

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3 Criminal Action No. 96-CR-68

4 UNITED STATES OF AMERICA,
5 Plaintiff,

6 vs.

7 TIMOTHY JAMES McVEIGH and TERRY LYNN NICHOLS,
8 Defendants.

AA

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10 REPORTER'S TRANSCRIPT
(HEARING ON MOTIONS TO SUPPRESS EYEWITNESS IDENTIFICATION)
11 VOLUME I

AA

12

13 Proceedings before the HONORABLE RICHARD P. MATSCH,
14 Judge, United States District Court for the District of
15 Colorado, commencing at 9:00 a.m., on the 18th day of February,
16 1977, in Courtroom C-204, United States Courthouse, Denver,
17 Colorado.

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24 Proceeding Recorded by Mechanical Stenography, Transcription
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1 APPEARANCES

2 PATRICK M. RYAN, United States Attorney for the
3 District of Oklahoma, 210 West Park Avenue, Suite 400, Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.

5 SEAN CONNELLY, LARRY A. MACKEY, BETH WILKINSON, SCOTT
6 MENDELOFF, JAMIE ORENSTEIN and AITAN D. GOELMAN, Special
7 Attorneys to the U.S. Attorney General, 1961 Stout Street,
8 Suite 1200, Denver, Colorado, 80294, appearing for the
9 plaintiff.

10 STEPHEN JONES and ROBERT NIGH, Attorneys at Law,
11 Jones, Wyatt & Roberts, 114 East Broadway, Suite 100, Post
12 Office Box 472, Enid, Oklahoma, 73702-0472; JERALYN MERRITT,
13 303 East 17th Avenue, Suite 400, Denver, Colorado, 80203;
14 CHERYL A. RAMSEY, Attorney at Law, Szlichta and Ramsey, 8 Main
15 Place, Post Office Box 1206, Stillwater, Oklahoma, 74076; and
16 CHRISTOPHER L. TRITICO, Attorney at Law, Essmyer, Tritico &
17 Clary, 4300 Scotland, Houston, Texas, 77007, appearing for
18 Defendant McVeigh.

19 MICHAEL E. TIGAR, RONALD G. WOODS, ADAM THURSCHELL,
20 REID NEUREITER, and JANE TIGAR, Attorneys at Law, 1120 Lincoln
21 Street, Suite 1308, Denver, Colorado, 80203, appearing for
22 Defendant Nichols.

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1 PROCEEDINGS
2 (In open court at 9:00 a.m.)
3 THE COURT: Please be seated. We're convened in
4 96-CR-68, United States against Timothy James McVeigh and Terry
5 Lynn Nichols, for the purpose of hearing motions, a motion
6 filed on behalf of Mr. Nichols on December the 19th as a motion

7 to exclude eyewitness testimony and with supplemental filings
8 and also a motion filed for Mr. McVeigh on January the 7th as a
9 motion to suppress eyewitness identification with some
10 follow-up briefing on both sides, and we're here to consider
11 evidence in connection with these motions.

12 So as usual, our appearances today.

13 Mr. Mackey.

14 MR. MACKEY: Good morning, your Honor. Larry Mackey
15 on behalf of the United States. With me at counsel table is
16 Scott Mendeloff, Aitan Goelman and Beth Wilkinson. Also
17 Government counsel in the courtroom is Mr. Pat Ryan and Jamie
18 Orenstein.

19 THE COURT: All right. Thank you.

20 MR. MACKEY: And Sean Connelly.

21 THE COURT: And for Mr. McVeigh, Mr. Jones.

22 MR. JONES: Good morning, your Honor. Stephen Jones
23 on behalf of the accused, Timothy McVeigh. To my right,
24 Mr. Rob Nigh and Ms. Jerri Merritt and Ms. Cheryl Ramsey and
25 Mr. Tritico.

4

1 Your Honor, if I may, I wish to inform the Court that
2 one of your expert witnesses, Mr. Gary Wells, is present in the
3 courtroom and that he is an expert on this particular issue,
4 and I would ask that he be permitted to remain. And also, our
5 case agent, Mr. David Fecheimer, is also in the courtroom, and
6 I will ask that he be excused from the rule as a designated
7 case agent for Mr. McVeigh's team.

8 THE COURT: Any objection to that?

9 MR. MACKEY: None, your Honor.

10 THE COURT: All right, those requests are granted.

11 For Mr. Nichols.

12 MR. TIGAR: Mike Tigar for Terry Lynn Nichols.

13 Mr. Nichols has a written waiver of his appearance on file with

14 the Court. With me at counsel table, Ron Woods, Reid

15 Neureiter, Adam Thurschwell and Jane Tigar.

16 THE COURT: All right, thank you.

17 And, Mr. Jones, Mr. McVeigh has also filed his written

18 waiver of his appearance for these hearings.

19 MR. JONES: He has, your Honor.

20 THE COURT: Thank you.

21 Now, both defendants have filed motions. As I've

22 indicated, there's only one area I think in which there is --

23 well, there are several areas actually that involve both, but

24 one area and one witness only as to Mr. Nichols.

25 Have you agreed among yourselves as to the order of

5

1 proceeding here?

2 MR. WOODS: Yes, your Honor. Ron Woods for Terry

3 Nichols. We've agreed that the McVeigh team will go first.

4 THE COURT: Okay. Then I'm prepared to hear from you

5 and proceed.

6 Mr. Jones.

7 MR. JONES: Your Honor, we'll waive opening statement

8 and begin the commencement of evidence. And if that pleases

9 the Court, we will call Mr. Tom Kessinger as our first witness.

10 THE COURT: All right, we'll get Mr. Kessinger. We

11 will, of course, impose the rule on sequestration of these

12 witnesses so that all testifying witnesses are excluded from

13 the courtroom as well as my earlier rulings on Rule 615.

14 If you'll come forward here, please, to be sworn by

15 the clerk.

16 (Thomas Kessinger was sworn.)
17 THE COURTROOM DEPUTY: Have a seat, please. Would you
18 state your full name for the record and spell your last name.
19 THE WITNESS: Thomas Kessinger. K-E-S-S-I-N-G-E-R.
20 THE COURT: You need to move the microphone here.
21 THE COURTROOM DEPUTY: I'm sorry. How do you spell
22 your name again?
23 THE WITNESS: K-E-S-S-I-N-G-E-R.
24 THE COURT: Thank you. Proceed.
25 DIRECT EXAMINATION

6

Thomas Kessinger - Direct

1 BY MR. JONES:
2 Q. Mr. Kessinger, your full name is Tom Kessinger?
3 A. Thomas.
4 Q. And your date of birth?
5 A. 10/26/49.
6 Q. Your social security number, sir?
7 A. 5 1 5 - 5 2 - 7 2 2 0 .
8 Q. And your place of birth?
9 A. Junction City, Kansas.
10 MR. MENDELOFF: I have to object to this. What is the
11 relevance for this kind of background information?
12 THE COURT: Identification, I assume.
13 Get on with it.
14 BY MR. JONES:
15 Q. Mr. Kessinger, where do you presently reside?
16 A. At 938 East 4th Street, Lot No. 11, Junction City Kansas.
17 Q. And are you still employed at Elliott's Body Shop?
18 A. No, sir.

19 Q. On April 17, 1995, you were working at Elliott's Body Shop;

20 is that correct?

21 A. Yes, sir.

22 Q. Between 4:15 and 4:30 p.m. on that day, were you on break

23 sitting in the office area?

24 A. Yes, sir.

25 MR. MENDELOFF: Judge, I have to object. There is no

7

Thomas Kessinger - Direct

1 reason for leading questions with this witnesses. He's a

2 neutral witness. He's not the Government's witness. He's not

3 an agent.

4 MR. JONES: I believe he's a hostile witness in the

5 classical sense. Also, there's no jury present. I'm simply

6 trying to move it along.

7 THE COURT: The objection to leading is overruled.

8 Proceed.

9 BY MR. JONES:

10 Q. Was your answer to my question yes?

11 A. Yes.

12 Q. At that point in time, did two males come in and begin a

13 conversation with Vickie Beemer about picking up a rental

14 truck?

15 A. Yes.

16 Q. For purposes of my questions today, Mr. Kessinger, I'm

No. 17 going to refer to these individuals as Unidentified Subject

18 1 and Unidentified Subject No. 2, until I let you know

19 otherwise.

20 Which of the two individuals; that is, Unidentified

21 Subject No. 1 and Unidentified Subject No. 2, conducted the

22 transaction with Miss Beemer?

23 A. No. 1.

24 Q. The individual that you have identified as Unidentified
25 Subject No. 1 was very talkative and acted nervous; is that

8

Thomas Kessinger - Direct

1 correct?

2 A. Yes.

3 Q. And this individual was 5-foot 10 inches tall, weighed
175

4 to 185 pounds, had green or brown eyes, and a rough complexion

5 or acne; is that correct?

6 MR. MENDELOFF: Judge, objection.

7 THE COURT: Sustained. At this point, I think you

9 BY MR. JONES:

10 Q. What is your recollection of this individual's weight,

11 height, color of eyes, and complexion?

12 MR. MENDELOFF: Judge, objection, compound question.

13 THE COURT: Sustained.

14 BY MR. JONES:

16 A. Around 5 10.

17 Q. His weight?

18 A. I couldn't see that much of him to give any weight.

19 Q. Are you telling me that you could not give a weight?

20 A. I would only estimate.

21 Q. What is your estimate?

23 Q. I'm sorry?

24 A. 165 to 170 pounds.

25 Q. Do you recall being interviewed by Raymond Rozycki of the

9

Thomas Kessinger - Direct

1 FBI on April 20, 1995?

2 A. Yes, sir.
3 Q. At that time did you not tell this special agent of the
4 Federal Bureau of Investigation that Unidentified Subject No. 1
5 weighed 175 to 185 pounds?

7 Q. What color of eyes did this individual have?

8 A. I do not know.

9 Q. On April the 20th, 1995, do you recall having an interview
10 with FBI Special Agent Raymond Rozycki?

11 A. Yes, sir.

12 Q. And at that time did you not describe Unidentified Subject

14 A. Yes, I believe I did.

15 Q. And what type of complexion did this individual have; that
16 is, Unidentified Subject No. 1?

17 A. Blemishes on his face.

18 Q. I beg your pardon?

19 A. Blemishes on his face.

21 MR. MENDELOFF: Judge, I don't understand the
22 question. I have to object to vague. I don't see what is
23 unclear about what does he mean by blemishes.

24 THE COURT: Well, I don't. The objection is
25 overruled. The question is what do you mean by blemishes.

10

Thomas Kessinger - Direct

1 THE WITNESS: Looked like could have had possible some
2 kind of scar tissue of acne or something like that.

3 BY MR. JONES:

4 Q. Did he have a rough complexion?

5 A. I guess.

6 Q. Well, did you tell Special Agent Raymond Rozycki of the FBI
7 on April 20, 1995, that he had a rough complexion?

8 A. Blemishes or acne scars or something like that.

9 Q. You think that's what you told the special agent of the
10 FBI?
11 A. Yes, sir, I believe so.
12 Q. Now, this conversation that you had with Special Agent
13 Raymond Rozycki on April the 20th was approximately three days
14 after the transaction on April the 17th; is that correct?
15 A. Yes, sir.
16 Q. Was Unidentified Subject No. 1 accompanied by a person that
17 later became known as John Doe 2?
18 A. Yes, sir.
19 Q. And would you describe what this individual was wearing,
20 please.
21 A. Black --
22 Q. That is, No. 2?
23 A. No. 2?
24 Q. Yes, sir.
25 A. Black T-shirt. Blue --

11

Thomas Kessinger - Direct

1 Q. Go ahead.
2 A. I believe jeans, and a ball cap. Royal blue and white.
3 Royal blue in the front and white in the back.
4 Q. Did this individual have a tattoo on his body that was
5 visible to you?
6 A. About a quarter inch of it was visible.
7 Q. And where was that?
8 A. On his left upper arm.
9 Q. This hat that you have described as being royal blue in
10 front and white in back, did it have a pattern?
11 A. Yes, sir.
12 Q. What was the pattern on the hat?
13 A. Zig-zag pattern.

15 Subject No. 1 that rented the Ryder truck, what was he wearing?

16 A. I said it on the report that it was a camou military camou,

17 and then I said later it was khakis, and at this point in time

18 I really don't know.

19 Q. When you said military camou, do you mean camouflage?

20 A. Yes, sir.

22 as you related to Agent Scott Crabtree of the FBI. Do you

23 remember him?

24 A. Yes, sir.

25 Q. When did you first meet him?

12

1 A. That Wednesday, which I believe would have been the 19th or

2 the 20th.

3 Q. And the Wednesday following the transaction on Monday?

4 A. Yes, sir.

5 Q. If Monday was the 17th, then Wednesday would be what?

6 A. The 19th, I believe.

7 Q. Do you recall what hour of the day or part of the day you

8 first met Agent Crabtree?

9 A. Probably around 4:45.

10 Q. In the afternoon?

11 A. Yes, sir.

12 Q. And at that time did you have an interview with him?

13 A. A short one, yes.

14 Q. Now, in that interview -- let me withdraw that.

15 Did you have two interviews with him that day or just

16 one?

17 A. Just one.

18 Q. All right.

19 A. I believe.

20 Q. At that interview, Mr. Kessinger, what did you describe

21 Unidentified Subject No. 1 as wearing?

22 A. Camou, military camous.

23 Q. By that, you mean camouflage?

24 A. Yes, sir.

25 Q. And did you describe him physically?

13

Thomas Kessinger - Direct

1 A. Just the face.

2 Q. And what did you tell him about the face?

3 A. His chin was peculiar to me.

4 Q. Anything else?

5 A. He had beady eyes.

6 Q. Anything else?

7 A. And the blemishes on his face. And short hair.

8 Q. Did you describe him as wearing a multicolor uniform?

9 A. Yes, sir. Which I called the camou, but at this time I

10 can't remember exactly what I said.

11 Q. Well, I take it your memory would have been better on

12 Wednesday, April the 19th, concerning a transaction that

13 occurred on Monday, April 17, 1995, than it would be today,

14 almost two years later; would that be a fair statement?

15 A. Yes, sir. 90 percent of the people that come in there wear

16 camous.

17 Q. Sir?

18 A. 90 percent of the people that come in that place wear

19 camous or khaki military clothing.

20 Q. So someone that didn't wear it would stand out in your

21 mind?

22 A. No, I would say camous or khakis would come out -- would

23 come out of my mouth more quickly than regular dressed person.

24 Q. Are you telling me you were mistaken?

25 A. I believe I was.

Thomas Kessinger - Direct

- 2 A. I just believe I was because I couldn't see that much of
3 his body from where I was sitting to see --
- 4 Q. How far --
5 A. -- to see exactly his pants and his shirt.
- 6 Q. Well, how far away from him were you?
7 A. About 10 feet.
- 9 A. Yes, sir. But there's a counter that was blocking my view
10 of the -- his pants.
- 11 Q. I see. Wasn't blocking the view, I take it, of his shirt?
12 A. No, sir.
- 13 Q. And was the store lit, were the lights on?
14 A. Yes, fluorescent.
- 16 A. Yes, sir.
- 17 Q. Well, certainly you saw the man well enough to describe his
18 features on his face even down to the blemishes?
19 A. Yes, sir.
- 20 Q. And I take it that your field of vision was sufficient that
21 you could even see that quarter inch of a tattoo that was
22 coming out from under the shirt of John Doe 2; is that correct,
23 Mr. Kessinger?
24 A. He was standing closer to around the counter, closer to me,
25 John Doe No. 2.

Thomas Kessinger - Direct

- 1 Q. I see. Well, were they standing side by side?
2 A. No, sir.
- 3 Q. Where were they standing?
4 A. No. 1 was standing approximately right in front of the

5 door, in front of the counter, and No. 2 was around the
6 counter, closer to me.

7 Q. Well, did the counter kind of end there at some point?

8 A. It ended, and then another section of it come down to an
9 aisle, to another doorway.

10 Q. I see. And so was Miss Beemer on the same side of the
11 counter as you?

12 A. Yes, sir.

13 Q. And you were there and saw this transaction for how long?

14 A. Approximately ten minutes.

15 Q. All right. Now, Mr. Kessinger, on April the 17th, 1995,
16 you did not know the name of John Doe 1 or Unidentified Subject
17 No. 1 or Unidentified Subject No. 2 or John Doe 2, did you?

18 A. No, sir.

19 Q. Were you later made aware that the Government had indicated
20 that Mr. Todd Bunting might be John Doe 2?

21 A. Yes, sir.

22 Q. When did you become aware of that?

23 A. I was aware that I had made a mistake in the, in the, in
24 November.

25 Q. In November what year?

16

Thomas Kessinger - Direct

1 A. Of '96.

2 Q. In November of 1996, a year and a half after you first saw
3 John Doe 2 at Elliott's Body Shop, you were aware you were
4 mistaken?

5 A. Yes, sir.

6 Q. Up to November 1996, you believed John Doe 2 was not Todd
7 Bunting?

8 A. Yes, sir.

9 Q. Do you know Mr. Bunting?

10 A. No, sir.

11 Q. Did you know or do you know Mr. McVeigh?

12 A. No, sir.

13 Q. Do you know Sergeant Michael Hartig?

14 A. No, sir.

15 Q. Now, prior to November 1996, did you see reports in the

16 media concerning whether Mr. Todd Bunting was at Elliott's Body

17 Shop on Tuesday, April 18?

18 A. Yes, sir.

19 Q. And what time on Tuesday, April 18, was Mr. Bunting there?

20 A. I have no idea.

21 Q. Have you used anything to refresh your recollection, sir?

22 A. No, sir.

23 Q. Did you ever call the government agents or the FBI and

24 inform them that information that Mr. Bunting was at Elliott's

25 Body Shop was correct?

17

Thomas Kessinger - Direct

1 A. No, sir.

2 Q. On April 24, 1995, did you assist in preparing a composite

3 drawing of John Doe No. 2's hat?

4 A. When was this, sir?

5 Q. April 24, 1995.

6 A. Yes, sir, I believe so.

7 Q. And was that the third composite of Unidentified Subject

8 No. 2?

9 A. Yes, sir.

10 Q. And did you believe the hat description was accurate or

11 inaccurate?

12 A. At that time I believe it was accurate.

13 THE COURT: If you want to take a glass of water

14 there, you're entitled to it.

15 THE WITNESS: Thank you.

16 THE COURT: Anytime.

17 BY MR. JONES:

18 Q. I can wait, so if you want to get a glass of water.

19 A. No, I'm all right.

20 Q. All right. And you signed that third composite of

21 Unidentified Subject No. 2; is that correct?

22 A. I don't recall, sir.

23 Q. All right. On April the 27, 1995, did you give another

24 interview to the FBI?

25 A. Yes, sir.

18

Thomas Kessinger - Direct

1 Q. And do you recall what the subject of that interview was?

2 A. Something to do with the hat, I believe.

3 Q. Was it not also involving a physical description of John

4 Doe 1 and John Doe 2?

5 A. I don't remember, sir.

6 Q. All right. But in any event, on April 27, 1995, you were

7 still convinced that the person that you had described as John

8 Doe 2 had accompanied John Doe 1 on April 17; is that correct?

9 A. Yes, sir.

10 Q. All right. On April 27, 1995, did you tell these two

11 agents that were interviewing you that Unidentified Subject No.

12 1 was the only individual that you heard speak?

13 A. Yes, sir.

14 Q. Is that correct?

15 A. Yes, sir. Best of my knowledge.

16 Q. What did you tell the individuals from the FBI that day

17 concerning the jawline of Unidentified Subject No. 1?

18 A. Wasn't the jawline. It was the chin. And it was a

19 horizontal line that ran underneath his lip, and the chin
20 protruded out like this.
21 Q. All right, sir. And would you describe it as a scar or
22 some other way?
23 A. It wasn't a scar, from what I could see.
24 Q. Was it a noticeable line?
25 A. Yes, sir.

19

Thomas Kessinger - Direct

1 Q. How did you describe Unidentified Subject No. 2 that day?
2 A. Wearing a ball cap, thick eyebrows.
3 Q. Did you also say he was muscular and had a good V-shaped
4 body?
5 A. Yes, sir, I did.
6 Q. Did you tell them that you had observed the bottom portion
7 of the tattoo on the left upper arm?
8 A. Yes, sir, I did.
9 Q. What did you say to them about whether Unidentified Subject
10 No. 2 had a hat on while in the office?
11 A. What did I say?
12 Q. Yes.
13 A. It was blue and white, blue in front -- royal blue in
14 front, white in back, and it had something like a scallop
15 pattern. I believe that's what I said at that time.
16 Q. What did you say to them, whether the individual kept the
17 cap on or took it off and on?
18 A. It remained on the whole time I seen him.
19 Q. All right. What did you say about Unidentified Subject No.
20 2 and whether or not the individual had a tan?
21 A. Looked like he had been in the sun.
22 Q. Did you describe him as having a good tan?

23 A. I believe I did.
24 Q. On April the 29, 1995, did you assist in another composite
25 drawing of unidentified Subject No. 2, only this time with a

20

Thomas Kessinger - Direct

1 profile?
2 A. Do you mean a side shot?
3 Q. Yes, sir.
4 A. Yes, sir.
5 Q. Who was present at that meeting?
6 A. I believe Scott Crabtree and Mrs. Boylan.
7 Q. Is that Jeanne Boylan?
8 A. The lady, yes.
9 Q. Yes. And was a composite profile or side shot, as you call
10 it, prepared of Unidentified Subject No. 2?
11 A. Yes, Mrs. Boylan did.
12 Q. And did you show it to her?
13 A. She --
14 Q. I'm sorry. Did she show it to you?
15 A. Yes, sir.
16 Q. And did you agree that it was an accurate description?
17 A. Yes, sir.
18 Q. What conversation did you and Mr. Crabtree have before you
19 talked with Miss Boylan, if any?
20 A. I don't believe we had one.
21 Q. What conversation did you and Mrs. Boylan have to assist in
22 preparing this composite profile or side shot?
23 A. Well, she kind of went from the first drawing that I had
24 made -- that was made; and she asked me different features
25 about the man's face, and so on and so forth, and particular

21

Thomas Kessinger - Direct

- 1 questions about the hat.
- 2 Q. Did you say anything to her other than what you've
- 3 testified to this morning?
- 4 A. If I did, I don't remember.
- 5 Q. Is there anything which would refresh your recollection?
- 6 A. Possibly, yes.
- 7 Q. What would that be?
- 8 A. I don't know.
- 9 Q. Prior to April 30, 1995, were you ever shown a photographic
- 10 lineup? Do you know what I mean by photographic lineup?
- 11 A. Mug shots on a piece of paper?
- 12 Q. That's fair enough.
- 13 A. Yes, sir.
- 14 Q. And when were you first shown that?
- 15 A. I believe it was in the afternoon, Sunday afternoon.
- 16 April 30.
- 17 Q. Prior to that time, you had not been shown any mug shots or
- 18 photographic lineup?
- 19 A. No, sir.
- 20 Q. Mr. Kessinger, where were you on the days of April 22d,
- 21 23d, 24th, and 25th of 1995?
- 22 A. I believe I was at work, sir.
- 23 Q. Did you at any time leave your place of work or your place
- 24 of residence and go someplace with the FBI, or any law
- 25 enforcement agency?

22

Thomas Kessinger - Direct

- 1 A. At this time, I don't remember; but I don't believe I did.
- 2 Q. Do you remember that the FBI agents came to your place of
- 3 residence, the place where you were renting, and were looking

4 for you on Friday or Saturday?

5 A. I believe it was Saturday, Mr. Smith was. And I believe
6 that was for the drawing out at Fort Riley.

7 Q. All right --

8 MR. MENDELOFF: Just for the record, I'm not sure what
9 date we're talking about. There are two Saturdays here.

10 BY MR. JONES:

11 Q. Which Saturday are you talking about?

12 A. There is one Saturday -- the same Saturday that I believe
13 Agent Mr. Smith come out to my residence, and I was not home.
14 I was gone somewhere. I can't remember. And anyway, they
15 couldn't find me; and anyway, he come to my house to get me to
16 go out to Fort Riley to be with Miss Boylan.

17 Q. All right, that would be Saturday the 29th, wouldn't it?

18 A. I believe so.

19 Q. Did you see Miss Boylan more than once?

20 A. No, sir.

21 Q. All right. I'm talking about the Saturday, which would be
22 April 22d. Where were you that day?

23 A. I can't remember, sir.

24 Q. Were you in Junction City?

25 A. Yes, sir, I was.

23

Thomas Kessinger - Direct

1 Q. Were you with any agents of the FBI?

2 A. Not that I know of.

3 Q. Were you with any other law enforcement agents?

4 A. Not that I know of, sir.

5 Q. Prior to April 30, 1995 -- or let me withdraw that and put
6 it this way.

7 From April the 19th, 1995, until April 30, 1995, did
8 you have any conversations with any law enforcement officers

9 concerning the Oklahoma City bombing other than in Junction
10 City Kansas, or at Fort Riley?
11 A. No, sir.
12 Q. Did you have any conversation with any agents or law
13 enforcement authorities about traveling to Oklahoma City to
14 participate in an in-person lineup on the weekend of April 22?
15 A. No, sir.
16 Q. You did not participate in that lineup; is that correct?
17 A. Yes, sir.
18 Q. Do you know why?
19 A. No, sir.
20 Q. Prior to April the 30th, I believe you told me that you
21 were not asked to look at any photographic lineup.
22 A. There was a Sunday there that I don't know if it was the
23 29th or the 30th that they brought a photographic lineup to my
24 house.
25 Q. Who brought it?

24

Thomas Kessinger - Direct

1 A. There was two agents and a detective, Bob Story.
2 Q. And which agency is Mr. Story with?
3 A. He's with the Junction City police department.
4 Q. What time of day did they come to your house?
5 A. I can't remember the exact time, but it was in the
6 afternoon. Early afternoon.
7 Q. And what did they say to you when they came?
8 A. They come in to my house, and we went to the kitchen. And
9 they asked me to sit down at the kitchen table. And they said
10 that there may or may not be an individual that I could
11 identify that rented the Ryder truck at Elliott's Body Shop and
12 that if I did see him, to point at him; if I didn't, if I

13 couldn't identify anybody on that paper, to tell them right
14 then and there.
15 Q. How many photographic spreads did they show you?
16 A. There was only one sheet of paper, and I believe it had six
17 mug shots on it.
18 Q. Did they say anything else to you before you looked at the
19 spread? And by "spread" I mean the mug shots, as you call
20 them.
21 A. No, sir.
22 Q. And did you say anything to them before you looked at the
23 spread?
24 A. No, sir.
25 Q. What did they say to you while you were looking at the

25

Thomas Kessinger - Direct

1 spread?
2 A. It was face down. I didn't get to look at it.
3 Q. Did you ever look at it?
4 A. Yes, sir, I did look. They did flip it over, and I did
5 look at it.
6 Q. All right.
7 A. And I did pick out an individual that was on that.
8 Q. And did you have any conversation with them once you saw
9 the spread and it was turned over?
10 A. No. They turned -- as soon as I picked out the individual
11 that was -- I seen that rented the truck, I -- they turned over
12 the paper and had me sign the back side of that photograph and
13 had me date it, also, I believe. And then they signed it right
14 underneath my name.
15 Q. You selected one of the six individuals as the person you
16 believe had rented the Ryder truck?
17 A. Yes, sir.

- 18 Q. And how did you signify your selection?
- 19 A. I pointed.
- 20 Q. Pointed?
- 21 A. Yes, sir. And then they flipped the paper over, and then I
- 22 signed the back side of that photo.
- 23 Q. Did you say anything, or did you just point?
- 24 A. I said, "That's him right there." And that's what I said.
- 25 Q. And what did they say?

26

Thomas Kessinger - Direct

- 1 A. They never indicated either way. They didn't have no
- 2 emotion whatsoever.
- 3 Q. All right.
- 4 A. They just asked me -- they just picked up the piece of
- 5 paper and asked me to sign the back of that photograph.
- 6 Q. After you had signed the back of it, what happened next?
- 7 A. They thanked me. You know, they just said, "Thank you very
- 8 much for your time," and proceeded to walk towards the door.
- 9 Q. Now, on April 30, 1995, when these gentlemen arrived, were
- 10 you living at 417 South Madison?
- 11 A. Yes, sir, I was.
- 12 Q. In Junction City?
- 13 A. Yes, sir.
- 14 Q. And did you own that house? Were you renting?
- 15 A. I was renting, sir.
- 16 Q. And the name of the owner?
- 17 A. Anita Crocek.
- 18 Q. Crocek?
- 19 A. Crocek is the best way I can pronounce it.
- 20 Q. All right. Now, was this a house, a duplex, apartment?
- 21 A. It was --

22 MR. MENDELOFF: Judge, objection.
23 THE COURT: What's the importance of this?
24 MR. JONES: I'm coming right to it.
25 THE WITNESS: It was a one-bedroom house.

27

Thomas Kessinger - Direct

1 BY MR. JONES:
2 Q. Did you have a television set?
3 A. Yes, sir, I did.
4 Q. Had you been watching any of the proceedings with respect
5 to the Oklahoma City bombing?
6 A. No, sir. Mr. Crabtree told me not to.
7 Q. When did he tell you that?
8 A. He reminded me of a -- when I left Fort Riley after being
9 with Mrs. Boylan.
10 Q. And that would have been that you were with Ms. Boylan on
11 Saturday the 29th?
12 A. Yes, sir.
13 Q. The day before?
14 A. Yes, sir.
15 Q. Now, you say he reminded you of it. What do you mean he
16 reminded you of it?
17 A. Well, he told me it wouldn't, to only -- I can't remember
18 how he put it. But he told me to rely only on my own memory,
19 not to be watching TV to sway my vision of the person I had in
20 mind.
21 Q. Was that the first time he had given you that statement?
22 A. No, sir, it was not.
23 Q. When was the first time?
24 A. The first time was when we interviewed out at Fort Riley,
25 and I believe I was with the composite drawer.

Thomas Kessinger - Direct

1 Q. Well, that was -- are you talking about the FBI agent, or
2 Miss Boylan?

3 A. Before Mrs. Boylan, which would have been about a -- on the
4 19th, I believe, or the 20th. In that area.

5 Q. Could it have been on April 24th at Fort Riley?

6 A. It could have been, yes, sir.

7 Q. All right. In any event, regardless of the date, your
8 recollection is that the first time that Mr. Crabtree told you
9 not to watch television was on the day that you were with the
10 special agent of the FBI, assuming he's a special agent, in any
11 event, the sketch artist?

12 A. Yes, sir.

13 Q. Not Miss Boylan, but the FBI sketch artist?

14 A. Yes, sir.

15 Q. Had any other agent of the FBI or any law enforcement
16 officer told you prior to that time not to watch television?

17 A. No, sir. Just Mr. Crabtree, sir.

18 Q. Now, specifically on the day that you were there with the
19 sketch artist from the FBI at Fort Riley and Mr. Crabtree, tell
20 me, please, precisely as you remember, what Special Agent
21 Crabtree told you about watching television or anything else?

22 A. He specifically said not to watch TV or any of the news
23 media because it could -- he wanted me not to watch it for the
24 simple fact that I had my own vision of what John Doe No. 1 and
25 John Doe No. 2 looked like and not to watch any television for

Thomas Kessinger - Direct

1 the simple fact is it swayed my identification one way or the
2 other.

3 Q. And is that what he told you?

4 A. Somewhat, in that general -- not word for word; but, you

5 know, as best I can remember, something like that.

6 Q. Now, you say that he reminded you again on the day that you

7 were with Mrs. Boylan?

8 A. Yes, sir.

9 Q. All right. Between the day you were with the sketch artist

10 and the day you were with Mrs. Boylan, did any other law

11 enforcement officer of any agency give you similar advice or

12 instruction?

13 A. I cannot remember.

14 Q. You did not follow that advice or instruction, did you?

15 A. Yes, sir, I did.

16 Q. Always?

17 A. Yes, sir.

18 Q. Without exception?

19 A. Without exception.

20 Q. Until when?

21 A. Until . . . I can't remember, sir.

22 Q. Well, when did you feel you could first watch television?

23 A. I could watch television, but I would turn the channel when

24 anything about the bombing come on. And I believe it was

25 approximately almost a month later.

30

Thomas Kessinger - Direct

1 Q. So up until a month later? A month from when?

2 A. A month after April 19.

3 Q. So in your mind, the first time you thought you could watch

4 television or read anything about this case was on or around

5 May 19?

6 A. Yes, sir.

7 Q. 1995?

8 A. Around then, yes, sir.

9 Q. Well, in fact, Mr. Kessinger, didn't you on May the 2d,
10 1995, telephone Special Agent Scott Crabtree and tell him that
11 you had been watching a television news report earlier on May
12 the 2d, and you saw a driver's license that looked like John
13 Doe 2?

14 A. Yes, sir, I did.

15 Q. So you were mistaken when you testified a few minutes ago
16 under oath --

17 A. Yes, sir.

18 Q. -- that there was not a single exception; is that correct?

19 A. I said I couldn't remember; but, yes, you're right. As you
20 recall.

21 Q. I see. Now, Mr. Kessinger, I want you to think carefully
22 before you answer my next question, please. Have you ever told
23 anybody, other than this conversation on May 2d with the FBI --
24 have you ever told any other person prior to May 19 that you
25 did in fact watch as much television as you could about the

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Thomas Kessinger - Direct

1 Oklahoma City bombing?

2 A. Not to my recollection, sir.

3 Q. Tell me again the name of your landlord?

4 A. % Anita Crocek.

5 Q. Would you believe her under oath?

6 A. I don't know.

7 Q. Did you tell her you had been watching television?

8 A. I watched television every day, sir.

9 Q. I'm talking about with respect to the Oklahoma City bombing
10 case?

11 A. No, sir.

12 Q. You did not?
13 A. I don't believe I did. Matter of fact, I think I even told
14 her I could not watch television --
15 Q. You think you told her --
16 A. -- about the bombing.
17 Q. About the bombing. All right. Did you tell any -- strike
18 that.
19 Leaving aside Mrs. % Crocek, did you tell any other
20 person between April the 19th and May the 19, 1995, that you
21 had been watching television, other than the conversation --
22 talking about television of the Oklahoma City bombing case --
23 other than the discussion you had on May 2d with Mr --
24 A. Crabtree.
25 Q. -- Crabtree?

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Thomas Kessinger - Direct

1 A. Not that I him aware of, sir.
2 Q. Did you read any newspapers between April 21 and May 19?
3 A. I believe I wasn't getting any newspaper at that time, sir.
4 Q. Well, I didn't ask you whether you were getting them. I
5 asked you whether you read any of them.
6 A. No, sir, I don't believe so.
7 Q. Are you aware of the fact that on the morning of April the
8 30th, the same day that you claimed to have made your selection
9 as to who rented the Ryder truck, that there was a front page
10 story in the Junction City newspaper identifying Mr. McVeigh as
11 the person who rented the Ryder truck?
12 A. No, sir.
13 Q. You didn't read that article on that very day before the
14 agents came out --
15 A. No, sir, I did not.
16 Q. -- to your house?

- 17 A. No, sir. I never seen the article.
- 18 Q. Did you have a television set in your apartment?
- 19 A. In my house, yes.
- 20 Q. I'm sorry. In your house, in the month of April and May,
- 21 1995?
- 22 A. Yes, sir.
- 23 Q. Was it working?
- 24 A. Yes, sir, it was.
- 25 Q. Did you have cable?

33

Thomas Kessinger - Direct

- 1 A. Yes, sir.
- 2 Q. What stations did your cable pick up?
- 3 A. 2 through 40, I believe.
- 4 Q. So 38 channels?
- 5 A. Approximately, yes, sir.
- 6 Q. Did you watch television for any reason on the days of
- 7 April 21st, 22d, 23d, and 24th?
- 8 A. Not that I recall. I believe I was working during the day.
- 9 Q. Was the TV set -- was there a TV set at Elliott's?
- 10 A. I don't recall.
- 11 Q. When you got home or on the weekends, did you watch
- 12 television in that particular time?
- 13 A. I'm sure I did, sir.
- 14 Q. And I'm talking about now April 22d, 23d, 24th, 25th, 26th,
- 15 27th?
- 16 A. Yes, sir. I'm sure I did watch TV sometime during that
- 17 time.
- 18 Q. How much television do you think you watched during those
- 19 five days?
- 20 A. Maybe a couple hours in the evening.

