I didn't see  
2 anything in any of these documents that made me suspicious  
3 at all. A number of these things I had seen in certified  
4 copies before I ever went to Moscow to look at them in  
5 their original state. I saw a number of things in there  
6 that I had not seen previously in a certified copy, but I  
7 mean these were German records that the Soviets had somehow  
8 gotten their hands on presumably late in the Second World  
9 War, and by whatever means, they ended up in Moscow in the

10 hands of the KGB.

11 Q. Dr. Sydnor, what languages do you speak and read?

12 A. Well, English hopefully, German. I can -- at one  
13 time, I could do passably well in Dutch, and I could still  
14 struggle with it if I'm dealing with the context of  
15 something that generally gives me a frame of reference. I  
16 can get by in Spanish reading, although at one time I was,  
17 I think, almost as fluent in Spanish as I have managed to  
18 try to stay fluent over the years in German, so I would say  
19 really the only thing with fluency is German, and I can try  
20 elsewhere.

21 Q. Dr. Sydnor, you didn't mention Russian.

22 A. Yes, sir.

23 Q. Does the fact that you can't read Russian prevent you  
24 from conducting historical research with Russian language  
25 documents?

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1 A. No, I don't read or speak a word of Russian. I mean  
2 what I have seen and read has been, of course, in

3 translation from either Russian into -- I think it's all  
4 been Russian into English. I don't think I've ever seen  
5 anything translated from Russian into German. I may be  
6 mistaken, but most of what I've seen is Russian into  
7 English.

8 Q. What has been the substantive focus of your research  
9 for the past 20 years?

10 A. The substantive focus of the research since 19 -- at  
11 least 1979 has been the political and ideological agenda of  
12 the SS and the Hitlerian system, and that involves conquest  
13 of territory in Europe that was not part of Germany before  
14 1939, the political domination and economic exploitation of  
15 peoples who lived in these areas that the Germans  
16 conquered, and the agenda of what the Germans called  
17 demographic reordering, which is a euphemism for mass  
18 extermination and the wholesale deportation and relocation  
19 of population groups, particularly in eastern Europe.

20 When I was in graduate school, I had the good  
21 fortune to work with a professor who told me that -- and he  
22 had been part of the American Historical Association's team  
23 that looked at the microfilming of the captured Axis

24 records. He was concerned with Italian records more than  
25 German records, but he told me in 1965 that only a very

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1 small fraction of these records had been examined at that  
2 point, and he said that if he were giving advice, and I  
3 wanted advice, and I was really interested in the history  
4 of Nazi Germany, I ought to look at what was the most  
5 important institution in the structure of Nazi Germany.

6 And that meant the institution that was most important to  
7 Hitler, and that was the SS.

8 And I was interested in the Waffen SS or the  
9 Armed SS because it stood really at the kind of center of  
10 SS activity, both before and during the Second World War.  
11 That involved a lot of researching in military things in  
12 the '60s and '70s, but began with an article I wrote in  
13 1979, which was an attack on the scholarship of David  
14 Irving, who has become even more notorious of late in  
15 England than he was in the late '70s as a Holocaust  
16 revisionist.

17 I really focused on the issues of  
18 persecution, economic exploitation, mass murder and  
19 Hitler's agenda to create a thousand-year Nazi new order in  
20 Europe, and that means the SS.

21 Now, within that -- excuse me for a  
22 long-winded answer, but within that, the real focus of my  
23 interest in the last decade has been Reinhardt Heydrich,  
24 H E Y D R I C H. Reinhardt Heydrich was the number two man  
25 in the SS until he was assassinated by Czech commandoes at

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1 the end of May in 1942. He was the chief of the security  
2 police and the security service. After 1939, he was head  
3 of the Reich security main office.

4 He was the person who was assigned the task  
5 of carrying out what was called the final solution to the  
6 Jewish question. He became in executive terminology the  
7 chief operating officer of the Holocaust. He organized the  
8 program of mass extermination and delegated it to people

9 within the SS whom he trusted.

10 And two of the people that he trusted  
11 implicitly are people who are involved in the matters under  
12 discussion here. One of them was a man named Friedrich  
13 Wilhelm Kruger, K R U, with an umlaut over it, G E R.  
14 Kruger was the Higher SS and police leader for the  
15 Government General or General Government, either way, of  
16 Poland, and the SS and police leader in the Lublin District  
17 of the Government General of Poland, who was Odilo  
18 Globocnik. And it was Globocnik who organized and built  
19 the ad hoc extermination facilities at Belzec, B E L Z E C,  
20 Sobibor and Treblinka.

21 So Heydrich's relationship with these two men  
22 and Heydrich's role as a top-level official in the SS and  
23 his relationship with Hitler, with Himmler, and with the  
24 other top policy makers has really been the focus of my  
25 research.

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1 Q. Dr. Sydnor, have you published any scholarly books

2 based primarily on archival research?

3 A. Scholarly books? Yes, sir.

4 Q. Can you please tell us what you've published in terms

5 of books?

6 A. The Ph.D. dissertation was transformed into a history

7 of the SS Death's Head Division over a period of about

8 seven years. Ph.D. dissertations are usually pretty raw

9 scholarly products that require a lot of revision,

10 expansion, polish, et cetera, and I took what had been the

11 dissertation and worked on it over a period of, I guess,

12 seven years, about seven years, and it was published by the

13 Princeton University Press in November of 1977. It's

14 called Soldiers of Destruction.

15 Q. Does that book relate in some way to the

16 concentration camp system or the guards there?

17 A. Yes, sir.

18 Q. Please describe how.

19 A. Well, like the dissertation, the book deals with the

20 history of a single Armed SS Combat Division, the SS

21 Death's Head Division, but it does so because the SS

22 Death's Head Division was formed in November, 1939 out of a

23 cadre of three regiments of death's head guards from the  
24 concentration camps.

25 These are solders who had guarded the

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1 permanent German concentration camps built between 1933 and  
2 1939, and the commander of the SS Death's Head Division was  
3 an SS general named Theodore Eicke, E I C K E. He had been  
4 the organizer of the Dachau concentration camp in 1933. He  
5 made it into the model upon which the whole rest of the SS  
6 concentration camp system was based. And then in July of  
7 1934, he became the first inspector general of SS  
8 concentration camps, and he held that office until he  
9 became commander of the SS Death's Head Division in 1939.

10 So the book deals with the prewar background  
11 and the history of the camp system, and major figures from  
12 the concentration camps who went into the combat division,  
13 and then the wartime history of the combat division from  
14 many standpoints, not only as combat effectiveness, but  
15 also its continuing relationships with the other branches

16 of the SS that were not engaged in front line fighting, but  
17 were involved in activities such as defoliation,  
18 exploitation and mass murder. And by this, I mean the SS  
19 Einsatzgruppen, special mobile killing commandoes that  
20 operated in eastern Europe, the concentration camps, and  
21 other special SS units that were engaged in murder. So  
22 that's the book.

23 Q. Was the book subject to a peer review, Dr. Sydnor?

24 A. Extensive peer review, yes, sir.

25 Q. Can you describe what peer review means in your

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1 field?

2 A. Well, peer review normally means being in the  
3 dentist's chair without Novocaine. It can be very humbling  
4 to engage in research and do all this work and then write  
5 about it, and then you subject it to the, or university  
6 press puts it in front of someone who is an experienced  
7 senior seasoned historian, which is usually the way it

8 works. And they apply their experience and their knowledge  
9 and their skill and their literate gifts hopefully as an  
10 historian, and try to save you from mistakes and help you  
11 polish awkward prose and avoid using the passive voice in  
12 the narrative of your book, and doing a lot of other  
13 things.

14           It's a way of exercising checks and balances  
15 in the historical profession, so the university presses  
16 that I'm familiar with and have been associated with,  
17 Princeton, California, North Carolina, Kentucky, and I  
18 think one manuscript years ago for Chicago, University of  
19 Chicago Press, all use a system of peer review. Normally  
20 that means that if you've got a manuscript that somebody  
21 submitted for publication, you get one person to read it,  
22 and if that one person is so certain about it and is  
23 willing to sign off on it or recommend it without any real  
24 reservation, you might -- the editors might decide, the  
25 editorial board of the press might decide to go ahead and

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1 publish it.

2 Usually you have two readers.

3 Q. Did Soldiers of Destruction, your book, have two

4 readers or one reader?

5 A. One reader.

6 Q. Is Soldiers of Destruction still in print?

7 A. Yes, sir.

8 Q. To your knowledge, has the book ever been used as

9 assigned reading at any universities or colleges?

10 A. Yes, sir.

11 Q. Where?

12 A. It's been used over a number of years as assigned

13 reading in classes on the history of Nazi Germany in 20th

14 century Europe at the U.S. Naval Academy at West Point. It

15 was used at one point in time in the History of Modern

16 Warfare at the U.S. Military Academy at West Point.

17 It has been -- it is part of the permanent

18 curriculum or the standard curriculum that's used at the

19 School of Advanced Military Studies at Ft. Leavenworth,

20 Kansas. This is the top level school that is above the

21 command and general staff, command and general staff class

22 at Ft. Leavenworth. This is an intensive year long course  
23 for selected officers mainly from the Army, but also from  
24 the Marine Corps and the Navy and Air Force, to study  
25 military theory, military history, 20th century warfare.

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1 So the book has been used there.

2 I know about this because the man who just  
3 came back from a tour as inspector general of the U.S. Army  
4 in Europe, Colonel French MacLean, M A C L E A N, Colonel  
5 MacLean was a member of the School of Advanced Military  
6 Studies in the late '80s. He's interested in the history  
7 of the SS and has published to date two books, one on the  
8 Einsatzgruppen and the one on the major figures in the  
9 concentration camps, and he and I have become friends and  
10 share many research interests.

11 Other than those places, I know it was used  
12 at some point in time at the University of Toledo up the  
13 road here, and beyond that, I don't know.

14 Q. Has Soldiers of Destruction appeared in any foreign

15 language editions?

16 A. Yes, sir.

17 Q. In what language or languages?

18 A. It appeared in a Polish edition. It was published in

19 Warsaw either a year or two years ago, I think two years

20 ago, almost two years ago. And it is -- the German

21 translation has just been finished, and the German

22 translation will be published in September by a company in

23 Patterborne, the city of Patterborne in Germany,

24 Schoeninghverlag S C H O E N I N G H V E R L A G. That's a

25 publishing house that is well known in Europe for

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1 publishing books both by German historians and by English

2 speaking historians on the history of the Third Reich.

3 Q. Did you write any new material for this forthcoming

4 German edition?

5 A. Yes, sir.

6 Q. Would you please describe in general what is it you

7 wrote?

8 A. The most important part of the new edition is the  
9 afterword, which simply attempts to bring up to date and  
10 point out the younger generation of scholarship that has  
11 come along since the book was originally published in  
12 English 24 years ago.

