

AFFIDAVIT

I, John Truslow, being duly sworn, state the following:

1. I am a Special Agent in the Federal Bureau of Investigation and have been such for almost sixteen (16) years. I am presently assigned to the Providence office doing white collar and corruption investigations. I have been doing white collar investigations throughout my entire career with the Federal Bureau of Investigation.

2. I am the case agent involving Cumberland Investment Corporation and Harold F. Chorney. I conducted the entire investigation involving CIC's and Mr. Chorney's dealings with Eastland Bank (formerly Woonsocket Institution for Savings) and I am thoroughly familiar with the records of its and his dealings with the bank. These records include those obtained by grand jury subpoena from Eastland Bank, John Cullen, the United States Trustee in Bankruptcy, various banks in the State of Rhode Island, suppliers and purchasers of coins and numerous other sources that dealt with Cumberland and Mr. Chorney during the years that are the subject matter of this indictment. Many of the sources for these records testified as witnesses during the trial of Mr. Chorney.

3. I have personally examined every record we obtained from all of the above sources, most particularly the large number of records of CIC that were obtained from the United States Trustee, which I personally examined at least three (3) separate times.

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4. I have reviewed defendant's Memorandum In Support of his Motion for a New Trial with the prosecutor and have personal knowledge of many of the matters the defendant raises in his memorandum. Many of the statements made in the defendant's memorandum are inaccurate, misleading, and a total distortion of the evidence produced at the defendant's trial. The following paragraphs are an itemization of why I believe the memorandum contains inaccurate and misleading statements, and distortions of the evidence.

5. At the end of January, 1993, the prosecutor, defense counsel, defendant, Postal Inspector Stephen Rothemich, and I traveled to Toronto, Canada, to obtain court sanctioned depositions of accountants who represented CIC and Wescap Enterprises, the Canadian firm that bought out CIC. It was during a recess at one of the depositions that the prosecutor informed Mr. Lutes that the government had a box of video tapes dated August 17, 1990, the date that they were made at the time the assets of CIC were removed from its premises in Woonsocket. The prosecutor indicated he did not believe the video tapes were material or relevant and was therefore not going to view them. However, the prosecutor then told Mr. Lutes that he was free to view them if he wished to do so. Mr. Lutes response was to the effect that, if you are not going to look at them, I am not going to look at them. I myself heard Mr. Lutes' response. I remember the incident because I was very happy that I did not have to sit with Mr. Lutes and the defendant to view many

hours of tapes that the prosecutor and I deemed irrelevant. Mr. Lutes' contention in defendant's memorandums that he was unaware of the existence of the tapes is incorrect. Because the notice was done orally and informally, Mr. Lutes probably forgot that it was mentioned to him while we were in Canada.

6. In his second motion for a new trial, Mr. Lutes points out the inconsistencies between the government's brief on appeal to the First Circuit and the statements I made as to notice to Mr. Lutes in the first affidavit and I reiterate in this second affidavit. The inconsistencies are explainable. The appellate brief was being prepared by the Department of Justice counsel in Washington, DC. After the government's brief was filed I read a copy of it and discovered that there was an error in it regarding the existence of video tapes. The initial brief filed did not mention all of the video tapes that we had in our possession. I knew that was wrong because we had a box full of video tapes that we received from the attorney for Eastland Bank. Mr. Posner and I spoke with the government counsel in Washington, DC and so advised him that the brief, as initially filed, was incorrect. The government's appellate counsel then filed an amended brief with the court. Before filing the amended brief the appellate counsel asked me whether the defense counsel knew of the existence of these video tapes. I told appellate counsel Mr. Lutes did know because I remember distinctly that Mr. Lutes had been told by Assistant United States Attorney Posner of the existence of the video tapes.

He indicated that he did not want to look at them, and since we had no interest in looking at them either I was very happy that I would not have to sit through a viewing of the tapes. But at that time I could not remember exactly when and under what circumstances Mr. Lutes had been informed of the existence of the tapes. At that time the only way that I could think of that he was informed was by telephone from Mr. Posner's office, though I did not specifically remember it happening that way. The amended brief reflected my honest recollection and belief of how Mr. Lutes was informed of the existence of the video tapes.