- 21 Q. What channels do you ordinarily watch?
- 22 A. A lot of MTV, a lot of -- a lot of Discovery Channel, and,
- 23 well, a lot of Channel 13, I believe.
- 24 Q. And what is Channel 13?
- 25 A. It's out of Topeka, Kansas, sir.

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Thomas Kessinger - Direct

- 1 Q. Sir?
- 2 A. It's out of Topeka, Kansas, sir.
- 3 Q. Did you watch any evening news programs; that is, the
- 4 network, Peter Jennings, Tom Brokaw, Dan Rather?
- 5 A. No, sir.
- 6 Q. Did you watch any local news?
- 7 A. That would be on Channel 6. No, sir, I did not.
- 8 Q. By "local news," I mean Kansas news, not necessarily
- 9 Junction City news. Did you watch any coverage on CNN?
- 10 A. No, sir, I don't believe I did.
- 11 Q. Did you watch the memorial funeral service from the state
- 12 fairgrounds?
- 13 A. No, sir, I did not.
- 14 Q. Did you watch any of the press conferences?
- 15 A. No. They're boring.
- 16 Q. Did you read any newspaper accounts of the Oklahoma City
- 17 bombing between April 19 and April 25?
- 18 A. Not to my recollection, sir.
- 19 Q. Did you shop during that period of time? By "shop" I mean
- 20 go to the grocery store, convenience store?
- 21 A. I believe I probably went to the grocery store a couple
- 22 times, yes, sir.
- 23 Q. Are newspapers sold in the grocery stores?
- 24 A. I believe so, sir.
- 25 Q. Did you ever look at any of the newspapers in the rack or

Thomas Kessinger - Direct

- 1 on the stands?
- 2 A. Not as I recall, sir.
- 3 Q. Not as you recall?
- 4 A. No, sir.
- 5 Q. Does that mean you might have?
- 6 A. No, I don't believe I did, sir.
- 7 Q. Because you were following the admonition?
- 8 A. Admonition?
- 9 Q. Yes, not to watch anything or read anything relating to the
- 10 Oklahoma City case?
- 11 A. Yes, sir. Mr. Crabtree asked me not to.
- 12 Q. Well, if that was your admonition, and if you were so
- 13 faithfully following it up to May 2, how did you lapse on that
- 14 day, sir?
- 15 A. I believe there was a flash that come on TV; and I said,
- 16 "Well, that kind of looks like the guy." And I made a phone
- 17 call. And then Mr. Crabtree also reminded me again on that
- 18 day, stay away from the TV and the newspaper.
- 19 Q. What flash was that, sir?
- 20 A. About something to do with the driver's license. I can't
- 21 even remember it.
- 22 Q. And that was on MTV or the Discovery Channel?
- 23 A. No, sir. I believe that was on Channel 13.
- 24 Q. Channel 13 as it's received on cable?
- 25 A. Yes, sir, I believe so.

Thomas Kessinger - Direct

- 1 Q. Do you know the call letters of that station?

2 A. W B I -- WIBW, I believe.

3 Q. And do you remember what time of day it came on?

4 A. I believe it was in the middle of the afternoon, sir.

5 Q. Did you see any of the television coverage showing

6 Mr. McVeigh being escorted from the Noble County courthouse?

7 A. No, sir, I did not.

8 Q. Did you have any discussion with any of your friends in

9 which they told you what they had read or seen?

10 A. Not that I remember, sir.

11 Q. Were you aware of any news stories that claimed that

12 Mr. McVeigh was the person that had rented the Ryder truck at

13 Elliott's on April the 17th, according to the Government's

14 belief?

15 A. No, sir.

16 Q. I want to be sure I understand your testimony under oath.

17 You're stating that between April the 21st, 1995, and April the

18 30th, 1995, you saw no photograph or visual depiction of

19 Mr. McVeigh?

20 A. No, sir. I tried to keep --

21 Q. No, sir, you didn't, or no, sir, I'm wrong?

22 A. No, sir, I did not see any picture of Mr. McVeigh or

23 Mr. John Doe No. 1. I was asked -- I was asked by Mr. Crabtree

24 to stay independent of my own -- visual sight of what I seen.

25 Q. I take it there came a time when you in fact were permitted

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Thomas Kessinger - Direct

1 or you did watch television routinely, as your prior habit had

2 been?

3 A. Yes, sir.

4 Q. Now, when you started watching television after May 19 on a

5 regular basis, did you see pictures of Mr. McVeigh on

6 television?

7 A. Yes, sir, I did.

8 Q. Did you see pictures of him in the newspaper?

9 A. Yes, sir.

10 Q. Did you notice any difference between the person that was
11 identified on television as Tim McVeigh and the person that you
12 claimed to have seen at Elliott's as Unidentified Subject No. 1
13 on April 17?

14 A. Any difference?

15 Q. Yes, sir.

16 A. Not to my recollection.

17 Q. If you had noticed any difference, would you have told the
18 FBI?

19 A. Yes, sir.

20 Q. When you had the conversation with Mr. Crabtree on or about
21 May 2d concerning the driver's license, that you had seen on
22 this television station broadcast from Topeka, was there
23 anything else on the broadcast?

24 A. At this time, I can't remember, sir.

25 Q. Well, specifically did you tell him that the broadcast also

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Thomas Kessinger - Direct

1 showed photographs of a white Thunderbird?

2 A. I believe I did.

3 Q. What, in your mind, was the significance of the white
4 Thunderbird?

5 A. I don't have any idea.

6 Q. Do you recall why you mentioned it?

7 A. I think this individual was asked for his driver's license,
8 and I seen the driver's license and the white Thunderbird
9 together.

10 Q. How did that happen?

11 A. I think there was a picture of the driver's license with
12 this individual's mug shot on it, and then I believe the
13 Thunderbird flashed on right after that.
14 Q. On May the 8th, 1995, were you again contacted by FBI
15 Special Agents Doyle and Koziol?
16 A. When, sir?
17 Q. On or about May 8, 1995.
18 A. I can't remember, sir.
19 Q. On May 23, 1995, were you contacted by Special Agent West
20 of the FBI and Special Agent Sheila Dobson?
21 A. I believe so, sir.
22 Q. In the conversation on May 23, 1995, do you remember what
23 they asked you?
24 A. Something to do with the hat that John Doe No. 2 was
25 wearing.

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Thomas Kessinger - Direct

1 Q. Did they ask you about anything else?
2 A. I can't remember, sir.
3 Q. I recognize that you may have been interviewed a number of
4 times; but the reason I ask you specifically about May 23 is
5 that this time there was a female FBI agent --
6 A. Yes, sir.
7 Q. -- and that was the first time that a female FBI agent had
8 been involved in the interrogation of you; is that correct?
9 A. Yes, sir. I believe that's so.
10 Q. So do you remember that incident a little better because
11 that was the first time there was a different type agent there?
12 A. No, sir, I don't. I do remember them just identifying
13 themselves by pulling out the badge and stuff, sir.
14 Q. In June of 1995, were you shown a photograph of a cap worn,
15 or at least allegedly worn by Mr. Todd Bunting on April 18,

16 1995, when he came to Elliott's Body Shop?

17 MR. MENDELOFF: Judge, objection: Vague. I'm not
18 sure whether Mr. Jones is trying to ask the witness if he knew
19 that at the time, or whether he had just seen a cap that day.

20 THE COURT: Well, rephrase the question.

21 MR. JONES: Sure.

22 BY MR. JONES:

23 Q. Were you shown a photograph of a cap in June of 1995?

24 A. Yes, sir, I believe so.

25 Q. And what was your understanding at that time as to whose

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Thomas Kessinger - Direct

1 cap it was?

2 A. John Doe No. 2, sir.

3 Q. All right. And what did you tell them about the cap?

4 A. No, it did not look like the cap.

5 Q. All right. The cap worn by John Doe 2?

6 A. Yes, sir.

7 Q. And to the best of your recollection, is this the

8 conversation that you had in June of '95?

9 A. I believe so, sir.

10 Q. When you had the discussion with these two agents or these

11 agents concerning the hat, what conversation did you have with

12 them about John Doe 2 accompanying Robert Kling or John Doe 1

13 on April 17, if any?

14 MR. MENDELOFF: Judge, objection: Lack of foundation.

15 It hasn't been established that there were agents there or who

16 was there other than him having been shown a cap.

17 THE COURT: Overruled.

18 MR. JONES: Well --

19 THE COURT: Overruled.

20 BY MR. JONES:
21 Q. Do you remember my question?
22 A. Yes, sir.
23 Q. Okay. Go ahead.
24 A. As far as talking about talking about John Doe No. 1, it
25 was not discussed. It was primary questions was revolved

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Thomas Kessinger - Direct

1 around the hat.
2 MR. JONES: I might have just a moment, your Honor.
3 THE COURT: Yes.
4 BY MR. JONES:
5 Q. When you had this conversation with the agents of the FBI
6 in June of 1995, were you still of the opinion at that time
7 that John Doe 2 had accompanied John Doe 1 on April 17?
8 A. Yes, sir.
9 Q. I believe you stated earlier in response to a question that
10 I asked that it was not until November of 1996 that you reached
11 the decision that Mr. Bunting was John Doe 2?
12 A. Yes, sir.
13 Q. You reached this decision in a meeting with Government
14 prosecutors, or before?
15 A. With Government prosecutors, sir.
16 Q. And where was that meeting held?
17 A. In Denver.
18 Q. And were you driven or flown here?
19 A. I drove.
20 Q. What day did the meeting occur?
21 A. I do not remember, sir.
22 Q. How long did the meeting last?
23 A. About an hour and a half.
24 Q. How many people were present?

25 A. Three. Four including myself.

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Thomas Kessinger - Direct

1 Q. And do you recall which prosecutors were present?

2 A. Yes, sir, I do.

3 Q. Can you give me their names?

4 A. Scott Mendeloff, John Hersely, and Larry -- I can't

5 remember his last name.

6 Q. I believe one of those gentlemen is an FBI agent and one is

7 a prosecutor; but are those the three that were present in the

8 room?

9 A. Yes, sir.

10 Q. Were you accompanied by anyone?

11 A. No, sir.

12 Q. How many meetings did you have either with FBI agents or

13 prosecutors between April 19, 1995, and today?

14 A. Approximately six or seven, sir.

15 Q. Six or seven?

16 A. Yes, sir. I am not

17 Q. Well, you had a meeting on April the 19th with

18 Mr. Crabtree; is that correct, 1995?

19 A. April.

20 Q. April 19, 1995, Mr. Crabtree --

21 A. Yes.

22 Q. -- interviewed you? And you had a meeting or an interview

23 on April the 20th with FBI Special Agent Raymond Rozycki; is

24 that correct?

25 A. Yes, sir.

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Thomas Kessinger - Direct

1 Q. And you had one meeting or two meetings with Jeanne Boylan
2 and the FBI?

3 A. One meeting, sir.

4 Q. And you had a meeting on April 24, 1995, with Special Agent
5 Smith of the FBI, didn't you?

6 A. Yes, sir.

7 Q. And you had a meeting on April 27, 1995, with Sergeant
8 Story and Special Agent Koziol, didn't you?

9 A. Yes, sir. Mr. Smith -- Mr. Smith meeting was only to
10 locate me, sir.

11 Q. I understand. You had a meeting on April 29 with FBI Agent
12 Scott Crabtree, didn't you?

13 A. Yes, sir. That was over the phone, sir.

14 Q. Sir?

15 A. That was over the phone, sir.

16 Q. Telephone?

17 A. Yes.

18 Q. You had a meeting on April the 30th with Special Agent
19 Koziol and Fencl, did you not?

20 A. Yes, sir.

21 Q. And you had some kind of contact on May 2 with
22 Mr. Crabtree, didn't you?

23 A. I believe so.

24 Q. Was that by phone, or in person?

25 A. I believe that was by phone, sir.

Thomas Kessinger - Direct

1 Q. And you had a meeting on May 8 with Special Agent Stuart
2 Doyle and Ronald Koziol, did you not?

3 A. Yes, sir.

4 Q. You had a meeting on May 23, 1995, with Special Agent
5 William West and Special Agent Sheila Dobson, did you not?

6 A. Yes, sir.

7 Q. And you had a meeting in June of 1995 where prosecutors
8 were present where the hat photograph or picture was shown --

9 A. Yes, sir.

10 Q. -- is that correct? Sir?

11 A. Yes, sir.

12 Q. And you had a meeting in November of 1996; is that correct?

13 A. When, sir?

14 Q. November of 1996 --

15 A. Yes, sir.

16 Q. -- the one we were just talking about?

17 A. Yeah, I thought your question revolved around with when I
18 was with the prosecutor here in Denver, when I was up here.

19 Q. I didn't mean to mislead you, so I'll ask the question
20 again: From April the 19th, until today, how many times have
21 you met face to face with special agents of the Federal Bureau
22 of Investigation about this case?

23 A. Okay. Probably twelve times, sir.

24 Q. Now, are you guessing, or is that based upon some memory?

25 A. I'm guessing, sir. I didn't number them.

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Thomas Kessinger - Direct

1 Q. So it could be more?

2 A. Yes, sir, it could be.

3 Q. How many times have you met with prosecutors in this case?

4 A. Five or six times, sir.

5 Q. When was the last time?

6 A. Last night.

7 Q. And the time before that?

8 A. The day before that.

9 Q. And the time before that?

10 A. Right before Christmas.

11 Q. That's not the November meeting?

12 A. No, sir, that was December meeting. And then there was a

13 November meeting.

14 Q. How many meetings were there in December with the

15 prosecutors?

16 A. I believe one, sir.

17 Q. And the meeting last night: How long did that last?

18 A. About one hour.

19 Q. And the meeting Sunday: How long did that last?

20 A. About an hour and a half.

21 Q. Did you read anything before testifying here today that

22 relates to these issues? And when I say "reading anything," I

23 mean in the last four or five days.

24 A. Read anything? No, sir.

25 Q. Were you shown anything?

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Thomas Kessinger - Direct

1 A. No, sir.

2 Q. You weren't shown any pictures or --

3 A. Oh, excuse me. Yes, sir, I was.

4 Q. What pictures were you shown?

5 A. A picture of a tattoo and an arm and a hat and a picture of

6 Mr. Bunting --

7 Q. What else?

8 A. -- with the hat and a black T-shirt and the tattoo.

9 Q. And that's been in the last four or five days?

10 A. About.

11 Q. Did you say about?

12 A. Yes.

13 Q. What else were you shown?

14 A. That's all, sir.

- 15 Q. Shown any photographic arrays or mug shots?
- 16 A. I believe the one piece of paper I signed the back of, I
- 17 seen.
- 18 Q. That's the place where you made your selection of what the
- 19 person looked like?
- 20 A. At my home.
- 21 Q. Sir?
- 22 A. At my home, yes, sir.
- 23 Q. So you seen that again?
- 24 A. Yes, sir.
- 25 Q. And when did you see that?

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Thomas Kessinger - Direct

- 1 A. In December, I believe, sir.
- 2 Q. Have you seen it in the last week?
- 3 A. No, sir, I don't believe so.
- 4 Q. Are you sure?
- 5 A. No, sir, I am not.
- 6 Q. So you might have seen it in the last week?
- 7 A. I might have seen it, yes, sir.
- 8 Q. How might you have seen it? Somebody show it to you,
- 9 somebody leave it on a desk?
- 10 A. I don't recall, sir.
- 11 Q. You did see it in the last four or five days, didn't you,
- 12 sir?
- 13 A. I may have.
- 14 Q. Was anything said when you may have seen this picture?
- 15 A. No, sir.
- 16 Q. Were you shown anything else?
- 17 A. Not that I recall, sir.
- 18 MR. JONES: Your Honor, I believe that under the

19 ground rules that were established, other than prior
20 inconsistent statements, impeachment otherwise is not
21 appropriate today; is that correct?

22 THE COURT: Yes.

23 MR. JONES: Thank you, your Honor. May I have just a
24 moment to confer with counsel?

25 THE COURT: You may.

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Thomas Kessinger - Direct

1 MR. JONES: Just a few questions, your Honor.

2 BY MR. JONES:

3 Q. I'm sorry. I talked to my lawyer.

4 Mr. Kessinger, prior to April the 30th, 1995, but
5 after April 19, did you tell any agent of the FBI that you had
6 in fact been exposed to publicity concerning Mr. McVeigh, the
7 Oklahoma City bombing, Mr. Nichols, and so forth?

8 A. Exposed to any publicity?

9 Q. Exposure, yes, sir, that you'd seen or read anything?

10 A. No, sir, not that I recall.

11 Q. Well, when you met with Mr. Ronald Koziol and Mr. Douglas
12 Fencil on April the 30th, do you recall whether they said to you
13 prior to exhibiting the photographic lineup, that you were only
14 to rely on your memory of events in which you were personally
15 involved and that you were to disregard any knowledge that you
16 may have acquired from news media sources and rely specifically
17 on your own memory?

18 A. Yes, sir, I do remember them saying that.

19 Q. Well, do you recall that just about 30, 45 minutes ago, I
20 asked you to tell me all the conversation that you had with
21 those agents before they showed you the photographic lineup and
22 you didn't tell me about this; is that correct?

23 A. Yes, sir, I did not remember.

24 Q. Now, in fairness, you said that you were telling me
25 everything you could remember.

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Thomas Kessinger - Direct

1 A. Yes, sir.

2 Q. And I take it now that I have refreshed your memory by
3 reading this to you?

4 A. Yes, sir.

5 Q. All right. Well, why would these two agents of the FBI, if
6 you know, tell you to rely only on your memory and not any
7 publicity that you may have been exposed to if in fact you
8 hadn't been exposed to any?

9 A. Because -- I don't believe I had been exposed at that time,
10 sir, but I think they were just refreshing my memory to let me
11 go on my own memory of what I had in my mind.

12 Q. Well, had you told them prior to this conversation that you
13 had in fact been exposed to publicity?

14 A. No, sir, I did not, I don't believe I did.

15 Q. You don't believe that you did?

16 A. No.

17 Q. Might you have told them that?

18 A. No, I don't believe I did, sir, because --

19 Q. Well, let me --

20 A. I don't recall it.

21 Q. Let me put all that aside. Your statement under oath today
22 is that you didn't watch any television or read any newspapers
23 between the 19th and the 30th that showed Tim McVeigh?

24 A. Yes, sir.

25 Q. And you're sure of that?

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Thomas Kessinger - Direct

1 A. Yes, sir.

2 Q. Rock bottom sure?

3 A. Pretty damn sure.

4 Q. And anybody that said to the contrary would not be telling

5 the truth; is that correct?

6 MR. MENDELOFF: Objection, Judge.

7 THE COURT: Sustained.

8 MR. JONES: No further questions, your Honor.

9 THE COURT: All right.

10 CROSS-EXAMINATION

11 BY MR. MENDELOFF:

12 Q. Mr. Kessinger, let me just start with a point that

13 Mr. Jones just made. When the agents told you that you should

14 avoid media -- or, excuse me -- the agents were going to show

15 you the photo spread and they asked you to put any media out of

16 your mind, you remember that?

17 A. Yes, sir.

18 Q. Do you know whether they were saying that to you because

19 that was a routine question they would say to anybody they

20 showed a photo spread to?

21 A. Yes, sir.

22 Q. Now, Mr. Kessinger, let me start at the beginning, on

23 April 17.

24 A. Yes, sir.

25 Q. Okay? You testified previously that you were in the

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Thomas Kessinger - Cross

1 office. And what were you doing in the office during the

2 transaction?

3 A. I was taking my afternoon break.

4 Q. And do you recall where you were sitting?

5 A. Yes, sir. Right by the doorway around the corner. There's
6 a entrance to the shop that goes to the north, and I was
7 sitting right there against the wall back behind the counter
8 where Vickie sits.

9 MR. MENDELOFF: Judge, we have some exhibits. I don't
10 know if you want to use the system now or not.

11 THE COURT: Well, go ahead. Whatever you want to do.

12 MR. MENDELOFF: All right.

13 THE COURT: You have the screen there in front of you.
14 Do you see it?

15 THE WITNESS: Yes, sir, I do.

16 BY MR. MENDELOFF:

17 Q. Mr. Kessinger, do you see that photo?

18 A. Yes, I do.

19 Q. What is that?

20 A. That is the counter at the body shop and the display area
21 where the Ryder truck stuff is.

22 Q. Do you see where you were seated?

23 A. Yes, sir, I do.

24 Q. Can you describe for the Court where that was?

25 A. I was sitting in the chair that's cut off in the corner of

Thomas Kessinger - Cross

1 the picture, there.

2 MR. MENDELOFF: Your Honor, we move the admission of
3 this exhibit, which is Government Exhibit 1.

4 MR. JONES: No, objection, your Honor.

5 THE COURT: I have it as marked 3, is that -- no, I'm
6 sorry. One, all right. One is received.

7 MR. MENDELOFF: Thank you, your Honor.

8 THE COURT: In fact, we ought to receive exhibits

9 before they're displayed on this system.

10 MR. MENDELOFF: All right. Fine.

11 MR. JONES: May I just look at them? And I probably

12 just --

13 THE COURT: All right.

14 MR. MENDELOFF: Your Honor, I'm sorry, I thought the

15 system had been set up so that we could do that without

16 displaying, but that's all right.

17 THE COURTROOM DEPUTY: I can. It will turn that TV

18 off.

19 THE COURT: Yes, put it on so that the witness can see

20 it but it's not publicly displayed until it's received. But

21 there's not going to be any --

22 MR. MENDELOFF: We're going to try to work it out.

23 THE COURT: -- difficulty with these exhibits anyway.

24 MR. JONES: I don't have any objection to these, your

25 Honor.

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Thomas Kessinger - Cross

1 THE COURT: All right, so, we can save that step.

2 BY MR. MENDELOFF:

3 Q. Mr. Kessinger, let me show you what's been marked as

4 Government Exhibit No. 2 and ask you whether you recognize

5 that?

6 A. Yes, sir, that's the counter area, approximately exactly

7 where I was sitting at in the office.

8 Q. Are you saying that's the view you had of the counter area?

9 A. Yes, sir.

10 Q. And can you tell us when you sat down where Mr. McVeigh was

11 standing?

12 A. Well, this picture won't show it very good, but he was

13 standing more closer to the front-door entrance.

14 Q. Okay. To the far left of the photo?

15 A. Yes, sir.

16 THE COURT: 2 is received, just so that we have --

17 MR. MENDELOFF: Your Honor, we move the admission --

18 well, I'll do it as I go along. I'm sorry, Judge.

19 BY MR. MENDELOFF:

20 Q. Let me show you Government Exhibit No. 3.

21 MR. MENDELOFF: We'd move the admission of this

22 exhibit.

23 THE COURT: There's no objection. It's received.

24 MR. JONES: That's correct, your Honor.

25 BY MR. MENDELOFF:

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Thomas Kessinger - Cross

1 Q. Mr. Kessinger, what is this?

2 A. That's back where Vickie Beemer was sitting, the secretary
3 for Elliott's Body Shop.

4 Q. Can you see in that picture where Mr. McVeigh was standing?

5 A. Yes, sir, exactly.

6 Q. Where was he standing?

7 A. He was standing just to the right of the door.

8 Q. All right. Now, during the course of the rental

9 transaction, did you have occasion to focus on Mr. McVeigh for
10 some reason?

11 A. Yes, sir.

12 Q. And without getting into the conversation, was it the
13 result of something that was said during the conversation?

14 A. Yes, sir.

15 Q. Now, when you focused on him, what did you look at?

16 A. His face and chin. His chin was peculiar to me.

17 Q. And that is in the way you described previously?

18 A. Yes, sir.

19 Q. Now, when you described a line, horizontal, across the
20 chin, was that a line that was a deep crease or a shade?

21 A. It was a shade line.

22 Q. During the course of the transaction, which I believe you
23 testified on direct examination lasted ten minutes, did you
24 remove your eyes from Mr. McVeigh?

25 A. Yes.

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Thomas Kessinger - Cross

1 Q. How frequently?

2 A. Probably just for a moment to look at No. 2.

3 Q. All right. And other than that, where were your eyes
4 located?

5 A. On Mr. McVeigh.

6 Q. Now, Mr. Kessinger, how far away was Mr. McVeigh from you?

7 A. Approximately 10 feet.

8 Q. Now, you just said, Mr. Kessinger, that you removed your
9 eyes to look at No. 2. Is it your testimony today that there
10 was somebody else there or not? Or do you know?

11 A. I don't know.

12 Q. When Mr. Jones asked you the questions regarding this
13 second person there, were you testifying based on what your
14 current belief or what your belief was at the time?

15 A. At the time. My belief was at the time.

16 Q. Now, you testified on cross-examination -- excuse me,
17 direct examination, that after this event, two days later,
18 Scott Crabtree appeared at the Elliott's Body Shop and
19 interviewed you; is that right?

20 A. Yes, sir.

21 Q. And you gave the description of the person you had seen?

22 A. Yes, sir.

23 Q. You testified then that the next morning, early that --
24 excuse me, the next day, you met with the FBI sketch artist?
25 A. Yes, sir.

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Thomas Kessinger - Cross

1 Q. And what time of day was that?
2 A. Around three-thirty, four o'clock in the morning, a.m.
3 Q. All right. And during that meeting with the sketch artist,
4 what was the purpose of your discussion with her? Him, excuse
5 me?
6 A. To make a composite drawing.
7 Q. Of whom?
8 A. John Doe No. 1 and 2.
9 Q. Did you do this at the same time or did you do it
10 separately, John Doe 1 --
11 A. I did it separately, John Doe No. 1 and then we had a small
12 break, and then I did John Doe No. 2.
13 Q. And Mr. Kessinger, let me show you what's been marked as
14 Government Exhibit 4. What is that?
15 A. That is John Doe No. 1 that I had a composite, that is my
16 composite drawing.
17 MR. MENDELOFF: All right, we would move the admission
18 of Government Exhibit 4, your Honor.
19 THE COURT: There is no objection?
20 MR. JONES: None, your Honor.
21 THE COURT: Received.
22 BY MR. MENDELOFF:
23 Q. You have described on direct and now in cross-examination
24 your observation of a horizontal shaded area underneath the
25 lip. Do you see that in this photo?

Thomas Kessinger - Cross

- 1 A. Yes, sir, I do.
- 2 Q. And can you point that out, can you tell us where it is?
- 3 A. It's, like I said, underneath his lower lip, and it's a
- 4 bubble in the middle of the chin more or less, and then it has
- 5 a curvature kind of sort of.
- 6 Q. On both sides?
- 7 A. Yes, sir.
- 8 Q. Did you also, after you completed the drawing of John Doe
- 9 1, then complete a drawing of John Doe 2?
- 10 A. Yes, sir.
- 11 Q. And did you go through the same procedure you had with
- 12 respect to John Doe 1?
- 13 A. Yes, sir.
- 14 Q. Let me show you Government Exhibit 5 and ask you what that
- 15 is.
- 16 A. That's my composite drawing of John Doe No. 2.
- 17 Q. Okay.
- 18 Judge, we move the admission of Government Exhibit 5.
- 19 THE COURT: There's no objection, so it's received.
- 20 MR. JONES: No objection, your Honor.
- 21 THE COURT: All right.
- 22 BY MR. MENDELOFF:
- 23 Q. Now, after that, did you proceed with the artist to attempt
- 24 to draw anything else?
- 25 A. Yes, sir. The hat. That John Doe No. 2 wore.

Thomas Kessinger - Cross

- 1 Q. And that is the hat that you described on direct
- 2 examination as the blue and white hat with zig-zags?
- 3 A. Royal blue.

4 Q. Royal blue and white with zig-zags?
5 A. Yes, sir.
6 Q. And in assisting the artist to create this hat, did you
7 make any drawing of your own?
8 A. Yes, sir, I did.
9 Q. Let me show you what's been marked Government Exhibit 6 and
10 ask you what that is.
11 A. That is my drawing, sir.
12 MR. MENDELOFF: We move the admission of Government
13 Exhibit 6, your Honor.
14 MR. JONES: No objection, your Honor.
15 THE COURT: It's received.
16 BY MR. MENDELOFF:
17 Q. Have I focused in on the part that is your drawing of the
18 hat?
19 A. Yes, sir, it is.
20 Q. And what does the B stand for?
21 A. The blue.
22 Q. And the white stands for -- the W stands for white?
23 A. Yes, sir, it does.
24 Q. Let me ask you to look at one other aspect of this. Did
25 you assist the artist when you were --

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Thomas Kessinger - Cross

1 A. Yes --
2 Q. -- creating John Doe No. 1 in some way?
3 A. Yes, sir, I did.
4 Q. What did you do?
5 A. This was the shaded part underneath the chin, underneath
6 the lip, and this here is how I drew the fold, not a fold, but
7 highlighted area underneath the chin.

8 Q. All right.

9 A. And that hump in there was decreased a little bit because

10 it didn't look right.

11 Q. So you, the hump in the chin was made more horizontal, is

12 that what you're saying?

13 A. Yes, sir; yes, sir.

14 Q. Now, after you described the hat for the artist, did you

15 and the artist -- did you watch and help as the artist drew

16 your memory of that hat?

17 A. Yes, sir.

18 Q. What is that?

19 A. That is the hat.

20 Q. Okay. And that's the hat that you and the artist drew --

21 the artist drew at your direction?

22 A. Yes, sir.

23 MR. MENDELOFF: Move the admission of Government

24 Exhibit No. 7, your Honor.

25 THE COURT: No objection?

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Thomas Kessinger - Cross

1 MR. JONES: No objection, your Honor.

2 THE COURT: Received.

3 BY MR. MENDELOFF:

4 Q. After the artist drew that hat, did you authorize it as

5 being accurate?

6 A. Yes, sir.

7 Q. Before you left Fort Riley that day, did Agent Crabtree

8 give you any instructions about the news media?

9 A. Yes, sir.

10 Q. What did he tell you?

11 A. He told me not to -- to rely on my own visual, my own

12 memory of what I seen and not to be watching television or

13 reading any newspaper articles, too, 'cause it may affect my
14 memory of what I had seen.
15 Q. All right, and that was in the early morning hours of
16 April 20; is that right?
17 A. Yes, sir.
18 Q. Now, three days -- four days later, on April 24, I believe
19 you testified you met again with, or you spoke again with the
20 sketch artist; is that right?
21 A. Mrs. Boylan?
22 Q. No, a male sketch artist, over the telephone?
23 A. Oh, yes, over a fax machine.
24 Q. Right. And I believe you responded to questions on direct
25 examination about meeting with Steve Smith that day; is that

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Thomas Kessinger - Cross

1 right?
2 A. Yes, sir.
3 Q. Tell us what happened with respect to Mr. Smith. What
4 happened?
5 A. The sketch artist that I had prior been with on the 19th
6 had faxed in a picture, I believe.
7 Q. All right. Now, let's start at the beginning. Did agent
8 Smith contact you?
9 A. Yeah. Agent Smith contacted me.
10 Q. And what did he ask you?
11 A. And asked me to come to Fort Riley.
12 Q. All right.
13 A. To where I had been before.
14 Q. And did he tell you what the purpose was?
15 A. Not at that time, I don't believe.
16 Q. When you got to Fort Riley, did he tell you what the

17 purpose was?

18 A. Yes, I believe it was.

19 Q. Did he tell you anything about changing or adding to the
20 drawing that you had made, you had helped to make of John Doe
21 2?

22 A. Yes.

23 Q. And what were you going to do?

24 A. We were going to change something on the hat. I believe.

25 Q. Did the original drawing have a hat on it?

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Thomas Kessinger - Cross

1 A. No, it did not.

2 Q. And were you going to create a new --

3 A. We were going to put the hat on the John Doe No. 2.

4 Q. Now, you mentioned that the sketch artist had, was not
5 present. Where was he?

6 A. From what I was told, he was in Washington, D.C.

7 Q. And he was the same sketch artist, as you understood it,
8 had met with you four days earlier?

9 A. Yes.

10 Q. In person?

11 A. In person, yes.

12 Q. At Fort Riley?

13 A. Yes.

14 Q. And you said that the meeting began with the sketch artist
15 faxing in a drawing?

16 A. Yes, sir.

17 Q. Let me show you what's been marked, which is the first
18 portion of Government Exhibit 8, it's a three-part exhibit.

19 What is that?

20 A. That was John Doe No. 2 with just a plain hat.

21 Q. And was that the first hat that you got faxed in?

22 A. Yes, sir.

23 MR. MENDELOFF: We move the admission of the entire
24 group of exhibit, of Government Exhibit No. 8.

25 THE COURT: Any objection to this?

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Thomas Kessinger - Cross

1 MR. JONES: No, your Honor.

2 THE COURT: All right, Exhibit 8, three pages?

3 MR. MENDELOFF: Yes, your Honor.

4 THE COURT: Received.

5 BY MR. MENDELOFF:

6 Q. This is the second page of that exhibit. Mr. Kessinger, if
7 you can look carefully at the hat. Was there any change made
8 of the hat?

9 A. Yes, sir, on the hat you see where the lines had been added
10 for the zig-zag lines.

11 Q. Now, were those lines added as a result of your assistance
12 with the original drawing? Original hat drawing?

13 A. Yes.

14 Q. Let me show you what's been marked Government Exhibit 9.
15 What is that?

16 A. That's another drawing that the artist had drawn, and you
17 can see where the zig-zag lines had been rounded off to more
18 look like scallops, the way I call scallops, but they were
19 shorter, and then you can see where they were brought longer.

20 Q. So you extended the lines --

21 A. Yes, sir.

22 Q. -- down the hat? And was this done at the -- at your
23 direction?

24 A. Yes, sir, was it.

25 Q. Now, Government Exhibit 7, which has previously been

Thomas Kessinger - Cross

- 1 admitted, was your original hat drawing; is that right?
- 2 A. Yes, sir.
- 3 Q. Government Exhibit No. 9 --
- 4 Which we move into evidence, by the way, your Honor.
- 5 THE COURT: Is there any objection to nine?
- 6 MR. JONES: No, your Honor.
- 7 THE COURT: It's received.
- 8 BY MR. MENDELOFF:
- 9 Q. Government Exhibit No. 9 is an altered version of that
- 10 drawing?
- 11 A. Yes, sir.
- 12 Q. Who made those alterations?
- 13 A. I believe the sketch artist did, sir.
- 14 Q. And at whose direction?
- 15 A. At my direction, sir.
- 16 Q. What is the reason that you started extending the points on
- 17 your zig-zag further and further back on the hat?
- 18 A. Because of they were larger, smaller and smaller.
- 19 Q. And ultimately was a final drawing created?
- 20 A. Yes, sir.
- 21 Q. This is the third of this three-part exhibit. What is
- 22 that?
- 23 A. That's with the lines on there.
- 24 Q. Now, on direct examination Mr. Jones referred to a third
- 25 composite. Was this hat composite, face-on, the third

Thomas Kessinger - Cross

- 1 composite you were thinking of?
- 2 A. The side shot?

3 Q. The face, the hat-on shot with the hat on it? Or were you
4 thinking of the side shot?
5 A. I was thinking of the side shot. That Mrs. Boylan did.
6 Q. On direct examination you testified you met with Miss
7 Boylan on Saturday the 29th of April. Do you remember that?
8 A. Yes, sir.
9 Q. Do you remember meeting with Miss Boylan one time before
10 that at Elliott's?
11 A. Yes, sir, I did.
12 Q. And was a composite drawing created as of that meeting?
13 A. As of the first meeting, yes.
14 Q. Was the -- did you finish your work on the first meeting?
15 A. No, we never, we never, we just met on the first meeting,
16 we never even started a composite drawing.
17 Q. And that drawing was completed on the following meeting,
18 right?
19 A. Yes, it was started and finished on that meeting.
20 Q. Now, you were asked questions during direct examination
21 about a conversation, whether you had a conversation with Scott
22 Crabtree before that second meeting, and I believe you
23 testified you didn't believe you had one. Do you remember
24 Mr. Crabtree speaking with you about whether you had seen John
25 Doe 2 from the front or from the side or both?