13 Q. Does any of this new material relate in some way to  
14 the Trawniki training camp?

15 A. Yes, sir.

16 Q. How so?

17 A. Well, two of the people, when I wrote the original  
18 edition of the book, I was interested in tracing  
19 individually figures who served in the SS Death's Head  
20 Division who were involved other places in noncombat  
21 activities that related to the agenda of the Nazi regime,  
22 particularly things that related to mass murder, and I  
23 identified a number of people in the book, some of them  
24 high ranking SS figures, some of them lower ranking SS  
25 figures.

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1           But in the intervening -- and I suggested in  
2 the conclusions to the book in 1977 that further research  
3 would probably lead to a much more extensive documentation  
4 of other people whose career paths clearly pointed to the  
5 fact that the SS was one comprehensive, cohesive  
6 organization; that there were not two different branches of  
7 the SS, one that was criminal and one that was not  
8 criminal; that men from all different places in the SS  
9 sooner or later became involved in these criminal  
10 activities.

11           In the afterword to the edition that will be  
12 published in the fall, I've been able to document just with  
13 as sort of snapshot profiles the career paths of three men:  
14 An SS major whose last name is Ploetz, P L O E T Z, who  
15 served in the SS Death's Head Division, who was Reinhardt  
16 Heydrich's chief attendant for four years; and also two  
17 men, an SS lieutenant named Johann Schwarzenbacher, S C H W  
18 A R Z E N B A C H E R.

19           Schwarzenbacher was a principal in the  
20 permanent SS administration and command structure at the

21 Trawniki training camp. He had served in the prewar SS  
22 Special Service Troops and came to Trawniki from the Armed  
23 SS or the Waffen SS and stayed there.

24 More interesting even than Schwarzenbacher is  
25 the last figure, Ernst Heinrich Teufel, T E U F E L.

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1 Mr. Teufel ended up being the clothing works clerk at  
2 Trawniki after he had served for two years as a front line  
3 combat veteran in the SS Death's Head Division. He had  
4 served in, I think, the last phase of the French campaign  
5 and was with the Death's Head Division from the beginning  
6 of the war with the Soviet Union until he was wounded in  
7 the late summer of 1941, and because of the severity of his  
8 wounds, he was no longer fit for front line duty, he was  
9 assigned to a rear area post. And he ended up being in  
10 Trawniki, and he, of course, is the man who signed a number  
11 of the service identity passes that we've examined.

12 Q. Dr. Sydnor, in researching Soldiers of Destruction  
13 did you use the historical methodology that you previously

14 described?

15 A. Generally, yes. I think my approach to doing the  
16 research in the documents in the 1960s was chronological,  
17 started with the earliest records and kept going. I ran  
18 into a brick wall in 1969, of course, because at that time  
19 with the cold war still in place and no real way of finding  
20 out what kind of SS records might be in either what was  
21 then East Germany or the Soviet Union or Czechoslovakia, I  
22 wasn't able to get access to everything that was pertinent,  
23 so I had to go at it another way, in a roundabout way, and  
24 use microfilmed military records from the German Army from  
25 the war in Russia between 1941 and 1945.

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1 Q. Specifically to the methodology you talked about  
2 earlier, context, chronology, common sense, did you apply  
3 that methodology in researching and writing Soldiers of  
4 Destruction?

5 A. Yes, sir.

6 Q. Are you currently researching and writing another  
7 scholarly book?

8 A. Yes, sir.

9 Q. What is that book about?

10 A. This will be a biography of Reinhardt Heydrich.

11 Q. And that is the same Reinhardt Heydrich you described  
12 earlier?

13 A. Yes, sir.

14 Q. Has that book been accepted for publication anywhere?

15 A. The German edition has already been commissioned.

16 The same publisher who is doing the German edition of  
17 Soldiers of Destruction will do the German edition of the  
18 Heydrich biography, but I do not yet have an English  
19 publisher for the book.

20 Q. For a war historian, what is the significance, if  
21 any, of having your books published in the German language?

22 A. Well, I think it's an important step. It opens --  
23 even though I think Germans, adult Germans because of the  
24 advantages that their educational system has with its  
25 multilingual emphasis and the prominence that learning

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1 English has in German culture, even though the adult  
2 literate German public can to some extent read in English,  
3 having the book translated into the German language opens  
4 up a much broader and much wider readership for the book in  
5 German. In one sense it's like giving the book a new lease  
6 on life.

7 Q. Dr. Sydnor, in addition to your books that you've  
8 talked about, have you also published any scholarly  
9 articles in your career?

10 A. Yes, sir.

11 Q. Were any of those subject to a peer review?

12 A. All of them were subject to peer review.

13 Q. Can you give us some examples?

14 A. Certainly. The first two things I published in the  
15 early '70s were for a journal called Central European  
16 History. That was peer reviewed not only by the editor,  
17 but by academic historians who served on his board of  
18 editors who read manuscripts for him.

19 The second thing I published was in French by

20 the big French journal, the Journal of the History of the  
21 Second World War, which at that time was headed by a very  
22 distinguished French historian named Henri Michel. He is  
23 no longer living, I believe. I didn't write it in French.  
24 It was translated into French, but it was -- and I don't  
25 know who the historians were who read the article and

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1 judged it suitable for publication, but they were, I  
2 believe, English-reading French historians whose specialty  
3 was the Second World War.

4 The article I published in 1979, which is a  
5 review of David Irving's work, controversial work, Hitler's  
6 War, was commissioned by the editor of Central European  
7 History, Professor Douglas A. Unfug, U N F U G, who at that  
8 time was professor at Emory University in Atlanta. The  
9 journal was published at Emory University in Atlanta. He  
10 commissioned the article, and then he got a couple of  
11 people to read it after I worked on it.

12 I published -- I prepared a paper for the

13 American Historical Association in 1987 on the role of  
14 Reinhardt Heydrich in the planning of the mass  
15 extermination of the European Jews. That paper was read at  
16 the convention of the American Historical Association. It  
17 was then the basis of a chapter that was published in a  
18 volume commissioned by the United States Holocaust Memorial  
19 Museum. That book appeared in 1993.

20 I wrote a chapter in a book on the -- edited  
21 by the Holocaust Historian Saul Friedman, a chapter in his  
22 book that -- my chapter deals with the concentration camps  
23 and extermination complexes of the Third Reich. He was the  
24 general editor of the book. He had readers who reviewed  
25 the manuscripts submitted. I don't know who they were.

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1 But everything that I've written -- and in  
2 1996 I was invited to present a paper at an international  
3 conference in Klagenfurt, K L A G E N F U R T, in  
4 Klagenfurt, Austria, and that paper was also -- that paper

5 is to be published sometime in a book that I believe is  
6 being done by the University of Vienna's press. And that  
7 will be, in whatever incarnation it appears, will be the  
8 subject of peer review.

9 Q. Did any of these articles that you've just mentioned  
10 and others that you've written relate to the SS or the Nazi  
11 concentration camp system?

12 A. Well, in some way all of them have. The early essay  
13 in 1979 -- well, everything since 1979 has. The early  
14 essay in 1979, the paper I read in Klagenfurt, the chapter  
15 in Saul Friedman's volume, everything else has.

16 Q. In writing these articles, did you conduct original  
17 archival research in some of the places you talked about  
18 earlier?

19 A. Yes, sir.

20 Q. In writing these articles, did you employ the  
21 historical methodology that you discussed earlier?

22 A. Yes, sir.

23 Q. Dr. Sydnor, I believe you just mentioned one paper  
24 that you read or presented. In addition to the  
25 publications, have you presented other scholarly papers at

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1 professional conferences and seminars?

2 A. Yes, sir.

3 Q. What are the criteria for being selected to present  
4 these kinds of papers?

5 A. In the case of the paper for the Klagenfurt  
6 conference, that was sponsored by the Institute for the  
7 Study of National Socialist History and Institutions  
8 located in Hamburg, Germany.

9 In the case of the chapter for the book at  
10 the Holocaust museum, I read that as a paper at an  
11 international conference to which I was invited at the  
12 Holocaust Museum in 1992. So in every case -- well, a year  
13 ago -- a year ago I was invited by a group of other  
14 historians to chair a session at the -- or to comment on  
15 papers at a session at the German Studies Association  
16 meeting in Atlanta, and the papers I commented on were  
17 presented by three Austrian historians: Bertran Perz, who  
18 wrote a paper on the use of dog handling units, SS dog

19 handling units in concentration camps; Professor Michael  
20 Zimmerman, who has written the now standard work on the  
21 Nazi persecution of the gypsies; and Professor Florian  
22 Freund, F R E U N D, who has written on the persecution of  
23 gypsies and other minorities in the Austrian empire in the  
24 19th century.

25 Q. Have any of the papers you presented covered the Nazi

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1 concentration camp system or the Holocaust?

2 A. Yes, sir. The paper I read at the Holocaust Museum,

3 the paper I read in Klagenfurt, and the paper I will read

4 in October at the forthcoming meeting of the German Studies

5 Association in Washington, all would deal with that.

6 Q. Dr. Sydnor, in writing these papers, did you conduct

7 research in any of the archives that you discussed earlier?

8 A. Yes, sir.

9 Q. And in preparing these papers did you employ the

10 historical methodology that you described earlier?

11 A. Yes, sir.

12 Q. As a professional historian, have you ever been  
13 involved in the peer review of other people's books or  
14 articles or manuscripts?

15 A. Yes, sir.

16 Q. Who selects reviewers to go over such manuscripts?

17 A. Well, in the case of -- I've done it for both  
18 journals, I've done it for academic journals and for  
19 university presses. In the case of academic journals, it's  
20 usually the editor, the managing editor of the journal or  
21 someone on his editorial board who says or who recommends  
22 somebody who is qualified to review an article that deals  
23 with the subject matter in the reviewer's area of  
24 specialty.

25 In the case of the university presses for

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1 which I've read manuscripts, the editor of the press relies  
2 upon his own network of contacts in the academic profession  
3 to assign manuscripts that are being considered for

4 publication to specific fields. The University of North  
5 Carolina press, for which I've done the most reading, the  
6 editor there has a group of political scientists that he  
7 can turn to to read manuscripts in political science.

8 It's the same thing in history, a group of people that he  
9 can rely on to read manuscripts in various fields of  
10 history.

11 Q. What kind of topics have you been asked to review  
12 manuscripts on?

13 A. In the case of the Princeton University Press, I  
14 reviewed the manuscript of the biography of a major SS  
15 figure named Ernst Kaltenbrunner, K A L T E N B R U N N E

16 R. Kaltenbrunner was Heydrich's successor as chief of the  
17 Reich security main office after Heydrich's assassination.

18 This was a Ph.D. dissertation that had been  
19 written by a historian named Peter Black, and I read the  
20 manuscript for Princeton and recommended its publication,  
21 made some suggestions that I thought would strengthen or  
22 improve the manuscript, and Princeton published it, and  
23 it's since been published in the German translation.

24 I've read manuscripts for the University of  
25 North Carolina Press on -- I read a history of the SS

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1 Ethnic German Liaison Office written by a professor at the  
2 University of South Carolina. It's a very important study.