After the Court of Appeals affirmed Mr. Chorney's conviction and denied his appeal, I was asked by Mr. Posner to assist him in responding to defendant's first motion for a new trial. It was while assisting Mr. Posner by reviewing documents and transcripts that had been generated in this case that I realized that it was during a recess in one of the depositions that we were taking in Canada late in January of 1993 that Mr. Lutes was told of the existence of the video tapes. The time and place were confirmed in my mind when I then went and found the date I had received the video tapes. That date was January 15, 1993, and it was shortly thereafter that we journeyed to Canada for the depositions, during which Mr. Lutes was told about the video tapes.

There has never been any question in my mind that Mr. Lutes was told of the existence of the video tapes long before

trial because my relief at not having to sit through hours of video tapes that Mr. Posner and I believed were irrelevant to the issues in the case, was so strong that I remember it distinctly to this day. The only aspect of the notification that I was initially unsure of was where and when Mr. Lutes was so notified by Mr. Posner.

7. I have looked at the transcript of the stenographic notes taken on August 17, 1990, at the time CIC's assets were removed from CIC premises. I first learned of the existence of such stenographic records from reading defendant's first motion for new trial. We never requested nor did we receive copies of any still photographs taken at the time the CIC assets were removed. I saw a photo album of photographs taken during the August 17, 1990, asset removal process but did not obtain copies of them because the defense counsel did not want to view the videotapes of the same matter and the photos merely showed pictures of the assets (mostly in bulk or in boxes) that were removed. The pictures that I saw did not show a coin by coin itemization or inventory of the assets that were removed.

8. Defendant's memorandum talks about records that are missing, including CIC inventory records. Defendant and his counsel reviewed some sixteen (16) boxes of CIC records in the custody and control of the government located at the United States Attorney's office between October 16, 1992 and November 5, 1992.

They failed to examine eighteen (18) boxes of CIC records prior to trial but did examine six (6) boxes on June 16, 1993, and eight (8) boxes July 14, 1993, after trial. Four (4) boxes of CIC records were never examined by defendant and his counsel. There are at least half a dozen additional boxes of records obtained from other sources which were made available to the defendant and his counsel but were never examined by them.

9. - In his memorandum defendant refers to an inventory of the possessory collateral held initially by Eastland Bank and then by FDIC. That inventory of some 953 coins, claims defendant, was removed from Woonsocket without his knowledge. Defendant claims he only learned that these coins were removed from Agent Truslow's November 8, 1995 affidavit made in support of defendant's first motion for new trial. Def. memo, pages 11, 22 and 25. That inventory taken by FDIC was approximately 953 coins less than the number of coins held by the bank as collateral, which was 7,820 coins, according to Sotheby's inventory taken October 3, 1989. That discrepancy is easily explainable.

On December 27, 1995, I spoke with Per Baverstam, one of the bankruptcy examiners from Cambridge Meridian Group, Cambridge, Massachusetts. He stated that, to the best of his recollection, at his direction and with the approval of the defendant, a substantial quantity of possessory collateral coins, held at Eastland Bank, Woonsocket, which were contained in some five or six boxes, had

been moved some time in early 1990, to the Cambridge Trust in Cambridge, Massachusetts, by armored car. This was done in order to test the value of the collateral by having them examined and graded. Defendant's then attorney, John Boyajian, sat in during the examination of these coins. Per Baverstam confirmed to me that Chorney knew that these coins were being moved up to Cambridge, and Chorney's knowledge is further confirmed in the Authorization and Procedure For Handling of Coins signed by the defendant in late March, 1990, and in Paragraph 40 of the affidavit the defendant himself swore to on May 10, 1990, in support of his motion to strike Examiners Report number 2. See Government's Exhibits I and E, attached to the Government's Memorandum. After the testing was completed these coins were returned to the Eastland Bank branch in Cranston by armored car. The coins were kept segregated and returned in boxes that were marked as "Eastland Collateral".

In 1993, when Fleet Bank took over many of the Eastland Bank branch offices, including the Cranston office, it insisted that all of the assets of CIC contained in one of the Cranston vaults be removed. On August 18, 1993, after the trial, all of the miscellaneous assets of CIC were moved to Woonsocket. Included in the assets moved to Woonsocket were the 953 silver dollars that were part of the possessory collateral which had been previously examined and graded in Cambridge, Massachusetts. The collateral coins that came from Cranston came in boxes. Each of those boxes had FDIC inventory numbers "C-118" and numbers "1 of 7" through "7

of 7". Four of the boxes had a yellow sticker with the words "Eastland Collateral" written on each label indicating that the coins in these boxes were part of the possessory collateral and one box was marked "Part of 50 coin sample Eastland Collateral."