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Thomas Kessinger - Cross

1 A. Yes, I do remember. And I did see John Doe 2 from the
2 front and the side.
3 Q. Now, you testified on direct examination about a photo
4 spread session that you did --
5 A. Yes, sir.
6 Q. -- you remember that?

7 A. Yes, sir.

8 Q. And that was on Sunday, April 30, at your home?

9 A. Yes, sir.

10 Q. And you said that you had seen a piece of paper with a

11 series of photos on it, I believe you said there were six?

12 A. Yes, sir.

13 Q. Are you certain of six, have you seen the --

14 A. I am not certain, no, sir.

15 Q. Now, on direct examination, Mr. Jones asked you a series of

16 questions regarding your call to Scott Crabtree after this

17 photo spread session.

18 A. Yes, sir.

19 Q. And that call occurred on May 2d; is that right?

20 A. I believe so.

21 Q. Now, when you watched this television report that you were

22 talking about, were you aware that Agent Crabtree had told you

23 previously on several occasions not to watch television?

24 A. Yes, sir.

25 Q. What was the reason that you felt that you could on May 2?

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Thomas Kessinger - Cross

1 A. Well, I think I just flashed -- I was just changing the

2 channel and I just flashed by it.

3 Q. As of May 2, had you seen the photo spread already?

4 A. Yes, sir.

5 Q. Had you made a selection?

6 A. Yes, sir, I had.

7 Q. Did that have an impact on your belief that, about whether

8 you could watch TV?

9 A. Yes, it did.

10 Q. Tell the Court what that was.

11 A. I thought being as all I had made a positive identification

12 and signed the back of that picture, it was all right to watch
13 TV at that time. And then I believe I flashed by that, and
14 then I called Mr. Crabtree, and Mr. Crabtree reminded me and
15 told me not to watch TV.

16 Q. Now, when you say a positive identification, you mean you
17 had identified somebody?

18 A. I had identified somebody that I had seen in the office of
19 the body shop. That I remembered.

20 Q. Now, let me ask you about your meeting in June of 1995 in
21 which you were shown a hat. Do you remember who was present
22 for that meeting?

23 A. No, sir, I don't.

24 Q. What agent was there?

25 A. Mr. Hersely, I believe.

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Thomas Kessinger - Cross

1 Q. And were there any attorneys there?

2 A. I can't remember.

3 Q. All right.

4 A. I know there was one other person there.

5 Q. And during that meeting, did Agent Hersely tell you
6 anything about what he was going to tell you?

7 A. No, sir, I don't believe so.

8 Q. He just laid the hat down on the, on the table?

9 A. Yes, sir. Picture of the hat.

10 Q. All right. And what was your reaction?

11 A. I told him that wasn't the hat at that time.

12 Q. When Agent Hersely showed you the hat in June of 1995, did
13 he, did you recall at that time that you had previously
14 described the hat on John Doe 2 as having zig-zags, not
15 elongated stripes?

16 A. No, sir, I did not.

17 Q. Did you recall at that time, in June of 1995, when Agent
18 Hersely showed you the hat, the original hat drawing that you
19 had done in the early morning hours of April 20?

20 A. Did I remember?

21 Q. When Agent Hersely showed you the hat in June of 1995, did
22 your at that time remember what the hat you had drawn with the
23 agent, the first hat you had drawn with the agent looked like?

24 A. Yes, sir.

25 Q. Did you remember that in June of 1995, the zig-zag hat?

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Thomas Kessinger - Cross

1 THE COURT: I'm not clear as to your question.

2 MR. MENDELOFF: Let me rephrase it.

3 THE WITNESS: I am not, either.

4 BY MR. MENDELOFF:

5 Q. When you sat down -- let me do it a different way.

6 In the early morning hours of April 20, this was the
7 hat that you drew; is that right?

8 A. Yes, sir.

9 Q. You met with Miss Boylan on April 29; is that right?

10 A. Yes, sir.

11 Q. And you came up with a composite, a profile version of the
12 hat; is that right?

13 A. Yes, sir.

14 Q. Let me show you Government Exhibit 11. What is that?

15 A. That's the best, the John Doe No. 2 with the hat on and the
16 hat.

17 Q. Is that the one you did with Miss Boylan?

18 A. Yes, sir.

19 MR. MENDELOFF: Move the admission of Government
20 Exhibit No. 11, your Honor.

21 MR. JONES: No objection.

22 THE COURT: Received.

23 BY MR. MENDELOFF:

24 Q. When you met with Agent Hersely in June of 1995, about six
25 weeks later, and he showed you a photo of the hat, which of

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Thomas Kessinger - Cross

1 those two hats did you have in mind?

2 A. My drawing hat. Not the one Mr. Hersely showed me.

3 Q. When you -- I understand. Which drawing? Miss Boylan's
4 drawing --

5 A. Miss Boylan's drawing, yes, sir.

6 Q. Now, when Mr. Hersely showed you that photo in June of 1995
7 then, you did not recall or have in mind your original drawing
8 of that hat; is that right?

9 A. No, I did not.

10 Q. When Agent Hersely showed you that photo in June of 1995,
11 did he show you anything beneath the hat; in other words, did
12 he show you the person that was wearing the hat?

13 A. No, sir.

14 Q. Did he remind you or did you discuss with him anything you
15 had said about what John Doe 2 looked like?

16 A. Not that I remember, sir.

17 Q. Did he show you any photos of arms or chests?

18 A. No, sir.

19 THE COURT: Are you at a convenient breaking point?

20 MR. MENDELOFF: I am, your Honor.

21 THE COURT: All right, then we'll take a recess here.

22 And we're going to be in recess until ten minutes before the

23 hour. Recess.

24 (Recess at 10:30 a.m.)

Thomas Kessinger - Cross

1 (Reconvened at 10:50 a.m.)

2 THE COURT: Please be seated.

3 Please resume the stand, Mr. Kessinger.

4 BY MR. MENDELOFF:

5 Q. Mr. Kessinger, on direct examination you were asked a
6 series of questions regarding whether you had reviewed or seen
7 a photo spread within the last few weeks. Do you remember
8 that?

9 A. Yes, sir.

10 Q. Now, let me show you what's been marked Government's
11 Exhibit 14.

12 MR. JONES: No objection.

13 MR. MENDELOFF: We move the admission of 14, by the
14 way.

15 THE COURT: It's received.

16 BY MR. MENDELOFF:

17 Q. I show you the reverse side of that exhibit. What is that?

18 A. That's my signature and date.

19 Q. Have you seen anything except the reverse side of this
20 exhibit?

21 A. No, sir.

22 Q. Have you been shown the front portion of this exhibit at
23 all?

24 A. In the last three or four days?

25 Q. Have you been shown the front portion of this exhibit

Thomas Kessinger - Cross

1 throughout the time you've been meeting with Agent Hersley?

2 Have you ever been shown the pictures?
3 A. No, sir.
4 Q. And within the last three or four days, have you seen the
5 reverse side of this exhibit?
6 A. Yes, sir, I have.
7 Q. Previously when you said that you viewed the exhibit in
8 December, was it the front or the back that you saw?
9 A. In December?
10 Q. Yes.
11 A. The back. My signature.
12 Q. Now, you were asked certain questions on direct examination
13 regarding an Anita Crocek.
14 A. Yes, sir.
15 Q. Who is she?
16 A. She was my landlady at 417 South Madison.
17 Q. Now, without getting into the details, have you had a
18 series of disputes with her?
19 A. Yes, I have.
20 Q. That revolves around your tenancy; is that correct?
21 A. Yes, sir, it does.
22 Q. During the course of our meetings, your meetings with Agent
23 Hersley and I, did you have occasion to review a photograph of
24 a young man that looks like that? If you'll review that
25 photograph.

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Thomas Kessinger - Cross

1 A. Yes.
2 MR. MENDELOFF: And that's Government's Exhibit 21,
3 Judge, which we would move into evidence.
4 MR. JONES: No objection.
5 THE COURT: 21 received.

6 BY MR. MENDELOFF:
7 Q. When did you review that photograph? Do you recall?
8 A. No, sir, I don't recall exactly.
9 Q. How long ago?
10 A. I think it was on the second meeting, the third meeting. I
11 ain't sure.
12 Q. All right. And when you were shown that photograph, what
13 was asked of you regarding that photograph?
14 A. I was asked if I knew the person. Said no.
15 Q. All right. And what else was asked?
16 A. Did he look like John Doe No. 1?
17 Q. All right. Were you asked whether or not you could have
18 had him in mind when you were drawing John Doe No. 1?
19 A. No, I didn't have him in mind.
20 Q. Were you asked that question?
21 A. Yes, I was.
22 Q. When you were asked that question, did you explain why you
23 were sure that wasn't the man?
24 A. Yes, I'm positive that ain't the man I had in mind.
25 Q. All right. And why is that?

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Thomas Kessinger - Cross

1 A. Because this here guy has longer hair. His forehead is
2 different, and he has a mustache.
3 Q. Anything else?
4 A. And the shape of his face is not the same.
5 Q. All right. What about any kind of general appearance?
6 A. His chin ain't the same as what I had in my drawing,
7 either.
8 Q. And how is that different?
9 A. He has -- he has vertical lines on his chin around the --
10 underneath the lower lip and around the edges of his jaw, I

11 guess kind of sort of like.

12 Q. And what were the lines on the man's face that you saw rent
13 the truck on April 17?

14 A. It was a horizontal line underneath his lip, highlighted
15 line. I don't -- it wasn't a scar or there wasn't a fold, just
16 kind of like a crease or something or highlighted part.

17 Q. Now, in direct examination you were asked a series of
18 questions regarding your meetings with Agent Hersley and I
19 concerning your review of photographs. You remember that?

20 A. Yes, sir.

21 Q. And during those meetings, did you review a series of
22 photographs?

23 A. Yes.

24 Q. And what were they of, just in general, physically?

25 A. A chest, an arm, a hat.

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Thomas Kessinger - Cross

1 Q. Did you see a face?

2 A. Yes.

3 Q. And during the course of those -- that review, did you also
4 review a drawing that had been done in conjunction with you
5 earlier in this case?

6 A. Yes.

7 Q. Which drawing was that?

8 A. Composite drawing.

9 Q. All right. And did you review a drawing of a hat that you
10 did early in the case?

11 A. Yes.

12 Q. Which drawing was that?

13 A. You'll have to show me a picture. I don't remember. There
14 were two different hats in that.

15 Q. Let me show you Government's Exhibit 16.

16 MR. MENDELOFF: We move that into evidence, your

17 Honor.

18 THE COURT: Any objection to 16?

19 MR. JONES: No, your Honor.

20 THE COURT: Received.

21 BY MR. MENDELOFF:

22 Q. Did you review the -- does the drawing that you reviewed

23 during those sessions appear in this exhibit?

24 A. Yes, sir.

25 Q. Which drawing is that?

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Thomas Kessinger - Cross

1 A. The drawing I had of the hat that I had earlier and this

2 here is a --

3 Q. No, I'm not asking you about the photo right now. Is this

4 the drawing that you reviewed during the course of those

5 sessions?

6 A. Yes, sir.

7 Q. As a result of those reviews, did you come to a conclusion

8 about whether you had been in error regarding the person that

9 you thought was with John Doe 1?

10 A. Yes, sir.

11 Q. And what conclusion did you come to?

12 A. I was in error.

13 Q. And what -- in what way?

14 A. I was in error on the -- my drawing of the hat; and come to

15 find out, it was Mr. Bunting.

16 Q. When you say you come to find that out, did you determine

17 that yourself?

18 A. I determined that myself, yes, that I was in error.

19 Q. And that was based on what?

20 A. Based on my composite drawing and my memory.
21 Q. All right. Now, having realized that you made an error as
22 to John Doe 2, do you have any question about your recollection
23 of who it was who came into Elliott's Body Shop on April 17 to
24 rent that truck? Do you have any question about who John Doe 1
25 was?

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Thomas Kessinger - Cross

1 A. No, sir.
2 Q. Notwithstanding your error on John Doe 2; is that right?
3 A. Right.
4 Q. Is there any doubt who it was who appeared or have you made
5 an identification of who it was who appeared to pick up that
6 truck on April 17?
7 A. Rephrase that question.
8 Q. Have you made an identification of who it was who appeared
9 to pick up the truck on April 17?
10 A. Yes.
11 Q. And that was in the photo spread?
12 A. Yes, sir.
13 Q. And you selected Timothy McVeigh; is that right?
14 A. Yes, sir, I did.
15 Q. Is there any doubt in your mind of the accuracy of your
16 selection of that photo and photo spread?
17 A. No. No question about it.
18 MR. MENDELOFF: Thank you, your Honor. Nothing
19 further.
20 THE COURT: Mr. Jones, do you have any follow-up?
21 MR. JONES: Yes, sir.
22 REDIRECT EXAMINATION
23 BY MR. JONES:

24 Q. Mr. Kessinger --

25 A. Yes, sir.

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Thomas Kessinger - Redirect

1 Q. -- was John Doe 1, the person that you say was Tim McVeigh,
2 accompanied by anybody else on April 17 when he rented the
3 Ryder truck?

4 A. At this time --

5 Q. Yes or no?

6 MR. MENDELOFF: Yes or no, Judge -- yes or no, I don't
7 think is a fair question. He has made a statement about his
8 recollection.

9 THE COURT: No need to repeat that. The objection is
10 overruled.

11 Do you have the question in mind?

12 THE WITNESS: No. You'll have to repeat the question,
13 please.

14 BY MR. JONES:

15 Q. All right. Was John Doe 1, the person that you say was Tim
16 McVeigh, accompanied by any other person when he came to the
17 Ryder truck rental place where you worked on April 17, 1995, to
18 rent a truck?

19 A. I thought he was.

20 Q. What do you think today?

21 A. I think I made a mistake.

22 Q. What was the mistake?

23 A. I believe I made a mistake that Mr. Bunting was in the day
24 after and I put him in the place for John Doe No. 2.

25 Q. Well, I understand that's your testimony. That's not quite

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Thomas Kessinger - Redirect

1 my question. Let me put it as Mr. Mendeloff would: Did
2 anybody accompany Tim McVeigh to Elliott's Body Shop on the
3 afternoon of April 17, 1995?

4 A. I don't know.

5 Q. You don't know? Is that correct?

6 A. I want to say yes, there was somebody that accompanied him,
7 but I don't know who the individual was. I thought it --

8 Q. You thought what?

9 A. I thought it was somebody other than Mr. Bunting, but I
10 made a mistake.

11 Q. Well, I'm asking today what your testimony is. Was someone
12 with Tim McVeigh, or not?

13 A. I thought there was.

14 Q. Is that the same as saying yes?

15 A. Yes.

16 Q. You're saying I thought there was. Today are you saying
17 there was someone with Tim McVeigh? It isn't necessary to look
18 at Mr. Mendeloff.

19 A. I wasn't looking at him.

20 Q. All right. Was someone with Tim McVeigh?

21 A. I don't know.

22 Q. Well, which is it? You don't know, or yes, or no?

23 MR. MENDELOFF: Judge, objection. This has been asked
24 and answered.

25 THE COURT: Overruled.

Thomas Kessinger - Redirect

1 I'm not sure you understand the question.

2 THE WITNESS: I don't understand the question, your
3 Honor.

4 THE COURT: He's not asking who it was or whether you

5 can identify who it was. The question was anybody --

6 THE WITNESS: I thought -- yes, sir, I thought there
7 was.

8 THE COURT: All right.

9 BY MR. JONES:

10 Q. You think that today?

11 A. Yes.

12 Q. So your sworn testimony to the Court today is that John Doe
13 1 is Tim McVeigh, and you don't know who John Doe 2 is in terms
14 of being the second person with Mr. McVeigh.

15 A. No, sir.

16 Q. No, you don't know who it is?

17 A. No, sir, I do know -- do not know who it is.

18 Q. You know there was someone with Mr. McVeigh. You don't
19 know who it was.

20 A. Yes, sir.

21 Q. Now, originally, you said that John Doe 2 was Todd Bunting.
22 Is that correct?

23 A. Yes.

24 Q. Did you say that originally, or did you say that John Doe 2
25 was not Todd Bunting?

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Thomas Kessinger - Redirect

1 A. Originally?

2 Q. Yes, sir.

3 A. Originally, I said it was not Mr. Bunting.

4 Q. All right. And in fact, you maintained that belief rather
5 strongly until about November of 1996?

6 A. Yes, sir.

7 Q. Okay. And in fact on April 6, 1996, you were interviewed
8 at your front door by a camera crew from ABC evening news, were
9 you not?

10 A. Vaguely.

11 Q. To help you, wasn't that the occasion when you asked them

12 to wait while you went in and changed shirts and then came back

13 to the front door? Does that refresh your memory?

14 A. I didn't have a shirt on.

15 Q. Well, then you put a shirt on?

16 A. Yeah.

17 Q. So now you remember it?

18 A. Yeah.

19 Q. Did you tell them while they filmed you that John Doe 2 was

20 not Todd Bunting?

21 A. I don't remember, sir.

22 Q. You don't remember?

23 A. No. I don't remember what I told them.

24 Q. Well, on April 6 of 1996 you still thought that Todd

25 Bunting was John Doe -- I'm sorry -- that John Doe 2 was not

Thomas Kessinger - Redirect

1 Todd Bunting.

2 A. I believe you're right.

3 Q. Now, do you remember, Mr. Kessinger, when the news first

4 came out that Todd Bunting might be John Doe 2?

5 A. Yes, I remember.

6 Q. And that was when, sir?

7 A. I don't remember, sir.

8 Q. Was it May of 1995? May, June, 1995?

9 A. I think it was closer to June.

10 Q. All right. And were there pictures of Mr. Bunting in the

11 newspaper then?

12 A. I did see a flash on TV, just a mug shot of Mr. Bunting.

13 Q. Well, were you still trying to conscientiously avoid

14 television as late as June of 1995?
15 A. Yes, sir, I was.
16 Q. You were. Well, so you did, or did not see Mr. Bunting?
17 A. I seen a picture flash on news of him. Yes, sir, I did.
18 Q. I thought just a little while ago you said that after
19 March -- I'm sorry -- after May 19, 1995, you felt you could
20 continue to watch television.
21 A. Yes, I did.
22 Q. So in June of 1995, you were no longer conscientiously or
23 consciously trying to avoid watching about the Oklahoma City
24 bombing case, were you, sir?
25 A. Yes, sir.

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Thomas Kessinger - Redirect

1 Q. Yes, you were, or yes, you were not?
2 A. Please rephrase that question.
3 Q. Sure. Did you not tell me in direct examination that after
4 May 19, 1995, you felt you could watch television?
5 A. Yes, sir.
6 Q. Okay. So in June of 1995, you didn't have any inhibitions
7 about watching television, did you?
8 A. Somewhat, yes, sir, I did.
9 Q. Somewhat?
10 A. Yes, sir.
11 Q. When did you lose all those inhibitions?
12 A. I was trying to still rely on my memory to keep John Doe as
13 close in my memory as I could from when I had seen him.
14 Q. Which John Doe?
15 A. No. 2.
16 Q. No. 2. Well, if you didn't watch it except for that flash,
17 were you aware that there were newspaper articles and
18 television stories saying that Todd Bunting was John Doe 2?

19 A. No, I wasn't aware. The flash that he was at Fort Riley,
20 that's the only thing that I remember.
21 Q. When did you first learn that there were press reports that
22 Todd Bunting was John Doe 2?
23 A. I don't remember, sir. I don't remember even knowing that
24 he was John Doe No. 2 or them saying that he was John Doe
25 No. 2.

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Thomas Kessinger - Redirect

1 Q. Is it your testimony today that you are certain that John
2 Doe 1 is Tim McVeigh but you're equally certain that John Doe 2
3 is Todd Bunting?
4 A. Yes, sir.
5 Q. But you acknowledge that you previously for a year and a
6 half maintained repeatedly that John Doe 2 was not Todd
7 Bunting.
8 A. Yes, sir.
9 THE COURT: I'm not sure about the question and answer
10 here when you asked him John Doe 2 was Todd Bunting, what the
11 witness understood you to be asking.
12 MR. JONES: That's fair enough. Let me rephrase it.
13 BY MR. JONES:
14 Q. The sketch of John Doe 2 --
15 A. Yes, sir.
16 Q. -- you have that in mind?
17 A. Yes, sir.
18 Q. All right. For a year and a half, you maintained that that
19 sketch was not of Todd Bunting; is that correct?
20 A. Yes, sir.
21 Q. Today you say that you were mistaken.
22 A. Yes, sir.

23 Q. And that Todd Bunting is the same person in the sketch.

24 A. Yes, sir.

25 Q. Well, who prepared the sketch?

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Thomas Kessinger - Redirect

1 A. The same guy that did John Doe No. 1, sir.

2 Q. Okay. Who gave them the information?

3 A. I did, sir.

4 Q. All right. Well, can you give us a sketch of the person

5 that accompanied Mr. McVeigh?

6 A. That was John Doe No. 2, sir.

7 Q. Which is Todd Bunting.

8 A. Yes, sir.

9 Q. Well, let's leave aside Todd Bunting. Tell me what the man

10 that accompanied Mr. McVeigh looked like.

11 A. My sketch does that.

12 Q. So you're saying that -- even though the Government says

13 that the sketch is Todd Bunting, you still say the sketch looks

14 like the person that accompanied Mr. McVeigh.

15 A. Which is Todd Bunting.

16 Q. Did Todd Bunting accompany Mr. McVeigh?

17 A. I don't know, sir.

18 Q. Well, let's leave aside -- let's try it again. I

19 understand that you now say that you believe the sketch of John

20 Doe 2 is Todd Bunting; correct?

21 A. Yes, sir.

22 Q. But the sketch was prepared by information you gave.

23 A. Yes, sir.

24 Q. And you were asked to give a description of the person that

25 accompanied John Doe 1 on the afternoon of April 17; is that

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Thomas Kessinger - Redirect

- 1 correct?
- 2 A. Yes, sir.
- 3 Q. You were not asked to give a sketch of somebody that came
- 4 in at 4:30 on Tuesday, April 18, were you?
- 5 A. I think that's what has happened, sir.
- 6 Q. Well, I'm coming to that. You weren't asked to do that,
- 7 were you?
- 8 A. Asked to do what?
- 9 Q. To give a sketch of the person that came in at 4:30 on
- 10 April 18.
- 11 A. No, sir.
- 12 Q. You were asked to give a sketch of the second person that
- 13 came in at 4:30 or 4:15 on April 17; correct?
- 14 A. Between 4:15 and 4:30, yes, sir.
- 15 Q. Yes, sir. And that's what you tried to do?
- 16 A. Yes, sir. I think -- I think I got the 17th and the 18th
- 17 confused, and I think I put Todd Bunting in that place of
- 18 No. 2.
- 19 Q. I understand that's your testimony, and I want you to
- 20 simply put that aside. Put it aside. Let's say that I accept
- 21 what you say. Fair enough?
- 22 A. Yes, sir.
- 23 Q. Okay. Now tell me what the person that came in with Tim
- 24 McVeigh looked like.
- 25 A. I don't know.

Thomas Kessinger - Redirect

- 1 Q. You don't know.
- 2 A. My eyes were glued on Tim McVeigh.
- 3 Q. Your eyes were glued on Tim McVeigh?

4 A. Yeah.

5 Q. Why were they glued on Tim McVeigh?

6 A. He had a peculiar chin, sir.

7 Q. Well, when you were drawing this sketch, or you were

8 helping to draw the sketch, what day were you doing that?

9 A. I believe on the 19th, sir, or 20th, early morning of the

10 20th, sir.

11 Q. How early in the morning?

12 A. Around 3:30, 4:00 in the morning, sir.

13 Q. 3:30 or 4:00?

14 A. Yes, sir.

15 Q. And how long did it go on?

16 A. Took a couple hours to do John Doe No. 1, and then it took

17 a couple hours to do John Doe No. 2, sir.

18 Q. And then you worked on the sketch on succeeding days, or

19 you worked on the description?

20 A. The description and the hat, sir.

21 Q. Now, on the 20th of April, 1995, at 3:30 in the morning,

22 that would have been two full days since April 17 at 4:30 plus

23 the rest of the 17th and the hours from midnight to 3:30 in the

24 morning on the 20th. Is that correct?

25 A. Yes, sir.

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Thomas Kessinger - Redirect

1 Q. So it would be about 48, 50, about 60 hours.

2 A. Yes, sir.

3 Q. Did you feel you were up to the task of doing the sketch?

4 A. Yes, sir.

5 Q. You weren't under the influence of anything? You were

6 willing to cooperate and assist?

7 A. Yes, sir.

8 Q. All right. Well, then tell me how could you be so wrong 60

9 hours after the event and so right a year and a half later?

10 A. There were several reasons. I got to see the body size and

11 the arm size and the hat on the person and full -- full picture

12 of this person.

13 Q. Of which person?

14 A. Mr. Bunting.

15 Q. Well, I understand that. What I'm talking about is when

16 these agents are visiting with you and they say, Mr. Kessinger,

17 draw us a sketch of the two people on April 17, you're telling

18 me that on one of those, what you were actually describing is

19 somebody that came in on the 18th?

20 A. Could have been, sir.

21 Q. What do you mean could have been? I thought you said it

22 was what happened.

23 A. I'm sure that's what has happened.

24 Q. Well, did you suffer amnesia with respect to the

25 description of the person that came in with Mr. McVeigh?

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Thomas Kessinger - Redirect

1 A. No, sir.

2 MR. MENDELOFF: Objection.

3 THE COURT: Sustained.

4 BY MR. JONES:

5 Q. Why did you forget to describe the person that came in with

6 Mr. McVeigh?

7 MR. MENDELOFF: Your Honor, objection. This has been

8 asked and answered many times.

9 THE COURT: Overruled.

10 THE WITNESS: I can't remember.

11 BY MR. JONES:

12 Q. Well, could it be because you did in fact describe

13 accurately the two people that came in on the 17th and you are
14 changing your mind because the Government wants you to?
15 A. No, sir.
16 Q. No.
17 A. That was just the best of my memory.
18 Q. I see. You met with them some 17 to 19 times? Is that
19 right?
20 A. No, sir. I only met with the -- Mr. Mendeloff about five
21 to six times, sir.
22 Q. Okay. But you've met with the FBI agents?
23 A. Yes, sir.
24 Q. Some 17 to 19 times total.
25 A. I don't know how many times, sir.

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Thomas Kessinger - Redirect

1 Q. Well, you met with them a lot more than you've met with me,
2 haven't you, Mr. Kessinger?
3 A. Yes, sir.
4 Q. In fact, you haven't met with me any?
5 A. Never.
6 Q. But you opened your door to a reporter from ABC News,
7 didn't you?
8 A. I believe I did, sir.
9 Q. And you've talked to other reporters, haven't you, sir?
10 A. No, sir, I haven't.
11 Q. Well -- well, whatever suggestion might or might not have
12 transpired in drawing this chart or diagram or identification
13 couldn't have come from Mr. McVeigh's defense because you
14 haven't talked to us, have you?
15 A. No, sir, I haven't.
16 Q. Okay. Well, let's talk about for a moment the person that
17 came in with Mr. Bunting. Who is that?

18 A. I don't know, sir.
19 Q. You don't know?
20 A. No, sir.
21 Q. I thought you said this was the person, sir.
22 MR. MENDELOFF: Judge, objection. That is a
23 misstatement of the record.
24 THE COURT: I don't recall any such testimony.
25 MR. MENDELOFF: I object to this exhibit before we

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Thomas Kessinger - Redirect

1 display it.
2 THE COURT: Well, it hasn't been offered.
3 MR. MENDELOFF: It's on the monitor.
4 MR. JONES: I don't want to offer it if he can't
5 identify it.
6 THE COURT: I understand.
7 BY MR. JONES:
8 Q. Is this the person that came in with Mr. Bunting?
9 A. I don't know.
10 Q. You don't know. Okay.
11 Who is this?
12 A. That's Timothy McVeigh.
13 Q. Okay. Now, show me where the acne is on this person, which
14 is Defendant's Exhibit triple A -- double A.
15 A. I thought there was blemishes on the jawline, sir.
16 Q. Where are they?
17 A. This ain't a very good side shot of him.
18 Q. Well, it's the one from the spreadsheet that you
19 identified. Don't you recognize that?
20 A. Yes, sir.
21 Q. Okay. Well, it was good enough for you to make an

22 identification, wasn't it?

23 A. Yes, sir, it was.

24 Q. Well, tell me where the acne, blemishes and scars are.

25 A. I believe they're on the jawline and on the neck.

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Thomas Kessinger - Redirect

1 Q. But they're not on this picture, are they?

2 A. I don't see them, sir.

3 Q. Now, would you say that's a close-up?

4 A. Yes.

5 THE COURT: We don't have for the record what this is.

6 MR. JONES: Yes. It's Defendant's Exhibit AA, and I

7 move its admission. Actually, I think it may be the same

8 number as a Government's exhibit.

9 THE COURT: Any objection to AA?

10 MR. MENDELOFF: No, your Honor.

11 THE COURT: It's received.

12 BY MR. JONES:

13 Q. I've laid beside it Defendant's Exhibit BB. Do you see

14 that?

15 A. Yes, sir.

16 MR. JONES: I move the admission of Defendant's

17 Exhibit BB.

18 MR. MENDELOFF: We object, your Honor. There is no

19 basis for the admission of this -- of this exhibit as being

20 part of the record here.

21 THE COURT: Well, I see two exhibits here. I'm

22 confused about what you've got.

23 MR. JONES: I think he was talking about BB, your

24 Honor.

25 THE COURT: Well, I don't have BB.

Thomas Kessinger - Redirect

- 1 I don't have any of your exhibits.
- 2 MR. JONES: Just a moment, your Honor.
- 3 THE COURT: All right.
- 4 MR. JONES: I'm not sure where we are.
- 5 THE COURT: I'm trying to find BB, I thought.
- 6 MR. JONES: Excuse me.
- 7 We should -- he thought Debbie had -- okay.
- 8 MR. TRITICO: I'm getting it, Judge.
- 9 MR. JONES: AA and BB.
- 10 BY MR. JONES:
- 11 Q. Let me -- perhaps this will help you, Mr. Kessinger, and
- 12 remove the confusion. I'm going to show you Government's
- 13 Exhibit 21. Do you see that?
- 14 A. Yes, sir.
- 15 Q. All right. Do you know who that is?
- 16 A. No, sir.
- 17 Q. Well, I'll ask you, sir: Which one has the more prominent
- 18 chin, in your opinion, the man who would be on your left --
- 19 whoops -- or the man on your right?
- 20 A. I ain't got no picture here now.
- 21 Q. I understand.
- 22 THE COURT: We don't have any screen on now.
- 23 MR. TRITICO: There it is.
- 24 BY MR. JONES:
- 25 Q. Let me do it this way: Which has the more prominent chin

Thomas Kessinger - Redirect

- 1 in your opinion, sir, the man that has the blue tag down in the
- 2 corner, or the man that has the white tag?

3 A. The man that has the blue tag has the more prominent chin
4 for my composite drawing.
5 Q. I didn't ask about your composite drawing. I'm asking you
6 to look at this photograph, these two photographs. Who has the
7 more prominent chin?
8 A. The white tag, I guess.
9 Q. Now, the white tag has the mustache.
10 A. Right.
11 Q. And I believe you told the Court that you knew that John
12 Doe 1 couldn't be this man because he has a mustache.
13 A. Yes, sir.
14 Q. Okay.
15 A. And the forehead is different, too.
16 Q. Sure. I understand you said that. Forehead is different?
17 A. And the jaw is different, too.
18 Q. You think and maintain that the jaw --
19 A. The jawline is different.
20 Q. Sir?
21 A. The jawline is different here.
22 Q. I understand. You maintain that the drawing that you did
23 is more consistent with the man with the blue tag than the man
24 with the white tag. Is that correct?
25 A. Yes.

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Thomas Kessinger - Redirect

1 Q. Well --
2 A. The guy with the white tag has more hair than the guy with
3 the blue tag, too.
4 Q. I'm just asking about the jaw right now, Mr. Kessinger.
5 Can you see this very well?
6 A. Somewhat, yes, sir.
7 MR. MENDELOFF: Judge, I object. Unless Mr. -- unless

8 Mr. Jones --

9 THE COURT: It hasn't been offered, Mr. Mendeloff.

10 MR. MENDELOFF: Your Honor -- okay. Apologize, your
11 Honor.

12 BY MR. JONES:

13 Q. Can you see this picture very well?

14 A. Yes, sir.

15 Q. All right. Can you see this picture very well?

16 THE COURT: What is your purpose here?

17 MR. JONES: I want to -- I want to see which ones he
18 can see clearly.

19 THE COURT: Why don't you ask him whether he can see
20 them, not whether he knows what they are.

21 MR. JONES: Then I want to go back and ask him if he
22 would agree with me that the jawline and the chin is very
23 prominent on this individual.

24 THE WITNESS: Yes, I can see it, sir.

25 BY MR. JONES:

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Thomas Kessinger - Redirect

1 Q. Is it prominent?

2 A. Yes.

3 Q. Now, you told me a moment ago that among other things the
4 gentleman with the white tag -- and I'll just tell you that his
5 name is Hartig, so we don't have to keep saying "white tag" --
6 didn't have a mustache -- I'm sorry -- did have a mustache; and
7 so therefore, you knew it couldn't be him among other reasons,
8 wrong jawline, wrong face, skull and so forth?

9 A. Yes.

10 MR. MENDELOFF: I'm sorry, your Honor. The objection
11 is it's vague. Had a mustache when?

12 THE COURT: All right.

13 BY MR. JONES:

14 Q. On April 19; correct?

15 A. Please, sir.

16 THE COURT: I'm sure that the witness is confused.

17 MR. JONES: I'll try to clear it up.

18 THE COURT: Repeat the question.

19 BY MR. JONES:

20 Q. Let's do it this way: Tell me why this person is not a

21 sketch of John Doe 1.

22 THE COURT: And this is Exhibit 21?

23 MR. JONES: Yes, sir.

24 THE WITNESS: Okay. He has a mustache, to start off

25 with. His forehead is longer. His jawline is not the one that

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Thomas Kessinger - Redirect

1 I seen, and he has longer hair than the person I seen.

2 BY MR. JONES:

3 Q. Okay. Well, of course, you were mistaken, as you say

4 today, about whether John Doe 2 was Todd Bunting.

5 A. Yes, sir.

6 Q. So in that case, no matter what his mustache, if any, his

7 chin line, what he was wearing or the size of his skull or

8 whether he had beady eyes or not, you were mistaken about all

9 of it.

10 A. No, sir.

11 Q. No?

12 A. No, sir. I was not mistaken about all of it.

13 Q. Sir?

14 A. I was not mistaken about all of it, no, sir.

15 Q. But you were mistaken about the most basic fact, which is

16 whether he was there, weren't you -- Mr. Bunting?

17 A. Yes, sir.
18 Q. So on what basis do you know that you haven't described
19 Mr. Hartig instead of Mr. McVeigh?
20 A. I just explained it.
21 Q. Indeed you did; but you also said and gave a detailed
22 description of the person with Mr. McVeigh, which you now
23 rejected and said that wasn't him, didn't you?
24 A. Yes, sir.
25 Q. So in your review and your mental processes, you have gone

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Thomas Kessinger - Redirect

1 from two people came in on the 17th to two people came in on
2 the 17th but one of them that you previously described as the
3 person that came in on the 18th; is that correct?
4 A. As I remember, yes.
5 Q. Now, you said you were focused in on John Doe 1, which
6 Mr. Mendeloff identified for you as Tim McVeigh in his
7 questions. Do you remember that?
8 A. Yes, sir.
9 Q. Okay. You also looked at some photographs which
10 Mr. Mendeloff showed you of the inside of Mr. Elliott's body
11 shop. Do you remember that?
12 A. Yes, sir.
13 Q. I want to just ask you about them briefly. I'm going to
14 show you what is Government's Exhibit 3; and would you tell me,
15 please, as you remember it, what that is.
16 A. That is the desk of Vickie Beemer, our secretary, and the
17 computer and looking out into the entrance of the body shop.
18 Q. All right. Now, this door: Is that the door that
19 customers walk in?
20 A. Yes, sir, it is.