3 I read a manuscript on a survivor of the  
4 Holocaust who was the person who unmasked David Duke in  
5 Louisiana as having been a member of the American Nazi  
6 Party at the time that he was running for governor in the  
7 state of Louisiana.

8 I've read two manuscripts by the Israeli  
9 historian Ariele, A R I E H, Kochavi, K O C H A V I. One on  
10 the United Nations War Crimes Commission, the first book  
11 was the establishment of the United Nations War Crimes  
12 Commission, and then I read a second manuscript on the  
13 Evolution of British Foreign Policy and the Palestine  
14 Question between 1943 and Israeli independence in 1948.

15 Q. Have some of the manuscripts you reviewed covered the  
16 Nazi concentration camp system or modern German history?

17 A. Yes, sir.

18 Q. Dr. Sydnor, I'd like to ask you about book reviews.

19 Have you also written book reviews?

20 A. Yes, sir.

21 Q. What are the criteria for being selected to write

22 book reviews?

23 A. Pretty much the same as they are for reading or

24 reviewing manuscripts that could be published as articles

25 in journals or manuscripts that could be published in

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1 books. The editor of a journal has a list or a Rolodex

2 with information about scholars in different fields who are

3 not only qualified, but are able and willing to write

4 reviews of books, and I mean these are less exacting

5 exercises than writing an article or writing a book, but

6 writing a review of a book is nonetheless pretty demanding.

7 And over the last five or six years, I have

8 written most frequently for a journal called Holocaust and

9 Genocide Studies.

10 Q. Have your book reviews included books about the Nazi

11 concentration camp system?

12 A. Well, not specifically about the concentration camp  
13 system. The most recent is the review of the Himmler desk  
14 calendar that was found in the Soviet Union in 1991, and I  
15 did three other reviews. I'm doing a review now that deals  
16 with the operation of the Reinhardt death camps. This is a  
17 book published in German by a Polish scholar that deals  
18 with German civilian authority and the persecution of the  
19 Jews in the Government General of Poland.

20 Q. Have any of your book reviews covered topics related  
21 to modern German history from 1933 to 1945?

22 A. Yes, sir.

23 Q. In addition to your publications, has your work in  
24 the field of German history included television  
25 documentaries?

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1 A. Yes, sir.

2 Q. What has been your role in the creation of these

3 documentaries?

4 A. Well, in the case of the first documentary, which was  
5 created in the 1970s, it's a biography of Adolph Hitler  
6 which was shown on American public television in 1979, I  
7 believe. I had editorial control of the program. I wrote  
8 the script. I did the research and the film archives, and  
9 I arranged all of the -- and I did the research in the  
10 photo archives. I selected the artwork and all of the  
11 visual elements that went into the program.

12 My partner in the venture was someone who  
13 worked in television and knew how to edit and could handle  
14 the technical side of the thing. My role was to put it  
15 together as a whole piece of cloth historically, so I was  
16 the researcher and writer of the first documentary.

17 All the documentaries that I've been involved  
18 in since then that have had to do with the Third Reich or  
19 with the Nazi period or World War II, I've been the  
20 producer. I produced a one-hour show on the captured  
21 German records in the National Archives which was made in  
22 1979 or 1980.

23 I produced a one-hour profile of a survivor  
24 of the Auschwitz death camps who lives in Indianapolis,

25 Indiana. And I think that's it. Well, those three

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1 programs deal with the history of Nazi Germany.

2 Q. Did any of your documentaries win any awards?

3 A. Yes, sir.

4 Q. Please tell us what awards.

5 A. The biography of Adolph Hitler won the James Harvey

6 Robinson prize of the American Historical Association.

7 That's an award that the AHA created in the 1970s to

8 recognize scholars who produced work other than written

9 monographic work or written histories, and the award is

10 given every other year. It's given every two years for

11 whoever produces the most outstanding work in any field of

12 history that is audiovisual or film or videotape in nature.

13 Q. Dr. Sydnor, in addition to what you've talked about

14 now, up to now, have you ever testified as an expert

15 witness in any court proceeding recording modern German

16 history, and particularly about Nazi policies and practices

17 and the concentration camp system?

18 A. Yes, sir.

19 Q. On how many occasions have you testified as an expert  
20 witness in such matters?

21 A. I've lost count. I think this may be either the 17th  
22 or 18th.

23 Q. Have you ever been unqualified to present expert  
24 testimony by any court?

25 A. No, sir.

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1 Q. Have any of the cases in which you've testified as an  
2 expert involved persons accused of being Trawniki trained  
3 guards?

4 A. Yes, sir.

5 Q. How many occasions?

6 A. The first was in 1995. That was the Hajda case, H A  
7 J D A. That was in Chicago.

8 The second was in 1998. That was the case of  
9 Jacob Reimer, R E I M E R. That was in New York City.

10           The third was in 1999, early 2000 in  
11 Philadelphia. That was the case of Kwoczak, K W O C Z A K.

12 So there are three others previous to this one.

13 Q. Have any of the cases in which you've testified  
14 involved persons accused of serving at Flossenburg?

15 A. Yes, sir.

16 Q. How many cases?

17 A. Two, I believe.

18 Q. Can you please identify them?

19 A. The first was the case of Nicholas Schiffer, S C H I  
20 F F E R. That was in the Eastern District of Pennsylvania  
21 in, I believe, 1993. And I believe that was both a  
22 Majdanek and Flossenburg case.

23           And most recently it was in the case of  
24 Theodore Szezinsky. I'm going to try this, it's S Z E Z H  
25 I N S K Y; Theodore Szezinsky, which was in Philadelphia

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1 also. I think the last part of that case involved

2 Flossenburg.

3 Q. In the course of your testimonies, have you discussed  
4 the operational systems of Sobibor and other extermination  
5 camps?

6 A. Yes, sir.

7 Q. Have you been asked to provide expert testimony in  
8 cases that do not involve the Office of Special  
9 Investigations?

10 A. Yes, sir, I have.

11 Q. Can you tell us about some of those cases?

12 A. Certainly. The first case that was a non-OSI case, I  
13 was asked by the broadcasting group ABC Cap Cities, which  
14 is now I believe owned by the Disney Corporation -- at that  
15 time it was ABC Cap Cities -- jointly with CBS, to prepare  
16 a report and affidavit for them in a libel, slander case  
17 that had been brought against them in Philadelphia by a man  
18 who had been a defendant in a previous OSI case. This  
19 man's name was Johann Breyer, B R E Y E R. So I prepared a  
20 report for them in that case which was submitted to the  
21 Court, and the case was dropped by plaintiff.

22 The second was not really -- I mean it was a  
23 different kind of not really litigation, but treaty

24 settlement pursuit really. In 1997 and into 1998, I worked  
25 for the Foreign Claims Settlement Commission of the

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1 Department of Justice in reviewing a pretty extensive body  
2 of material that came from the international archives of  
3 the Red Cross as well as some records from the National  
4 Archives of the U.S. Army at the end of the Second World  
5 War and after the Second World War that dealt with the  
6 issue of the mistreatment of American military personnel in  
7 German prisoner of war camps, in German forced labor camps,  
8 and in other facilities where the conditions were  
9 comparable to or worse than the conditions in SS  
10 concentration camps.

11 And I was asked to do this more because of my  
12 familiarity with wartime conditions of SS concentration  
13 camps than anything else. The purpose of this analysis was  
14 to determine who among American applicants would be  
15 eligible for restitution payments within a sum of money

16 that the German government had agreed to pay to people who  
17 had been subjected to these conditions.

18 THE COURT: We have a computer problem that  
19 we need to fix. We need to take a 15-minute break.

20 MR. DRIMMER: Thank you, Your Honor.

21 (Recess had.)

22 THE COURT: Okay.

23 BY MR. DRIMMER:

24 Q. Dr. Sydnor, I believe we were talking about instances  
25 in which you provided expert testimony when we broke. Did

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1 you provide any expert testimony or an affidavit in a case  
2 called Degussa?

3 A. Yes, sir.

4 Q. Can you please state what that case was about?

5 A. I don't remember this as clearly as I certainly  
6 should, but a couple of years ago I was asked by a law firm  
7 in Washington to provide an affidavit in a case, I believe  
8 it's a class action litigation in a suit in which a number

9 of former slave laborers of German corporations were suing  
10 for compensation and damages for the time during the Second  
11 World War that they had been subjected to slave labor, and  
12 I believe the lead plaintiff in the case is a lady who is  
13 Ukrainian who lives in New Jersey.

14 I provided an affidavit detailing how the  
15 system of U.S. military and then civilian government in the  
16 immediate post-war period in Germany precluded the  
17 possibility of people who had been forced laborers who had  
18 worked at the hands of Germany, particularly eastern  
19 European workers, how the post-war system precluded any  
20 redress, any approach to redress on their part.

21 And this is based on work that I had done in  
22 the 1970s in preparing a documentary for public television  
23 on the American military and civilian role in the economic  
24 and political reconstruction of Germany.

25 So I did an affidavit in support of the

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1 plaintiffs in the case.

2 Q. Dr. Sydnor, have you had any prior involvement in  
3 litigation relating to Mr. Demjanjuk, the defendant in this  
4 case?

5 A. Yes, sir.

6 Q. What was that involvement?

7 A. Sometime in 1984, I did a short affidavit, and I  
8 believe it was for the denaturalization -- the immigration  
9 court, I believe, testifying to the Trawniki card as a  
10 document that appeared to be like other SS identity cards  
11 that I had seen up to that time. I was asked to do this by  
12 OSI, and at the time, I believe, was either in the middle  
13 of or I had just completed work with OSI in a case  
14 involving eastern European, an eastern European gentleman  
15 who served as a guard in what was called the labor  
16 education camp.

17 And then in January of 1987, during the  
18 second visit that I made to Israel in the 1980s, I spent  
19 the better part of one day talking with one representative  
20 of the Israeli prosecution team, a gentleman named Gabriel  
21 Finder, F I N D E R, and a major from the Israeli police  
22 whose name I cannot recall any longer, and then someone who

23 was Finder's assistant, talking about my experience in  
24 trial testimony with OSI up to that point and answering  
25 questions they had about what I knew of the concentration

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1 camp system and its operation.

2 Q. Dr. Sydnor, in the course of your career, have you  
3 been appointed any trustee positions or commissions?

4 A. Yes, sir.

5 Q. Such as what?

6 A. In 1986, after I had served as executive assistant  
7 and speech writer to Governor Charles S. Robb of Virginia,  
8 I was asked by his successor, Governor Gerald Baliles, B A  
9 L I L E S, to serve on a 12-member executive committee for  
10 a Virginia/Israel commission, and I was asked to chair the  
11 Education and Holocaust Education Committee.

12 And this was a publicly-funded commission  
13 that dealt with direct programs between Virginia and the  
14 state of Israel in education, medicine, law, I believe

15 certain aspects of business, computer science and computer  
16 technology, and I was a member of that executive committee  
17 and was a member of a commission from 1986 until the  
18 commission was dissolved in early 1989.