10. On April 21, 1995, the possessory collateral now belonging to FDIC was removed from the bank premises in Woonsocket to FBI premises by myself and two other employees of the FBI, at my direction. I had the collateral removed for security purposes and in order to do a physical inventory of the collateral. The bank building had been sold and FDIC was being urged to remove everything of CIC from the bank premises, including the collateral. I believed the only way to secure the integrity of the collateral was to take possession of it.

11. I and an FBI employee personally inventoried the entire possessory collateral consisting of 7,809 coins. After we completed the physical inventory, I summarized the results and compared those results with Sotheby's physical inventory, taken on October 3, 1989, and the inventory records supplied by the defendant to Eastland Bank dated December 28, 1988.

12. The first thing I did was compare the total number of coins that I inventoried with the total number of coins inventoried by Sotheby's in 1989. My total coins was 7,809. Sotheby's total number of coins was 7,820. Note should be taken that ten (10) of

the coins inventoried by Sotheby's were later sold by the examiners, with permission of the bankruptcy court and the defendant sometime in early 1990. Therefore, Sotheby's coin total would be ten (10) less or 7,810. Next I compared the years and mint marks of my inventory with that of Sotheby's. Seven thousand eight hundred (7,800) of the coins I inventoried and Sotheby's inventory matched completely. Only twenty (20) of Sotheby's coins do not match up, but because of the sale of ten (10) coins since the Sotheby inventory, the difference is only ten (10) coins.

On page 4 of defendant's second motion for a new trial, Mr. Lutes alleges that the total number of coins in Sotheby's inventory is 7, 822, apparently based on his Exhibit B, which is a tallying of coins held by Eastland Bank as collateral and listed in 20-coin rolls, unless otherwise noted. The first thing to note is that the printed Sotheby listing of collateral, defendant's Exhibit B, is not a coin-by-coin inventory of the coin collateral. Despite this there is only a two coin difference between the total of coins inventoried by Sotheby, according to my calculations, and that total as shown by the printed listing of silver dollar rolls.

After reading defendant's second motion for a new trial, I again went back to Exhibits 215 and 216 (Exhibits G and H herein) and totaled up the number of coins inventoried by Sotheby. The total is still 7,820 coins. I found the two coin error made in the printed Sotheby listing of collateral. Items 157 and 158 on

Sotheby's printed listing are counted as rolls of 20 each. On page 18 of Exhibit 215 (Exhibit G in government's memorandum) items 157 and 158 only total 19 coins each. Adjusting for the ten (10) coins that were sold from the collateral there were 7,810 coins in Sotheby's inventory, which is only one more than the total I arrived at when I took my physical inventory.

13. The next comparison I made was between Sotheby's inventory and the Chorney inventory records supplied to the bank. Sotheby had 7,820 coins and Chorney had 7,826 as totals. When comparing the years and mint marks, 7,794 Sotheby coins matched a like number of coins shown on defendant's inventory records of December 28, 1988.

In addition I was able to match up the location of these particular coins by drawer and box number, that is, Sotheby's inventory reflects each box and drawer where the coins were located. These match up almost exactly with the box and drawer numbers on the inventory records of Chorney had given to the bank, as of December 28, 1988.

14. The next comparison I made was between my physical inventory and the CIC records given by the defendant to Eastland Bank. My total of coins came to 7,809. Chorney's total number of coins as of December 28, 1988, was 7,826 of which ten (10) were sold by the examiners in early 1990. When comparing the years and

mint marks, the coins that I inventoried matched Chorney's list of December 28, 1988 for 7,778 coins contained on his inventory records.

In his second and new motion for a new trial defendant seeks to support his contention that his collateral coins were switched by listing the discrepancies or "differences between the Cumberland Investment Corporation inventory of coins collateralizing the loan at Eastland, which was verified and signed for by Thomas Hollis, Senior Vice-President of Eastland, in December 1988 (Exhibit "D"), and agent Truslow's inventory of November, 1995." Defendant's Memo, page 9.