21 Q. So John Doe 1 and John Doe 2 on the 17th walked in that
22 door.

23 A. Yes, sir.

24 Q. Government's Exhibit No. 2: What is that?

25 A. That is the approximate location where I was sitting.

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Thomas Kessinger - Redirect

1 Q. All right. So this is the view that you might have seen on
2 that day?

3 A. Yeah. But I was down -- sitting down a little lower, I
4 believe, sir.

5 Q. I understand. So the two men walked through that door; is
6 that correct?

7 A. Yes, sir.

8 Q. You were already seated; is that correct?

9 A. No, sir. They were already in the room when I come into
10 the -- take my break.

11 Q. So you didn't come into the room until they were already
12 there?

13 A. Yes, sir.

14 Q. What time did you come into the room?

15 A. I would say in between 4:15 and 4:30, sir.

16 Q. Can't be any more precise than that?

17 A. No, sir.

18 Q. Incidentally, what day (sic) did you take your break on the
19 18th?

20 A. What day did I take it on the 18th? The 18th.

21 Q. I'm sorry. What time?

22 A. I don't recall, sir.

23 Q. Did you take a break on the afternoon of the 18th?

24 A. Yes, sir, I did. We're supposed to take one at 3:00.

25 Q. Could you have been as late as an hour and a half on

Thomas Kessinger - Redirect

1 Tuesday taking a break?

2 A. Could have been, but I don't believe so, sir. I think I
3 walked through the office.

4 Q. For what purpose?

5 A. To discuss something with either Vickie or Eldon. I don't
6 know.

7 Q. But you wouldn't have discussed something with Vickie if
8 she had a customer, would you?

9 A. I would -- I would stand there and wait until she was into
10 a place where she could speak to me.

11 Q. Well, did you see Todd Bunting and this other man on the
12 18th?

13 A. I don't remember seeing another man. I think I probably
14 seen Todd Bunting, and that's where I come up with John Doe No.
15 2, sir.

16 Q. Was anybody with Todd Bunting on the 18th?

17 A. I don't know, sir.

18 Q. You don't remember?

19 A. No, sir.

20 Q. On the 17th, according to this picture -- and is this
21 pretty much the way it looked like on the 17th?

22 A. Pretty much so, sir.

23 Q. All right. Can you just take your finger and show me on
24 the picture there where Mr. McVeigh according to Mr. Mendeloff
25 was standing?

Thomas Kessinger - Redirect

1 MR. MENDELOFF: Objection, your Honor. According to

2 me?

3 THE COURT: Yes. The identification of the person
4 according to you.

5 MR. MENDELOFF: Judge, I think the question --

6 THE COURT: Objection is overruled. Sit down.

7 Proceed.

8 THE WITNESS: Yeah, he was standing just north of the
9 door there.

10 BY MR. JONES:

11 Q. Well, I don't see the north. Just point if you will for a
12 moment.

13 A. As you enter the door, he was --

14 Q. You don't have a camera, though, do you?

15 A. No, I don't.

16 Q. All right. Let's do it the old-fashioned way. Hold it up.

17 Oh, you don't have it.

18 MR. MACKEY: In the notebook.

19 BY MR. JONES:

20 Q. The notebook.

21 Mr. Kessinger, it's our first time, too.

22 THE COURT: And it may be the last.

23 THE WITNESS: Is this the picture you're talking
24 about, sir?

25 BY MR. JONES:

Thomas Kessinger - Redirect

1 Q. Yes, sir, that's it.

2 A. He was standing around the corner pretty much in front of
3 this light switch.

4 Q. All right. And the gentleman that was with him was
5 standing where?

6 A. Around this here corner, closer to me.

7 Q. All right. Let me give you something to mark on.

8 MR. JONES: Could I hand this to the clerk and ask if

9 she could hand it to Mr. Kessinger?

10 THE COURT: Yes.

11 BY MR. JONES:

12 Q. Got your Magic Marker there?

13 A. Yes, sir.

14 Q. All right. Would you take it and just draw in in a

15 freehand style where John Doe 1 was on the 17th.

16 A. On the TV screen here, or on this here?

17 Q. No, on the sketch that you took out of the book, the

18 photograph you took out of the book.

19 A. I was standing over here by the light switch right in this

20 here area.

21 Q. All right. Just draw a head, a circle and a chest.

22 Where was No. 2?

23 A. On around the corner here, in this here -- in this -- on

24 around the corner. See, this here is the main front part of

25 the counter, and then there was about a 3-foot section that

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Thomas Kessinger - Redirect

1 come around the corner there.

2 Q. Okay. Just put an X where No. 2 is.

3 A. About in this here area, sir.

4 Q. And put an X where No. 1 was.

5 A. Over around the corner on the other side, sir.

6 Q. So the person that was No. 2 was closer to you than the

7 person who was No. 1.

8 A. Yes, sir.

9 Q. You had to look past No. 2 to look at No. 1; correct?

10 A. No, sir. I had a straight-on shot of No. 1.

11 Q. All right. You had a straight-on shot of No. 2, didn't
12 you?
13 A. Side, and then he turned and looked and then he -- and then
14 he turned and looked and I got a full face shot of him, yes.
15 Q. All right.
16 A. But I mostly seen him from the side.
17 THE COURT: Is that Exhibit 2 that you've been drawing
18 on?
19 THE WITNESS: Yes, sir, it is.
20 THE COURT: Thank you.
21 MR. JONES: Your Honor, may I for the record ask that
22 his Exhibit 2 be included that's got the two Xs?
23 THE COURT: Yes.
24 MR. JONES: Thank you.
25 BY MR. JONES:

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Thomas Kessinger - Redirect

1 Q. Now, on April 18, where was Mr. Bunting standing?
2 A. I believe I just walked through the office and he was
3 standing right in the same place where Mr. John Doe No. 2 was
4 standing, sir.
5 Q. And how long did it -- did you have a view of him?
6 A. Probably three to four minutes.
7 Q. You walked that slowly?
8 A. No. I had to stand there and wait for Vickie to answer a
9 question that I had asked her. I had to wait till she come to
10 a pause in the computer to where I could ask her a question
11 about a car I was working on, sir.
12 Q. So on the 18th, you only saw Mr. Bunting for three to four
13 minutes?
14 A. Yes, sir.
15 Q. And on the 17th, the two men who came in, John Doe 1 and

16 John Doe 2: About how long did you have a chance to look at
17 them?

18 A. I was on break then, and I believe it was about ten
19 minutes, sir.

20 Q. How long was your break?

21 A. We got a 15-minute break in the morning and in the
22 afternoon, sir.

23 MR. JONES: I don't believe I have any further
24 questions. Thank you, sir.

25 MR. MENDELOFF: Just some, your Honor.

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Thomas Kessinger - Redirect

1 THE COURT: All right.

2 RE CROSS-EXAMINATION

3 BY MR. MENDELOFF:

4 Q. Mr. Kessinger, let us go through your recollections of your
5 observations of Todd Bunting and your descriptions of John Doe
6 2, if I can.

7 Early in the investigation of this case, after you
8 were first contacted by the FBI, did you give a series of
9 descriptions of John Doe 2?

10 A. Yes, sir, I did.

11 Q. It was after that, as I understand it, that you saw this
12 television coverage with a mug shot of Todd Bunting?

13 A. Yes, sir.

14 Q. Now, when you gave your descriptions, your original
15 descriptions of John Doe 2, did you give a description of the
16 way his arm looked?

17 A. Yes.

18 Q. What did you say?

19 A. It was large.

- 20 Q. What else?
- 21 A. And had a tattoo on it.
- 22 Q. And you described the way that tattoo appeared to you?
- 23 A. Yes, sir, it did. It had -- my exact words, I believe it
- 24 had rough lines or on that manner.
- 25 Q. How much of the tattoo could you see?

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Thomas Kessinger - Recross

- 1 A. About a quarter of an inch, sir.
- 2 Q. Was the rest of it obstructed by a shirt?
- 3 A. T-shirt, yes, sir. A black T-shirt.
- 4 Q. And did you describe the hat as you've described on direct
- 5 and cross-examination?
- 6 A. Yes, sir.
- 7 Q. Did you describe the size of the man?
- 8 A. Large, big, built like a V.
- 9 Q. Muscular?
- 10 A. Muscular.
- 11 Q. When you say built like a V, you mean V-shaped?
- 12 A. Well-built.
- 13 Q. It was after that that you saw this mug shot of Todd
- 14 Bunting on television; is that right?
- 15 A. Yes, sir.
- 16 Q. Did that mug shot display Mr. Bunting's body?
- 17 A. No, sir.
- 18 Q. Did it display him in any kind of hat?
- 19 A. No, sir.
- 20 Q. It was after that, as I take it, that you met with Jon
- 21 Hersley and myself in preparation for your testimony?
- 22 A. Yes, sir.
- 23 Q. And at that time, you reviewed a series of photos, didn't
- 24 you?

25 A. Yes, sir.

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Thomas Kessinger - Recross

1 Q. When you reviewed those photos -- before you viewed the
2 photos, were you asked questions about what you had seen?

3 A. Yes, sir.

4 Q. Were you asked questions about the arm?

5 A. Yes, sir, you were -- yes, sir, I was.

6 Q. And did you describe it similar to the way you described it
7 today?

8 A. Yes, sir.

9 Q. Did you then review a photo of that arm -- a photo of an
10 arm?

11 A. Yes, sir.

12 Q. Let me show you Government's Exhibit 17.

13 What is that?

14 A. That's a photo of the arm I seen.

15 MR. MENDELOFF: Move the admission of Government's
16 Exhibit 17, your Honor.

17 MR. JONES: No objection, your Honor.

18 THE COURT: 17 is received.

19 THE WITNESS: It has a tattoo on it, too.

20 BY MR. MENDELOFF:

21 Q. Can you see that in that photo?

22 A. Yes, sir.

23 Q. Where is the tattoo located?

24 A. About a quarter inch underneath the shirt sleeve, sir.

25 Q. How does that mesh with your recollection of the way the

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Thomas Kessinger - Recross

1 tattoo appeared on John Doe 2's arm, or the man you thought was

2 John Doe 2?

3 A. The same.

4 Q. Excuse me.

5 When you were asked -- when you were shown this

6 photograph, did you say whether or not this -- how this

7 compared to your recollection to the arm of John Doe 2?

8 A. Yes. To my memory, yes, sir.

9 Q. What did you say?

10 A. I said that looked like it.

11 Q. When -- were you then shown another photo?

12 A. Yes, sir.

13 Q. And before you were shown that photo, you described the way

14 the torso of the man looked -- appeared?

15 A. Large chest, like I said, very well-built, V.

16 Q. And were you shown two photos of the torso?

17 A. Yes, sir, I was.

18 Q. Let me show you Government's Exhibit 18.

19 A. That picture there looks like he has a gun.

20 Q. All right. And is that what you said when you saw that

21 photograph?

22 A. Yes, sir, that's exactly what I said.

23 Q. Were you shown another photo?

24 A. But I didn't get to see the head in that picture when I

25 first seen that.

1 Q. When you first were shown that photo, was something

2 obstructed?

3 A. Yes.

4 Q. What?

5 A. A sheet of paper.

6 Q. Over what?

7 A. Over the head.

8 Q. All right.

9 A. And hat.

10 Q. Were you then shown another photo of the torso?

11 A. Yes, sir, I was.

12 Q. Government's Exhibit 19?

13 A. And I didn't get to see the head on this here picture,

14 either.

15 Q. When you were shown this, what did you state?

16 A. That looked like the build of the man I seen.

17 MR. MENDELOFF: Move the admission of Government's

18 Exhibit 19, your Honor.

19 MR. JONES: No objection, your Honor.

20 THE COURT: 19, received.

21 BY MR. MENDELOFF:

22 Q. Did you then view -- did you then view a sketch you had

23 drawn or you had helped draw?

24 A. Yes.

25 Q. Let me show you Government's Exhibit 7. What is that?

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Thomas Kessinger - Recross

1 A. The hat.

2 Q. Is that the sketch you were shown?

3 A. Yes, sir.

4 Q. Did you -- did you recall the description or were you

5 reminded of the description that you gave originally of that

6 hat?

7 A. I recalled a description.

8 Q. Did you then view a photo of a hat?

9 A. Yes, sir, I did.

10 Q. I show you Government's Exhibit 20. What is that?
11 Let me ask you in a different way: Is this the photo
12 of the hat that you saw but with the bottom -- the rest of the
13 body blocked out?
14 A. Yes, sir.
15 Q. And did you compare that to your prior description and your
16 original drawing?
17 A. Yes, sir, I did.
18 Q. When you did that, what was your -- what was your
19 observation about how it compared to your recollection of the
20 hat that was on John Doe 2?
21 A. That was it.
22 Q. Finally, did you review a -- the face of the man?
23 A. Yes.
24 Q. And that's in Government's Exhibit 20; is that right?
25 A. Yes.

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Thomas Kessinger - Recross

1 Q. And did you compare that to your composite?
2 A. Yes, sir. It does.
3 Q. What was your observation about the --
4 A. That is him.
5 Q. All right. Now, this occurred -- you said you met with the
6 Government, with myself and Agent Hersley on five occasions; is
7 that correct?
8 A. Yes, sir.
9 Q. Which occasion was it that you reviewed these photos?
10 A. The second one.
11 Q. And the first occasion -- let me back up for a second. The
12 first time we met, how long did we meet?
13 A. The first time we met? About an hour.
14 Q. All right. This second session where you reviewed these

15 photos: How long did we meet?
16 A. About an hour and a half.
17 Q. At the conclusion of that session, what did you state as to
18 who you believed you were thinking of when you described John
19 Doe 2?
20 A. Mr. Bunting. And I made a mistake.
21 THE COURT: Did you mean to offer Exhibit 20?
22 MR. MENDELOFF: I did, your Honor. I'm sorry. I
23 thought I offered it.
24 THE COURT: Any objection to 20?
25 MR. JONES: No, your Honor.

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Thomas Kessinger - Recross

1 THE COURT: Received.
2 MR. MENDELOFF: No further questions, your Honor.
3 THE COURT: Mr. Kessinger, as you notice, this is not
4 the trial in this case.
5 THE WITNESS: Yes, sir.
6 THE COURT: This is a preliminary hearing in
7 connection with it or a pretrial hearing; but you are expected
8 to be a witness at the trial.
9 THE WITNESS: Yes, sir.
10 THE COURT: And I must instruct you that under our
11 rule here you must not discuss your testimony with any other
12 person who may be a witness at the trial.
13 THE WITNESS: Yes, sir.
14 THE COURT: You understand?
15 THE WITNESS: Yes, sir.
16 THE COURT: All right. You may step down.
17 THE WITNESS: Thank you, sir.
18 THE COURT: May he leave now?

19 MR. MENDELOFF: Yes, your Honor.
20 MR. JONES: Yes, your Honor.
21 THE COURT: So you can go home.
22 THE WITNESS: Thank you, sir.
23 THE COURT: Next witness.
24 MR. JONES: Mr. Eldon Elliott would be the next
25 witness, your Honor.

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1 THE COURT: All right. Eldon Elliott.
2 If you'll just come into the witness stand here, face
3 the front and raise your right hand and be sworn.
4 THE COURTROOM DEPUTY: Raise your right hand, please.
5 (Eldon Elliott was sworn.)
6 THE COURTROOM DEPUTY: Would have you a seat, please.
7 Would you state your full name for the record and
8 spell your last name.
9 THE WITNESS: Eldon Elliott, last name is
10 E-L-L-I-O-T-T.
11 THE COURT: You may proceed, Mr. Jones.
12 MR. JONES: Thank you.
13 DIRECT EXAMINATION
14 BY MR. JONES:
15 Q. Mr. Elliott, you are the owner of Elliott's Body Shop?
16 A. Yes, I am.
17 Q. Which is also a franchise owner for the Ryder truck rental?
18 A. Yes, it is.
19 Q. After April 19, 1995, Mr. Elliott, did you have some
20 T-shirts printed up saying, "Elliott's Body Shop, We Remember
21 Our Customers"?
22 A. Yes, I did.
23 Q. I want to talk to you about some of your customers. How

24 many of those shirts, incidentally, did you have printed up?

25 A. Probably about 50.

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Eldon Elliott - Direct

1 Q. 50? Is that right, sir?

2 A. Yes.

3 Q. Did you have them printed up because you were an alleged
4 eyewitness in this case and you wanted to make a point?

5 A. Not really. I had always had T-shirts of Elliott's Body
6 Shop beforehand and I did that; and then I decided that wasn't
7 right, so I just quit selling any T-shirts.

8 Q. But the reference "We Remember Our Customers" is a play on
9 this case, isn't it?

10 A. Not really.

11 Q. Do you keep a large Ryder truck parked in front of your
12 yard at all times?

13 A. Only when we have them there.

14 Q. Mr. Elliott, on April 17, 1995, you were working at
15 Elliott's Body Shop?

16 A. Yes, I was.

17 Q. And generally on a day-to-day basis, what would your duties
18 be, Mr. Elliott?

19 A. I work in the shop some. I make estimates when people come
20 in for estimates on cars and sometimes I'm in to work with the
21 people on Ryder trucks. Most generally I'm in the shop
22 working.

23 Q. Is the shop open sometimes on Saturday morning?

24 A. Just for renting Ryder trucks.

25 Q. You don't do any mechanic work on Saturday morning?

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Eldon Elliott - Direct

- 1 A. We don't do no body work on Saturday morning.
- 2 Q. What are your hours on Saturday morning?
- 3 A. Now, it's 8 --
- 4 Q. I'm sorry. On April 15, 1995, what were your hours?
- 5 A. From about 8:00 to 10:00. Sometimes I stayed a little
- 6 later, but that's what we had --
- 7 Q. That was to facilitate people that wanted to come in and
- 8 pick up a truck or make a deposit?
- 9 A. That we had reservations on, yes.
- 10 Q. And were you the only person at the shop that morning?
- 11 A. Yes, I was.
- 12 Q. And did an individual approach you to place a deposit or
- 13 make arrangements for leasing a truck that morning?
- 14 A. Yes, they did.
- 15 Q. Was there just one transaction?
- 16 A. That day?
- 17 Q. Yes.
- 18 A. No, there wasn't.
- 19 Q. So others approached you in that two-hour period?
- 20 A. Yes.
- 21 Q. All right. I want to center your attention on a gentleman
- 22 who identified himself to you as Robert Kling. Do you have
- 23 that in mind?
- 24 A. Yes.
- 25 Q. All right. Did Mr. Kling approach you?

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Eldon Elliott - Direct

- 1 A. Yes, he did.
- 2 Q. And tell me what happened when he came there.
- 3 A. He came in and I was setting (sic) behind my desk, which I
- 4 have a little countertop up at the top. He came in and -- up

5 to the countertop and said he had talked to Vickie the day
6 before on getting a price on a truck and he wanted to make the
7 reservation.

8 Q. Now, did he say he had talked with Vickie? Did he name
9 her, or did he just say he had talked the day before?

10 A. He said he had talked to Vickie.

11 Q. All right. And did you know that this individual had a
12 reservation?

13 A. No, I didn't.

14 Q. What time did he come in?

15 A. It was probably around -- somewhere around 9:00.

16 Q. After he had said to you what you attribute to him, what
17 did you say in return?

18 A. I said okay and I put his first initial in the computer so
19 it would bring up his name and put it down there for a deposit.
20 And I said it would be the \$80 deposit to make the reservation;
21 and he wanted to know if he could pay for it in full at that
22 time so he could pick the truck up on Monday.

23 And I said yes. I said, I've noticed that you don't
24 have insurance on here. Would you like to have insurance?

25 He said no, he wouldn't.

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Eldon Elliott - Direct

1 So I explained to him if he didn't take insurance he'd
2 be responsible; and so then we -- I run off the price, the
3 quote for him to make the reservation and he paid me for it;
4 and I said, If you decide you want insurance, all you'd have to
5 do is just let me know on Monday, think about it, and if you
6 want it, we can just add it right on Monday when we make the
7 contract out.

8 Q. And what was the sum he paid you that morning?

- 9 A. \$280 and some odd cents.
- 10 Q. Was that by check, by cash?
- 11 A. By cash.
- 12 Q. And was that the amount for the rental?
- 13 A. Yes, it was.
- 14 Q. Did you --
- 15 A. With the deposit.
- 16 Q. Sir?
- 17 A. With the deposit.
- 18 Q. And did you give him a receipt?
- 19 A. Yes, I did.
- 20 Q. About how long did this transaction take place?
- 21 A. I would suppose five minutes or -- five to ten minutes at
- 22 the very most.
- 23 Q. And was there anyone else in the shop or at least in the
- 24 office area besides the two of you?
- 25 A. No, there was not.

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Eldon Elliott - Direct

- 1 Q. Did the phone ring at any time?
- 2 A. Not while he was in there.
- 3 Q. Were you in any way distracted while he was in there?
- 4 A. No.
- 5 Q. So your business was entirely with him during the period of
- 6 time he was in your store?
- 7 A. Yes.
- 8 Q. What was the description that you gave of him on Saturday
- 9 morning, the physical description? What do you remember his
- 10 description was?
- 11 THE COURT: Well, I think you've asked a couple of
- 12 questions.
- 13 MR. JONES: It is compound. Let me withdraw it.

14 BY MR. JONES:

15 Q. What was your memory of his physical description on

16 Saturday, the day he came in?

17 A. About all I seen was just mostly his face because it was --

18 he was standing behind the counter there, the desk top that we

19 have that's taller than our desk. And just looking right

20 straight at his face.

21 Q. Did you form an opinion as to his height?

22 A. Not really. I said -- you know, when they asked me about

23 what height, but I couldn't really tell because he was leaned

24 on the counter.

25 Q. Well, did you give an approximation?

119

Eldon Elliott - Direct

1 A. Yes, I did.

2 Q. And what was the approximation?

3 A. Around 5' 10".

4 Q. And when you say he was leaning on the counter, what do you

5 mean?

6 A. Well, when he was standing up, instead of standing up

7 straight, he was leaning on the top of the counter kind of

8 leaned down; and I was looking right straight at him, so that's

9 why I guessed him to be about 5' 10".

10 Q. Well, did he lean down when he walked in through the door,

11 or was he standing upright?

12 A. I didn't really pay much attention to when he walked over.

13 I was doing some stuff at the desk when he walked in; and when

14 I looked up, he was kind of leaning down on the counter.

15 Q. Did you continue to sit, or did you stand up?

16 A. I was setting (sic) while I did the stuff on the computer,

17 and then I stood up.

18 Q. And when you stood up, did he continue to lean?
19 A. Yes, he did.
20 Q. I see. Did he stand up straight when he got ready to
21 leave?
22 A. Yes, he did.
23 Q. What was he wearing that Saturday morning?
24 A. I really wasn't sure, but I think -- about all I could see
25 was a T-shirt that I thought was a military T-shirt.

120

Eldon Elliott - Direct

1 Q. Did you describe it as a camouflage military T-shirt?
2 A. Yes, I did.
3 Q. Did you notice anything on his face or about his face?
4 A. Just nothing really out of the ordinary except like a
5 little, bitty line or mark on his -- kind of on his chin that
6 might have been a shadow from the light or something. I don't
7 know.
8 Q. Did you describe it to the grand jury as a wrinkle or a
9 drawn-in mark on his chin?
10 A. Yes, I did.
11 Q. And is that your memory of what he appeared like on that
12 Saturday morning?
13 A. Yes, it was.
14 Q. Did you notice anything else about him on Saturday morning?
15 A. No, I didn't.
16 Q. Did you have any other conversation with him on Saturday
17 morning other than what you have described?
18 A. The only thing that I had on it was I'd asked him if he
19 needed any more miles and he said no more miles, just a couple
20 days, which we give him on the contract; and then I told him,
21 Well, be sure and think about this and if you need any
22 insurance, just let us know on Monday; and then that was about

23 all of it that I remember.

24 Q. Did you see this individual again on Monday, April 17?

25 A. Yes, I did.

121

Eldon Elliott - Direct

1 Q. At your shop?

2 A. Yes, it was.

3 Q. And about what time did you see him?

4 A. I'm going to say probably somewhere around 4:20 or

5 something like that.

6 Q. What were the circumstances under which you saw him at that

7 time, Mr. Elliott?

8 A. I was out in the shop working. My gal Vickie came out to

9 get me to come in to inspect the truck. We inspect each truck

10 for damage that's on them when they go out and the people don't

11 take insurance. We go around and make sure that we got

12 everything listed good on them.

13 Q. And did you go to inspect the truck?

14 A. Yes, I did. I came in through the shop with her. She

15 handed me the inspection slip, walked up to him and asked him

16 if he had changed his mind. I said, You didn't change your

17 mind and want insurance?

18 He said, No, I didn't.

19 I says, Let's go out and walk around the truck so we

20 can get everything listed.

21 He said, That's all right. I'll just stay here and

22 you can inspect it.

23 So I went out, inspected the truck, and came back in.

24 Q. Did you recognize this individual as the same person that

25 had been there on Saturday morning?

Eldon Elliott - Direct

1 A. Yes, I did.

2 Q. Now, when you went out to look at the truck, had the truck
3 already been pulled around, or did you have to go to the back
4 for it?

5 A. It would have been pulled down to us.

6 Q. And why was that?

7 A. Because that's the way we always do. She has someone pull
8 it down, and then I walk around and inspect it.

9 Q. Does the person that pulls it down pull it down when the
10 customer arrives, or is it already in place?

11 A. He pulls it down after the customer arrives.

12 Q. So some way or the other she tells somebody to bring the
13 truck around?

14 A. That's right.

15 Q. Now, on this day, Mr. Elliott, do you know who brought the
16 truck around?

17 A. Yes, I do.

18 Q. Who was that?

19 A. A gentleman that works for us for -- named Fernando Ramos.

20 Q. So you went out to inspect the truck alone?

21 A. Right.

22 Q. And is there a form you use?

23 A. Yes, there are.

24 Q. And about how long did it take you to inspect the truck?

25 A. I would say probably a minute or two.

Eldon Elliott - Direct

1 Q. And then what did you do?

2 A. I came back in with it and showed him that I inspected it
3 and handed it to Vickie and told him to have a safe trip and if

4 he was ever back in the area and we could help him with
5 anything, come in and see us.
6 Q. Now, this gentleman had given you his name as Kling?
7 A. Yes, he did.
8 Q. Was there anyone with Mr. Kling when he came to see you on
9 Saturday?
10 A. No, not to my knowledge. I did not see no one but him.
11 Q. Was there anyone with him when he came in on Monday
12 afternoon?
13 A. There was someone standing in there in the office.
14 Q. Close to him?
15 A. Probably about 3-, 4-foot apart.
16 Q. Do you remember where this other individual was standing?
17 A. Yes, I do.
18 Q. Where was he standing?
19 A. Kind of to the right of our office towards the corner
20 there.
21 Q. All right. I have a -- let me show you a photograph of
22 your office and see if you can -- I'm going to show you what's
23 been previously received into evidence, sir, as Government's
24 Exhibit No. 2. Do you know what that is?
25 A. Yes, I do.

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Eldon Elliott - Direct

1 Q. What is it?
2 A. The office. The front door and the top of the counter that
3 the desk sits behind.
4 Q. Looking at Government's Exhibit No. 2, can you show me
5 where this other individual was?
6 A. He was standing over here to -- as I'm looking at the
7 picture -- to the right where your fingers are sitting right

8 now over further towards the corner, not that way, the other

9 way.

10 Q. This way?

11 A. That way.

12 Q. All right.

13 A. There is a rack there, and he was standing in front of the

14 rack a little more to the side. The other gentleman that

15 rented the truck was standing right at the corner of the desk.

16 Q. Here?

17 A. Right. And I walked between the two of them.

18 Q. Where was Mr. Kessinger?

19 A. He was sitting back up here along the other wall that's not

20 shown in this picture.

21 Q. Okay. So this might be a view as he set (sic) there, or at

22 least a partial view?

23 A. Pardon?

24 Q. This might be what he was seeing if he set (sic) there?

25 A. Right.

125

Eldon Elliott - Direct

1 Q. All right. Now, did you come in this door, sir?

2 A. No, I did not.

3 Q. Did you exit that door?

4 A. I went out that door when I inspected the truck. I came

5 back in that door when I got done inspecting the truck, and

6 then I went back out into the shop through the other door.

7 Q. Now, when you said you walked between them, that means when

8 you left?

9 A. When I went out to inspect the truck.

10 Q. Right. Now, when you came back in from inspecting the

11 truck, where were they?

12 A. Standing at about the same place.

13 Q. Can you describe for me as you remember it that day what
14 the second individual was wearing?
15 A. No, I cannot. The only thing I noticed was a kind of
16 unusual hat.
17 Q. What do you mean unusual?
18 A. Well, it had a -- it was a white hat with kind of blue
19 lightning bolt stripes back the side.
20 Q. Was other individual talking to Kling?
21 A. When I came back in from inspecting the truck.
22 Q. Do you remember what the conversation was?
23 A. No, I do not.
24 Q. Now, on that day; that is, April 17, what opinion did you
25 form as to Mr. Kling's height?

126

Eldon Elliott - Direct

1 A. I really didn't pay that much attention to his height.
2 Q. Do you recall whether you told the grand jury that on that
3 day you formed the opinion that he was about 5' 10" in height,
4 somewhere about there?
5 A. I don't remember.
6 Q. Okay. Did you tell the grand jury that he was about the
7 same height as you?
8 A. I think I told the grand jury he was about the same height
9 as me or just a little taller.
10 Q. Okay. And how tall are you?
11 A. I'm about 5' 10", 10 1/2".
12 Q. Now, with your shoes on or your shoes off?
13 A. With my shoes off.
14 Q. With your shoes off?
15 A. Right.
16 Q. All right. Thank you. Now, was the other person that was

17 there with Kling shorter or taller than Kling?

18 A. He was shorter than Kling.

19 Q. Do you know about how much shorter?

20 A. No, I really do not.

21 Q. On April 17, 1995, what was Kling wearing when you saw him?

22 A. I really don't remember.

23 Q. Just a moment, sir.

24 Were you interviewed by Special Agent Scott Crabtree

25 of the FBI on April 19, 1995?

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Eldon Elliott - Direct

1 A. Yes, I was.

2 Q. At that time did you tell Mr. Crabtree that the individual
3 who had identified himself as Kling was a white male with a
4 short, military-style haircut, light brown in color, wearing an
5 Army fatigue or similar military-type clothing, but that you
6 could not be certain exactly of the attire due to the number of
7 people in the office that day?

8 A. I told him that I couldn't remember for sure but it could
9 have been military fatigues because about 75 percent of our
10 customers is military uniforms that come in there to do
11 business with us.

12 Q. So are you telling me that the basis for your statement to
13 Mr. Crabtree that he was wearing military fatigues is because
14 that's 75 percent of your customers?

15 A. I said it could be, because I -- I never did really say for
16 sure what -- that I knew for sure what the clothing was.

17 Q. Well, what is your memory today?

18 A. Of what clothes he was wearing?

19 Q. Yes.

20 A. I'm not sure.

21 Q. So he as far as you know today -- he could still have been

22 wearing military fatigues?

23 A. Could be.

24 Q. What was Kling wearing on Saturday, April 15?

25 A. The only thing that I can remember that he was wearing was

128

Eldon Elliott - Direct

1 a T-shirt that was like the Army T-shirt or it might have even

2 had some camouflage on it.

3 Q. Do you remember whether he was wearing green slacks?

4 A. I don't remember at all. Where he was standing, I could

5 not see anything much below his shoulders.

6 Q. Did you have an occasion to see the type of automobile that

7 Kling arrived in on the -- I'm sorry -- on the 17th?

8 A. I remember seeing --

9 MR. MENDELOFF: Judge, I'm sorry. I have to object.

10 That assumes a fact not in evidence.

11 THE COURT: Overruled.

12 Do you remember seeing a car?

13 THE WITNESS: I remember seeing some kind of car, but

14 I really wasn't sure what it was because it was kind of a

15 little, bitty, nasty, rainy, drizzly day and I didn't pay much

16 attention.

17 MR. JONES: If I might have just a moment, your Honor.

18 THE COURT: Yes.

19 BY MR. JONES:

20 Q. Well, as a matter of fact, didn't you describe the vehicle

21 as fair-sized, light blue sedan?

22 A. I said it was a mid-sized car or full-sized car, but I

23 really wasn't sure what color it was. It could have been a

24 blue.

25 Q. Did you say it was a sedan?

Eldon Elliott - Direct

1 A. I said I thought it was --

2 THE COURT: Are you asking him on a particular
3 occasion?

4 MR. JONES: Yes, on the 17th.

5 THE WITNESS: I said I thought it was a sedan.

6 THE COURT: No, wait a minute.

7 Just give us a moment.

8 Now, say to whom and when.

9 BY MR. JONES:

10 Q. On the 17th of April, 1995, what -- let me -- let's get
11 around from what you said to Mr. Crabtree. Just tell me today
12 what kind of car you remember that was light blue or blue.

13 A. I really don't remember what kind of car it was.

14 Q. Do you remember whether -- on the interview that you had
15 with Mr. Crabtree on the 20th whether you described it as a
16 light blue or fair blue sedan?

17 A. At that time, I said I think it could have been. I wasn't
18 really sure what it was. I just took a short glance. I knew
19 there was a car sitting there, but I wasn't certain what it
20 was.

21 Q. And you told all that to Mr. Crabtree?

22 A. I don't know if I told him that day or not, but -- I don't
23 remember for sure what I told him on it all.

24 Q. Well, if you don't remember, you don't remember.

25 In June of 1995, did someone with the Federal

Eldon Elliott - Direct

1 Government show you a photograph of a cap worn by an
2 individual?

3 A. Yes, they did.

4 Q. And who showed you that?

5 A. I'm not sure what -- I think his name was Joe showed me

6 that cap. He was a prosecuting attorney, I believe is who it

7 was. I don't remember his name for sure.

8 Q. Was he with someone?

9 A. Yes.

10 Q. Who was he with?

11 A. With two ladies in the room, and Jon Hersley was in the

12 room.

13 Q. These two ladies were with the Federal Government?

14 A. Yes, they was.

15 Q. So there were four of them?

16 A. Right.

17 Q. And what exactly were you shown at that time, Mr. Elliott?

18 A. Just a cap.

19 Q. And were you shown the cap or a photograph?

20 A. I'm sorry. I was shown a photograph of the cap, and they

21 had a paper over the face that was under the cap.

22 Q. And what did they ask you or say to you when they showed

23 you the photograph?

24 A. If that looked like the cap I was describing; and I said

25 no.

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Eldon Elliott - Direct

1 Q. You said no.

2 A. That's right.

3 Q. Okay. And this is the cap that John Doe 2 was wearing?

4 A. Supposedly.

5 Q. Because Kling wasn't wearing a hat. Is that correct?

6 A. That's correct.

7 Q. Did you also have a conversation with them at that time in
8 which you expressed the opinion that John Doe 2 was with Kling
9 when Kling rented the Ryder truck?
10 A. That he was -- I thought he was probably with him when they
11 was in there renting the truck, picking the truck up. I'm
12 sorry.
13 Q. Right. Now, when was the first time you were interviewed
14 by anyone on the FBI with respect to this case, sir?
15 A. The first time?
16 Q. Yes, sir.
17 A. On the 19th, approximately around 4:00 or maybe 4:30. I
18 don't remember for sure.
19 Q. And who approached you at that time, sir?
20 A. Mr. Crabtree.
21 Q. And he identified himself as an agent of the FBI?
22 A. Yes, he did.
23 Q. What did he say to you, sir?
24 A. He called first to tell me he would be down there to talk
25 to me, and then he come in and interviewed me on it.