19 In the same period of time, I was appointed  
20 by Governor Baliles to be chairman of the Virginia Public  
21 Telecommunications Board. That's a gubernatorial board  
22 that oversees the appropriation of state funds in Virginia  
23 that support public television and public radio entities.

24 In subsequent years, I have been, I still am,  
25 have been made and still am, I'm trustee of the George C.

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1 Marshal Foundation, I am a trustee of the Virginia  
2 Holocaust Museum, I'm a trustee of the Virginia Historical  
3 Society, and I am a trustee of St. Mary's Hospital  
4 Foundation in Richmond.

5 Q. Dr. Sydnor, based on your work as a scholar and your  
6 other personal and professional accomplishments, have you  
7 received any national awards or commendations?

8 A. Yes, sir.

9 Q. What was that?

10 A. In April of this year, the National Society of the  
11 Daughters of the American Revolution, or the DAR as it's  
12 most commonly known, presented me with their medal of  
13 honor.

14 Q. Who are some of the past winners of that award, Dr.  
15 Sydnor?

16 A. The immediate past recipient of the medal of honor is  
17 also a Virginian. His name is Robert Slaughter, S L A U G  
18 H T E R. He is the chairman of the National D-Day Memorial  
19 Commission in Bedford, Virginia. He is a survivor of a  
20 company of the 29th Infantry Division, the first wave  
21 ashore at Omaha Beach.

22 I don't know the years in which they were  
23 given the award, but two of the other previous recipients  
24 are Senator Robert Dole of Kansas and President Ronald  
25 Reagan.

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Sydnor - voir Dire

1 MR. DRIMMER: Your Honor, at this time I  
2 offer Dr. Sydnor as an expert in the field of German  
3 history from 1939 to 1945 and the German concentration camp  
4 system.

5 THE COURT: Mr. Tigar?

6 MR. TIGAR: Thank you, Your Honor.

7 VOIR DIRE EXAMINATION OF CHARLES W. SYDNOR, JR.

8 BY MR. TIGAR:

9 Q. Dr. Sydnor, what is the last calendar year in which  
10 you were a full-time historian?

11 A. The last calendar year in which I was a full-time  
12 historian?

13 Q. Yes.

14 A. I would say 1980.

15 Q. And was that when you were at Emory & Henry College?

16 A. No, sir. That was when I was at Ham- -- well,  
17 Longwood College really. If you mean full-time teaching?

18 Q. Yes, full-time teaching.

19 A. 1980.

20 Q. 1980. And since 1980 you have been a university  
21 president; is that correct?

22 A. College president.

23 Q. College president, excuse me. College president?

24 A. Yes, sir.

25 Q. And speech writer?

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1 A. Yes, sir.

2 Q. And president of a public television company,

3 correct?

4 A. Yes, sir.

5 Q. Now, other than whatever you have received from the

6 Department of Justice, have I missed any other of the

7 full-time jobs that you've had?

8 A. Let's see.

9 MR. DRIMMER: Your Honor, I'm going to object

10 to that question. I don't think there's any testimony that

11 work at the Department of Justice is a full-time job.

12 MR. TIGAR: No, I didn't mean to imply that

13 in my question.

14 Q. Have I missed any of the other full-time jobs that  
15 you've had?

16 MR. TIGAR: Thank you, counsel, for the  
17 correction.

18 A. Let me think. No, I don't think other than sort of  
19 the boards and commissions and trustee, things like that,  
20 community service, no, sir.

21 Q. Now, when you were mentioning the standards that  
22 historical methodology permissibly uses, would you include  
23 among those bias, attention to whether the historian is  
24 biased or not?

25 A. Yes, sir.

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1 Q. For instance, you taught in a college south of the  
2 Mason-Dixon Line, correct?

3 A. Yes, sir.

4 Q. If you got a paper from a student that said, that  
5 began speaking of "The war between the states" as opposed  
6 to "The Civil War," you would have some sense that that

7 person had a point of view, is that right, or might?

8 A. Yes, sir.

9 Q. Now, in addition to that, have you spoken out and  
10 given a personal opinion about Mr. Demjanjuk in this case,  
11 the defendant in this case?

12 A. I did in 1989, but not in this case now, no, sir.

13 Q. But in 1989?

14 A. 1989, yes, sir.

15 Q. In 1989, you called him a monster, didn't you?

16 A. Yes, sir.

17 Q. You said "A great drama and an even greater good move  
18 toward final resolution." Did you say that?

19 A. Yes, sir.

20 Q. And you wrote that?

21 A. Yes, sir.

22 Q. What was the "even greater good" that you wanted to  
23 happen to Mr. Demjanjuk?

24 A. Well, not necessarily anything with Mr. Demjanjuk,  
25 but a conclusion to the trial and the release and

Sydnor - oir Dire

1 publication of the historical and legal material that had  
2 been accumulated by the District Court in Jerusalem at the  
3 time, and at that time I believe Mr. Demjanjuk was under  
4 sentence of death, and I believe that the sentence should  
5 be carried out.

6 Q. You said that he would be hanged and that the cause  
7 of justice will never have been better served. You said  
8 that, correct?

9 A. Every word of it, yes, sir.

10 Q. You also said that his attorneys, American attorneys,  
11 were shrill anti-Semites, correct?

12 A. Yes, sir, and by that I meant the early attorneys.

13 Q. Which attorneys did you have in mind when you  
14 characterized lawyers as shrill anti-Semites?

15 A. I honestly at this point don't remember whether it  
16 was Mr. Martin or Mr. O'Connor. One of them had said at  
17 one -- at the first trial or the second trial that Naziism  
18 was a term that has been much maligned of late.

19 Q. And did that person say that shrilly?

20 A. Well, I considered that a pretty shrill statement,

21 yes, sir.

22 Q. You also said that "Mr. Demjanjuk's defense or cause  
23 was funded by the same circles that have combined wealth  
24 and hatred to support radical right wing causes in our land  
25 for more than a generation." What basis did you have in

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1 your research to make that statement about people that  
2 contributed to the defense of a person who was a litigant  
3 in Federal Court?

4 A. Well, that was based on conversations that I had had  
5 in the early '80s with former senior trial attorney with  
6 OSI, who is now a Judge, Bruce Einhorn, who had said that  
7 even though no one knew for certain that the supposition  
8 was that money that was funding the defense was coming both  
9 from circles in the United States and in Canada.

10 Q. Did you say supposition?

11 A. I'm sorry, sir?

12 Q. Did you use the word supposition?

13 A. Yes, sir.

14 Q. And so you took a supposition and wrote it down and  
15 repeated it in a public meeting, is that correct?

16 A. Yes, sir.

17 Q. Were you introduced at that public meeting as a  
18 historian?

19 A. I don't recall how I was introduced at that meeting.

20 Q. Now, in addition to that, you said "These, we must  
21 remember, are the same people who considered Patrick  
22 Buchanan an expert in the matter of Iwan Demjanjuk and  
23 George Will as an authority on Adolph Hitler and who took  
24 and treated seriously the twice definitively," which is  
25 underscored, "disproven theory of mistaken identity that

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1 succeeded only in getting Demjanjuk denaturalized,  
2 deported, extradited to Israel, and tried and convicted and  
3 sentenced to death." You wrote that?

4 A. Yes, sir.

5 Q. And you also wrote that there was no mistake, is that

6 correct, about Demjanjuk?

7 A. Yes, sir.

8 Q. But there was a mistake, wasn't there, sir? Was

9 there a mistake?

10 A. There was subsequently a mistake, but at the time I

11 wrote that, I believe the Court had concluded proceedings

12 and sentence had been passed, and the sentence was under

13 review.

14 Q. Yes. But the sentence was that he was Ivan the

15 Terrible of Treblinka, correct?

16 A. Yes, but that was a mistake.

17 Q. And you said he was Ivan the Terrible of Treblinka,

18 right?

19 A. Yes, sir, and I was wrong.

20 Q. Tell us what was wrong with either your methodology

21 or the way in which you used your methodology that led you

22 to make that mistake and to publicly repeat it in the words

23 that I have read to the Court.

24 A. Well, that speech was based on upon what I knew at

25 the time, based on what I knew at the time of the verdicts

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1 that had been reached in courts in the United States and  
2 the denaturalization and deportation proceeding, and then  
3 what I had followed in the period between 1987 and 1989  
4 about the legal proceedings in Israel.

5 Q. Had you at that time spent a day with Mr. Finder, the  
6 Israeli prosecutor, as of 1989 when you made that speech,  
7 when had happened?

8 A. Yes, sir. In January of 1987 I did, yes, sir.

9 Q. And you spent some time with a Mr. Einhorn, as well?

10 A. In 1983 and '84, yes, sir.

11 Q. And that was in connection with your affidavit that  
12 you told us about, correct?

13 A. Yes, sir.

14 Q. And in that affidavit, you described or discussed the  
15 1393 service pass, correct?

16 A. Yes, sir.

17 Q. Who else, if anyone, in the United States Department  
18 of Justice did you talk with to gather the information that  
19 you eventually used to help you reach the conclusions that

20 you expressed in 1989?

21 A. I don't recall that I talked to anybody else in the

22 Justice Department.

23 Q. Just Mr. Einhorn?

24 A. Mr. Einhorn, I think over the intervening period

25 between '83, '84 and '89, I certainly talked to the staff

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1 historians at OSI about the evolution of the Demjanjuk case

2 through the extradition process, and then the trial in

3 Israel.

4 Q. As a historian in that period who had written about

5 World War II, did you in form or substance ask of these

6 Department of Justice historians, "Are you sure you got the

7 right guy?"

8 A. I asked the Israelis that in 1987.

9 Q. Well, we'll get to that. My question is, in any of

10 your conversations with the Department of Justice

11 personnel --

12 A. Yes.

13 Q. -- before 1989, did you as a historian say, "Are you  
14 sure you got the right guy?"

15 A. Yes, sir.

16 Q. Who did you ask that question of?

17 A. I had lengthy conversations on that subject with  
18 Peter Black, who at that time was the chief staff historian  
19 at OSI, who is now the senior research historian at the  
20 Holocaust Museum in Washington, specifically because I  
21 wondered on the issue of the Trawniki card specifying  
22 Sobibor and the witnesses attesting to Treblinka, and I was  
23 curious and concerned if there was a possible conflict  
24 between those two things, how can the Trawniki card say  
25 Sobibor and the witnesses say Trawniki.

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1 Is it possible that if the card says -- I'm  
2 sorry. Treblinka is what I mean to say. If the card says  
3 Sobibor, could he have served at Treblinka? Is there a  
4 chance that there is not necessarily any conflict between

5 the two things.

6 Q. When is it that you first got the idea that there  
7 might be a conflict between the evidence that you were  
8 seeing and the proposition that Mr. Demjanjuk had been Ivan  
9 the Terrible of Treblinka?

10 A. I don't remember. I raised the question in  
11 discussions with at least Mr. Black at OSI, and I raised  
12 the question in the discussions I had in Jerusalem with the  
13 Israelis.