I spoke with Mr. Hollis on January 5, 1996, and he advised me that neither he nor anyone else at Eastland did a coin-by-coin count and did not verify the years and mint marks of the United States silver dollars provided by Cumberland as collateral for its loan. Hollis only counted the number of tubes of coins supposedly containing 20 coins each.

As I explain in paragraph 16 hereinafter, I inadvertently listed twenty (20) 1888-O coins as being 1880-O coins. Mr. Lutes' page 9 analysis shows a difference of forty (40) for 1880-O and 1888-O coins. That should be a zero (0) difference. When these forty (40) coins are subtracted from his total of 103 differences (on page 9) there remain only 63 differences.

Mr. Lutes counts each difference twice. I count each difference only once, so there are only some 31 differences between Cumberland's written inventory (Exhibit D), which was not independently verified by anyone, and my physical inventory taken in November 1995. The year and mint mark match of 7,778 coins between my inventory and Cumberland's list of December 28, 1988 results when the 31 differences alluded to by Mr. Lutes are subtracted from my total of 7,809 coins.

15. Because there were several occasions on which parts of the collateral were either removed by the examiners or were inventoried by FDIC in Woonsocket, and not returned to the exact box and/or drawer after the Sotheby inventory of October 3, 1989, I was not able to make a comparison of the collateral box and drawer locations when I took the physical inventory of the coins.

16. In his second and new motion for a new trial, defendant again attempts to buttress his claim that the collateral coins held by Eastland had been tampered with, switched, and other mishandled. In support of his allegation, defendant did an analysis of the figures contained in Sotheby's October 1989 inventory and the summary figures of the physical inventory taken by Agent Truslow in 1995 which were provided to Mr. Lutes. Mr. Lutes makes a breakdown of what he claims are the differences between the Sotheby's inventory and the Truslow inventory on page 7 of the Memorandum. After I read this breakdown, I went back and rechecked

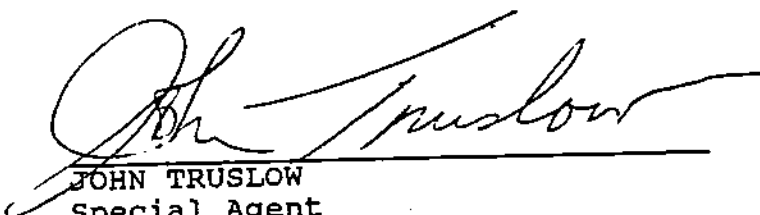
my figures. I did make one inadvertent error. My original figures showed twenty (20) 1888-O coins. In preparing a summary for purposes of responding to the initial motion for new trial, I transcribed the year from 1888-O to 1880-O. Therefore Mr. Lutes' page 7 analysis which shows a difference of forty (40) for 1880-O and 1888-O is in reality zero (0) difference. There were no 1880-Os in the collateral inventory.

I then went back to Exhibits 215 and 216 (entered as full exhibits at the trial on April 29, 1993) and reviewed the column of figures set forth on page 7 by Mr. Lutes as differences between the two inventories. I recomputed all the Sotheby's totals. Mr. Lutes had four incorrect totals for Sotheby's inventories as follows:


YEAR AND MINT MARK	SOTHEBY 10-89 PER MR. LUTES	SOTHEBY PER EXHIBITS 215 AND 216	INVENTORY PER TRUSLOW	NO. OF DIFFERENCES
1904-O	140	120	120	0
1922-P	1,100	1,079	1,079	0
1922-S	100	120	119	1
1924-P	260	280	280	0

Mr. Lutes totals the number of differences on page 7 as 141. When the inadvertent transcription of the 1888-O coins and the above four errors by Mr. Lutes are subtracted from his total of 141 differences, there remain only 22 differences in the manner Mr. Lutes counts differences. A total of 119 difference are not differences at all.

Considering the total number of coins and the very small differences in the total number of coins shown by Sotheby and Agent Truslow, to wit, ten (10) coins, (I claim there are only ten (10) differences; Mr. Lutes differences amount to 22 after correction by his method of counting differences) strongly refutes defendant's allegation that the differences are proof of wholesale switching of the coins.


JOHN TRUSLOW
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before
me this 12th day of January, 1996
at Providence, Rhode Island.


Linda D. Agmon, Notary Public
My Commission Expires 8/27/97.