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Eldon Elliott - Direct

1 Q. Did he say on the telephone why he wanted to talk with you?
2 A. He said he wanted to talk to me about the contract that the
3 Ryder people talked to me on.
4 Q. You had had some previous conversation with Ryder that day?
5 A. Yes, I had.
6 Q. And when was that, sir?
7 A. About 3:00.
8 Q. And who contacted you then?
9 A. Dave Russell, I talked to, from Miami.
10 Q. And he's with Ryder truck?
11 A. Yes, he is.

12 Q. And what did Mr. Russell inform you?

13 A. He wanted me to pull the contract -- give me a contract
14 number, wanted me to pull the contract to look at the name that
15 was on the contract; and he said, We believe that this might be
16 the truck that was involved in the Oklahoma and don't talk to
17 anybody but Mr. Crabtree will be calling you and don't talk to
18 anybody else about it.

19 Q. And then Mr. Crabtree called you?

20 A. He called me -- just seemed like it was just seconds after
21 I hung the phone up.

22 Q. And did you have a conversation with anyone in the office
23 before Mr. Crabtree arrived?

24 A. The only one I had anything to say with was Vickie, because
25 he said, Who is involved with renting the Ryder truck, and I

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Eldon Elliott - Direct

1 said Vickie and I.

2 He says, Don't say anything to anybody but her on
3 this.

4 Q. And did you talk with Vickie before Mr. Crabtree arrived?

5 A. Just said that I had just a few moments -- I said -- they
6 said that this truck they think was the one that was down in
7 Oklahoma.

8 Q. And what else did you say to her?

9 A. I think that's -- I don't remember saying anything else,
10 because the phone rang again and it was Dave Russell wanting me
11 to make reservations for rooms. And I called and made
12 reservations for rooms, and then I called him back in Miami and
13 let him know where the rooms was at; and seemed to me like just
14 about then Crabtree came walking in.

15 Q. All right. So the only conversation that you had with

16 Ms. Beemer before Mr. Crabtree got there was what you indicated
17 to me now; is that correct, sir?
18 A. Right.
19 Q. Did you have a conversation with anyone else before
20 Mr. Crabtree arrived other than Mr. Russell or Ms. Beemer?
21 A. I don't remember having any conversation with anyone else.
22 Q. When Mr. Crabtree got there, did he interview you first or
23 someone else?
24 A. Interviewed me first.
25 Q. And was anyone else in the room?

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Eldon Elliott - Direct

1 A. Not while he was interviewing me.
2 Q. How long did the first interview last?
3 A. I don't really remember.
4 Q. Did he interview you a second time on the 19th?
5 A. Yes, out of Fort Riley.
6 Q. And that's still on the 19th?
7 A. Yes.
8 Q. About what time of day was that, sir?
9 A. That was in the evening when we got -- when he got done
10 interviewing there at the shop, we went to Fort Riley to be --
11 we was going to be fingerprinted and then he had got a call and
12 we changed and went to the CID office at Fort Riley and we was
13 fingerprinted there and they talked to us again there and then
14 released us to go home that evening.
15 Q. When you say they talked with you, you mean they
16 interviewed you about the truck?
17 A. They interviewed us again on stuff.
18 Q. Now, when Mr. Crabtree was there on the 19th at your
19 office, who else, to your knowledge, did he interview besides
20 you?

21 A. Vickie Beemer and Tommy Kessinger.

22 Q. Anyone else?

23 A. No.

24 Q. What did he ask you on the interview on the 19th and what

25 did you say to him?

135

Eldon Elliott - Direct

1 A. He just asked about if I could describe to him what height
2 he was, anything about his face and the clothes he was wearing
3 and what I told and talked about, and that's about all it was
4 there.

5 Q. Were you also interviewed by Mr. Crabtree at Fort Riley
6 later that day?

7 A. I was interviewed with someone at Fort Riley, and I'm not
8 sure -- I don't remember if it was Crabtree or someone else
9 that day.

10 Q. Then on April 20, were you interviewed by Mr. Crabtree?

11 A. Yes, I was, at Fort Riley.

12 Q. And just the two of you, or was there someone else present?

13 A. No, there was someone else in the room there.

14 Q. Do you remember who that was?

15 A. No, I do not.

16 Q. What was the subject of the interview on the 20th?

17 A. Just went over about the same things that we had went over
18 before.

19 Q. And then on the 27th, you were interviewed by Sergeant

20 Robert Story of the Junction City Police Department and Special

21 Agent Ronald Koziol of the FBI?

22 A. At the where?

23 Q. Well, I didn't say where. I just asked if you were

24 interviewed by those two men.

25 A. I was interviewed -- I don't remember the dates, but I was

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Eldon Elliott - Direct

1 interviewed by so many, I don't remember who it was that

2 interviewed me.

3 Q. Sure. Were you interviewed between the 20th and the 27th?

4 Do you know?

5 A. I don't really remember. It seemed like everyday someone

6 was talking to me about it.

7 Q. Was there any discussion in which you were a participant or

8 which you overheard about your going to Oklahoma City on Friday

9 or Saturday or Sunday following your initial interview on the

10 19th?

11 A. I don't remember when they said we needed to go to Oklahoma

12 City.

13 Q. Did you go to Oklahoma City?

14 A. Yes, I did.

15 Q. When did you do that?

16 A. I really don't remember without looking back. I don't

17 remember what the date was.

18 Q. Well, how close was it to Mr. Crabtree's first visit with

19 you?

20 A. Oh, it was a while, but I don't -- it wasn't right away

21 that we went to Oklahoma City, I don't believe.

22 Q. Was it in April?

23 A. I don't really remember.

24 Q. Where did you go when you went to Oklahoma City?

25 A. We went to the federal building.

137

Eldon Elliott - Direct

1 Q. All right. A U.S. courthouse?

2 A. No.

3 Q. Which federal building?

4 A. There was a federal building.

5 Q. The Murrah Building?

6 A. That could have been where we went.

7 Q. Was it still standing?

8 A. No, it wasn't the Murrah Building. It was another

9 building. The building we went in was standing, yes; but I

10 don't remember what building it was for sure.

11 Q. What happened when you got inside that building?

12 A. They just asked a whole bunch of questions on who I was and

13 what type of business I run and then went through everything

14 over that we had been through.

15 Q. Were you shown any photographs then?

16 A. No.

17 Q. Did you ever participate or see a physical lineup of

18 anyone?

19 A. I didn't see a lineup. I seen photograph pictures.

20 Q. Okay. Was there ever a discussion with you about viewing a

21 physical lineup?

22 A. No.

23 Q. Were you asked to go to Oklahoma City on Saturday, the

24 23rd?

25 A. Saturday, the 23rd?

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Eldon Elliott - Direct

1 Q. Yes, sir.

2 A. I never went to Oklahoma City on a Saturday.

3 Q. Okay. Well, were you in Oklahoma City on Saturday after

4 Mr. Crabtree saw you on Wednesday?

5 A. No.

6 MR. JONES: Your Honor, when do you want me to --

7 THE COURT: Good time right now?

8 MR. JONES: Yes, sir.

9 THE COURT: All right. We'll break now.

10 During the time of this recess, which is going to be
11 till 1:30, don't discuss your testimony with anybody.

12 We'll recess till 1:30.

13 (Recess at 12:13 p.m.)

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1 REPORTERS' CERTIFICATE
2 We certify that the foregoing is a correct transcript
3 from the record of proceedings in the above-entitled matter.
4 Dated at Denver, Colorado, this 18th day of February,
5 1997.

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Paul Zuckerman

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Kara Spitler

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3 Criminal Action No. 96-CR-68

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

7 TIMOTHY JAMES McVEIGH and TERRY LYNN NICHOLS,

8 Defendants.

AA

9

10 REPORTER'S TRANSCRIPT
11 (HEARING ON MOTIONS TO SUPPRESS EYEWITNESS IDENTIFICATION)
12 VOLUME II

AA

12

13 Proceedings before the HONORABLE RICHARD P. MATSCH,

14 Judge, United States District Court for the District of

15 Colorado, reconvened at 1:30 p.m., on the 18th day of February,

16 1977, in Courtroom C-204, United States Courthouse, Denver,

17 Colorado.

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24 Proceeding Recorded by Mechanical Stenography, Transcription
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21 Street, Suite 1308, Denver, Colorado, 80203, appearing for
22 Defendant Nichols.

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1 PROCEEDINGS
2 (Reconvened at 1:30 p.m.)
3 THE COURT: Please be seated. Are we ready for the
4 witness?
5 MR. JONES: Yes, your Honor.
6 THE COURT: All right. Please resume the stand,
7 Mr. Elliott.
8 You may be seated.
9 (Eldon Elliott was recalled to the stand.)
10 THE COURT: Continue, Mr. Jones.
11 MR. JONES: Thank you, your Honor.
12 THE COURT: We've, I guess, marked that exhibit that
13 Mr. Kessinger had marked on now as 2A.
14 MR. JONES: Thank you, your Honor.
15 THE COURT: We've marked that and will receive that in
16 evidence.
17 REDIRECT EXAMINATION CONTINUED
18 BY MR. JONES:
19 Q. Mr. Elliott, when you were first interviewed on April the
20 20th by Special Agent Scott Crabtree, did you tell him that you
21 could not recall hearing Mr. Kling's voice on April 17?
22 A. I don't remember saying that.
23 Q. Have you read a copy of the 302 that he wrote, the witness
24 statement of his interview with you on April the 20th?
25 A. That Crabtree wrote?

Eldon Elliott - Redirect

1 Q. Yes, sir.
2 A. No, I have not.
3 Q. Was there a time when you were uncertain as to whether you

4 had ever heard Mr. Kling's voice?

5 A. No.

6 Q. Now, you told Mr. Crabtree and the other agents, did you

7 not, that on the 17th when this transaction took place that

8 afternoon before the picking up of the truck, that there were

9 two of them there together; is that right?

10 A. Yes.

11 Q. And do you still hold to that belief today?

12 A. There was another person in there, yes.

13 Q. I beg your pardon?

14 A. There was another person in there, yes.

15 Q. Okay. Well, you said there was another person in there.

16 Are you trying to say that you're not certain whether this

17 person came with Mr. Kling?

18 A. I never know if he come with Mr. Kling because I didn't see

19 him come in.

20 Q. Did you form the opinion that he was there with Kling?

21 A. Yes.

22 Q. He wasn't in there before Kling came in, as far as you

23 know?

24 A. As far as I know, no.

25 Q. And he wasn't there after Kling left?

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Eldon Elliott - Redirect

1 A. As far as I know, no.

2 Q. And you didn't rent another truck to him around that time,

3 did you?

4 A. No.

5 Q. Now, have you seen a sketch of what is known as the John

6 Doe 2 sketch?

7 A. Yes.

8 Q. I'll hand you -- well, actually I won't hand it to you.
9 I'll show it to you. Government Exhibit.
10 Just a moment, Mr. Elliott.
11 I hand you, I show you Government Exhibit No. 5, which
12 is a sketch of John Doe 2, I believe. Have you seen this
13 sketch before?
14 A. Yes.
15 Q. Does this look like the person that you saw with Mr. Kling?
16 A. I don't even remember what John Doe 2 looked like.
17 Q. So you're not able to say whether this is or is not the
18 sketch?
19 A. Right.
20 Q. Where have you seen this sketch?
21 A. I don't really remember.
22 Q. Did you -- did the Government show it to you?
23 A. I would say that's probably who showed it to me.
24 Q. Did you see it in a newspaper or on television or in a
25 magazine?

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Eldon Elliott - Redirect

1 A. I try to not watch TV or I don't read the newspapers.
2 Q. Well, my question was: Did you see it on television or in
3 the newspaper?
4 A. No, I did not see it on.
5 Q. Now, when you spoke with Mr. Crabtree on the 19th, do you
6 remember anything else that he said to you other than what
7 you've testified to here today?
8 A. No, I don't.
9 Q. Do you remember what he said to you on the 20th?
10 A. Not really.
11 Q. What part do you remember, if any?
12 A. He just went over -- he just asked me questions on what

13 that I'd went over before with him that night on, if I could
14 tell anything different or anything I remember what happened in
15 the transaction other than what I told at first. And I told
16 him no.

17 Q. Did he say anything else to you?

18 A. No.

19 Q. And then when you saw him again -- well, I'm not actually
20 sure it was him again -- on the 27th when you saw Sergeant
21 Robert Story of the Junction City, Kansas, Police Department.

22 Do you know Sergeant Story, incidentally?

23 A. No.

24 Q. How long have you lived in Junction City?

25 A. About 40 years.

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Eldon Elliott - Redirect

1 Q. Four years from today?

2 A. 40 years.

3 Q. 40 years. And you don't know Mr. Story?

4 A. Not, I don't know him personally, no.

5 Q. You know who he is?

6 A. Yes.

7 Q. When you met with Sergeant Story and Special Agent Ronald
8 Koziol, do you remember what they said to you?

9 A. Not really.

10 Q. What do you remember they did say, if anything?

11 A. I don't remember. I think they just asked about the same
12 questions they'd asked before.

13 Q. Which was?

14 A. On the, any description I give or anything else that I
15 could think of that might be further helpful on the rental of
16 the truck. And I told them I couldn't.

17 Q. Okay. Now, when did you make a selection that the person
18 you saw on the photo spread was the Robert Kling that you
19 remembered being in your business on the 15th and 17th of
20 April?

21 A. When I seen the transcript that was drawed, I said that was
22 him. And when I seen him for the first time on TV, I said that
23 was him.

24 Q. And when was the first time you saw him on television?

25 A. It was just a short time after the 19th, but I don't

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Eldon Elliott - Redirect

1 remember what the date was.

2 Q. Okay. Now, you said when you saw him on a sketch; are you
3 referring to the sketch of John Doe 1?

4 A. Yes.

5 Q. All right. Did you assist in the preparation of that
6 sketch?

7 A. I was asked some details on it and stuff, and then he
8 showed me the sketch and wanted to know if I could add anything
9 to it. And I says no.

10 Q. Who showed you the sketch?

11 A. The sketch artist, and I don't know what his name was.

12 Q. Was this the FBI sketch artist?

13 A. Yes, it was, sir.

14 Q. All right. Now, Mr. Elliott, I've put here on the screen
15 Government Exhibit No. 4. Do you recognize this?

16 A. Yes.

17 Q. What is this, sir?

18 A. That's a sketch of Kling.

19 Q. And is this the one that they showed you?

20 A. I don't know if this is the one for sure or not. It looks
21 like the one.

22 Q. And then that sketch was shown to you when, do you
23 remember?
24 A. That time was on the early morning of the 20th at Fort
25 Riley.

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Eldon Elliott - Redirect

1 Q. All right. And then was it shown to you again? By the
2 Government?
3 A. Yes.
4 Q. And when was that, sir?
5 A. It was when we was in Oklahoma.
6 Q. And I went back during the lunch hour and found out that
7 you may have been in Oklahoma in June. Does that ring a bell,
8 or was it before then?
9 A. I'm not sure.
10 Q. What was the purpose of your being in Oklahoma?
11 A. The, when I went down to Oklahoma, they just asked me all
12 the questions. I think it was getting me ready for the grand
13 jury; I'm not sure.
14 Q. All right. Had you been served a subpoena?
15 A. Yes.
16 Q. Were you served a subpoena before you went down, or were
17 you served the subpoena when you were there?
18 A. I was served a subpoena before I went down.
19 Q. When you went down to talk with them after you had been
20 served with the subpoena, you didn't appear before the grand
21 jury that day?
22 A. No.
23 Q. Now, earlier before lunch you said "we," at least I
24 understood you to say "we went down." Did somebody accompany
25 you?

Eldon Elliott - Redirect

- 1 A. My wife rode down with me.
- 2 Q. Anyone else in the car?
- 3 A. No. Not at that time.
- 4 Q. Now, you said you saw Mr. McVeigh on television?
- 5 A. Yes.
- 6 Q. And when was the first time you saw him on television, sir?
- 7 A. I don't remember the date. It was the first time that he
- 8 was seen on TV.
- 9 Q. Well, do you remember what you saw?
- 10 A. Just him walking out of the courthouse. And when I seen
- 11 his face, I said that's him.
- 12 Q. All right. And who did you say that's him to?
- 13 A. I think it was the attorney from Ryder and the security guy
- 14 that was there. I'm not sure. There was several people that
- 15 was there from Ryder that I was with.
- 16 Q. All right. Now, how long had you been watching television
- 17 before you saw Mr. McVeigh come out?
- 18 A. Not very long.
- 19 Q. Well, did you just turn it on or had it been on and you
- 20 hadn't been paying much attention?
- 21 A. They had just turned it on.
- 22 Q. Who is "they"?
- 23 A. Whoever was -- some people setting (sic) there that picked
- 24 up the -- went over and turned the TV on.
- 25 Q. Do you know why they turned the TV on?

Eldon Elliott - Redirect

- 1 A. No.
- 2 Q. Where were you when they turned it on?

3 A. Are you referring to where, what part?
4 Q. Yes, sir. Where were you in the building?
5 A. I was probably setting (sic) about 10-foot from the TV.
6 Q. At your desk or at a chair?
7 A. No, this was at the Elk's lodge.
8 Q. Oh, you were at the Elk's lodge. And there were others
9 there in the room. And why were you sitting in the chair?
10 A. Well, we was all setting (sic) in the chairs by -- at the
11 table there.
12 Q. And what were you doing before you watched television?
13 A. Just went in there and set (sic) down to have a sandwich.
14 Q. And how long do you think you'd been sitting down before
15 your attention was called to the TV set?
16 A. Probably about 20 minutes.
17 Q. And how long had the set been on before Mr. McVeigh walked
18 out?
19 A. It wasn't very long. It was just -- probably five or ten
20 minutes.
21 Q. And did you watch it intermittently before he walked out?
22 A. No.
23 Q. Was the sound on?
24 A. The sound was not turned up.
25 Q. Was it on?

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Eldon Elliott - Redirect

1 A. The sound?
2 Q. Yes.
3 A. It was not up loud enough for me to hear it.
4 Q. I see. So the people were more interested in what the
5 vision was rather than what the sound was?
6 A. It's always that way there.

7 Q. I see. Now, when Mr. McVeigh walked out, what did you see?
8 A. All I looked at when someone said something to that, I
9 looked up at and I seen him, and I said that's him.
10 Q. Now, what was he wearing?
11 A. Kind of an orange-colored coveralls.
12 Q. And who was with him?
13 A. I'm not sure who was with him.
14 Q. Well, were there law enforcement people around him?
15 A. Yes, there was.
16 Q. And do you remember how many?
17 A. No, I don't.
18 Q. Was it clear that this individual was in custody?
19 A. Yes.
20 Q. Was he handcuffed?
21 A. I don't know.
22 Q. They were taking him out of a courthouse to what?
23 A. I don't know where they was taking him.
24 Q. How long did you watch it?
25 A. I just looked at him for just a little bit and then turned

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Eldon Elliott - Redirect

1 around and walked -- got up and walked towards the back.
2 Q. And what did you do when you got to the back?
3 A. Went to the bathroom.
4 Q. Now, when was the next time you saw Mr. McVeigh on
5 television?
6 A. I don't know that -- well, when I seen him the next time, I
7 seen him on there, I just turned around and walked away because
8 I didn't want to be looking at any more news and I haven't
9 looked at any more news or papers on the stuff.
10 Q. Why is that?
11 A. I just don't want to have anything else that might

12 interfere with my thinking.

13 Q. By your thinking, you mean your testimony in this case?

14 A. What I -- yes, my testimony, what I believe in.

15 Q. I see. Why did you watch it that afternoon, then?

16 A. I just seen when they come, brought him out, someone said,

17 Look at that, and I looked up at it; and then after I looked

18 and seen it was his face, I turned away.

19 Q. So are you telling me that you never again saw him on

20 television?

21 A. Just when he walked out one other time I seen him and then

22 I just turned away, I didn't look at him.

23 Q. Did you see his picture in any newspapers or --

24 A. I have not looked at no newspapers.

25 Q. So you did not see his picture in any newspapers?

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Eldon Elliott - Redirect

1 A. No.

2 Q. Did you see his picture on the cover of Time magazine or

3 Newsweek?

4 A. No.

5 Q. Did you know his picture was on the cover?

6 A. People have said that.

7 Q. But you don't go read it?

8 A. I don't know it.

9 Q. Do you read the Junction City Daily Union?

10 A. No, I do not.

11 Q. So you didn't read it Sunday morning, April the 30th?

12 A. No, I did not.

13 Q. Does your business place ads in the paper?

14 A. Occasionally.

15 Q. Do you ever read the paper to check on your ads?

16 A. If I look at the paper, it's just to look at my ad.
17 Q. How do you know what page the ad is on?
18 A. I just thumb through it.
19 Q. Now, Mr. Elliott, you were first shown a photo spread on
20 what day, sir?
21 A. I'm not sure what day it was.
22 Q. Mr. Elliott, are you sure about anything other than that
23 the person you saw walk out of the Noble County courthouse is
24 Robert Kling?
25 A. Yes, I am. But I don't keep the dates of when I went down

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Eldon Elliott - Redirect

1 there. I have them all on record at home, but I don't remember
2 it in my -- right now what day it was.
3 Q. What kind of records do you keep?
4 A. Everything that when we go these places is put down.
5 Q. Why do you do that?
6 A. We keep track of everything on -- in all the stuff when we
7 go on -- anywhere and have any expenses.
8 Q. Is that because you want to apply for the reward?
9 A. No, this has been going on ever since I've been in
10 business, sir.
11 Q. Well, you haven't been keeping records about your work and
12 identification and trips with the FBI in this case since you've
13 been in business, have you, sir?
14 A. I give them to my gal to put down the expenses when I go,
15 yes.
16 Q. And you think the expenses of traveling to Oklahoma City,
17 say to talk with the FBI or the U.S. Attorney, is a deductible
18 expense?
19 A. I do not know. I put all that down, and it goes to my
20 accountant. And she looks at it.

21 Q. Is there an expense in showing you a photo array?

22 A. Would you repeat that?

23 Q. Sure. Where was the photo array shown to you?

24 A. In Oklahoma City.

25 Q. Not before then?

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Eldon Elliott - Redirect

1 A. The photo, the photo spread of him?

2 Q. Yes, sir.

3 A. No, it wasn't.

4 Q. So you never saw the photo spread until you got to Oklahoma

5 City?

6 A. Right.

7 Q. Do you know the reason for that?

8 A. I don't know.

9 Q. Did you tell someone that you had seen Mr. McVeigh when he

10 was escorted from the Noble County Courthouse? When I say

11 "someone," I mean law enforcement.

12 A. Yes, I told the FBI that.

13 Q. When did you tell them that?

14 A. When I was down in Oklahoma City.

15 Q. When you were down in Oklahoma City meeting with the FBI

16 and the U.S. Attorney's Office, you specifically told them then

17 that you had seen Mr. McVeigh when he was escorted out of the

18 Noble County Courthouse?

19 A. I think that, if I remember, they asked if I seen him. I

20 seen him one time on TV when I walked out.

21 Q. Was that the only time you told them prior to that? I'm

22 sorry, that's not -- that's a confusing question.

23 Prior to your meeting in Oklahoma City, had you told

24 the FBI or the U.S. Attorney's Office or any law enforcement

25 officer that you'd seen Mr. McVeigh walk out of the Noble

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Eldon Elliott - Redirect

1 County Courthouse?

2 A. I don't remember if I did or not.

3 Q. Had you received any request or instruction not to read the

4 newspaper or watch television as it relates to the Oklahoma

5 City bombing case?

6 A. Yes, I had.

7 Q. When did you receive that?

8 A. I believe it was like on the 20th or when we talked to our

9 security guy that was out there, he says, Don't try to read any

10 news or watch any TV on this.

11 Q. That's what your security officer told you?

12 A. Right.

13 Q. I'm talking about anybody from the FBI.

14 A. All they had told us, not to talk to anybody about

15 anything. And I didn't, so I just took it that was part of it.

16 Q. When you were going to Fort Riley with Ms. Beemer and you

17 all were working on being interviewed about the identification,

18 did you ask Ms. Beemer whether John Doe 1 or Mr. Kling had a

19 beard?

20 A. No, I did not.

21 Q. You did not?

22 A. I did not.

23 Q. Did you ever ask Vickie Beemer whether John Doe 1 or Robert

24 Kling had a beard?

25 A. No, I did not.

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Eldon Elliott - Redirect

1 Q. Did she ever ask you?

2 A. No.

3 MR. JONES: Excuse me just a moment, your Honor.

4 THE COURT: Yes.

5 Excuse me just a moment, Mr. Kessinger, I need to read
6 something here, change glasses -- I mean Mr. Elliott.

7 BY MR. JONES:

8 Q. So on April the 20th, 1995, when the Government
9 investigators asked you and Ms. Beemer to come to the U.S.
10 Army's Criminal Investigation Division office on Fort Riley for
11 the purpose of meeting with an FBI sketch artist, you did not
12 say to Miss Beemer or did not ask her whether the man who had
13 rented the Ryder truck by the name of Robert Kling had a beard?

14 A. No, I did not.

15 Q. Mr. Elliott, have you been told or do you know why you were
16 not shown a photo spread until your meeting in June with the
17 prosecutors in Oklahoma City?

18 A. I don't know the reason why.

19 Q. And how many photo spreads were you shown at that time,
20 sir?

21 A. Two.

22 Q. And how many were in each one?

23 A. I think there was about eight in each one.

24 Q. And did you select an individual from both of them or just
25 from one of the sheets?

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Eldon Elliott - Redirect

1 A. Just from one of them.

2 Q. About how many times, Mr. Elliott, have you been
3 interviewed or had a conversation with FBI agents about this
4 case where there were no prosecutors present or at least none
5 to your knowledge?

6 A. Counting right at first and now, probably 20 times.

7 Q. And how many times where there were prosecutors present?

8 A. Probably five or six.

9 Q. And how many times have you been interviewed by a

10 representative of Mr. McVeigh's defense?

11 A. I've had once or twice maybe someone come in, but I have

12 not talked to any of them.

13 Q. In fact, you declined to talk to them?

14 A. That's right.

15 Q. Now, have you received any type of advice with respect to

16 these matters from Ryder?

17 A. Would you repeat that again?

18 Q. Yes. Have you received any advice with respect to these

19 matters from Ryder?

20 A. No matter at all except right at first. Like I said, when

21 the security guy was there and Ryder was there, they said don't

22 talk to anything, anybody about this. Other than the FBI.

23 Q. I see. So you haven't been present in any meetings where

24 representatives of Ryder have attempted to give you advice or

25 counsel with you with respect to the facts of this particular

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Eldon Elliott - Redirect

1 incident?

2 A. No, I have not.

3 MR. JONES: I don't believe I have any further

4 questions. Thank you, Mr. Elliott.

5 THE COURT: Mr. Mendeloff.

6 MR. MENDELOFF: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. MENDELOFF:

9 Q. Mr. Elliott, your business, Elliott's truck rental --

10 excuse me, Elliott's Body Shop --

11 A. Right.

12 Q. -- is located in Junction City?

13 A. Yes, it is.

14 Q. And that's on a road called what? What's the name of the

15 street?

16 A. The name of the street is 1430 Golden Belt Boulevard, sits

17 about 1 mile out of town.

18 Q. Okay. And what is Golden -- what kind of street is Golden

19 Belt Boulevard?

20 A. Golden Belt Boulevard is actually the old Highway 40 that

21 used to run from Denver through Junction City to Kansas City,

22 and it's called Golden Belt Boulevard. It runs parallel to

23 I-70.

24 Q. So it's like a frontage road?

25 A. It's a frontage road, yes.

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Eldon Elliott - Cross

1 Q. Between your business and the beginning of the commercial

2 area of Junction City, what do we find there?

3 A. Between me and town? Going from my place into town --

4 there's a house about halfway between my place and town. Right

5 down close to town there's apartments, and then there's a

6 Kentucky Fried Chicken -- I'm sorry -- there's -- it was

7 Bonanza and then Country Kitchen.

8 Q. Now, Mr. Elliott, that route that you just described, how

9 long is that route?

10 A. Just right at a mile.

11 Q. And there's not much more on than what you described?

12 A. That's all that's on it.

13 Q. You talked about a Country Kitchen. Back in 1995, in

14 April, were there a series of franchise establishments right at

15 that corner of Junction City?
16 A. Right at that corner of Junction City, there's -- it was a
17 Bonanza, the Country Kitchen, and a motel there, and McDonald's
18 right across the street and a couple Quick Sacks.
19 Q. Now, those franchises are in the one corner of Junction
20 City?
21 A. Yes.
22 Q. Now, I believe you testified on direct examination that on
23 the morning of Saturday, April 15, a man came into your
24 business to rent a truck.
25 A. Right.

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Eldon Elliott - Cross

1 Q. And that's the man that you identified as Robert Kling; is
2 that right?
3 A. Yes.
4 Q. When you made the -- when you waited on him, you were
5 standing behind the counter, I believe you testified; is that
6 right?
7 A. I was setting (sic) at the thing when I typed it in the
8 computer, and then I was standed up when I presented the copy
9 of it to him.
10 Q. All right. Now, when you were standing at the counter,
11 were you directly in front of him?
12 A. Yes, I was.
13 Q. How far away were you from -- was your face from his face
14 when you were standing at the counter?
15 A. Probably about 18 inches to 2-foot maximum.
16 Q. When you say 18 inches, why were you so close?
17 A. Because my counter's not a very wide -- my desk is not very
18 wide, and that counter that's on top of my desk sets (sic) a
19 foot from the edge of the desk back over, so when I'm standing

20 up on the edge of the desk and lean on it, it put us real
21 close, and when I leaned up to put the contract in front of
22 him, we was real close to each other.
23 Q. What kind of lighting is there?
24 A. Fluores lighting.
25 Q. I believe you testified at the beginning of the

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Eldon Elliott - Cross

1 transaction, you were sitting at your desk?
2 A. Right.
3 Q. And you typed something in the computer?
4 A. Right.
5 Q. After that you had a conversation with Mr. Kling?
6 A. Yes, I did.
7 Q. The person representing himself to be Mr. Kling; right?
8 A. Yes.
9 Q. What was your degree of attention to him at that time?
10 A. Would you repeat that again, please?
11 Q. What was your degree of attention to that man?
12 A. I was looking right straight at his face and talking to
13 him.
14 Q. Do you have a business practice that you follow regarding
15 paying attention to customers?
16 A. Yes, I do. I look right at their face all the time and
17 talk to them. I want them to realize that we're real
18 interested in them.
19 Q. And you pay attention to them in that way as a matter of
20 routine?
21 A. Yes, I do.
22 Q. Did you do that Saturday morning?
23 A. Yes, I did.

24 Q. I believe you testified that you had a conversation with
25 Mr. Kling regarding the rental of that truck that morning; is

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Eldon Elliott - Cross

1 that right?

2 A. Yes.

3 Q. And I won't get into the details of what you put into the
4 record on direct examination. Just let me ask you. After you
5 explained to Mr. Kling that if he didn't take insurance on the
6 truck, he'd be responsible for any damage to the truck, did he
7 respond in any way as to why he wasn't concerned about
8 insurance?

9 A. Yes, he did. He said, I'm not going very far, and I'm used
10 to driving big trucks out of Fort Riley and deuce and a halves
11 and I'm a careful driver so, he says, I'm not taking any
12 insurance.

13 Q. Did he make any remark about where he was going?

14 A. He just said he was going to Nebraska and over to Iowa a
15 little ways to pick some stuff up.

16 Q. When you heard him say he was going to Nebraska and over to
17 Iowa, did that cause you to ask him any questions?

18 A. Yes, I said, Do you need some more miles on this, on this
19 end we can give them to you free. And he says, No, but I would
20 like to have a couple more days.

21 Q. At that point did you print out a reservation sheet from
22 your computer?

23 A. Yes, I did.

24 Q. When you printed that out, what did you do with the sheet?

25 A. I stood up and laid it up on the counter to him and turned

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Eldon Elliott - Cross

1 it around facing him and explained it what the amount was and
2 everything with the deposit that -- refundable deposit that
3 he'd get back when he turned the truck in and had him to sign
4 it.

5 Q. And as you went through the contract, you were looking at
6 the contract and so was Mr. Kling?

7 A. Yes, but it wasn't a contract. It was a --

8 Q. I'm sorry.

9 A. -- reservation.

10 Q. I'm sorry.

11 A. The contract doesn't get printed until they pick the truck
12 up.

13 Q. As you were looking at the reservation and talking to him,
14 did you have occasion to look up toward him as you were
15 explaining the reservation form to him?

16 A. Yes, I did.

17 Q. And at the conclusion of your description, did you point
18 out the place on the reservation form where Mr. Kling needed to
19 sign?

20 A. Yes.

21 Q. Did you watch as he did that?

22 A. Yes.

23 Q. Now, after you went through the reservation form and
24 watched as he filled in his name, I believe you testified
25 either then or before that time that you received cash for

1 the -- for the rental from Mr. Kling; is that right?

2 A. Yes, I did.

3 Q. After you received the cash, did Mr. Kling ask you anything
4 about the rental and the availability of the truck?

5 A. Yes, he did. He wanted to know if the truck could be ready
6 around four o'clock on Monday. That's why he wanted to pay for
7 it all in advance. He wanted to have it ready where he could
8 pick it up without waiting too long. I said, The truck will be
9 ready.

10 Q. And did you say anything at the conclusion of the
11 discussion about insurance?

12 A. Just that I told him again, Now, if you change your mind,
13 you can get insurance on Monday. And he said, I'll think about
14 it and let you know.

15 Q. Now, I believe that on direct examination you went on to
16 testify about what happened the following Monday, April 17, for
17 the rental when the renter came to pick up the truck; is that
18 right?

19 A. Yes, I asked him -- I said --

20 Q. Hold on, Mr. Elliott. I haven't asked you a question. I
21 was just trying to tell you where we were going.

22 A. All right. Sorry.

23 Q. That's all right. Now, I believe you testified that Vickie
24 Beemer came into the shop to get you to handle a walk-around
25 inspection of the truck; is that right?

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Eldon Elliott - Cross

1 A. Yes, she did.

2 Q. And you walked into the shop; is that right?

3 A. Right.

4 Q. And now, when you walked into the shop, who did you see?

5 A. I seen Mr. Kling.

6 Q. And where was he standing in relation to where you were?

7 A. He was standing right at the corner of the desk as I walked
8 around the corner of my office.

9 Q. How many feet away?

10 A. When I first seen him, I was probably about roughly 5 feet
11 away.

12 Q. And at that point in time, is that when you had the
13 conversation you described this morning regarding insurance
14 again?

15 A. No. I walked on up to him.

16 Q. All right.

17 A. And asked him if -- at that time about the insurance.

18 Q. Now, when you asked him about the insurance, was that in
19 relation to the conversation you'd had two days earlier with
20 him about insurance?

21 A. Right.

22 Q. And when you spoke with him about the insurance, how far
23 away were you then?

24 A. Not over 2-foot maximum.

25 Q. Where were your eyes focused?

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Eldon Elliott - Cross

1 A. Right at his face.

2 Q. Now, as you walked up to him, did you notice anyone else in
3 the room?

4 A. I noticed it was another person standing there.

5 Q. And where was he in relation to you, your right, your left
6 or in front of you?

7 A. To my right.

8 Q. Did you look at this man?

9 A. Just barely glanced at him.

10 Q. How long did you look at him?

11 A. Oh, it was a real short time. Probably less than a second.

12 Q. And then you directed your attention to Mr. Kling; is that
13 right?

- 14 A. Right.
- 15 Q. I believe you testified on direct examination that you --
- 16 it was your opinion that this man was with Mr. Kling. When
- 17 Mr. Kling arrived that Monday afternoon in your shop, were you
- 18 in the office?
- 19 A. No, I was not.
- 20 Q. Did you see him arrive?
- 21 A. No, I did not.
- 22 Q. Do you know what vehicle he drove, if any?
- 23 A. No, I do not.
- 24 Q. Do you even know if he drove a vehicle?
- 25 A. No, I do not.