14 Q. Did you ever say in words or substance to any  
15 prosecutorial authority, "I, as a historian, Dr. Charles  
16 Sydnor, see a contradiction here. This guy might be  
17 executed. Don't you think we should look into it?"

18 A. No, sir.

19 Q. Why not?

20 A. Well, I raised the question in the discussions in the  
21 '80s. The answers I received were that the witness  
22 testimony seemed compelling, they seemed independently  
23 generated, they seemed broad based enough that -- I don't  
24 remember all the different explanations, but they were  
25 basically that there is probably not necessarily a conflict

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1 between the annotation of Sobibor on the Trawniki card and  
2 the possibility of later service at Treblinka.

3 Q. And that was a mistake?

4 A. I believe it was a mistake, yes, sir.

5 Q. As you sit there today, sir, you don't believe that  
6 Mr. Demjanjuk was Ivan the Terrible at Treblinka, do you?

7 A. I do not believe he was Ivan the Terrible at  
8 Treblinka.

9 Q. When we look at that, I want to come back then to my  
10 question, was the conclusion -- let me start something  
11 else. Among the historians upon whom you rely in your  
12 reports is a man named Arad, A R A D, correct?

13 A. Yes, sir.

14 Q. And he is the author of a book entitled Belzec,  
15 Sobibor, Treblinka, correct?

16 A. That is correct.

17 Q. A new edition of this has just appeared in paperback.

18 Did you know that?

19 A. I didn't know that, no, sir. Is that the 1987

20 edition you have there?

21 Q. I am holding the 1987 edition, sir. I represent to

22 you that the paperback edition appears simply to be one of

23 those reprints.

24 A. Okay.

25 Q. That's not important to my question, but I do want to

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1 ask you, as a historian, what, if any, role did Dr. Arad's

2 work play in your developing your methodology that you've

3 talked about on direct examination?

4 A. After probably 1993, a good bit. I mean in the

5 course of what I learned about the three Operation

6 Reinhardt camps, that of course is the first and still one

7 of the most valuable works to consult. So after 1993, a

8 good deal.

9 Q. And you think that is it Dr. Arad or Mr. Arad?

10 A. I'm not sure. I think he's Dr. Arad.

11 Q. And he is the head of the archive in Israel, correct?

12 A. He is the retired director of Yad Vashem, yes, sir.

13 Q. And Yad Vashem is an archive?

14 A. Yes, sir, memorial archive.

15 Q. Now, he made the same mistake you did, didn't he,

16 about Mr. Demjanjuk?

17 A. I'm not sure how you mean.

18 Q. Well, he says that the Ukrainian Iwan Demjanjuk was

19 Ivan the Terrible at Treblinka, he says at page 197 of his

20 book and repeats it at page 235 of his book. I've marked

21 those, and if you'll just confirm that for the Court.

22 A. Yes, sir.

23 Q. Now, you cite his book extensively in your report to

24 this Court, correct?

25 A. Yes, sir.

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1 Q. Did you happen to notice these two references in this

2 book when you were writing your report to this book?

3 A. Yes, sir.

4 Q. Could you please explain to His Honor what  
5 methodological difficulties Dr. Arad had in reaching the  
6 conclusions that he expressed and is a part of the studies  
7 he made?

8 A. Well, I believe that he relied on the testimony and  
9 the identifications provided by the witnesses in the  
10 processes both in the United States and in Israel to come  
11 to the same conclusion that the courts did and that I did.

12 Q. If Mr. Arad -- well, you can't answer. If you had  
13 had in 1989 all of the documents that were later uncovered  
14 in the proceedings in the Sixth Circuit and before Judge  
15 Wiseman, would you have come to a different conclusion than  
16 you did in 1989?

17 A. I'm not sure what documents you mean. If you mean  
18 the Soviet, all of the wealth of documentation that has  
19 come out of eastern Europe since basically 1990 or 1991,  
20 plus all of the Flossenburg material, no, I would never  
21 have said that in a public speech.

22 Q. I am referring to the documents that dealt with how  
23 the Otto Horn identification was made, the documents that  
24 related to the identity of Ivan Marschenko and the Soviet

25 protocols that were not presented to Judge Battisti.

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1 Methodologically, how would you have used those?

2 MR. DRIMMER: Pardon me. I don't mean to

3 interrupt, but I don't think it's been established that he

4 actually did see those documents.

5 MR. TIGAR: I'm sorry.

6 Q. Did you ever see those?

7 A. No, sir. The material that I'm familiar with is

8 related to the material that's been made available from the

9 Soviet archives and from other Eastern European archives

10 since 1990, 1991.

11 Q. Is it your testimony, sir, that in preparation of

12 your reports to this Court and to come today that you have

13 not read the protocols from the former Soviet Union that

14 were considered by the United States Court of Appeals for

15 the Sixth Circuit in its 1993 decision, is that your

16 testimony?

17 MR. DRIMMER: Pardon me, Your Honor. I need

18 to object again. He hasn't identified what materials those  
19 are, if they were things the witness has seen.

20 Q. Have you read the Sixth Circuit's 1993 opinion as  
21 reported in volume 10 of Federal 3d at page 338?

22 A. I've read the report of the special master, I  
23 believe, but I don't believe that I've read the document  
24 that you are referring to.

25 Q. The special master recommended Mr. Demjanjuk get no

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1 relief, correct?

2 A. If I recall correctly, yes, sir.

3 Q. And he was reversed by the Sixth Circuit, did you  
4 know that?

5 A. No, sir.

6 Q. How many hours have you spent with the government  
7 lawyers in this case discussing just the question of the  
8 history of the Demjanjuk litigation, sir?

9 A. I have spent -- I've spent a very small number of

10 hours with the government lawyers. I've spent a huge  
11 amount of time with historians looking at the documentary  
12 evidence that is the basis for the report in this matter.

13 I worked on that for probably a year before I ever  
14 discussed anything with the lawyers in this case.

15 Q. You worked on the documents on which your present  
16 report is based for this court for a year?

17 A. Just about, yes, sir.

18 Q. How many days? I mean you are paid by the day,  
19 correct?

20 A. Well, no. It's capped. I've worked 107 days on this  
21 matter with the historical documents that are the basis of  
22 the government's exhibits and that are in the expert  
23 report.

24 I began work on this matter --

25 Q. Let me stop you there if I may. You can continue in

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1 a minute. You say it's capped?

2 A. Yes.

3 Q. Your affidavit says how much you get paid for  
4 out-of-court work. You mean the government is not going to  
5 pay you for all 107 days?

6 A. No, sir. They are going to pay me for about 30 days.

7 Q. When you say days, you mean eight-hour days?

8 A. Or more. Usually more.

9 Q. And all the time working as the president of the  
10 public television in Richmond?

11 A. That's correct.

12 Q. Now, sir, I'd like to go and look at the books and  
13 articles that you've testified about. This book, Soldiers  
14 of Destruction, is based on your Ph.D. thesis, correct?

15 A. Yes, sir.

16 Q. You testified on direct examination that chapter 1  
17 deals with the organization of the concentration camp  
18 systems, correct?

19 A. Yes, sir.

20 Q. Now, one principal figure in Soldiers of Destruction  
21 is this man Eicke, E I C K E?

22 A. Yes.

23 Q. When did Eicke cease to have any relationship to

24 concentration camp administration and return instead to

25 active fighting?

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1 A. In October or November -- November really of '39. He

2 returned briefly to the camp system in the summer of '41

3 after he was wounded in combat in the Soviet Union, and

4 then returned to combat full time in the winter of '41-42

5 and remained on active combat duty until he was killed in

6 Russia in February of 1943. So he left the inspector

7 concentration camps in the fall of 1939 and returned to

8 direct the murder of Soviet POWs in August of '41.

9 Q. And the concentration camp system, if I remember your

10 direct testimony, you said was dealt with in chapter 1 of

11 your book, correct?

12 A. That's correct, yes, sir.

13 Q. Now, in the period of time that you are talking about

14 in chapter 1 of your book, were any Ukrainians being used

15 as Wachmenn?

16 A. No, sir.

17 Q. In fact, sir, the first spate of mass killing of Jews  
18 in the concentration camps was in calendar year 1941, is  
19 that correct?

20 A. Well, it depends on how you define mass killing. The  
21 first collective group killings of Jews in German  
22 concentration camps occurred in November of 1938, German  
23 Jews in German concentration camps. The first mass killing  
24 of nonGerman Jews occurred in 1941.

25 Q. And that is to say, do you accept Raul Hilberg's

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1 figures that between 1933 and 1940, under 1,000 Jews were  
2 killed in the camps, and in 1941 alone, there were  
3 1,100,000 Jews exterminated; do you accept those figures?

4 A. I'm not sure I would accept the first because you  
5 can't include just the camps. If you include the actions  
6 in Poland in September and October of 1939 by the special  
7 killing squads of the security police and the security  
8 service, I think the totals would probably be a little bit

9 higher than Hilberg gives. But if he's saying the camps,  
10 I'll accept that.

11 MR. DRIMMER: I do apologize, Your Honor.  
12 I'm not sure how this relates to the voir dire on his  
13 qualifications.

14 MR. TIGAR: I'm just going to tie it up now.

15 Q. In sum, sir, isn't it a fact that nothing in the  
16 Death's Head book deals with the administration of the  
17 concentrations camps in the period 1942, '43 and '45?

18 A. No, sir, that's not a fair statement.

19 Q. What is it in here that forms the part of the  
20 methodology that you're using here to identify a Ukrainian  
21 Wachmanner in the concentration camps as a part of  
22 Operation Reinhardt?

23 A. Nothing in there dealing with that specifically.  
24 Your question was about concentration camps. If you look  
25 at chapter 9 which deals with the issue of what I call

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2 reference to men who served in the SS Death's Head Division  
3 who became police officials, who became concentration camp  
4 commandants, who exercised other types of noncombat duties  
5 in pursuit of persecution or mass murder.

6 Q. Is there anything in your chapter 9 that deals with  
7 the Ukrainians who were captured?

8 A. No, sir.

9 Q. Let's look at the articles you wrote.

10 MR. DRIMMER: Do you have a copy for us?

11 MR. TIGAR: I don't have a copy. These are  
12 his articles that he went over on direct examination. I'm  
13 just going to ask him about it. I don't have copies for  
14 the government. I'll be happy to share what I have, but  
15 under Rule 803, they are not going to be in evidence. They  
16 can't be.

17 THE COURT: Well, in order to ask questions  
18 from them, you need to show them to the other side.

19 MR. TIGAR: They are the ones he asked about  
20 on direct examination. I assumed he had them.

21 THE COURT: That's fine. Because he  
22 mentioned them doesn't mean the government has them.

23 MR. TIGAR: Yes, Your Honor. Would Your  
24 Honor like me to defer that part of the examination or  
25 share with Mr. Drimmer? I didn't mean to commit a

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1 discourtesy.