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Eldon Elliott - Cross

- 1 Q. Do you know whether he arrived with the second person that
- 2 you glanced at?
- 3 A. I do not.
- 4 Q. I believe at that point you had a conversation with him
- 5 regarding insurance; is that right?
- 6 A. Yes, I did.
- 7 Q. What did he say?
- 8 A. I said, Did you -- You didn't change your mind and want
- 9 insurance? And he says, No, I don't.
- 10 Q. Then did you invite him to accompany you any more?
- 11 A. I invited him to come out with me to do the walk-around.
- 12 Q. What did he say?
- 13 A. He says, No, I'll just stay here and you can inspect it.
- 14 Q. What did you do?
- 15 A. I went out and inspected it and came back in and handed the
- 16 paperwork to Vickie.
- 17 Q. When you did that?
- 18 A. When I did that, then I thanked him for coming in and if he

19 was ever in the area again, come in and see us if we could help
20 him.
21 Q. How far away were you when you said that?
22 A. Right around about 2-foot.
23 Q. Then you went there?
24 A. Walked back out into the shop.
25 Q. Did you remain in the shop and work there thereafter, that

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Eldon Elliott - Cross

1 afternoon?
2 A. I was in there for a while, and then I came back into the
3 office. But at that time it was probably getting close to 4:30
4 and we close at 5:00 and I was trying to finish something up so
5 we could get it out of the driveway, so I wasn't back out in
6 the shop very long.
7 Q. Now, let me just ask you: When you -- after you came in
8 from doing the inspection, did you see Mr. Kling and/or the
9 other man leave?
10 A. Seen them leave?
11 Q. Yes.
12 A. No, I did not.
13 Q. Do you know whether they left together or separately?
14 A. I don't know whether they left together or separate.
15 Q. Do you know whether or not they -- the second man drove or
16 went with Mr. Kling or went by himself? Do you know any of
17 those questions?
18 A. I don't know that, either. I went back out in the shop,
19 and there's no windows there in that end of the shop.
20 Q. Now, in direct examination, you were asked about a car that
21 you noticed outside; do you remember that?
22 A. Right.

23 Q. Do you know how that car got there?

24 A. No, I do not.

25 Q. Have you ever seen that car before?

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Eldon Elliott - Cross

1 A. No, I hadn't.

2 Q. If that car was a car that was driven by another truck
3 rental customer, would you have known whose car that was?

4 A. No, I wouldn't.

5 Q. I believe you testified that on the afternoon of April 19
6 you had a conversation with Scott Crabtree, an interview with
7 Scott Crabtree, an FBI agent; is that right?

8 A. Yes.

9 Q. And you were asked questions about whether you had told
10 Scott Crabtree that you didn't recognize or hear the voice of
11 the renter, Mr. Kling, on the 17th; do you remember those
12 questions?

13 A. Yes.

14 Q. All right. Now, at the time Mr. Crabtree interviewed you
15 about this, how long had you known that your business had
16 apparently become involved in this tragedy?

17 A. Less than 45 minutes.

18 Q. Had you had a chance to carefully review the records --

19 A. No.

20 Q. -- regarding the rental?

21 A. No, I had not.

22 Q. Had you had a chance to think much about what involvement
23 you had had in this?

24 A. No.

25 Q. During the time period between the time in which you

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Eldon Elliott - Cross

1 learned of your involvement -- your business's involvement in
2 this case and the time you spoke with Mr. Crabtree, were you
3 doing other things as well as -- other things?

4 A. Yes, I was busy on the phone calling and making
5 reservations for the Ryder people coming in and calling them
6 back in Miami and letting them know.

7 Q. Now --

8 MR. MENDELOFF: A moment, please, your Honor.

9 THE COURT: Yes.

10 BY MR. MENDELOFF:

11 Q. Do you remember being asked questions by Mr. Jones in his
12 examination of you regarding whether you made a comment to
13 Vickie Beemer to the effect of, Didn't that guy have a beard,
14 and you were speaking of John Doe 1? Do you remember that?

15 A. I don't remember that.

16 Q. That's not what I'm asking you.

17 THE COURT: I think he's asking you about the
18 questions you were just asked by Mr. Jones here.

19 BY MR. MENDELOFF:

20 Q. Do you remember Mr. Jones asking you --

21 A. Yes.

22 Q. I'm sorry, that was a poorly phrased question. I
23 apologize.

24 Do you remember Mr. Jones asking you if Vickie
25 Beemer -- if you had said to Vickie Beemer, Didn't that guy

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Eldon Elliott - Cross

1 have a beard, regarding John Doe 1? Do you remember those
2 questions of Mr. Jones?

3 A. Yeah.

4 Q. Now, do you know whether or not you may have said that
5 regarding John Doe 2 to Vickie Beemer?

6 A. That's what I would have meant because I knew that the
7 first person did not have a beard 'cause I had said that right
8 off the first to him, that he was clean-shaved.

9 Q. Now, do you remember what the second person looked like?

10 A. No, I do not.

11 Q. Can you describe his clothing?

12 A. No, I cannot.

13 Q. Can you describe his build?

14 A. I didn't look at anything, really, except that he was a
15 little shorter than I was, 'cause I looked at his hat.

16 Q. Mr. Elliott, I believe you testified that you had met with
17 prosecutors about five or six times in preparation for your
18 testimony over a several-month period; is that right?

19 A. Right.

20 Q. During that -- those meetings, did you have occasion to
21 review this photograph?

22 A. Would you repeat that question again?

23 Q. During those meetings --

24 MR. MENDELOFF: I'm sorry, your Honor.

25 BY MR. MENDELOFF:

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Eldon Elliott - Cross

1 Q. During those meetings, did you have occasion to review that
2 photograph, the photograph I've just put on the ELMO; that is,
3 Government Exhibit 21?

4 A. Yes.

5 Q. And can you tell the Court what you told investigators
6 about whether or not that individual looked like the person
7 that rented the truck on the 17th and that you talked to on the
8 15th?

9 A. I said it did not.

10 Q. Were you asked whether you could have been confused in your
11 identification in connection -- in this case?

12 A. Yes, I was.

13 Q. And what's your response to that?

14 A. That I says, No, I'm not.

15 Q. Finally, Mr. Elliott, at one point during the course of
16 investigation in this case, you were shown two photo spreads
17 and in one of those photo spreads you made a selection?

18 A. That's right.

19 Q. During that photo spread process, were you asked to put out
20 of your mind any media you might have seen?

21 A. Yes.

22 Q. And when you made that selection, were you able to rely
23 exclusively on your memory of the man you saw on April 15 and
24 on April 17?

25 A. Yes.

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Eldon Elliott - Cross

1 Q. Were you able to put out of your mind the single incident
2 of TV that you have related to us?

3 A. Yes.

4 Q. Are you confident in your identification?

5 A. Yes, I am.

6 Q. Do you have any doubt that the person you identified in
7 that photo spread is the person that came in and rented the
8 truck on the 15th and the 17th?

9 A. No, I'm not.

10 MR. MENDELOFF: One moment, please, Judge.

11 THE COURT: Yes.

12 MR. MENDELOFF: Nothing further, your Honor.

13 THE COURT: Mr. Jones.

14 REDIRECT EXAMINATION

15 BY MR. JONES:

16 Q. Mr. Elliott, when you met with Mr. Crabtree on the 19th,
17 you didn't tell him, did you, that you had also seen Mr. Kling
18 on April 15?

19 A. No.

20 Q. Because you had forgotten that?

21 A. No. All he asked about was on Monday.

22 Q. I want to be sure I get this straight. We've got a
23 building that's just been blown up in Oklahoma City in which
24 nearly 200 people have been killed and your place of business
25 may have rented the truck that carried the bomb and he's coming

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Eldon Elliott - Redirect

1 to talk to you about somebody that might have rented that truck
2 that carried that bomb. And so you're not going to tell him
3 that you had a conversation with that person on Saturday unless
4 he asks the specific question?

5 MR. MENDELOFF: Your Honor, object. Argumentative.

6 THE COURT: Sustained.

7 BY MR. JONES:

8 Q. Well, why didn't you tell him?

9 A. Right at that time, there was so much being asked, so much
10 going on that I just wasn't thinking about everything as much
11 as I did after I thought about it that night.

12 Q. So you forgot to tell him?

13 A. I didn't forget to tell him.

14 Q. Well, did you remember and not tell or did you not
15 remember?

16 A. No, I did not tell him. I was at -- I told him the
17 questions that he answered that night, and that's what I told

18 him.

19 Q. What was the purpose of the meeting with him on the 19th?

20 A. Just to come down to get some -- he just asked some
21 questions there that night and then was going to take us out
22 and get -- get us fingerprinted and then show us some sketch so
23 we could make some sketch drawings.

24 Q. So he was looking for the person that had rented the Ryder
25 truck?

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Eldon Elliott - Redirect

1 A. Right.

2 Q. And you knew you had a contact with that person?

3 Correct?

4 A. Yes.

5 Q. In fact, you were the only person at Elliott's Body Shop
6 that, according to your testimony, had face-to-face contact
7 with this individual twice?

8 A. Right.

9 Q. Well, isn't the truth of the matter is you simply forgot?

10 MR. MENDELOFF: Objection, your Honor. Asked and
11 answered.

12 THE COURT: Forgot what?

13 BY MR. JONES:

14 Q. You forgot to tell him -- you didn't remember that you had
15 seen Mr. Kling on Saturday?

16 A. No, I did not.

17 Q. Well, when you told him that you didn't think you had heard
18 Kling's voice, that was an error, too, wasn't it?

19 A. That wasn't -- when he was talking about stuff, when I said
20 that, that wasn't that I didn't hear his voice when he talked
21 to me.

22 Q. What did you mean?
23 A. I was thinking of what that they was talking about, the two
24 gentlemen was talking about.
25 Q. So when Mr. Crabtree wrote down, He does not recall hearing

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Eldon Elliott - Redirect

1 Kling's voice, that meant what to you?
2 A. I don't know.
3 Q. Well, are you telling -- were you telling Mr. Crabtree you
4 didn't hear the voice or you just didn't hear the conversation?
5 A. The voice of the conversation.
6 Q. I'm sorry, the what?
7 A. His voice on the conversation he was having.
8 Q. So you didn't hear his voice?
9 A. When he was talking to the other gentleman, no.
10 Q. Well, you didn't tell Mr. Crabtree on the 19th that you had
11 a conversation with him, did you?
12 A. On the 19th?
13 Q. Yes, sir.
14 A. I had a conversation with him on the 19th.
15 Q. I understand that's your testimony today. Did you tell
16 Mr. Crabtree on the 19th that you'd had a conversation with
17 this individual?
18 A. I don't know if we told that. I was thinking we talked
19 about them picking the truck up.
20 Q. Well, Mr. Elliott, what you've done, isn't it, sir, is
21 you've gone back and reconstructed this, rather than rely on
22 your memory? Isn't that true?
23 A. No, it's not.
24 Q. You looked at some records that you had; correct?
25 A. Right.

Eldon Elliott - Redirect

- 1 Q. You saw Mr. McVeigh's picture on television; correct?
- 2 A. Right.
- 3 Q. And you even asked Ms. Beemer, according to you, about
- 4 whether John Doe 2 had a beard; correct?
- 5 A. No, I said I didn't even look at -- what I'd said, I didn't
- 6 even look enough at John Doe 2 whether he had a beard or didn't
- 7 have a beard.
- 8 Q. Why would you ask about it if you didn't see?
- 9 A. I didn't ask about it.
- 10 Q. So you didn't even ask about John Doe 2 having a beard?
- 11 A. No.
- 12 Q. So your version was there was no conversation between you
- 13 and Ms. Beemer about whether either one of them had a beard?
- 14 A. There was not.
- 15 Q. But you're clear and certain in your mind that there were
- 16 two of them there on the 17th?
- 17 A. Right.
- 18 Q. Together?
- 19 A. There was two of them there.
- 20 Q. Together?
- 21 A. I don't know whether they was together or not. There was
- 22 two people in there.
- 23 Q. Well, what is your statement there, they came together,
- 24 they were there together and left together or not?
- 25 A. I seen them together there, but I didn't see them come and

Eldon Elliott - Redirect

- 1 I didn't see them leave.
- 2 Q. Do you believe they were together?

3 A. I don't know.

4 Q. Well, Mr. Elliott, if that's true, then why haven't you
5 made it clear in all these interviews that, Look, I don't know
6 whether these two people came or left together, they were just
7 in the room together?

8 A. I was -- assumed they was together, but I can't say
9 definitely they was together.

10 Q. Well, do you know any other reason there would have been
11 somebody else there?

12 A. No.

13 Q. I mean you didn't rent a truck to some other person or give
14 a quote, did you?

15 A. I didn't, no.

16 Q. Have you checked your records to see if anybody else did?

17 A. No.

18 Q. Have you asked your people whether any of them knew this
19 second person?

20 A. No.

21 Q. Now, you were shown a picture here of Mr. Hertig, I
22 believe, and you were asked about that. Do I understand you
23 had a conversation with the FBI about Mr. Hertig?

24 A. Was that the last one, the picture I just seen?

25 Q. The man with the mustache, at least in that picture?

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Eldon Elliott - Redirect

1 A. Yes.

2 Q. Did you have a conversation with the FBI about him?

3 A. Yes, they showed me him.

4 Q. When did they do that?

5 A. I believe it was in January.

6 Q. January of what year?

7 A. Of '97.

8 Q. And who showed you the picture of Mr. Hertig?
9 A. Scott.
10 Q. Scott who?
11 A. Mendenoff.
12 Q. Oh, Scott. You mean Mr. Mendeloff, the Assistant United
13 States Attorney showed you?
14 A. Yes.
15 Q. You call him "Scott"?
16 Are you all that well acquainted now?
17 A. No, but that's what I've always called him.
18 Q. I see. Mr. Crabtree is "Mr. Crabtree," though?
19 A. Yes.
20 Q. You've known Mr. Crabtree longer, haven't you?
21 A. Yes, but I haven't met with him as much.
22 Q. How many times have you met with Mr. Mendeloff?
23 A. Probably around six times.
24 Q. Well, in any event, he showed you a picture of Mr. Hertig?
25 A. Yes.

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Eldon Elliott - Redirect

1 Q. Show you a picture of anyone else?
2 A. Not that time.
3 Q. What did he say to you when you saw the picture of
4 Mr. Hertig?
5 A. He wanted to know if I could be mistaken, if that could be
6 the guy that came in to rent the truck. And I says no.
7 Q. And they didn't ask you that question till January '97?
8 A. That's right, I think.
9 Q. Now, that was last month?
10 A. Yes.
11 MR. JONES: No further questions, Mr. Elliott.

12 THE COURT: Anything else of this witness?
13 MR. MENDELOFF: Nothing from us.
14 THE COURT: And he's going to be excused from the
15 remainder of this hearing, I trust; is that right?
16 MR. JONES: Yes, your Honor.
17 THE COURT: Mr. Elliott, you can step down and you can
18 go home now. Remember that you're likely to be called as a
19 witness at the trial of this case. This is a hearing before
20 trial. So under the rules that govern witnesses, you should
21 not discuss your testimony with any other person who may be a
22 witness. Understand?
23 THE WITNESS: I understand.
24 THE COURT: You may step down, and you can leave.
25 THE WITNESS: Thank you, your Honor.

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1 THE COURT: Your next witness, please.
2 MR. JONES: Mr. Donahue, your Honor.
3 THE COURT: All right.
4 (Timothy Patrick Donahue was sworn.)
5 THE CLERK: Would you have a seat, please. Would you
6 state your full name for the record and spell your last name,
7 please.
8 THE WITNESS: Timothy Patrick Donahue. D-O-N-A-H-U-E.
9 THE COURT: You may proceed, Mr. Jones.
10 MR. JONES: Thank you, your Honor. Just a moment to
11 get my water here.
12 DIRECT EXAMINATION
13 BY MR. JONES:
14 Q. Mr. Donahue, you live near Marion, Kansas, do you, sir?
15 A. Yes.
16 Q. You farm?

17 A. Yes.
18 Q. What do you farm?
19 A. Well, our main business is cow/calf livestock operation.
20 We also do some small grain farming, lot of hay production.
21 Q. You work there with your dad?
22 A. Yes, my dad and my brother.
23 Q. Right. Now, from time to time, you all have had a hired
24 hand out there, haven't you?
25 A. Yes.

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Timothy Patrick Donahue - Direct

1 Q. And at one time did you have Mr. Terry Nichols working for
2 you?
3 A. Yes.
4 Q. Now, do you remember when that was, sir?
5 A. Was around the first of March until the last of September
6 of '94.
7 Q. And did you provide quarters for him there?
8 A. Yes.
9 Q. Now, during the time that Mr. Nichols worked there, did he
10 have anybody come by to see him, any male acquaintance or
11 friend?
12 A. Yes.
13 Q. How many times was that?
14 A. I seen an individual twice.
15 Q. And the first time who was he with?
16 A. With Marife and infant I believe to be Terry's child.
17 Q. Uh-huh. And that's -- you saw this male acquaintance with
18 Marife and Terry's child?
19 A. Yes.
20 Q. All right. Do you remember about when that was,

21 Mr. Donahue?

22 A. No, I really don't. Towards the end of his -- towards the
23 end of Terry's employment with me.

24 Q. And the second time was when, sir?

25 A. It was Friday, September 30.

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Timothy Patrick Donahue - Direct

1 Q. Now, how do you fix it as Friday, September the 30th, sir?

2 A. Because that's the night I give Terry his final paycheck,
3 and I purchased a water bed from him and wrote him a check.

4 Q. All right. So you're sure about that day?

5 A. Yes.

6 Q. All right. Now, are you equally sure that it was the same
7 person both times?

8 A. Yes.

9 Q. When you were interviewed on April 21, 1995, by special
10 agents of the Federal Bureau of Investigation, did you give
11 them a description of this acquaintance --

12 A. Yes.

13 Q. -- male acquaintance that had been by to see Mr. Nichols
14 twice?

15 A. Repeat that question, if you would, please.

16 Q. Sure. When you were interviewed by the FBI on April 21,
17 1995, did you give them a description of what the individual
18 looked like, this male that had come by to see Mr. Nichols on
19 these two occasions?

20 A. I give them a description of the time on September 30 that
21 I remembered at that time. The time I give them the
22 description, I did not remember my first meeting this
23 individual.

24 Q. Well, didn't you tell them that on a couple of occasions, a
25 friend, name unknown, visited Nichols at the house?

Timothy Patrick Donahue - Direct

- 1 A. I don't remember saying that exact thing but possibly did.
- 2 Q. Well, my question was did you give them a description?
- 3 A. Yes.
- 4 Q. And what was the description you gave them?
- 5 A. A tall, thin build man with dark hair, worn mid ear
- 6 length, straggly unshaven beard, and sloppy in appearance.
- 7 Q. No eyeglasses?
- 8 A. No.
- 9 Q. And did you describe what kind of automobile he drove?
- 10 A. Yes. He drove a silver import, a small import car.
- 11 Q. And you described his age?
- 12 A. I believe 35, mid-30's.
- 13 Q. So you described a white male, about 35 years of age, 5 11,
- 14 tall, thin build, dark hair, worn about mid ear length,
- 15 scraggly beard, no eyeglasses, and driving a silver import?
- 16 A. Yes.
- 17 Q. Now, that was before you had seen Mr. McVeigh on television
- 18 coming out of the Noble County Courthouse, wasn't it?
- 19 A. Yes.
- 20 Q. After you saw Mr. McVeigh on television, did you have a
- 21 subsequent meeting with the FBI concerning this white male that
- 22 had come by to see Mr. Nichols?
- 23 A. Yes.
- 24 Q. And would that have been about May 1?
- 25 A. Yes, I believe so.

Timothy Patrick Donahue - Direct

- 1 Q. And at that time, did you not tell them that after seeing

2 television coverage of the bombing that you believe the visitor
3 was Timothy James McVeigh?

4 A. Yes. At that time, I also remembered the first meeting of
5 Mr. McVeigh in the field with Marife, after I seen his picture
6 on TV.

7 Q. Well, I didn't ask you that. What I asked you was did you
8 tell them that after having seen television coverage of the
9 bombing, you believed that the visitor was Timothy James
10 McVeigh?

11 A. Yes.

12 Q. So after you saw Mr. McVeigh on television, you formed the
13 opinion that was the visitor?

14 A. Yes.

15 Q. Before that time, as I think you told the grand jury, you
16 had your foot in your mouth and you gave a wrong description?
17 Isn't that right?

18 A. Repeat that, please.

19 Q. Well, let's withdraw your grand jury transcript.

20 The description that you gave them on April the
21 21st --

22 A. I did not say that about having my foot in my mouth about
23 that.

24 Q. I said I withdrew it.

25 A. Okay.

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Timothy Patrick Donahue - Direct

1 Q. We'll visit about that later. The description you gave
2 them on April 21st was not that of Mr. McVeigh, was it?

3 A. The description I gave them on April 21st?

4 Q. Yes, sir.

5 A. I believe it was, yes.

6 Q. You believe that Mr. McVeigh was 35 years old?

7 A. I'm not that good on judging age. That's what I estimated.

8 Q. How about judging color of hair?

9 A. I said it was dark.

10 Q. Worn midlength?

11 A. Yes.

12 Q. Scraggly brown beard?

13 A. Yes.

14 Q. Sloppy in appearance?

15 A. Yes.

16 Q. When you visited with the FBI on May 1, did you tell them

17 that the last time you had seen this white male visitor was

18 September the 30th, or did you say three or four days prior to

19 Mr. Nichols vacating his residence on October 2?

20 A. I do not remember which I said. Mr. Nichols -- well --

21 Q. I'm sorry, sir.

22 A. I don't remember what I stated there.

23 Q. Did you ever tell the FBI that you had seen the composite

24 of Unidentified Subject No. 1?

25 A. Yes.

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Timothy Patrick Donahue - Direct

1 Q. And did you tell them that if you put glasses on that

2 composite and changed the hair, it looked a lot like Terry

3 Nichols?

4 A. Yes.

5 MR. JONES: I don't believe I have any further

6 questions. Thank you.

7 THE COURT: Mr. Mackey?

8 CROSS-EXAMINATION

9 BY MR. MACKEY:

10 Q. Mr. Donahue, good afternoon.

11 A. Good afternoon.

12 Q. Let me start your questioning with a request that you
13 detail to the Court what you saw on your first encounter with
14 this associate of Terry Nichols.

15 A. In the field with Marife, you're talking about?

16 Q. Yes, sir.

17 A. Well, I was out in the field about 2- or 300 yards off the
18 Highway 50, preparing to work in the field in a tractor that
19 day; and a silver car pulls up to me and a lady gets out, walks
20 over to me, and asks me where Terry was.

21 Q. Let me interrupt. What distance from the highway was it
22 that you were situated?

23 A. Oh, at least 200 yards. At least.

24 Q. And what were you doing at the time?

25 A. I was preparing -- I believe I was preparing a tractor and

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Timothy Patrick Donahue - Cross

1 implement, servicing it, to work in the field that day. I was
2 outside my vehicle. My pickup was setting (sic) there, and my
3 tractor was setting there, and I was servicing my tractor,
4 getting ready to work in the field.

5 Q. This is central Kansas?

6 A. Yes.

7 Q. So I take it there would be no obstruction from the highway
8 to spot you down in the field?

9 A. No, none. None.

10 Q. Did you have an opportunity to see the vehicle approach you
11 before it came to rest?

12 A. Yes. When I was standing there, I seen the silver car
13 pulling up toward me.

14 Q. At that precise point in time, did you recognize the
15 vehicle?

- 16 A. No.
- 17 Q. How close did the vehicle come to you?
- 18 A. Oh, I would estimate 40 feet.
- 19 Q. These are daylight hours?
- 20 A. Yes. In the morning. Midmorning.
- 21 Q. And which of the occupants got out?
- 22 A. The lady.
- 23 Q. Did you recognize her immediately?
- 24 A. No.
- 25 Q. Thereafter, did you?

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Timothy Patrick Donahue - Cross

- 1 A. Yes.
- 2 Q. As being?
- 3 A. Marife.
- 4 Q. Did you have a conversation with Mrs. Nichols at that time?
- 5 A. Yes. She asked me where Terry was. And I started to
- 6 explain to her where he was. But it's kind of difficult to
- 7 explain to her how to get over to where he was.
- 8 Q. Now, the Donahue ranch has some 15,000 acres?
- 9 A. Yes.
- 10 Q. In central Kansas?
- 11 A. Yes.
- 12 Q. It's a big spread?
- 13 A. Yes.
- 14 Q. And Mr. Nichols was not in eye shot of where you were
- 15 located?
- 16 A. No.
- 17 Q. Did you know Mrs. Nichols to be of Filipina descent?
- 18 A. Yes.
- 19 Q. Did you detect some difficulty in relating directions to

20 her?

21 A. Yes.

22 Q. What did you do?

23 A. I walked over to the car, to the male occupant in the car,
24 who was in the driver's seat; and I told him that he could just
25 follow me over there and I'd lead him to where Terry was.

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Timothy Patrick Donahue - Cross

1 Q. Had you seen that individual before --

2 A. No.

3 Q. -- that day?

4 A. No.

5 Q. Approximately what distance separated you and he?

6 A. Oh, ten feet at the most. I was right at the door.

7 Q. And how long a conversation did you have with the driver of
8 that car?

9 A. Not very long. Just a minute, just to tell him to follow
10 me, turn around, and follow me over to where Terry was.

11 Q. Did you get a good look at the person who was driving the
12 car that day?

13 A. Yes.

14 Q. What did you do after talking to him?

15 A. I got into my pickup and turned around, and we drove over
16 to where Terry was working in the field in another tractor.

17 Q. I'm envisioning two vehicles, his following yours?

18 A. Yes.

19 Q. And what distance separated you to where you were headed?

20 A. Oh, we drove for probably close to 2 miles.

21 Q. And did you locate Mr. Nichols?

22 A. Yes.

23 Q. Describe what happened when you got there.

24 A. Well, I just pulled up there and; and Terry stopped the

25 tractor and got out, and Tim -- or the silver car stopped. And

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Timothy Patrick Donahue - Cross

1 Mr. McVeigh got out, and them two had a conversation there

2 standing beside Tim's car.

3 Q. Did you get out -- excuse me.

4 A. And then I turned around and went back.

5 Q. Did you get out of your vehicle?

6 A. No.

7 Q. Even momentarily?

8 A. No.

9 Q. How close was your vehicle from where the silver car

10 stopped?

11 A. Oh, just 20 feet maybe.

12 Q. Did you have an unobstructed view from your vehicle to the

13 occupants of the car?

14 A. Yes.

15 Q. Did you see the driver get out?

16 A. Yes.

17 Q. And what did he do?

18 A. He walked over to Terry, and they started talking.

19 Q. Was that within earshot --

20 A. No.

21 Q. Could you hear what they were talking about? How long did

22 they engage in conversation?

23 A. Oh, I don't really know. I left and went back to work in

24 the field.

25 Q. Now, as opposed to your first encounter, this was your

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Timothy Patrick Donahue - Cross

1 first opportunity to see the man at full stature?

2 A. Yes.

3 Q. Did you get a good look at how tall he was?

4 A. Yes. I drove right back beside him, beside them standing
5 there.

6 Q. And that was the first occasion that you had seen this
7 individual you later identified --

8 A. Yes.

9 Q. -- in the of course of this investigation?

10 A. Yes.

11 Q. The second such occasion was on a date certain of
12 September 30?

13 A. Yes.

14 Q. Tell his Honor why it is you remember again that particular
15 date.

16 A. Well, that was Terry's last day that he was employed with
17 us. I went over that evening to look at a water bed that
18 Mr. Nichols had advertised in the paper, the local paper. And
19 I stopped there, and Terry and Mr. McVeigh was working outside
20 by Terry's pickup. And I stopped there, and Terry come over to
21 me; and we -- I asked him to see the water bed, on the front
22 step of the porch, or the house. And then we walked in and
23 looked at the water bed.

24 Q. In the fall of 1994, Mr. Donahue, what would be a regular
25 workday, what time of day would you end your work?

1 A. Oh, it varies quite a bit, but rarely before six and often
2 seven-thirty to eight.

3 Q. Approximately what time of day on September 30 did you end
4 your work?

5 A. I would say it was seven-thirty. Between seven and

6 seven-thirty.

7 Q. And after doing so, did you drive, then, to Mr. Nichols'

8 ranch house?

9 A. Yes.

10 Q. Mr. Donahue, let me ask you to direct your attention to

11 some photographs that you'll find in that binder to your left.

12 Take a look, please, at Government Exhibits 26, 27, 28, and 29.

13 A. 26 is the ranch house that we provide for our hired man,

14 which was Terry at the time, Mr. Nichols.

15 27 is also the same house.

16 28 is also the same house.

17 29, also?

18 Q. Please.

19 A. It's also the same house.

20 Q. Those four photographs depict the scene of your encounter

21 with Mr. Nichols and his friend --

22 A. Yes.

23 Q. -- on September 30, 1994?

24 A. Yes.

25 MR. MACKEY: Your Honor, we'd move to admit

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Timothy Patrick Donahue - Cross

1 Government's Exhibits 26 through 29.

2 MR. JONES: No objection.

3 THE COURT: They are received.

4 BY MR. MACKEY:

5 Q. Let me start, if I may, Mr. Donahue, with Government

6 Exhibit 29. The road that appears in the foreground of that

7 photo: What is that road?

8 A. That is a County Mile Road.

9 Q. What direction does it run?

10 A. It runs north and south.

11 Q. And if one were to travel north from the residence depicted

12 on Exhibit 29, where would they end up?

13 A. That would end up in our ranch yard.

14 Q. Approximately what distance separates that house, the one

15 shown in this exhibit, and your residence?

16 A. About two and a half miles.

17 Q. All gravel road?

18 A. Yes.

19 Q. Is this the road that you pulled into, or the driveway you

20 pulled into on September 30?

21 A. Yes.

22 Q. When you did so, did you notice any vehicles parked in the

23 driveway?

24 A. Yes. There was a silver car setting there.

25 Q. Was it the same silver car you had seen weeks before?

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Timothy Patrick Donahue - Cross

1 A. Yes.

2 Q. In the field?

3 A. Yes.

4 Q. With the same male driver?

5 A. Yes.

6 Q. Was there any other vehicles parked at the Nichols' ranch

7 house?

8 A. Well, Terry's blue GMC pickup was there.

9 Q. Turning your attention now, Mr. Donahue, to Government

10 Exhibit 27 -- and you should be able to see it either in the

11 notebook or in the screen below you.

12 A. Okay.

13 Q. Using that photograph, tell the Court where you saw and how

14 it was parked -- the Nichols vehicle, I mean.

15 A. It was backed up to the garage door on the left side of the
16 picture there.

17 Q. That would be the far western end of the home?

18 A. Yes.

19 Q. And when you say "backed up," was it entered into the
20 garage area?

21 A. No, it was in -- it was, oh, I'm sure 10 feet from the
22 garage door -- in front of, the back of the pickup was.

23 Q. The rear of the vehicle was closest to the residence?

24 A. Yes.

25 Q. Where did you park your vehicle, if you recall?

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Timothy Patrick Donahue - Cross

1 A. Oh, it was -- well, it's kind of hard to explain. It would
2 be east and south of the front door there a little ways.

3 Q. And approximately what time of evening was it that you
4 arrived at the Nichols' home on September 30?

5 A. Well, it was seven, seven-thirty, in that time frame.

6 Q. So I take it shortly after getting off work you went
7 straight to the Nichols residence?

8 A. Yes.

9 Q. And tell the Court once more the purposes, if you had more
10 than one, of going to the Nichols residence that Friday
11 evening.

12 A. Well, the main reason was to look at the water bed. And
13 also, I decided to give him his final paycheck at that time.

14 Q. And were you also interested in the condition of the
15 residence?

16 A. Yes. Uh-huh.

17 Q. Incidentally, do you own that home?

18 A. No. We lease it.

- 19 Q. From whom?
- 20 A. Reverend Brock.
- 21 Q. Are you responsible for its upkeep and condition?
- 22 A. Partly.
- 23 Q. If a tenant of yours or farmhand of yours destroys the
- 24 home, will you likely feel responsible?
- 25 A. Yes.

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Timothy Patrick Donahue - Cross

- 1 Q. Mr. Donahue, when you got out of your vehicle, where did
- 2 you go first?
- 3 A. I walked up to the front door.
- 4 Q. From the photograph, Exhibit 27, there appears, does there
- 5 not, a short stoop or a porch?
- 6 A. Yes.
- 7 Q. Flush with the entryway into the home?
- 8 A. Yes.
- 9 Q. Approximately what distance off the ground is that porch?
- 10 A. Oh, 2 feet maybe.
- 11 Q. Did you have any conversation with Mr. Nichols before
- 12 entering the residence?
- 13 A. Yes, a short one.
- 14 Q. Where did that take place?
- 15 A. On that top step, going into the house.
- 16 Q. From that vantage point, did you have a good look at both
- 17 the truck and the male person near the truck?
- 18 A. Yes.
- 19 Q. Did you notice that individual at that time?
- 20 A. Yes.
- 21 Q. What did you do after the short conversation on the porch?
- 22 A. Then we walked into the house and looked at the water bed.
- 23 Which took two, three minutes; and then we come back out on the

24 front porch.

25 Q. Incidentally, on Friday evening, did you notice how much

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Timothy Patrick Donahue - Cross

1 furnishing was still in the house?

2 A. Yeah, there was quite a bit in there yet. I remember

3 seeing a refrigerator there, and it was a dining room set

4 there.

5 Q. Did you have conversation with Mr. Nichols when you came

6 out of the residence about that furnishing?

7 A. Yes. I told him, being the way he was leaving and trying

8 to sell all of his stuff, I requested that he didn't leave

9 anything behind that I would have to be responsible for that

10 somebody had purchased and hadn't picked up before Terry left.

11 Q. And is that conversation with Mr. Nichols taking place on

12 the doorstep after coming out of the home?

13 A. Yes.

14 Q. And on the reentry -- that is, coming out of the home --

15 did you see that male person behind the truck again?

16 A. Yes.

17 Q. Was he still there?

18 A. Yes.

19 Q. What is the distance between the porch and the garage,

20 either based on having been there or the photograph, if you

21 can, please.

22 A. Oh, 15 feet, 20 feet maybe.

23 Q. And how long did you and Mr. Nichols stand on that porch

24 and talk about various subject matters?

25 A. Oh, five or ten minutes, I'm sure.

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Timothy Patrick Donahue - Cross

1 Q. In the course of that conversation, did you talk about his
2 final paycheck?

3 A. Yes.

4 Q. And what did you do about that?

5 A. Well, previously I told him that I wanted to withhold his
6 final paycheck until he was ready to move out of the house and
7 lock the door, and then I would give it to him. Most
8 circumstances when somebody quits, we wait until final payday
9 to give them their final paycheck; but I knew Mr. Nichols was
10 leaving the coun -- state, and I told him, When you get the
11 house cleaned up, ready to move out, tell me, and I'll bring
12 you your check.

13 Well, that night, I decided just to get everything
14 over with right then; so I decided to give him his final
15 paycheck that night. And I just requested that, to make sure
16 he left things in good order and just kind of went on honor
17 system with him.

18 Q. And you, in fact, gave him the check?

19 A. Yes.

20 Q. And did you give him a second check?

21 A. Yes, I wrote him a personal check of my own to cover the
22 cost of the water bed. I purchased it from him that night.

23 Q. Did you have that check predrawn? Had you already written
24 it out before you arrived?

25 A. No, I wrote it there on the front step.

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Timothy Patrick Donahue - Cross

1 Q. And you dated it what date?

2 A. September 30.

3 Q. Throughout all these events with Mr. Nichols on this
4 elevated spot, you could see this male person behind the

5 pickup?

6 A. Yes.

7 Q. On that occasion, Mr. Donahue, did Terry Nichols stop and
8 introduce you by name to the person there at the pickup truck?

9 A. No.

10 Q. On the earlier occasion when that same individual had been
11 with Mrs. Nichols out in the field, did Terry Nichols introduce
12 that person to you by name?

13 A. No.

14 Q. At any point before the FBI first talked to you, had you
15 heard Terry Nichols refer to a friend by the name of Tim?

16 A. Yes.

17 Q. In what context?

18 A. Oh, it was just, we was just driving to work, to various
19 job sites; and he was telling me about a friend, first name of
20 Tim, that had served in Desert Storm.

21 Q. Heard the name as related to an individual with military
22 background?

23 A. Yes, uh-huh.

24 Q. Prior to September 30, had Mr. Nichols told you why he was
25 leaving your employ?

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Timothy Patrick Donahue - Cross

1 A. He told me he was going to work for a friend, going to
2 various gun trade shows, moving to Arizona.

3 Q. And in those conversations, did he identify the friend with
4 whom he would be going into the gun trade shows with by a name?

5 A. No.

6 Q. Other than family members, Mr. Donahue, was the male
7 individual you've described here this afternoon the only person
8 that you saw in the company of Terry Nichols during the time he

9 was in your employ?

10 A. Yes.

11 Q. Did you see any other unknown vehicles, other than the

12 silver car you described at the Nichols residence anytime

13 during his employ?

14 A. No.

15 Q. Mr. Donahue, I mean no respect (sic) by this question, but

16 after years of raising cattle, are you better guessing ages of

17 cattle than you are people?

18 A. I hope so.

19 Q. How many head do you have?

20 A. We run about a thousand mother cows, and then we keep out

21 all of our own calves, so there's usually several thousand head

22 around at one time.

23 Q. When you described on April 21 the man at the house, the

24 Nichols house have a scraggly brown beard --

25 A. Yes.

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Timothy Patrick Donahue - Cross

1 Q. -- what precisely did you mean to convey?

2 A. More of an unshaven-type appearance.

3 Q. And of the particulars you gave the FBI on that first

4 occasion, what were you most certain about?

5 A. Oh, his build, the thinness of him. That's what struck me.

6 He's very thin, tall man standing there.

7 Q. Prior to that first interview by the FBI, had you seen

8 anything in the newspaper with the name Tim McVeigh, prior to

9 April 21, the interview with the FBI?

10 A. No.

11 Q. Had you seen any physical description, to the best of your

12 recollection?

13 A. No.

14 Q. About anybody associated with Oklahoma City?

15 A. No.

16 Q. You had seen the composites?

17 A. Yes.

18 Q. Mr. Donahue, you, as you sit there now, February 18, 1997,

19 that the man you saw in the field was the same man that you saw

20 at the residence in the fall of 1994?

21 A. I'm certain.

22 Q. And how certain are you that that man was the man that you

23 later learned was Tim McVeigh?

24 A. I'm certain.

25 MR. MACKEY: Thank you. I have nothing else.

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Timothy Patrick Donahue - Cross

1 MR. JONES: Nothing further of this witness, your

2 Honor.

3 THE COURT: I take it he may be excused.

4 MR. WOODS: Your Honor, may it please the Court, I

5 have three questions of Mr. Donahue that go directly to

6 Mr. Schlender's testimony, who will be the witness coming up.

7 And I am not going to get into anything about Nichols' work or

8 anything like that.

9 THE COURT: All right.

10 MR. WOODS: It's three questions that are relevant.

11 THE COURT: Very well.

12 MR. WOODS: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MR. WOODS:

15 Q. Mr. Donahue, my name is Ron Woods. I'm one of the lawyers

16 that have been appointed to represent Terry Nichols. You and I

17 have never met; is that correct?

18 A. That's correct.

19 Q. You have been cooperative and have met with our
20 investigators and Mr. Neureiter, one of our lawyers; is that
21 right?

22 A. Yes.

23 Q. On your farm of 15,000 acres, do you use dried bulk
24 fertilizer?

25 A. Do we use dry bulk fertilizer. We do in our planters for

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Timothy Patrick Donahue - Cross

1 starter, for starter fertilizer through our planters. That
2 would be the only time we do, yes.

3 Q. And you plant wheat there?

4 A. That would be used for corn or sorghum which is -- that
5 would be the only time we do that, yes.

6 Q. Do you have wheat at all there?

7 A. Yes.

8 Q. And do you use the dry fertilizer on that?

9 A. It's custom applied for us by the co-op association.

10 Q. You have a co-op bring it out and deliver it and spread it
11 and distribute it?

12 A. Correct.

13 Q. Thank you. What type of automobile did Mr. Nichols have
14 when he worked there those six months for you from March to
15 September '94?

16 A. It was a blue pickup.

17 Q. Do you know the make?

18 A. Well, GMC, Chevy, something like that.

19 Q. Do you recall whether or not he had a blue Michigan license
20 plate or a white Kansas license plate?

21 A. It was a Michigan plate.

22 Q. Do you recall the color?

23 A. Blue, yes.

24 Q. Do you recall whether or not he had a camper on the
25 vehicle?

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Timothy Patrick Donahue - Cross

1 A. I seen it on that Friday evening I give him his check.

2 That was the first time the camper was on the vehicle.

3 Q. As a matter of fact, what you saw that night after 7:30 was
4 the camper being mounted on the vehicle for the first time; is
5 that correct? I believe you stated that earlier.

6 A. Yeah, that's what I believe to be happening.

7 Q. Had you ever seen that camper on that vehicle prior to that
8 evening at 7:30?

9 A. No.

10 Q. You mentioned to Mr. Mackey that the two individuals,
11 Mr. Nichols and the other one, were working on the vehicle when
12 you got there at 7:30?

13 A. Yes.

14 Q. What were they doing?

15 A. I don't know. They was behind the vehicle. Whether they
16 was putting -- I guess I assumed they was putting it on because
17 I had never seen it on there before.

18 MR. WOODS: Thank you.

19 Thank you, your Honor. That's all the questions I
20 have.

21 MR. MACKEY: Nothing.

22 THE COURT: Any follow-up?

23 MR. JONES: No, your Honor.

24 THE COURT: Then, Mr. Donahue, you are excused now

25 from this hearing. We will probably see you at trial as a

1 witness. And you should follow the caution of not discussing
2 your testimony with any other person who may become a witness
3 or be a witness. Do you understand?

4 THE WITNESS: Yes, sir.

5 THE COURT: You can go.

6 THE WITNESS: Thank you.

7 THE COURT: Next witness.

8 MR. JONES: Mr. Tipton, your Honor.

9 THE COURT: All right.

10 (Glynn Allen Tipton was sworn.)

11 THE CLERK: Would you have a seat, please. Would you
12 state your full name for the record and spell your last name.

13 THE WITNESS: Glynn Allen Tipton. T-I-P-T-O-N.

14 THE CLERK: Thank you.

15 THE COURT: All right, Mr. Jones.

16 MR. JONES: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. JONES:

19 Q. Mr. Tipton, I have just a few questions for you. In the
20 year 1995 you were working for an outfit called BP Racing Fuels
21 out of Manhattan, Kansas; is that correct?

22 A. Yes.

23 Q. What did you do for them?

24 A. I sell racing fuel.

25 Q. What type of racing fuel?

Glynn Allen Tipton - Direct

1 A. BP racing fuel.

2 Q. That's easy enough. I'm sorry I asked.

3 On the weekend of September the 29th, 1994, through

4 October 2, you were at the Sears Kraftsman National Drag Race
5 in Topeka, Kansas?

6 A. What were those dates again?

7 Q. September the 29th, 1994, through October the 2d, 1994.

8 A. Yes.

9 Q. All right. Now, sometime during that period, that weekend
10 there, were you approached by an individual who gave you the
11 name John and who wanted to make an inquiry of you as to
12 whether BP Racing Fuels sold anhydrous hydrazine in 55-gallon
13 drums?

14 A. Yes.

15 Q. Subsequently did you have a conversation with this
16 individual by telephone?

17 A. Yes.

18 Q. How many times?

19 A. Just once.

20 Q. Did you see this individual again face to face other than
21 this time in late September or early October?

22 A. I saw the individual one time, and that was October the
23 1st.

24 Q. Now, did you originally think it was October the 2d?

25 A. No.

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Glynn Allen Tipton - Direct

1 Q. So you always thought it was October the 1st?

2 A. Yes. That is correct.

3 Q. All right. Now, you gave a description of this individual
4 later to special agents of the Federal Bureau of Investigation;
5 is that correct?

6 A. Yes, I did.

7 Q. And you gave them that description on or about May 1, 1995?

8 A. That would be correct.

9 Q. Do you remember the description that you gave of them --

10 gave them at that time of this John?

11 A. Yes, I do.

12 Q. What was that description, sir?

13 A. Basically it consisted of the fact that his facial features

14 were kind of narrow, light brown hair, facial growth of a

15 couple days or so, wearing a dark-colored T-shirt, dark jeans,

16 T-shirt had screening on it, but it wasn't a motor sport

17 screening.

18 Q. All right. Do you recall whether you told them that this

19 John, last name unknown, was 5-foot 10 to 6 feet tall with a

20 two- to three-day growth of whisker stubble and that the event

21 occurred on Sunday, October the 2d, or he could have been 5'

22 8", 150 to 160 pounds, with growth all over, possibly a

23 mustache?

24 MR. MENDELOFF: Judge, objection. Compound.

25 THE COURT: Pardon me?

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1 MR. MENDELOFF: Objection. Compound question, Judge.

2 THE COURT: All right, break it down.

3 MR. JONES: Okay.

4 BY MR. JONES:

5 Q. Did you tell the special agents of the FBI that this

6 individual was about 5' 8", weighed 150 to 160 pounds, and had

7 growth all over, possibly a mustache?

8 MR. MENDELOFF: Objection.

9 THE COURT: That's the same question.

10 MR. JONES: No. The question before included the

11 other description, I believe.

12 THE COURT: You're asked to break it down one at a

13 time on the description. That's the objection.

14 MR. JONES: All right. Fair enough.

15 BY MR. JONES:

16 Q. Did you tell him he weighed about 150 to 160 pounds?

17 A. Yes, I did.

18 Q. Did you tell him he was about 5' 8"?

19 A. Yes, I did at first. But that was before I realized that I

20 never made it all the way down to the ground level and I was on

21 the steps and he was on the ground level.

22 Q. Did you tell them that he was 5' 8"?

23 A. Yes, I did.

24 Q. Did you tell them he possibly had a mustache?

25 A. Yes, I believe I did.

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Glynn Allen Tipton - Direct

1 Q. Did you tell them he possibly had growth all over or had

2 growth all over his face?

3 A. I thought he had two- to three-day whisker stubble, I

4 believe.

5 Q. Now, on that day, did these two agents of the FBI show you

6 some photographs?

7 A. Yes, they did.

8 Q. They showed you photographs of how many people?

9 A. I believe it was either two or three people.

10 Q. And were they individual photographs, or were they in a

11 spread?

12 A. I think they just had individual photographs.

13 Q. They showed them to you one at a time?

14 A. I don't really recall how they did that for sure.

15 Q. Okay. Could they have shown you just two photographs?

16 A. It's possible.

17 Q. And do you know whether those were photographs of
18 Mr. McVeigh and Mr. Nichols?
19 A. I believe those were two of them, yes.
20 Q. Well, if there were only two photographs, then that's the
21 only ones they showed --
22 A. That would be the two, yes.
23 Q. They didn't show you a photo spread of six or eight
24 photographs, did they?
25 A. No.

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Glynn Allen Tipton - Direct

1 Q. And did you tell them that at that time that the face of
2 Mr. McVeigh in the picture was thin like the subject John but
3 you could not be positive that Mr. McVeigh was the subject?
4 A. Yes, I did.
5 Q. Now, subsequently -- well, strike that.
6 Did you learn at sometime that Mr. McVeigh was the
7 principal suspect in the Oklahoma City bombing?
8 A. Yes, I did.
9 Q. And when did you learn that?
10 A. I don't recall exactly when I learned that.
11 Q. Was it approximately one week after the bombing when you
12 received a telephone call from Mr. Wade Grey?
13 A. No, I don't believe so.
14 Q. Did you tell Mr. Grey that Mr. McVeigh looked identical to
15 the person?
16 A. I don't remember a conversation like that, no.
17 Q. Okay.
18 Q. Well, let me ask you: Did you call Mr. Grey?
19 A. Yes, I called --
20 Q. Within about a week after the bombing?
21 A. That would have been possible.

22 Q. Well, do you have a memory of it or not?
23 A. I call Mr. Grey a lot.
24 Q. Well, did you call him approximately one week after the
25 bombing and discuss the bombing?

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Glynn Allen Tipton - Direct

1 A. It was possible.
2 Q. Do you have a memory of doing that?
3 A. No, I do not.
4 Q. Prior to May 1, had you seen Mr. McVeigh's picture on
5 television?
6 A. Yes, I believe I had.
7 Q. And do you remember doing what? What was he doing?
8 A. I think that -- I don't recall exactly what -- what was
9 going on.
10 Q. How many times had you seen his picture on television?
11 A. I believe a couple times.
12 Q. Had you followed the Oklahoma City bombing?
13 A. I followed it early on, yes.
14 MR. JONES: I believe that's all. Thank you, sir.
15 THE COURT: Mr. Mendeloff.
16 MR. MENDELOFF: Just two questions, your Honor.
17 CROSS-EXAMINATION
18 BY MR. MENDELOFF:
19 Q. Mr. Tipton, I think you testified on direct examination
20 that you had this encounter at the racetrack -- at a racetrack
21 on October 1. Where was that racetrack?
22 A. That was in Topeka, Kansas.
23 Q. And about what time that afternoon -- what time that day
24 did you have the encounter?
25 A. I couldn't tell you exactly, but I know it was

Glynn Allen Tipton - Cross

- 1 approximately between 1:00 and 2:00 o'clock.
- 2 Q. Early afternoon?
- 3 A. Yeah.
- 4 Q. And when you had that encounter, where did it take place?
- 5 A. It took place right at the race truck itself.
- 6 Q. At the race truck?
- 7 A. Yes.
- 8 Q. What is the race truck?
- 9 A. It's a semitruck that hauls the fuel into the racetrack
- 10 there.
- 11 Q. Can you tell the Court what you were doing right before the
- 12 encounter took place.
- 13 A. I think I had been visiting with somebody on the outside.
- 14 I remember walking back up into (sic) the steps into the
- 15 trailer.
- 16 Q. Into the truck?
- 17 A. Yes.
- 18 Q. All right. And did you hear somebody call out to you?
- 19 A. Yes, I did.
- 20 Q. What did the person say?
- 21 A. He said, Hey, boss.
- 22 Q. Did you turn around?
- 23 A. Yes, I did.
- 24 Q. And did you see an individual there?
- 25 A. Yes, I did.

Glynn Allen Tipton - Cross

- 1 Q. Is that the person that you have described to Mr. Jones --
- 2 the person you described to Mr. Jones on direct examination?

- 3 A. Yes.
- 4 Q. And when you saw that person, what did you do?
- 5 A. Responded to him as to how I could help him.
- 6 Q. All right. You were standing where at the time?
- 7 A. I was standing in the truck.
- 8 Q. Where was he?
- 9 A. He was down on the ground level.
- 10 Q. And what did he respond?
- 11 A. Pardon?
- 12 Q. What did he say, response?
- 13 A. He was inquiring as to whether he could purchase anhydrous
- 14 hydrazine in 55-gallon drums.
- 15 Q. Did you learn at some point -- did you know at that point
- 16 what anhydrous hydrazine was?
- 17 A. No, I didn't.
- 18 Q. Did you learn that later?
- 19 A. Yes, I did.
- 20 Q. What is anhydrous hydrazine?
- 21 A. Basically it's used as rocket fuel.
- 22 Q. Are we talking about rocket fuel for myelo rockets or
- 23 other kinds of rockets?
- 24 A. Basically NASA rockets is the way I understand.
- 25 Q. And when the man asked you if you sell anhydrous hydrazine

Glynn Allen Tipton - Cross

- 1 in 55-gallon drums, what did you respond?
- 2 A. I said that I was not sure that we would be able to fulfill
- 3 that type of request, but I would check on it Monday when I got
- 4 back to the office.
- 5 Q. Did the man make any remark about his ability to have
- 6 access to that material at that time?

7 A. He had mentioned that at one point in time he did have
8 access to that particular material.

9 Q. All right. Now, what is the reason that you told the man
10 that you might be able to get an height?

11 A. Well, BP owns a chemical company as well, and I thought it
12 would be something that would be possible that we could make
13 the sale on.

14 Q. After you told the customer that you'd check on Monday,
15 about supplying him with anhydrous hydrazine, did the
16 conversation continue?

17 A. Yeah. Basically I just tried to get the information to be
18 able to get back with him, asked him for his name, his phone
19 number. He said that basically he was unable to give me a
20 phone number because he was in the process of moving. I
21 believe he was from Junction City.

22 Q. Now, during the course of this conversation, did you remain
23 in the cab of the truck, or did you move somewhere?

24 A. Throughout the whole conversation, we moved, at one point
25 in time I moved back into the truck, off of the steps to get

219

Glynn Allen Tipton - Cross

1 material to, pen or something to write on and piece of paper.

2 Q. And then where did you go after you got the pen and paper?

3 A. Came back down the steps, one or two steps, probably.

4 Q. Now, during the course of this conversation, do you recall
5 ever being on the same level as Mr. McVeigh -- excuse me, as
6 the person you were talking to?

7 A. Never were we at the same height.

8 Q. Now, when you got the piece of paper and a pen, did you ask
9 the person for any identifying information?

10 A. Could you repeat that one more time?

11 Q. When you got the piece of paper and the pen out of the

12 cab --
13 A. Yes.
14 Q. -- did you ask the man that you were talking to for some
15 sort of identifying information?
16 A. Yes, I asked him for his name and a phone number where I
17 could reach him.
18 Q. And that's when he told you he couldn't give you a phone
19 number because he was moving?
20 A. Yes, that is correct.
21 Q. After you got his name, what did you tell him to do?
22 A. I told him I'd check on it and I could get back with him on
23 the product, and that's when he told him that I wouldn't be
24 able to get ahold of him, that he would get back ahold of me
25 and I gave him a business card.

220

Glynn Allen Tipton - Cross

1 Q. And did you tell him when to call you?
2 A. I told him Monday afternoon.
3 Q. All right. And the reason you said that is why?
4 A. Because I wouldn't be able to get ahold of Wade until
5 Monday morning to find out whether it was possible to get this
6 anhydrous hydrazine.
7 Q. At that point what happened?
8 A. Basically he got ready to leave. I got ready to walk back
9 into the truck. I got up back into the truck and this
10 individual asked me what drum a nitromethane cost.
11 Q. What is nitromethane?
12 A. It's a fuel that the top fuel dragster and top fuel funny
13 cars burn.
14 Q. Racing fuel?
15 A. Yes, it is.

16 Q. And what did you say?
17 A. I told him it was \$1250 a drum.
18 Q. At that point did the conversation end?
19 A. Yes.
20 Q. How long did the conversation last?
21 A. Oh, I would say in the neighborhood of around five to eight
22 minutes.
23 Q. All right. And what was the lighting at the place that you
24 were having the conversation?
25 A. It was afternoon time, sun was shining.

221

Glynn Allen Tipton - Cross

1 Q. And how far away were you from this person identifying
2 himself as John?
3 A. Oh, about 3 feet.
4 Q. Throughout the conversation, or did that change?
5 A. That changed during the conversation. At points in time, I
6 was probably 6 to 8 feet away from him.
7 Q. All right. Now, during the conversation, did you pay
8 attention to him?
9 A. Yes, I did.
10 Q. Where did you direct your eyes?
11 A. At his face.
12 Q. And what was the reason you paid attention to him?
13 A. Well, it's kind of hard to sell somebody something, if you
14 don't pay attention to them.
15 Q. Is it a practice you follow in the sales business, to pay
16 attention to your customers?
17 A. Yes.
18 Q. Now, Mr. Jones went through a series of identifiers that
19 you provided. One thing, I don't think -- I don't remember if
20 he asked you -- is whether he provided you the identifier of

21 age. Do you remember what age you told the FBI this man was?

22 A. I believe it would have been mid-20s.

23 Q. Now, is it your testimony that you're certain that the

24 person you saw is Tim McVeigh?

25 A. That I am certain?

222

Glynn Allen Tipton - Cross

1 Q. Yes.

2 A. No.

3 Q. What is the level of your certainty of your identification?

4 A. I would say that I'd be 90 percent sure.

5 Q. Now, after your encounter at the racetrack that day, did

6 you have occasion to have a conversation with your supplier,

7 Wade Grey?

8 A. Can you repeat that one more time, please.

9 Q. After your conversation, after your encounter at the

10 racetrack on October 1, did you have a conversation with Wade

11 Grey on Monday, October 3?

12 A. Yes, I did.

13 Q. And what was the reason that you contacted -- Did you

14 contact him?

15 A. Yes, I did.

16 Q. Did you make a telephone call?

17 A. Yes, I did.

18 Q. What was the reason you contacted him?

19 A. To ask him about the anhydrous hydrazine to see if that was

20 available.

21 Q. When you contacted him, what did he tell you?

22 A. He told me that we didn't want to mess with it, it was a

23 regulated substance. And at that point in time, I asked him

24 what would happen in you mixed nitromethane with the anhydrous

25 hydrazine.

223

Glynn Allen Tipton - Cross

1 Q. And what did he tell you?

2 A. He told me it would become explosive or become a bomb.

3 Q. Now, did that conversation impact in any way your ability

4 to continue to remember this encounter at the racetrack?

5 A. It definitely stuck out in my mind.

6 Q. Had you ever had anybody come up to you and asked you to

7 sell them components which together would create a bomb?

8 A. No.

9 Q. When the man at the racetrack -- let me back you up to

10 October 1 -- when the man at the racetrack asked you for

11 nitromethane, did that strike you in any way?

12 A. Yes, it did, because he also asked me about the anhydrous

13 hydrazine.

14 Q. Why is that odd?

15 A. Because there are certain chemicals that you can mix with

16 nitromethane that can cause it to become unstable.

17 Q. Do you know whether anhydrous hydrazine was one of them?

18 A. No, I did not.

19 Q. Were you concerned it might be?

20 A. Yes, I was.

21 Q. How do you know that you cannot mix certain chemicals with

22 nitromethane?

23 A. There are a warning label on the nitromethane drums.

24 Q. During the course of the time that you'd been selling fuel

25 for BP Racing, has anybody ever come up to you and asked you to

224

Glynn Allen Tipton - Cross

1 sell them rocket fuel?

2 A. No.

3 Q. How many years have you been selling fuel for BP Racing?

4 A. I've been with them for ten years.

5 Q. When you saw the man that you did at the track -- John --

6 did he look like he fit in?

7 A. There was something that was, did strike me odd, different

8 about him. You know, I felt like he was definitely some type

9 of military personnel.

10 Q. And do military personnel enjoy drag racing?

11 A. Yes, they do.

12 Q. What was odd about his appearance?

13 A. Well, just throughout the whole conversation, he didn't

14 seem to be really interested in drag racing, because usually

15 when you're talking to something, somebody about selling them

16 racing fuel, they have something that they're looking for in

17 particular, you know, to use it in a certain way, and they ask

18 a lot of questions on, you know, what's the best way to do this

19 or what's the best way to do that. So he just didn't, didn't

20 seem to be interested in motor sports.

21 MR. MENDELOFF: One moment, your Honor.

22 THE COURT: Yes.

23 MR. MENDELOFF: Nothing further, your Honor.

24 THE COURT: Any follow-up questions?

25 MR. JONES: Yes, sir.

225

Glynn Allen Tipton - Cross

1 THE COURT: All right.

2 REDIRECT EXAMINATION

3 Mr. Tipton, I'd like to revisit now with you after

4 Mr. Mendeloff's cross-examination some answers that you gave me

5 on direct, if that's all right with you, and let's start with

6 the day of this transaction. What day did it occur?
7 A. October the 1st.
8 Q. Did you earlier believe that it occurred on October 2?
9 A. No, I did not.
10 Q. Want to be sure. So you never told the FBI that the
11 transaction occurred on October the 2d?
12 A. No, I did not.
13 Q. Never told anybody it took place on October the 2d?
14 A. No.
15 Q. Are you 90 percent positive of that or a hundred percent
16 positive of it?
17 A. I am a hundred percent positive.
18 Q. Okay. Now, Mr. Mendeloff asked you if the information that
19 you learned about the fact that this fuel could be made into a
20 bomb caused you to hold this fast in your mind what had
21 occurred between you and John; is that correct?
22 A. Could you repeat that one more time, please?
23 Q. Sure. Because this was unusual in the sense that somebody
24 was buying something that could be made into a bomb, it caused
25 you to remember it?

226

Glynn Allen Tipton - Redirect

1 A. Yes.
2 Q. Okay. So it wasn't like a casual encounter; it was
3 something that you consciously caused your memory to hold; is
4 that what you're telling me?
5 A. It was unusual enough that I remember it pretty distinctly,
6 yes.
7 Q. Okay. Well, do you know of anybody that has ever described
8 Tim McVeigh as being 5 8, 160 pounds?
9 MR. MENDELOFF: Objection, your Honor.
10 THE COURT: Sustained.

11 BY MR. JONES:
12 Q. When you were interviewed by the FBI on May the 1st, the
13 only photographs they showed you were Mr. McVeigh and
14 Mr. Nichols, correct?
15 A. I don't remember for sure, but --
16 Q. But that's what the 302 says, you wouldn't doubt it, would
17 you?
18 A. I don't remember.
19 Q. Well, wait a second. I thought this event stuck in your
20 mind. Are you telling the Court today you don't remember
21 whether you were shown two photographs or three?
22 A. Yes, that's what I'm telling him.
23 Q. Okay. Might you also be less positive about some other
24 things? Like the date the transaction first took place?
25 A. No.

227

Glynn Allen Tipton - Redirect

1 Q. When you were interviewed by the FBI agents on May 1, you
2 did tell them that Mr. McVeigh's face was thin like the
3 subject, but you could not be positive that McVeigh was the
4 subject known to you as John; do you remember telling them
5 that?
6 A. That is correct.
7 Q. Now, Mr. Mendeloff asked if you were certain. Do you
8 remember that?
9 A. If I was certain?
10 Q. Certain. That it was Mr. McVeigh.
11 A. Yes, I do.
12 Q. Now, the FBI agents didn't ask you about certainty, they
13 asked you if you could make a positive identification, didn't
14 they?

15 A. I don't remember exactly what they said at that point in
16 time, no.
17 Q. Even though this sticks in your mind because of the very
18 unusual nature of it, you can't remember what they said to you?
19 A. I don't remember the exact wording.
20 Q. So you don't know whether they said certain or positive?
21 A. I don't remember.
22 Q. But it's clear that you told them you could not be positive
23 it was Tim McVeigh?
24 A. That is correct.
25 Q. Even though that was one of two or three photographs they

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Glynn Allen Tipton - Redirect

1 showed you and even though you knew Mr. McVeigh had been
2 arrested and charged with a crime?
3 A. That is correct.
4 Q. Now, when did you decide that you were 90 percent certain?
5 A. I don't recall exactly when I made that decision, but at
6 one point in time, I knew that they were going to come visit
7 me, and I knew that that's where, pardon the expression, the
8 rubber meets the road, and that I had to be, you know, have
9 some idea of how certain I was of this 'cause I felt like that
10 they were going to want to know this.
11 Q. So you didn't learn any new facts that made you certain, it
12 was just the rubber meeting the road?
13 A. Well, it was the point in time that I needed to be able to
14 tell them if I was a hundred percent certain or if I was, you
15 know, and which I was not. So I wanted to put a percentage
16 point to it to tell them, yes, this is how certain I am that
17 this is this person.
18 Q. And when was that meeting?
19 A. I don't recall the date.

- 20 Q. Where was it?
- 21 A. It was at my place of employment.
- 22 Q. And who did you visit with?
- 23 A. Scott Mendeloff and John Hersely.
- 24 Q. And how far were you from Mr. Mendeloff's face when you
- 25 told him you were 90 percent certain?

229

Glynn Allen Tipton - Redirect

- 1 A. Probably about 6 feet.
- 2 Q. Did you know there was a \$2 million reward?
- 3 A. No, I did not.
- 4 Q. Did that help the rubber meet the road, Mr. Tipton?
- 5 A. No, it did not.
- 6 MR. JONES: No further questions.
- 7 MR. MENDELOFF: Just one question.
- 8 THE COURT: All right.
- 9 MR. MENDELOFF: Just one series of questions.
- 10 RE-CROSS-EXAMINATION
- 11 BY MR. MENDELOFF:
- 12 Q. Mr. Tipton, Mr. Jones stated in his questions to you just
- 13 now that you had said that the person you saw was 5 feet
- 14 8 inches tall. Is that what your testimony is?
- 15 A. No, that is not what my testimony is.
- 16 Q. Can you tell us what your testimony is regarding height?
- 17 A. I am not sure of the height.
- 18 Q. And did you originally state 5 feet 8 inches before you
- 19 remembered you weren't on the same level as the person?
- 20 A. Yes, I did.
- 21 Q. And the reason you said that is what?
- 22 A. Well, when I was talking to him, I remembered being able to
- 23 see him face to face, not have to look up, not have to look

24 down, at least not to a great extent.

25 Q. And you were standing on a step?

230

Glynn Allen Tipton - Recross

1 A. But I was standing on the steps.

2 Q. How tall are you?

3 A. I am 5 8.

4 MR. MENDELOFF: Thank you, nothing further your Honor.

5 MR. JONES: Nothing further your Honor.

6 THE COURT: All right, I take it he may be excused

7 now.

8 MR. JONES: Yes.

9 THE COURT: Mr. Tipton, you may step down, remembering
10 that you will probably be called back at a trial.

11 THE WITNESS: Okay.

12 THE COURT: And you should not, therefore, discuss
13 your testimony with any other person who may be a witness at
14 the trial.

15 THE WITNESS: Okay.

16 THE COURT: Understood?

17 THE WITNESS: Yes.

18 THE COURT: You can leave.

19 We will recess now, and we'll recess till 3:35.

20 (Recess at 3:15 p.m.)

21 (Reconvened at 3:35 p.m.)

22 THE COURT: Please be seated.

23 Ms. Merritt.

24 MS. MERRITT: Good afternoon, your Honor.

25 Marion Ogden.

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Glynn Allen Tipton - Recross

1 THE COURT: Okay.

2 THE COURTROOM DEPUTY: Would you raise your right
3 hand, please.

4 (Marion Charles Ogden affirmed.)

5 THE COURTROOM DEPUTY: Have a seat, please.

6 Would you state your full name for the record and
7 spell your last name, please.

8 THE WITNESS: Marion Charles Ogden. Last name is
9 O-G-D-E-N.

10 THE COURTROOM DEPUTY: Thank you.

11 THE COURT: Ms. Merritt.

12 DIRECT EXAMINATION

13 BY MS. MERRITT:

14 Q. Mr. Ogden, where are you from?

15 A. Marion, Kansas.

16 Q. And how are you employed in Marion, Kansas?

17 A. With the USD-408D school system.

18 Q. Are you a teacher?

19 A. Yes.

20 Q. What do you teach?

21 A. Health and physical education.

22 Q. And what grade school is that?

23 A. High school.

24 Q. Directing your attention to November of 1995, did you have
25 occasion to be contacted by a member of the FBI?

232

Marion Charles Ogden - Direct

1 A. I think that was the date, but I was contacted by the FBI.

2 Q. Did you contact them first, or did they contact you first?

3 A. They contacted me.

4 Q. And would November 14, 1995, sound reasonable?

5 A. Sounds good.

6 Q. And did they tell you why they were contacting you?

7 A. Yes.

8 Q. Did they advise you that you were being interviewed in
9 connection with the Oklahoma City bombing?

10 A. Yes.

11 Q. And did they tell you you were being contacted regarding a
12 possible purchase of furniture from Terry Nichols' residence in
13 1994?

14 A. Yes.

15 Q. Now, did you tell the FBI that you were somewhat of a flea
16 market, antique-shopping enthusiast?

17 A. I don't think I did.

18 Q. Well, let's go back to 1994. Can you tell me when it was
19 that you believe you had some contact with Terry Nichols'
20 residence?

21 A. I went to an advertised garage sale there, or moving sale,
22 or whatever.

23 Q. How did you learn about the garage sale?

24 A. It was advertised in the Marion County Record, which is a
25 local newspaper.

233

Marion Charles Ogden - Direct

1 Q. Do you recall the day it was advertised?

2 A. No.

3 Q. Do you recall the day of the week it was advertised?

4 A. The paper comes out on Wednesday. I usually don't read it
5 until a Thursday or a Friday.

6 Q. And do you read the garage sales every week?

7 A. Every week.

8 Q. How many times a month do you go to garage sales?

9 A. A month?

- 10 Q. Uh-huh.
- 11 A. Probably too many to count.
- 12 Q. Would you say you go every week?
- 13 A. Yes.
- 14 Q. Now, what did you do when you saw this particular ad for
- 15 what later you came to know as Terry Nichols' residence in the
- 16 Marion Record?
- 17 A. There was no address on the ad. They advertised some type
- 18 of a sale, and all there was was a phone number; so I called
- 19 the phone number.
- 20 Q. Did anyone answer the phone?
- 21 A. Yes.
- 22 Q. Did you have a conversation with the person who answered
- 23 the phone?
- 24 A. Yes.
- 25 Q. What transpired during that conversation?

234

Marion Charles Ogden - Direct

- 1 A. I asked if this was the residence that had a -- was having
- 2 a sale, and they said yes.
- 3 And I said, There was no address. How may I get
- 4 there?
- 5 And they proceeded to give me directions on how to get
- 6 there.
- 7 And I said, I'll see you soon.
- 8 And they said, Fine.
- 9 Q. Do you know today what that was?
- 10 A. I don't really know. It was either a Thursday or a Friday
- 11 that I made the call.
- 12 Q. Do you know what month it was in?
- 13 A. If I had to pinpoint it down, no, I wouldn't. All I know

14 is that it was sometime in the fall. It was immaterial to me
15 as far as what month it was; but it was sometime in the fall.
16 All you have to do is check the record in the Marion County
17 Record. There was just one add in there.
18 Q. We're talking about the fall of 1994?
19 A. Yes.
20 Q. Are we?
21 A. Yes.
22 Q. And you have not had occasion to check yourself and see
23 what week that was?
24 A. No reason to.
25 MR. GOELMAN: Objection, your Honor. Relevance.

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Marion Charles Ogden - Direct

1 THE COURT: Overruled.
2 BY MS. MERRITT:
3 Q. You have not had occasion to check yourself to see what
4 week that ad appeared?
5 A. No reason to.
6 Q. When you say fall, would that include September, October,
7 November?
8 A. Could.
9 Q. What else could it include?
10 A. That's pretty much fall: September, October, November.
11 Q. And this was a year before the FBI contacted you; correct?
12 A. '94, '95, yes.
13 Q. And it was approximately six or more months before the
14 Oklahoma City bombing?
15 A. Sometime between there, yes.
16 Q. Sometime between where?
17 A. From the time I went to the garage sale until the bombing.
18 That's what you're talking about; right?

19 Q. Right. And I'm asking whether it was about six months.
20 A. If it was September and the bombing was in April? Is that
21 correct?
22 Q. Yes. Well --
23 A. A little over six.
24 Q. Now, when you arrived at -- you went over to the house
25 after the person gave you directions?