2 THE COURT: All right. That's fine. Just  
3 defer that part.

4 MR. TIGAR: Thank you, Your Honor. Now I  
5 lost my train of thought.

6 BY MR. TIGAR:

7 Q. Now, you wrote The Selling of Adolph Hitler, David  
8 Irving's Hitler's War, that's the book review, the review  
9 article that Mr. Drimmer asked you about, do you remember  
10 that?

11 A. Yes, sir.

12 Q. And one of your quarrels about Mr. Irving's book is  
13 his misuse of primary sources, correct?

14 A. Yes, sir.

15 Q. And one of the quarrels you have about his misuse of

16 primary sources is that he mistranslates things, correct?

17 A. Correct, yes, sir. Certain specific words.

18 Q. Certain specific words?

19 A. Yes, sir.

20 Q. In reviewing primary sources, sir, is it your opinion

21 that it's necessary to pay careful attention to the

22 translation?

23 A. Yes, sir.

24 Q. How many Soviet protocols in the Russian language did

25 you cite in your original report to the Court which

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1 contains 349 footnotes?

2 A. How many in the Russian language did I cite?

3 Q. How many Russian protocols originally --

4 A. I think I cited -- all the ones I cited are

5 translations, certified translations in English from the

6 Russian.

7 Q. In dealing with -- protocols are statements taken by

8 the Soviet authorities, correct?

9 A. Correct.

10 Q. They are taken by the KGB or one of its other

11 incarnations, correct?

12 A. And they are not verbatim transcripts.

13 Q. They are in that sense like FBI 302s, correct?

14 A. I don't know what an FBI 302 is.

15 Q. But they are not verbatim transcripts?

16 A. They are not verbatim transcripts.

17 Q. And you are not able to read those primary sources in

18 the original language, are you, sir?

19 A. No, sir.

20 Q. And you are not independently able, in light of your

21 qualifications, to evaluate whether or not the translations

22 upon which you rely are accurate or not, is that correct?

23 A. That's correct.

24 Q. In addition to that, in the 349 footnotes in your

25 initial report, you refer to trials in the Soviet Union,

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1 correct?

2 A. Correct, yes, sir.

3 Q. And you also refer to those trials in your  
4 supplemental report with respect to the Uzbekh, correct?

5 A. Correct, yes, sir.

6 Q. Now, those trial records would have involved the  
7 questioning and cross questioning of witnesses, correct?

8 A. Yes, sir.

9 Q. Often the questioning and cross questioning of  
10 witnesses is a matter of historical methodology that  
11 provides a context within which to see the original primary  
12 sources, would you agree with that?

13 A. Yes, sir.

14 Q. Sometimes trials, in fact, provide information about  
15 significant events that is simply not available in the  
16 primary sources, is that correct?

17 A. Yes, sir, I would agree with that.

18 Q. And therefore it is important to study carefully the  
19 transcripts of trials with respect to these historic events  
20 in order to see, to shed light, do you agree with that?

21 A. Yes, sir.

22 Q. And you are not able, are you, to read the

23 transcripts of Soviet trials?

24 A. Not in the Russian language, no, sir.

25 Q. In fact, sir, in discussing -- in dealing with this

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1 question of methodology, do you remember an incident that

2 you describe in your Death's Head book at Le Paradis?

3 A. Yes, sir.

4 Q. Le Paradis was an explosion of killing fervor by

5 German troops, was it not, sir?

6 A. It involved the massacre of 100 disarmed British

7 prisoners of war from the 2nd Royal Norfolk regimen who had

8 surrendered and come out of a barn or farmstead where they

9 had fought in a defensive position, and they were marched

10 across the road into a field and gunned down.

11 Q. Gunned down. Now, there's no reference to this in

12 the primary sources that you've found, is there?

13 A. Yes, there is.

14 Q. What primary source was it?

15 A. The statements of the two British privates who  
16 survived the massacre and lived to tell about it and the  
17 subsequent trial of the SS officer who ordered and directed  
18 the massacre.

19 Q. I stand corrected. There's no reference to it in the  
20 German language primary sources, is there?

21 A. That's correct. Well, no, that's not exactly  
22 correct. There are indirect references in the Army records  
23 because the massacre created a scandal on the Western  
24 Front, and Himmler intervened, Heinrich Himmler, the head  
25 of the SS, intervened to protect Theodore Eicke and the

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1 Death's Head Division from any official inquiry or  
2 unpleasant consequences as a result of the massacre.

3 I think there's, in the text and in the  
4 footnotes, there is a narrative of the confrontation  
5 between General Eicke, Theodore Eicke, the commander of the  
6 Death's Head Division, and the commander of the Panzer

7 Corps, General Erich Hoepner, H O E P N E R.

8 Q. Now, sir, I don't want to spend a lot of time on this

9 except as it concerns methodology. Don't you say the

10 documents examined for this study contain no mention of the

11 atrocity at Le Paradis? I'm referring to footnote 29.

12 Don't you say that?

13 A. Yes, sir.

14 Q. All right. Now, in fact, sir, looking at this

15 Death's Head book, it is, is it not, a single but

16 extraordinary portrait, correct?

17 A. That's right. If you mean is there another

18 history -- is that what you mean? Is there another history

19 of the SS Death's Head Division?

20 Q. No. It is a single portrait. You used the word

21 "single portrait," didn't you, in your book?

22 A. Yes, sir.

23 Q. And you meant that it is of relatively limited scope?

24 A. Yes, sir.

25 Q. All right. Now, in your article Executive Instinct,

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1 the Reinhardt Heydrich article, are there original camp  
2 documents that are cited in there?

3 A. I don't recall. I'd have to look at the footnotes to  
4 see. Which version of that are you using, too?

5 Q. Okay. I have the version that looks like it's a book  
6 chapter.

7 A. Yes. This is out of the volume.

8 THE COURT: Are these the articles you were  
9 going to defer?

10 MR. TIGAR: Pardon me?

11 THE COURT: Are these the articles we agreed  
12 to defer discussion on?

13 MR. TIGAR: Your Honor, I'm sorry. With the  
14 echo in the room, I didn't understand Your Honor was  
15 telling me to do that. I thought you told me to go ahead.  
16 I'm completely mistaken, Your Honor.

17 THE COURT: No, I said these are deferred.

18 MR. TIGAR: Excuse me. Dr. Sydnor, I've  
19 committed an unintentional discourtesy to His Honor, and I  
20 apologize for it.

21 MR. DRIMMER: How about to me?

22 MR. TIGAR: I also apologize to counsel.

23 MR. DRIMMER: Accepted.

24 BY MR. TIGAR:

25 Q. Now, you also mention, sir, that in addition to the

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1 articles and so on -- I'll turn now to this question of

2 sources. You use primary sources, correct?

3 A. Whenever I can, yes, sir.

4 Q. Now, primary sources include, first, documents,

5 correct?

6 A. Correct.

7 Q. They include witness interviews, correct?

8 A. Correct.

9 Q. Witness interviews may be taken either shortly after

10 an event happened or years later, correct?

11 A. Correct.

12 Q. Witness interviews can be redacted in the form of

13 statements of an investigator or they can be verbatim,

14 correct?

15 A. Correct.

16 Q. They can be cross-examined or not cross-examined,

17 correct?

18 A. That's correct, yes, sir.

19 Q. Do you value things that are cross-examined more than

20 those that are not cross-examined?

21 A. Yes, sir, I think I do.

22 Q. When you look at primary sources, are you concerned

23 about the problem of selection, that is, making sure you

24 have enough of a group of them to provide a context?

25 A. Yes, sir.

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1 Q. Is one of the problems of methodology in your

2 conclusion that Mr. Demjanjuk was Ivan the Terrible of

3 Treblinka a problem of selection?

4 A. It was not only a problem of selection. It was a

5 problem of absence and inaccessibility to a wealth of

6 material that the Soviet armed forces had captured in the  
7 last year and a half of the war, the parameters of which no  
8 one in the west was aware of, that had been sequestered and  
9 held, and an inability to reach what would have been a much  
10 more solid set of conclusions based upon that evidence than  
11 were possible simply by relying upon witness testimony at  
12 the time.

13 Q. Do you know what steps the United States took in  
14 connection with the first case to obtain evidence from the  
15 Soviet Union?

16 A. Not fully, no, sir, I don't.

17 Q. So as you sit there today, you don't know whether the  
18 nondisclosure of the Soviet materials had to do with what  
19 the Americans were doing or what the Soviets were doing or  
20 both, correct?

21 A. That's correct.

22 Q. Now, in connection with this case, you've been to  
23 Moscow, right?

24 A. Yes, sir.

25 Q. Now, was your trip to the Moscow archives different

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1 in the way you were received and looked at things than a  
2 visit to the record center in Rockville, Maryland?

3 A. Well, I haven't been to the record center in  
4 Rockville, Maryland.

5 Q. Let's take another archive. An American archive, in  
6 the United States, a public archive.

7 A. Not materially different I would say than -- the last  
8 time I was in the National Archives was maybe four or five  
9 years ago. I was in Moscow for about a week. The  
10 documents that I was to review had been requested in  
11 advance, which is generally the kind of procedures that I  
12 followed when I've gone to German archives, so that when  
13 you arrive, you can go to work.

14 Q. When you say had been requested in advance, did you  
15 request the documents?

16 A. Yes, sir. Well, I collaborated in the creation of  
17 the request for the documents.

18 Q. And did the request ask for specific documents  
19 corresponding to a numerical designation or to a request

20 for documents of a particular subject?

21 A. No. I wanted to see as much as I would have time to  
22 look at in the 20869 material, which is the individual  
23 personnel records from the Trawniki camp that were in the  
24 Federal Security Service archive, and the case 779  
25 materials which were the remaining fragments of the

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1 Trawniki camp administrative records.

2 Q. Now, when you got there, did you actually go in to  
3 where all the archives were or did they have them out there  
4 in a room for you?

5 A. No, sir. The procedure was Mr. Coe and I arrived in  
6 Moscow -- I was accompanied by Dr. Steven Coe, who is a  
7 Russian speaking OSI historian. We arrived in Moscow at  
8 11:30 one morning, and we went to the procurator's office  
9 the first thing the next morning and took care of whatever  
10 formalities Mr. Coe had to arrange with the procurator.

11 And we were taken from that office to the archive and  
12 greeted by the archivist, and at that point, based on the

13 request that had been sent in advance, the first bundles of  
14 documents were brought out from the stacks in the archive  
15 to the reading room.

16 I was never anyplace else in the archive  
17 except the reading room and the men's room.

18 MR. DRIMMER: Your Honor, I think we are  
19 getting a bit far afield.

20 THE COURT: We are supposed to be voir diring  
21 the witness with respect to his qualifications as an  
22 expert. I think we are getting far afield.

23 MR. TIGAR: May I be heard on that, Your  
24 Honor? The question here is the reliability of the  
25 methodology. The methodology has to do with who is doing

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1 the choosing of the documents that Dr. Sydnor looks at.

2 That was the problem last time, Your Honor.

3 You know, Mr. Ryan went to Russia, went to Moscow, he met  
4 the procurator. He said, "I want everything about

5 Mr. Demjanjuk," and he said, "Here it is."

6 THE COURT: You can still have an expert who  
7 does not do a particularly good job of testifying in a case  
8 and I think you are mixing apples and oranges. Once he is  
9 or is not qualified as an expert, then the issue becomes  
10 the weight of his testimony. Just because a person is an  
11 expert doesn't mean his testimony has to be accepted. If  
12 he didn't follow proper procedures in a particular case,  
13 then his testimony as an expert is not worth much.

14 MR. TIGAR: With respect to the Court, I wish  
15 to be understood as respectfully disagreeing with Your  
16 Honor. Our view of Rule 702 is that the methodology about  
17 which I'm inquiring is relevant to the 702 inquiry. I say  
18 that for the record. I'll desist from this line of  
19 examination because Your Honor has ordered me to, and if  
20 he's qualified as an expert, I'll pick it up at that later  
21 time.

22 THE COURT: Okay. All right.

23 MR. TIGAR: Thank you, Your Honor. I mean no  
24 disrespect by making my position clear.

25 THE COURT: I understand. We just have a

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1 different view of 702.

2 MR. TIGAR: Well, in this room, Your Honor,

3 we know how that comes out.

4 BY MR. TIGAR:

5 Q. Now, is it your testimony, sir, that in private --

6 that in reaching your conclusions, that experts in your

7 position would rely upon identity documents such as the

8 Dienstausesweises?

9 A. Yes, sir. What I would call a service identity

10 passes or the Dienstausesweis, yes.

11 Q. And in making --

12 A. Among other documents.

13 Q. I understand. Now, are you in a position as an

14 expert to evaluate the credibility of the person who

15 provides the information to whoever typed it up, as you sit

16 here today?

17 A. As I sit here today, no, sir.

18 Q. And that doesn't make any difference to you, is that

19 right?

20 A. Well, let me back up a second. When you were asking  
21 a couple of questions ago about trial testimony, in looking  
22 at the German trial testimonies in the 1960s and 1970s, I  
23 paid particular attention to the testimony of Helmut  
24 Leonhardt, L E O N H A R D T. And there are several pretty  
25 extensive records of his testimony about the administration

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1 and record keeping practices in the Trawniki camp that I  
2 relied upon in helping to form my conclusions.

3 Mr. Leonhardt, as I believe you will recall,  
4 was the deputy of the police sergeant named Drechsel, D R E  
5 C H S E L, who was in charge of the records at -- in charge  
6 of the personnel records at Trawniki.

7 So in a sense, making -- in that sense, I'm  
8 not making a judgment in a vacuum with no knowledge of  
9 anyone who was involved in the preparation of the records  
10 because there is at least the information provided in  
11 Mr. Leonhardt's depositions and trial testimony.

12 Q. Do you accept, sir, that as a historian, the lack of  
13 available material requires you to accept the limitations  
14 placed on you by sources? Is that a part of good  
15 historical methodology?

16 A. Yes, sir, I think you have to -- yeah.

17 Q. And in continuing this, are you familiar with a  
18 historian named Scheffler?

19 A. Wolfgang Scheffler, yes, sir.

20 Q. And does he use the same methodology you do?

21 A. I'm not sure I would be completely accurate in saying  
22 yes, that he uses precisely or exactly the same methodology  
23 I do, but I've read his work and I respect his work.

24 Q. You know that he made the same mistake you did about  
25 Mr. Demjanjuk, you knew that?

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1 A. Yes, sir.

2 Q. And how about Professor Ziemke, do you respect him?

3 A. Yes, sir.

4 Q. And he made the same mistake, correct?

5 A. Yes, sir.

6 Q. Was that the same methodological error you told us  
7 about earlier?

8 A. Pretty much the same, yes, sir.

9 Q. Now, sir, I'd like to ask you about the methodology  
10 that you used in preparing your report, all right?

11 A. Certainly.

12 Q. Now, one of the things that scholars do so they can  
13 be evaluated by other scholars is they use footnotes,  
14 correct?

15 A. Correct.

16 Q. Or they use other references so you can check up on  
17 it, right?

18 A. Yes, sir.

19 Q. We have already established with respect to any  
20 footnotes that originated in the Russian language, you  
21 depended on translators, is that correct?

22 A. That's correct.

23 Q. Your footnotes reflect that you look at translations,  
24 correct?

25 A. Yes, sir.

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1 Q. Do your footnotes reflect anyone other than Charles  
2 Sydnor wrote any portion of your report or did any research  
3 for it?

4 A. No, sir.

5 Q. In fact, did anyone assist you in the preparation of  
6 your report or write first drafts of it or do research for  
7 it?

8 A. Yes, sir.

9 Q. And who are these people who did that?

10 A. There are -- this report, like the previous expert  
11 reports I've prepared in the other cases, are both  
12 cumulative and collaborative in preparation. There are I  
13 think five or six other people who in one way or another I  
14 either called on or who assisted in various stages of the  
15 preparation of the report.

16 Q. And who are they?

17 A. Professor Peter Black, who is the senior research

18 historian at the Holocaust Museum. Dr. Barrie White --

19 Q. Peter Black, he's the one you told us about a little

20 while ago?

21 A. Yes, sir.

22 Q. You know him for many years?

23 A. Yes, sir.

24 Q. Who is next?

25 A. Dr. Barrie White, B A R R I E, White, who is the

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1 chief research historian at OSI. Dr. David Rich.

2 Q. Now, Dr. Barrie White, what are his qualifications?

3 A. Hers.

4 Q. Did you say Mary or Barrie?

5 A. Barrie.

6 Q. Barrie?

7 A. Yes, sir. That's a nickname. Her given name is

8 Elizabeth, Elizabeth B. White.

9 Q. I apologize for inadvertent sexism, Doctor. I can

10 only say when you testified toward the end of direct who

11 you worked with, you left out Ruth-Bettina Birn, didn't

12 you?

13 A. That wasn't my testimony. That testimony referred to

14 the older generation of senior scholars who influenced me.

15 And I did not have Ruth-Bettina Birn in mind when I made

16 that answer.

17 Q. I'm all alone in my guilt. Go ahead.

18 A. Dr. Elizabeth B. White, who has a Ph.D. in modern

19 history from the University of Virginia and who has

20 published work on the Majdanek concentration camp.

21 David Rich.

22 Q. She works for the Department of Justice?

23 A. She works for OSI, yes, sir.

24 Q. Has she ever worked anyplace else?

25 A. I believe she taught for a while, but I'm not sure

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1 where.

2 Q. All right. Who else?

3 A. Dr. David Rich.

4 Q. Dr. Rich, is he here in court?

5 A. No, sir.

6 Q. Where does he work?

7 A. He is a staff historian at OSI.

8 Q. Has that been his principal occupation?

9 A. I'm not sure where else he has worked, and I'm not  
10 sure whether he's had an academic appointment or not.

11 Q. Has he published any peer-reviewed studies in any  
12 area?

13 A. Yes, sir. He is an expert in Russian military  
14 history and has published a monograph with Harvard  
15 University Press on Russian military reforms in the 19th  
16 century. He has a Ph.D. from Georgetown University and is  
17 fluent in the Russian language.

18 MR. DRIMMER: Your Honor, if I may again, I  
19 think we are moving a little far afield again on his  
20 qualifications.

21 THE COURT: I don't know that you need to go  
22 into the curriculum vitae of all the people he's worked  
23 with.

24 MR. TIGAR: Thank you, Your Honor. I'll just

25 get the list, if I may. May I, Your Honor?

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1 THE COURT: Yes.

2 Q. After Dr. Rich, who do we have?

3 A. Dr. Jeffrey Richter, who is also a Russian speaking

4 scholar who is a staff historian at OSI. I believe his

5 Ph.D. is from Princeton. Dr. Steven Coe, whose Ph.D. I

6 believe is from Michigan.

7 Q. Also an OSI employee?

8 A. Yes, sir, who also studied at Moscow State

9 University. Dr. Todd Huebner, OSI staff historian, whose

10 Ph.D. is from Columbia, he is primarily a German historian

11 who also knows, I believe, Czech and some Polish and also

12 the Dutch language. And let me think. I want to make sure

13 I'm not leaving anybody out. This has been a long,

14 drawn-out process.

15 Q. When did the process start?

16 A. Well, the process really -- I mean the way these

17 things are developed, the process started with the history  
18 back with the Hajda trial in 1999. In my mind the model  
19 for this kind of thing --

20 Q. I interrupted you though. Anybody else beyond  
21 Huebner?

22 A. Yes. Michael MacQueen, also a staff historian at  
23 OSI. He is a specialist. He's fluent in Lithuanian, among  
24 other Eastern European languages.

25 Q. Who drafted your second supplemental report, the one

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1 about Uzbekh? Who drafted your second supplemental report?

2 A. The final version was mine. The original draft I  
3 believe was prepared by Dr. Huebner, and I don't know who  
4 else assisted him in that.

5 Q. You don't know?

6 A. One of the other historians may have contributed to  
7 it.

8 Q. But you don't know?

9 A. No, sir.

10 Q. Who selected the materials that were to be used as  
11 footnotes in that second supplemental report drafted by  
12 Dr. Huebner and someone whose identity you don't know?

13 A. If I can see that, see the footnotes, I can tell you.

14 MR. TIGAR: I'm placing it in front of him,  
15 Your Honor.

16 MR. DRIMMER: Your Honor, I'd also state for  
17 the record I think we have gone a little far afield on  
18 qualifications.

19 A. Actually, this second supplement to the report,  
20 Dr. Huebner and I together decided on the footnotes in  
21 this. The materials had been assembled as a result of a  
22 research trip that he had made to Germany to the federal  
23 archives in Berlin, and then I'm not sure who had --  
24 whether Dr. Coe and/or Dr. Rich both had found the other  
25 materials, the nonFlossenburg materials that are in here,

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1 but Dr. Huebner and I worked together to do this.

2 Q. Now, this document is dated 30 April, is that

3 correct?

4 A. That's correct, yes, sir.

5 Q. Is there anything in here that would tell me as a

6 lawyer trying to get ready for trial where the material was

7 assembled, who wrote it, and who did the footnotes,

8 anything in here that would tell me that other than that

9 Charles Sydnor signed it?

10 A. No, sir. It would tell you I signed it and I'm

11 responsible for it.

12 Q. But the answer to my question is no, there's nothing

13 in here that would tell me?

14 A. No, there's nothing in here.

15 Q. You were a college teacher?

16 A. Yes, sir.

17 Q. You told your students to turn in research papers in

18 their history course, correct?

19 A. Yes, sir.

20 Q. In your college teacher handouts, you told your

21 students what you expected from them in an academic

22 environment, did you not?

23 A. Yes, sir.

24 Q. And you told them when you were teaching at Emory &  
25 Henry that you wanted to make sure that if they turned in

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1 something with their name on it, that it was their own

2 work, right?

3 A. Yes, sir.

4 Q. And in fact, in your -- Your Honor, give me just a

5 moment. I can't find a file.

6 (Pause.)

7 Q. In fact, sir, you told your students that if they did

8 rely on somebody else's work, that they should cite it,

9 correct?

10 A. Correct.

11 Q. And that if they used a primary source that they

12 hadn't actually seen, that they should note that fact,

13 correct?

14 A. Correct.

15 Q. Are there primary sources cited in your reports to

16 the Court and to counsel that you never saw?

17 MR. DRIMMER: I'm going to object.

18 A. No, sir, I don't believe.

19 MR. DRIMMER: I don't mean to interrupt. The  
20 expert report has not been submitted to Your Honor by the  
21 government, first; and second, this isn't a piece of  
22 scholarship, I don't believe, such as would be transmitted  
23 in a class. This is a judicial proceeding, and there are  
24 rules governing the preparation of expert reports.

25 THE COURT: Well, there's no report to the

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1 Court because the Court has not received any report.

2 MR. TIGAR: Yes, Your Honor. I'm attempting  
3 to make two points, and I think the Court knows what they  
4 are. The first is, Your Honor, I can't prepare to  
5 cross-examine people who aren't identified to me with  
6 respect to researches that are not disclosed to me based on  
7 trips about which I'm not informed and documents that are  
8 suddenly appearing. That's number one.

9           Second -- I'm sorry, Your Honor.

10           THE COURT: Well, I think you are taking a  
11 very, very limited and narrow and outmoded view of expert  
12 reports. Expert reports today are not prepared by people  
13 sitting on high stools and wearing green eye shades and  
14 scribbling away on their own. Expert reports today are a  
15 compilation of efforts by a number of people and one person  
16 takes responsibility for the report and is aware of what's  
17 in it. That's what expert reports today are.

18           MR. TIGAR: If Your Honor please, I'd like to  
19 be heard on that question. What we have here, Your Honor,  
20 is an expert report filed by a man who says that he is a  
21 historian and that he takes responsibility for the report  
22 of Charles Sydnor, Jr.

23           Now, in the United States Supreme Court case  
24 in Hazel Atlas versus Empire Glass, which was relied on by  
25 the Sixth Circuit in Demjanjuk versus Petrovsky, the

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1 precise fraud on the Court was that an allegedly  
2 independent expert had signed a report that was in fact  
3 prepared by the lawyers.

4 Now, it is our position -- and I understand  
5 the Court may reject it -- that the same thing has happened  
6 here, that the testimony of this expert is not admissible  
7 because the other side did not disclose to us, either  
8 candidly or in a manner that permits me intelligently to  
9 put trial subpoenas out, the basis for the report. We now  
10 find that there are a half a dozen government employees  
11 that were involved in this preparation and document  
12 collection, Your Honor. And it's just too late for us.

13 Therefore, it's our respectful submission  
14 that on that basis alone, he's not qualified as an expert.  
15 That's what I'm doing here. And if Your Honor has a  
16 different view of the law, I'll quit that part right now.

17 THE COURT: All right. On that particular  
18 point, I disagree with you.

19 MR. TIGAR: I thank Your Honor for his  
20 candor. We have just shortened this examination  
21 materially.

22 BY MR. TIGAR:

23 Q. Doctor, you've testified in 14, 15 cases, right?

24 A. Yes, sir.

25 Q. Do you believe, sir, as a historian that your

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1 methodology for talking in court should be or is different,

2 is different -- the Judge will tell us should be -- from

3 that followed by historians who are doing research papers

4 to present at conferences?

5 A. If anything, I would like to think it's a lot more

6 careful and reserved and conservative even than the effort

7 that would be made by a historian who is preparing a paper

8 for a conference.

9 Q. And just to protect my record, if you were presenting

10 a paper at a conference, you would disclose all the people

11 that helped you, right? Isn't that the usual first

12 footnote, I collaborated with so and so?

13 A. If it was a work to be published and put in the

14 public domain, yes, I would.

15 Q. And that is the standard, right?

16 A. Yes, sir.

17 MR. TIGAR: Would Your Honor indulge me for a  
18 moment? I think I'm done.

19 THE COURT: Yes.

20 MR. TIGAR: Thank you.

21 (Pause.)

22 MR. TIGAR: Your Honor, I have nothing  
23 further at this time except three or four questions with  
24 respect to the articles that I brought and is what Your  
25 Honor asked me to defer. If I could do that tomorrow

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1 morning --

2 THE COURT: We will do that tomorrow morning.

3 MR. TIGAR: -- I would appreciate it, and I  
4 would then ask that the witness -- he's fixing to stay,  
5 Your Honor, I have that feeling.

6 THE COURT: I'm sure of that.

7 MR. TIGAR: But I would ask Your Honor to

8 admonish him.

9 THE COURT: I hope he brought his coat with  
10 him.

11 MR. TIGAR: I would ask Your Honor to  
12 admonish him, please.

13 THE COURT: All right. We will reconvene  
14 tomorrow morning at 9:00 o'clock, and Dr. Sydnor, I would  
15 ask you with respect to the remaining, until we get back  
16 tomorrow, not to consult with the prosecution.

17 THE WITNESS: I understand, sir.

18 MR. TIGAR: I have no objection to them going  
19 out and talking about baseball or Richmond, Virginia, or  
20 anything else. We are not going to follow them around and  
21 see them having a drink or anything.

22 THE WITNESS: The Indians are not at home.

23 MR. DRIMMER: If I may state, the original  
24 documents that we have been looking at, not the original  
25 Trawniki cards from Israel but the other four, are going to

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1 be going back tomorrow morning, so we are --

2 THE COURT: I think we understood that.

3 MR. DRIMMER: Okay. Thank you, Your Honor.

4 MR. TIGAR: Yes. And as to that, I want to  
5 say I think we have done as much with them as we are going  
6 to be able to do. I know we will be talking to Dr. Sydnor  
7 about them, and for those purposes we can use copies.

8 THE COURT: You have all the original  
9 documents right now in your possession, is that right?

10 MR. DRIMMER: Yes. Well, I don't think so  
11 actually, Your Honor. Yes, Your Honor, we do.

12 THE COURT: I thought you did.

13 MR. TIGAR: May I inquire of counsel through  
14 the Court when the Lithuanian red tape bound book is  
15 scheduled to leave?

16 MR. DRIMMER: Tomorrow morning.

17 MR. TIGAR: The Lithuanian, too?

18 MR. DRIMMER: Gone. Everything but the four  
19 Israeli-produced Trawniki cards will be leaving tomorrow.

20 MR. TIGAR: There it is, Your Honor. I heard  
21 it completely backwards. I wonder, can we request that the

22 tape bound book be held? Is there any way we could do  
23 that? I would like Dr. Sydnor to see that.

24 THE COURT: He may have already seen it.

25 MR. TIGAR: Your Honor, if I could just have

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1 five minutes to ask him about it now, out of order, I'll  
2 just ask, and we can let it go.

3 THE COURT: All right. Since he's coming  
4 back tomorrow, that's fine.

5 MR. DRIMMER: I have no objection.

6 MR. TIGAR: May I have it? We'll just  
7 shorten this.

8 BY MR. TIGAR:

9 Q. Dr. Sydnor, I'm going to show you a green book, bound  
10 in red tape --

11 A. Yes, sir.

12 Q. -- and ask you if you've ever seen it before.

13 (Pause.)

14 A. Yes, sir. I have seen this before.

15 Q. And when and where did you first see it?

16 A. I saw this in the conference room at the Office of  
17 Special Investigations facility which is on New York Avenue  
18 in Washington, D.C. I can't remember exactly, I believe  
19 it was either last fall or last summer. It's been about a  
20 year, at least a year since I saw this.

21 Q. Were you there with Mr. Domarkos from Lithuania?

22 A. Yes, sir. I went to OSI specifically for the purpose  
23 of looking at this document which had been brought from  
24 Vilnius, V I L N I U S, the capital of Lithuania.

25 Q. And you met there with Mr. Stutman and Mr. Domarkos,

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1 and who else?

2 A. Mr. Drimmer, Dr. Huebner and Dr. Rich, I believe,  
3 were in the room.

4 Q. And about how long did you take to look through it at  
5 that time?

6 A. I spent probably two hours with the material. I

7 looked at the -- there are carbon copies or onionskin  
8 copies of some other German material in there, too, but I  
9 probably was at OSI a total of two hours that day.

10 MR. TIGAR: Thank you very much, Your Honor.  
11 That gives us the basis then to inquire of him further with  
12 respect to this document.

13 THE COURT: Are there any parts of it that  
14 you particularly want him to look at tonight before he goes  
15 back?

16 MR. TIGAR: Oh, my goodness. That would be  
17 very nice.

18 THE COURT: He could do that.

19 MR. TIGAR: Thank you.

20 Q. Doctor, can I stand up next to you here?

21 A. Sure. Show me what you want me to look at.

22 Q. There's an onionskin here that has a bunch of light  
23 blue names written on the back of it in the Cyrillic  
24 alphabet. I had it a moment ago and I can't seem to find  
25 it again.

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1 A. It's from November.

2 Q. Is it? Would you take a look there, please, sir?

3 MR. DRIMMER: Would you mind if I stay here?

4 MR. TIGAR: No, no. Please.

5 A. I think I know what you are referring to. Is this

6 what you are referring to?

7 Q. No, it's a list of names written in the Cyrillic

8 alphabet. It is the page, we are being very careful, it is

9 the page dated, at the top it says Lublin D E N 17 November

10 1943, and then it says that German word.

11 A. Yes, if I may translate, it says order for the

12 Lithuanian auxiliary policemen or security policemen.

13 Q. All right. I would like you to just look at that

14 document overnight. I know you've seen it before.

15 A. Sure. Actually, let me correct myself on the

16 translation. The literal translation would be "Order for

17 the Lithuanian security guards." That's not policemen.

18 Q. Wachmann is guard?

19 A. Yes, sir.

20 Q. All right. I'm just going through the only German

21 word I know.

22 A. Is this --

23 Q. That's the only one.

24 THE COURT: Just take a look at that tonight.

25 MR. TIGAR: That's an exception to the

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1 admonishment, with our gleeful consent. Thank you, Your

2 Honor.

3 THE COURT: All right. We will reconvene at

4 9:00 o'clock tomorrow morning in the original courtroom

5 downstairs on the first floor.

6 MR. TIGAR: Thank you, Your Honor.

7 MR. STUTMAN: Thank you, Your Honor.

8 (Trial adjourned at 4:50 p.m.)

9

10 C E R T I F I C A T E

11

12 I certify that the foregoing is a correct

13 transcript from the record of proceedings in the  
14 above-entitled matter.

15

16

Bruce A. Matthews, RDR-CRR      Date

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2 BY MR. DRIMMER..... 154:4

3 CROSS-EXAMINATION OF LARRY F. STEWART

4 BY MR. TIGAR..... 190:13

5 REDIRECT EXAMINATION OF LARRY F. STEWART

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