236

Marion Charles Ogden - Direct

1 A. Yes.
2 Q. Back in the fall of 1994; correct?
3 A. Yes.
4 Q. Now, when the person answered the door, had you ever seen
5 that person before at that point in time?
6 A. No.
7 Q. Now, you later came to be interviewed by the police, I
8 believe, on about November, 1995. Correct? By the FBI?
9 A. Yes.
10 Q. And you gave a physical description of the person who
11 answered the door at that house; right?
12 A. Yes.
13 Q. And did you tell the FBI agent that the person was a white
14 male?
15 A. I don't know whether I ever used the phrase "white male,"
16 but I could have.
17 Q. I said "white." Did you get that word?
18 A. I said "white," yes.
19 Q. Okay. You did, also?
20 A. Yes.
21 Q. And did you describe him as being tall and slender?
22 A. I might have.

23 Q. And did you tell the FBI agent that the person had the same
24 facial features you observed on the news accounts?
25 A. I didn't mention anything about facial features. I just

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Marion Charles Ogden - Direct

1 said that was the same person that was on the news account.
2 Q. Now, can you tell me when you first saw a news account of
3 the person you believe was the person who answered the door at
4 Terry Nichols' house?
5 A. I can't give you any date. I have no idea other than the
6 fact that I did see a news account after the bombing, and
7 sometime after the bombing I did see him on TV.
8 Q. Okay. Did you watch television coverage of the bombing on
9 April 19, the day of the bombing?
10 A. I'm sure I probably watched some.
11 Q. Did you see any television coverage in which any composite
12 drawings or sketches of any suspects appeared on television?
13 A. Yes.
14 Q. Do you recall if you ever saw a composite drawing of
15 someone that the media referred to as Un. Sub. 1 or John Doe 1?
16 A. I'm sure I did.
17 Q. Do you recall if you saw a composite or sketch of someone
18 the media referred to as Un. Sub. 2 or John Doe 2?
19 A. I'm sure I probably did.
20 Q. Did you read newspaper accounts concerning the facts of the
21 case or the alleged facts of the case?
22 A. Yes.
23 Q. When you saw these drawings or -- strike that.
24 Did you also happen to see Mr. McVeigh being led out
25 of the Noble County Courthouse?

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Marion Charles Ogden - Direct

- 1 A. I think I saw that on TV, yes.
- 2 Q. Can you tell me what you remember seeing as to that
- 3 walk-out?
- 4 A. Handcuffs on an individual surrounded by, I assume, FBI
- 5 agents.
- 6 Q. So the person you saw was in custody?
- 7 A. Yes.
- 8 Q. Do you remember what kind of clothing he was wearing?
- 9 A. He could have been in some type of a jumpsuit.
- 10 Q. Would that -- when you say jumpsuit, do you mean a prison
- 11 jumpsuit?
- 12 A. Yes.
- 13 Q. Now, when you saw either of the composites on television or
- 14 the walk-out from the jail, did you make any connection in your
- 15 mind between this person or the person depicted in the sketches
- 16 and the person you saw at Terry Nichols' house?
- 17 MR. GOELMAN: Your Honor, I'm going to object. A
- 18 compound question as to which image he saw.
- 19 THE COURT: All right. Break it down.
- 20 BY MS. MERRITT:
- 21 Q. When you saw the composite sketch of John Doe 1 or Un.
- 22 Sub.2, did you make any connection between that composite or
- 23 drawing and the person you encountered at Terry Nichols' house
- 24 in the fall of 1994?
- 25 A. No.

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Marion Charles Ogden - Direct

- 1 Q. When you saw Mr. McVeigh being led out of the Noble County
- 2 Courthouse in April of 1995, did you make any connection
- 3 between that person and the person you encountered at Terry

4 Nichols' house in November or the fall of 1994?

5 A. He looked familiar, but I didn't know where I had seen him
6 before; so there was some type of connection, but I didn't
7 place it.

8 Q. And did you -- when did you first make a connection?

9 A. When I saw the house where I had went to the garage sale
10 and a -- the location of the house. Whenever they mentioned
11 the location of the house, why, then, something clicked in my
12 mind as to the fact that that was the guy that was at the
13 house.

14 Q. Let's break that down a little bit.

15 You say when you saw the house. Did you go back to
16 see that house again?

17 A. No. I saw it on the media.

18 Q. What did you see in the media?

19 A. A picture of the house.

20 Q. What media did you see this on?

21 A. On television.

22 Q. Was it a local station, or a network station?

23 A. It was a local station.

24 Q. Do you remember what they said about the house?

25 A. No.

240

Marion Charles Ogden - Direct

1 Q. How did you know --

2 A. Other than the fact that that was -- well, I don't remember
3 what they said about the house, other than the fact that they
4 identified the place and that it was Terry Nichols' house; and
5 I just mentioned to my wife at that time that that was the
6 house where Tim McVeigh was when I went to the garage sale.

7 Q. Okay. So you said to her that by that time you had decided
8 in your mind it was Tim McVeigh?

- 9 A. Yes.
- 10 Q. When was this?
- 11 A. I have no date.
- 12 Q. Do you have a month?
- 13 A. I have no month.
- 14 Q. Do you have a season?
- 15 A. No.
- 16 Q. Do you have a year?
- 17 A. It was right after the bombing.
- 18 Q. Okay. Now, when you made that realization, what you call a
- 19 realization, in 1995 that Timothy McVeigh was the person who
- 20 answered the door, did you contact the FBI to tell them?
- 21 A. No.
- 22 Q. Why not?
- 23 A. I thought it was immaterial at the time.
- 24 Q. Okay. Now, who -- you say your wife was with you?
- 25 A. Yes.

241

Marion Charles Ogden - Direct

- 1 Q. When you saw this broadcast?
- 2 A. Yes.
- 3 Q. And you told her that you believed the person to be Timothy
- 4 McVeigh that you encountered at Terry Nichols' house?
- 5 A. I said that's the man that was at Terry Nichols' house.
- 6 Q. Did you tell her anything else?
- 7 A. Conversation throughout the night about the -- being there,
- 8 why, she had already heard about that, the fact that I had gone
- 9 to the sale. I mean I didn't tell her anything else specific
- 10 that I can remember.
- 11 Q. Okay. Was anyone else present --
- 12 A. No.

- 13 Q. -- when you told her?
- 14 A. No.
- 15 Q. Is there anyone else that you told about Mr. McVeigh being
- 16 the person that you went to a garage sale with or that -- who
- 17 was at the home of the garage sale?
- 18 A. Various individuals.
- 19 Q. Okay. Who were they?
- 20 A. Teachers that I teach with and a few individuals that I
- 21 went to church with.
- 22 Q. Did you tell an individual named Keith Collette?
- 23 A. I might have. He goes to our church.
- 24 Q. And did you have any conversation about it with an
- 25 individual named Tim Makevic?

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Marion Charles Ogden - Direct

- 1 A. Tim Makevic? I did not talk to Tim Makevic about it.
- 2 Q. Do you know someone named Tim Makevic?
- 3 A. Sure, I know Tim Makevic. He was one of my students.
- 4 Q. Do you know his mother, Faye?
- 5 A. I know Faye.
- 6 Q. Did you converse with Faye about it?
- 7 A. Not that I can remember.
- 8 Q. Is the first statement you ever made to law enforcement
- 9 officers about your encounter at Terry Nichols' house when they
- 10 contacted you on November 14, 1995?
- 11 A. Yes, that's the first time.
- 12 Q. Now, when -- do you remember the name of the agent who
- 13 contacted you?
- 14 A. Yes.
- 15 Q. And what was it?
- 16 A. Larry Tongate.
- 17 Q. And how many times have you spoken with Mr. Tongate?

18 A. Since that first time?
19 Q. Correct.
20 A. Maybe three or four.
21 Q. What did he tell you after he -- or ask you after he
22 advised you why he was calling on November 14, 1995?
23 A. Now, you're saying that he called me?
24 Q. Or did he not call you? He came to your place of
25 employment?

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Marion Charles Ogden - Direct

1 A. He came to my school.
2 Q. So he was unannounced?
3 A. Yes.
4 Q. Were you surprised to see him?
5 A. I just asked him -- I was wondering how long it would take
6 for him to find me.
7 Q. You knew that you were going to be contacted?
8 A. Not in any way.
9 Q. Well, then why did you ask him -- say that you were
10 wondering how long it would take for him to find you?
11 A. I just thought that if it was material enough, the FBI
12 would find me.
13 Q. But you didn't think it was material enough to call the
14 FBI?
15 A. No.
16 Q. And tell them?
17 A. No.
18 Q. Now, let me back over to another subject: When you went
19 inside this residence that you call Terry Nichols' residence,
20 you were looking at some items to buy; correct?
21 A. Correct.

- 22 Q. And you did buy a lamp; is that right?
- 23 A. Yes.
- 24 Q. And you paid \$2 for the lamp, I believe?
- 25 A. Correct.

244

Marion Charles Ogden - Direct

- 1 Q. And you later had occasion to sell that lamp?
- 2 A. Correct.
- 3 Q. And you sold that lamp for \$40?
- 4 A. Correct.
- 5 Q. And you told the person you sold the lamp to that the lamp
- 6 was sold to you by Timothy McVeigh?
- 7 A. Correct.
- 8 Q. Did you tell the person that you had bought it for \$2?
- 9 A. No.
- 10 Q. When did you decide to sell this lamp?
- 11 A. The same evening that I purchased it.
- 12 Q. And when did you sell it?
- 13 A. Months, months later. It was after the bombing sometime.
- 14 Q. So your testimony is that you made attempts to sell the
- 15 lamp between November of 1994 or the fall of 1994, when you
- 16 purchased it, and April 19, 1995?
- 17 A. Yes.
- 18 Q. Can you tell me the names of any persons that you discussed
- 19 selling it to?
- 20 A. No.
- 21 Q. Did you have any conversations face to face with any
- 22 persons about selling the lamp?
- 23 A. Yes. The individual that I sold it to.
- 24 Q. Did you try and sell it to anyone other than the individual
- 25 that you sold it to?

Marion Charles Ogden - Direct

1 A. No one else was interested enough in the lamp for me to
2 tell them the story.

3 Q. Okay. Well, let's back up. I guess first of all, I'm
4 trying to find out whether you made any attempts to sell the
5 lamp before you actually sold it to the person you sold it to.

6 A. I put a price on the lamp. I set the lamp on a shelf, and
7 if somebody wanted the lamp, why, then, they could come by and
8 pick it up and buy it.

9 As far as putting an advertisement on it, no, I never
10 did.

11 Q. Where did you put this lamp with a price tag on a shelf?

12 A. In my shop.

13 Q. What kind -- do you own a shop?

14 A. Yes.

15 Q. What shop do you own?

16 A. Barely Making It Antiques.

17 Q. And is that in Marion, Kansas?

18 A. That's in Marion, Kansas.

19 Q. And how often do you work in that shop?

20 A. When I'm there.

21 MR. GOELMAN: Your Honor, I'm going to object to this
22 line of questioning as irrelevant now.

23 THE COURT: What's the relevance?

24 MS. MERRITT: Under the Neil vs. Biggers factors, it
25 goes to degree of attention, which I'm about to get into, which

Marion Charles Ogden - Direct

1 is the number of encounters he has with persons as a flea

2 market/garage sale enthusiast, what he pays attention to when

3 he's dealing at flea markets and garage sales, and his ability
4 to pay attention and recall the specific facial features of --

5 THE COURT: Well, I don't see that selling it out of
6 his shop has anything to do with that.

7 The objection is sustained.

8 BY MS. MERRITT:

9 Q. How many people did you -- you said that you tried to sell
10 the lamp before you sold it to the person --

11 THE COURT: The objection is sustained.

12 MS. MERRITT: I thought that was a different question.

13 THE COURT: Well, it's the same subject matter.

14 MS. MERRITT: Okay, it is the same subject matter.

15 THE COURT: That's what the objection was.

16 BY MS. MERRITT:

17 Q. When you attend garage sales, what is it your attention is
18 focused on primarily?

19 A. Almost anything.

20 Q. Would you say it's the items that are for sale?

21 A. If they don't have a price tag on them, why, then I'll go
22 ahead and ask if they're for sale.

23 Q. Are you examining the items to see if they are items that
24 you might want to purchase?

25 A. Well, yes.

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Marion Charles Ogden - Direct

1 Q. Do you look at their condition?

2 A. Of course.

3 Q. And you look at their price; right?

4 A. Price.

5 Q. And you attend these flea markets or garage sales on a
6 pretty fairly frequent basis; right?

7 A. Yes.

8 Q. Can you give me an example of any other item you purchased
9 that fall?
10 A. That fall?
11 Q. Yes.
12 A. I have no idea or account of all the things that I've
13 purchased that fall.
14 Q. Do you remember what all the people you buy these things
15 look like?
16 A. Pretty much so. I can remember faces. I just have trouble
17 with names.
18 Q. Now, you said that you decided to sell the lamp the night
19 that you purchased it in 1994; correct?
20 A. Yes.
21 Q. Now, at that time, you didn't know that the lamp belonged
22 to Timothy McVeigh; correct?
23 A. I had no idea.
24 Q. And you --
25 THE COURT: Belonged to Timothy McVeigh? Did you

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Marion Charles Ogden - Direct

1 intend that?
2 MS. MERRITT: Well, he said that --
3 THE COURT: I just asked you if you intended the
4 question.
5 MS. MERRITT: Yes.
6 THE COURT: All right.
7 BY MS. MERRITT:
8 Q. Let me -- do you want to answer that?
9 A. The only answer I can give to that is at that time I did
10 not know I was purchasing the lamp from Timothy McVeigh.
11 Q. But when you sold the lamp, you told the person you sold it

12 to that it belonged to Timothy McVeigh, didn't you?
13 A. Yes.
14 Q. And you sold the lamp for \$40; correct?
15 A. Yes.
16 Q. And so my question was that on the night that you bought it
17 or the afternoon that you bought it in November of 1994, you
18 had no reason to think that that lamp was being purchased from
19 someone named Timothy McVeigh.
20 A. Correct.
21 Q. And in fact, nobody did buy that lamp before the bombing,
22 did they?
23 A. No.
24 Q. Okay. Do you recall the questions that Agent Tongate asked
25 you when he came to your school in November of 1995?

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Marion Charles Ogden - Direct

1 A. There were very few.
2 Q. Can you tell me what they were?
3 A. He asked me if I had been to a garage sale or sale out
4 at -- in the country at a residence, and I said yes, I had.
5 And he said, Can you tell me about it?
6 And so I conveyed the information that he asked --
7 that he asked for; and that was -- I told him the whole story
8 from the time it began, all the way until I left the property.
9 Q. Now, you said that you have discussed this with Agent
10 Tongate two or three times since the time that you first were
11 contacted by him in November of 1995; right?
12 MR. GOELMAN: Objection, your Honor. The witness did
13 not indicate what he discussed with Agent Tongate.
14 THE COURT: Overruled.
15 THE WITNESS: Yes.
16 BY MS. MERRITT:

17 Q. And can you tell me how many times you have met with
18 prosecutors in this case concerning this event?
19 A. Probably three.
20 Q. When was the last time you met with them?
21 A. Last night.
22 Q. And how long did you meet with them for?
23 A. About 45 minutes.
24 Q. Now, did you ever have occasion to describe the person you
25 bought the lamp from before you described the person to your

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Marion Charles Ogden - Direct

1 wife or to Agent Tongate?
2 A. Please repeat.
3 Q. Did you ever have an occasion to describe the appearance of
4 the person you bought this lamp from before you told your wife,
5 which would have been after the bombing or before you told
6 Agent Tongate?
7 A. No.
8 Q. Would you say it wasn't that big a deal then?
9 A. I think that's -- I could use that term.
10 Q. And in fact, after the bombing, the reason you didn't tell
11 the FBI is because you weren't sure it was material even then;
12 right?
13 A. Exactly.
14 Q. How many times would you say that you saw a replay of
15 Mr. McVeigh exiting from the Noble County Jail on television?
16 A. Probably once.
17 Q. You've only seen it once? Have you seen any pictures in
18 the newspaper?
19 A. Yes.
20 Q. How many times would you say you've seen pictures in the

21 newspaper?

22 A. Whenever they have appeared.

23 Q. Can you give me an estimate?

24 A. I cannot.

25 Q. Was it more than 10?

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Marion Charles Ogden - Direct

1 A. I cannot say that. All I can say is that I read the paper

2 every day.

3 Q. What papers do you read?

4 A. The Salina Journal and the Marion County Record.

5 Q. You don't read any national publications?

6 A. No.

7 Q. Do you read any national magazines, such as Time or

8 Newsweek?

9 A. Don't have time.

10 Q. Do you subscribe to any?

11 A. Magazines?

12 Q. Yes.

13 A. None that any pictures of either one of the people we're

14 referring to would be in.

15 Q. Are you aware of a reward for information leading to the

16 conviction of the person who committed the Oklahoma City

17 bombing?

18 A. No.

19 MS. MERRITT: No further questions.

20 THE COURT: Do you have any questions?

21 MR. GOELMAN: Just a few, your Honor.

22 THE COURT: All right.

23 CROSS-EXAMINATION

24 BY MR. GOELMAN:

25 Q. Good afternoon, Mr. Ogden.

Marion Charles Ogden - Cross

- 1 A. Good afternoon.
- 2 Q. You told Ms. Merritt that you go to a lot of garage sales;
3 is that right?
- 4 A. Correct.
- 5 Q. Do you read a lot of ads in the Marion Record for moving
6 sales and garage sales?
- 7 A. I do. Any one that's there, I read.
- 8 Q. What kind of information is typically contained in these
9 ads?
- 10 A. Usually it says Garage Sale or Indoor Sale or Yard Sale.
11 Sometimes it gives the information that -- or the information
12 on what is going to be sold, and then it gives an address and
13 it gives the time, 8:00 to 4:00, or else maybe they might say,
14 No early sales.
- 15 Q. What kind of information did the ad that led you to buy a
16 lamp from Tim McVeigh have in it?
- 17 A. The only thing that I can really remember is that there was
18 an advertisement for either a moving or a garage sale. And I
19 think it was a moving sale and there was a telephone number.
- 20 Q. Was it unusual to not have an address or a time contained
21 in the ad?
- 22 A. Yes.
- 23 Q. Approximately how many ads for moving sales have you seen
24 that didn't have address or time information in it?
- 25 A. Hardly any.

Marion Charles Ogden - Cross

- 1 Q. Approximately what time did you arrive at the residence

2 when you went out there?

3 A. I get out of school at 4:00. I came home, made the
4 telephone call, changed my clothes, drove approximately
5 10 miles to the residence, so I got there sometime between 4:30
6 and 5 p.m.

7 Q. You told Ms. Merritt, sir, that you didn't know that it was
8 a Thursday or a Friday that you went out there?

9 A. That is correct.

10 Q. Is it more likely that it was more one day than the other?

11 A. More likely it was a Thursday, since I do read all the
12 garage sale ads; and sometimes in order to get good
13 merchandise, you have to be there early, so normally I'm not
14 there on the second day of a sale.

15 Q. What were the lighting conditions like when you arrived at
16 the sale?

17 A. The sun was shining.

18 Q. What did you see when you got there, sir?

19 A. I drove up a dirt road or a rock road and was hoping that I
20 got -- followed my directions correctly; and there was no car
21 or vehicles in the drive. I pulled in the drive, and I saw
22 that the door was open with the screen door closed, so I got
23 out with the intention of asking and making sure that this was
24 the right residence for a sale.

25 Q. Mr. Ogden, I'm showing you Government's Exhibit 29. It's

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Marion Charles Ogden - Cross

1 on that screen up on the witness stand.

2 Do you recognize that, sir?

3 A. That looks like the house.

4 Q. When you say it looks like the house, what do you mean by
5 that?

6 A. Assuming that the picture has not been touched up in any

7 way, that looks like the residence where I went.

8 Q. Thank you. How long did you spend at that house, sir?

9 A. Probably 10 to 15 minutes.

10 Q. And how much of those 10 to 15 minutes were you in the

11 company of Tim McVeigh?

12 A. The whole time.

13 Q. During this time, did you have occasion to talk to

14 Mr. McVeigh?

15 A. Of course.

16 Q. Why is that?

17 A. Well, it's very difficult to buy anything from somebody if

18 you don't talk to them.

19 Q. Were the items in the house labeled for sale?

20 A. No, sir.

21 Q. Did they have price tags on them?

22 A. No, sir.

23 Q. So if you wanted to know whether or not something was for

24 sale, what did you do?

25 A. I had to ask him if it was for sale and if so, how much.

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Marion Charles Ogden - Cross

1 Q. What were the lighting conditions like inside the house,

2 sir?

3 A. Light. I mean I can't recall any lights being on in the

4 house, but the windows were not shaded in any way. It was

5 light in the house.

6 Q. During the 15 minutes or so that you spent with

7 Mr. McVeigh, did he tell you anything about himself?

8 A. When I walked in, I knocked on the door, asked him if this

9 was the place where the sale was; and he said yes, come in,

10 told him that I had been the person that called him.

11 And when I walked in, I stepped in and I asked him --
12 I said -- asked him what he had for sale. And I think he said,
13 I'll show you.

14 And then the first thing, I asked him if the guns on
15 the floor behind the couch were for sale.

16 And he said, No. I just got out of the military, and
17 I'm going to take those back to Michigan with me.

18 Q. Sir, let's turn to the discussion that you had with Agent
19 Tongate after the bombing. Did Agent Tongate ever suggest to
20 you that the man you saw at the house might have been Tim
21 McVeigh?

22 A. No.

23 Q. Did he tell you that the FBI thought that Tim McVeigh had
24 been at this house?

25 A. No.

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Marion Charles Ogden - Cross

1 Q. Did he ever mention the name McVeigh to you, sir?

2 A. No.

3 Q. And after you told Agent Tongate that you had seen McVeigh
4 there, did he in any way suggest or hint or confirm to you that
5 he had other evidence putting McVeigh at this house?

6 A. No.

7 Q. You mentioned to Ms. Merritt that you sold the lamp that
8 you bought from Tim McVeigh for \$40. When do you put the \$40
9 price tag on this lamp?

10 A. Like I told her, I put it on the evening after the
11 purchase.

12 Q. What was this price based on?

13 A. It was based on a value guide book for that type of
14 pottery.

15 Q. What type pottery was that?

16 A. Shawn's.
17 Q. After the bombing, Mr. Ogden, did you advertise this lamp
18 as having come from Tim McVeigh?
19 A. No.
20 Q. Have you ever sold anything else that you certified came
21 from Tim McVeigh?
22 A. I only bought one thing.
23 MR. GOELMAN: Nothing further, your Honor.
24 MS. MERRITT: No further questions.
25 THE COURT: All right. And, Mr. Ogden, you may step

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Marion Charles Ogden - Cross

1 down. You're excused now; but remember you may be called at
2 trial, and therefore, do not discuss your testimony with other
3 people who may be witnesses.
4 THE WITNESS: Good enough. Thank you.
5 THE COURT: All right.
6 Next, please.
7 MR. JONES: Mr. Skrdla, your Honor.
8 THE COURTROOM DEPUTY: Raise your right hand, please.
9 (Fredrick Wade Skrdla affirmed.)
10 THE COURTROOM DEPUTY: Would you state your full name
11 for the record and spell your last name.
12 THE WITNESS: Fredrick Wade Skrdla, S-K-R-D-L-A.
13 THE COURTROOM DEPUTY: Thank you.
14 THE COURT: Proceed, please.
15 DIRECT EXAMINATION
16 BY MR. JONES:
17 Q. Mr. Skrdla, on April 19, 1995, where were you working?
18 A. At the Cimarron Travel Plaza in Billings, Oklahoma.
19 Q. Is that what we generally call a truck stop?

20 A. Yes, sir.

21 THE COURT: We're having -- would you move the
22 microphone for the witness, please.

23 Could you repeat your answer.

24 THE WITNESS: Yes. I was working at Cimarron Travel
25 Plaza, which is a truck stop on I-35, in Billings, Oklahoma.

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Fredrick Wade Skrdla - Direct

1 BY MR. JONES:

2 Q. When did you learn that there had been a bombing of a
3 building in Oklahoma City that day?

4 A. It would have been on the morning of the bombing.

5 Q. And how did you learn?

6 A. Watching TV.

7 Q. And after it came on television, did you continue to watch
8 it?

9 A. For a short time.

10 Q. How long?

11 A. Probably just for the immediate coverage of that morning.

12 It was probably about 30 minutes or so.

13 Q. Did you watch it again that day?

14 A. Not to my knowledge, no.

15 Q. Did you watch the television coverage on the next day,

16 April 20?

17 A. Yes, I believe I did. Yes.

18 Q. And did you also read The Daily Oklahoman accounts?

19 A. No, I didn't read them.

20 Q. Did you read any newspaper accounts of the bombing?

21 A. Not that I recall, no.

22 Q. Pardon me, sir.

23 Did you continue to -- did you continue to follow it

24 from television?

25 A. No.

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Fredrick Wade Skrdla - Direct

1 Q. So the only two times you watched anything were on the 19th
2 and 20th?

3 A. I didn't watch it actually faithfully as it would come -- I
4 didn't look for it every day. If I was watching TV and it came
5 on, I would watch what was ever on at the time.

6 Q. I understand. Was the television on at the place where you
7 worked, sir?

8 A. No.

9 Q. So you didn't watch the television while you were at work?

10 A. No.

11 Q. Do you remember seeing the composite sketch or drawing of
12 Unidentified Subject No. 1 and Unidentified Subject No. 2?

13 A. Yes, I do.

14 Q. And did you see that on television or in the newspapers?

15 A. Both.

16 Q. When you saw the sketch of Unidentified Subject No. 1 or
17 Unidentified Subject No. 2, sometimes referred to as John Doe 1
18 and 2, what did you think?

19 A. The person in that sketch looked familiar to me.

20 Q. The person in which sketch looked familiar to you? Which
21 sketch? Both?

22 A. Just the one.

23 Q. And which one?

24 A. It would have been the second one, I believe.

25 Q. And was that John Doe 1 or John Doe 2?

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Fredrick Wade Skrdla - Direct

1 A. I'm not certain.

2 Q. Did you notice any differences between the composite that
3 you saw on the television and the paper and the one you had
4 seen at the -- the person you had seen at the gas station?

5 A. Could you repeat the question, please.

6 Q. Yes. You told me a moment ago -- and perhaps I skipped a
7 step -- that when you saw this sketch, the person looked
8 familiar to you; is that what you said?

9 A. Correct.

10 Q. Okay. How did he look familiar to you?

11 MR. MACKEY: Your Honor, may I interpose an objection
12 and ask that the witness be given an opportunity to view the
13 sketches that are in evidence so the record is more clear as to
14 which sketch he's trying to reference?

15 THE COURT: Do you accept the suggestion?

16 MR. JONES: Not quite yet, your Honor.

17 THE COURT: All right. We'll wait.

18 THE WITNESS: Could you repeat the question, please.

19 BY MR. JONES:

20 Q. Sure. When you saw the sketch, as I understand it, you
21 thought it looked familiar to you.

22 A. I'm not familiar with the No. 1 and the No. 2 sketch.

23 Q. It doesn't make any difference which one it is for purposes
24 of my question. I'm just asking you in what respect did it
25 look familiar? Is it somebody you had seen before? You knew?

1 You had seen on television? Read about it in a book? How did
2 the person look familiar to you?

3 A. A face that I had seen before.

4 Q. All right. And where did you think you had seen that face
5 before?

- 6 A. At the place I worked.
- 7 Q. That would be the truck stop?
- 8 A. Cimarron Travel Plaza.
- 9 Q. What day do you think you saw the sketch?
- 10 A. I believe I saw it on Thursday.
- 11 Q. And did you see it first on television or first in the
- 12 newspaper?
- 13 A. I believe I saw it on TV.
- 14 Q. Now, when you saw it and you thought it looked familiar,
- 15 did you tell anybody that it looked familiar?
- 16 A. Yes, I did.
- 17 Q. Who did you tell?
- 18 A. I told my girlfriend and one person at work.
- 19 Q. And your girlfriend's name?
- 20 A. Karen.
- 21 Q. Last name?
- 22 A. Webber.
- 23 Q. Now, where does she live?
- 24 A. In Blackwell.
- 25 Q. And you told one person at work?

262

Fredrick Wade Skrdla - Direct

- 1 A. Right.
- 2 Q. All right. Who was that?
- 3 A. Seb Johnson.
- 4 Q. And when did you tell Ms. Webber?
- 5 A. It would have been the evening following the bombing.
- 6 Q. Thursday evening. Is that correct?
- 7 A. Thursday evening was the 20th, wasn't it?
- 8 Q. Yes, sir.
- 9 A. Yes, I believe so.

10 Q. And the person at the service station: When did you tell
11 him?
12 A. I believe it would have been the following night.
13 Q. Friday night?
14 A. No, Thursday night, in the late hours of the morning.
15 Q. All right.
16 A. Because I worked the third shift.
17 Q. And what are the hours that you worked?
18 A. 10 p.m. to 8 a.m.
19 Q. So you told him sometime in the early morning hours of
20 Friday?
21 A. No, it would have been Thursday.
22 Q. Thursday. Okay. Who did you tell first, Ms. Webber or
23 him?
24 A. It would have been Ms. Webber.
25 Q. Did you see Mr. McVeigh escorted from the Noble County

263

Fredrick Wade Skrdla - Direct

1 Courthouse on Friday?
2 A. I'm not sure of the date that he was escorted, but I did
3 see it on TV, yes.
4 Q. All right. You saw it as it happened?
5 A. Yes, sir.
6 Q. Okay. And what did you think when you saw that?
7 A. I believe that I had saw that -- or he was the person that
8 I had seen in the store.
9 Q. And when you saw him being led out of the Noble County
10 Courthouse, what was your understanding of who that was and why
11 he was being led out?
12 A. It was the person that was supposed to have had something
13 to do with the bombing.
14 Q. Specifically, what?

- 15 A. Excuse me?
- 16 Q. What was that person supposed to have done with respect to
- 17 the bombing?
- 18 A. Had been part -- had a part in the bombing.
- 19 Q. Did you have any understanding what that person had done?
- 20 A. No.
- 21 Q. When did you learn that the authorities were interested in
- 22 a Ryder truck?
- 23 A. I don't recall.
- 24 Q. Do you think you knew about it before or after you saw
- 25 Mr. McVeigh leave the Noble County Courthouse?

264

Fredrick Wade Skrdla - Direct

- 1 A. Knew about what, sir?
- 2 Q. The Ryder truck.
- 3 A. I don't recall.
- 4 Q. After you saw Mr. McVeigh leave the Noble County Courthouse
- 5 in custody, did you tell anyone that you thought this was
- 6 someone that you might have seen before?
- 7 A. Could you repeat the question, please.
- 8 Q. Yes. After you saw Mr. McVeigh leave the Noble County
- 9 Courthouse in custody, did you tell anyone in the next few days
- 10 that that's the person that you thought you had seen before?
- 11 A. Yes.
- 12 Q. Who did you tell?
- 13 A. My mother.
- 14 Q. And her name?
- 15 A. Mary.
- 16 Q. And when did you tell her?
- 17 A. It would have been probably a Saturday, weekend following
- 18 the bombing.

19 Q. Did you tell anyone else?

20 A. No.

21 Q. What did you say to your mother?

22 A. I told her I believed that I had seen the person in the
23 store that was accused of bombing the federal building.

24 Q. Did you tell her what this person was doing?

25 A. Excuse me?

265

Fredrick Wade Skrdla - Direct

1 Q. Did you tell your mother what this person was doing in the
2 store?

3 A. Not to my knowledge.

4 Q. Was anyone else present when you told your mother?

5 A. Not that I recall, no.

6 Q. When you saw Mr. McVeigh come out of the Noble County
7 courthouse in custody -- excuse me -- how certain were you that
8 that was the person that you had seen in the service station?

9 A. Pretty certain.

10 Q. Were you able to make a positive identification at that
11 time?

12 A. Yes, sir.

13 Q. And did you tell anyone else other than your mother?

14 A. Not that I recall, no.

15 Q. Now, you had a contact -- your first contact with law
16 enforcement was with Special Agent Eric Gerstein on May 2. Is
17 that correct?

18 A. Near as I could recall, yes.

19 Q. Now, prior to May 2, had the FBI or law enforcement
20 authorities been to the Cimarron truck stop where you worked in
21 reference to the Oklahoma City bombing case?

22 A. I'm not real certain of all the dates. I can't -- I don't
23 believe they had.

24 Q. You didn't know they had already been to the Cimarron truck
25 stop?

266

Fredrick Wade Skrdla - Direct

1 A. Oh, yes, they had. I had a phone interview, yes.
2 Q. I'm not talking about your interview with them. I'm
3 talking about had they had any contact with the Cimarron truck
4 stop before your first contact with them?
5 A. To my knowledge, no.
6 Q. Now, you said you had a telephone contact with them?
7 A. I received a call at home, and they were at my place of
8 employment trying to get in touch with me.
9 Q. And why were they trying to get in touch with you? Do you
10 know?
11 A. I know now that they had heard what I had told Seb Johnson.
12 Q. And did you meet with them that day?
13 A. No, I did not.
14 Q. When they had talked to you on the phone, what did they say
15 to you?
16 A. They asked me what I had saw, what had happened, what had
17 taken place.
18 Q. Did you tell them?
19 A. Yes.
20 Q. And did you tell them that you thought it was Mr. McVeigh?
21 A. Yes, I did.
22 Q. Did they ask you if you had seen Mr. McVeigh walk out of
23 the Noble County Courthouse?
24 A. I don't recall.
25 Q. Well, if you were pretty certain, I believe is the way you

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Fredrick Wade Skrdla - Direct

1 put it, or pretty positive that Mr. McVeigh was the same person
2 that you had seen at the service station, why didn't you notify
3 law enforcement?

4 A. Didn't want to get involved.

5 Q. Well, what changed your mind when they called you?

6 A. I didn't have a lot of choice about the matter then.

7 Q. Well, you say you didn't want to be involved, but you had
8 already told three people: Your girlfriend, your mother and a
9 co-worker; is that correct?

10 A. Correct.

11 Q. Did you tell anyone else?

12 A. Not to my knowledge, no.

13 Q. Now, were you aware that -- or are you aware that your
14 supervisor, Beth Lynch, told the FBI that there had in fact
15 been a Ryder truck on April 18 between 10:30 a.m. and 11 a.m.
16 at the Cimarron truck stop?

17 A. Repeat that, please.

18 Q. Are you aware whether your supervisor, Beth Lynch, had
19 already told the FBI before they contacted you that she had
20 seen a Ryder truck on April 18, 1995, between 10:30 a.m. and
21 11 a.m. at the Cimarron truck stop?

22 A. No, I was not.

23 Q. Had she told you that?

24 A. No.

25 Q. Do you know whether there were any other employees at the

268

Fredrick Wade Skrdla - Direct

1 Cimarron truck stop who claimed to have seen a Ryder truck in
2 the 24 hours before the Oklahoma City bombing?

3 A. Not to my knowledge.

4 Q. When did you become aware that there was a reward of

5 \$2 million leading to information that might result in the
6 conviction of someone for the Oklahoma City bombing?
7 A. Probably about a month ago.
8 Q. You didn't know that until a month ago?
9 A. No.
10 Q. How did you become aware of it a month ago?
11 A. In a meeting with the attorney there.
12 Q. Which attorney? Mr. Mackey? Or someone else?
13 A. Mr. Mackey.
14 Q. All right. And how did that subject come up?
15 A. He point-blank asked me was I aware of it; and I said I was
16 not.
17 Q. You were not aware of it.
18 A. No, sir.
19 Q. Never heard about it.
20 A. No.
21 Q. Until Mr. Mackey asked you?
22 A. Correct.
23 Q. Are there -- at the Cimarron truck stop that's on I-35;
24 correct?
25 A. Correct.

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Fredrick Wade Skrdla - Direct

1 Q. At the -- which exit?
2 A. I'm not sure of which exit it is.
3 Q. Is it the Blackwell exit?
4 A. No, it's the Billings exit.
5 Q. Okay. The Billings exit. That's a pretty good-sized truck
6 stop, isn't it?
7 A. Yes, sir.
8 Q. How many vehicles do you think stop there a day on the

9 average?

10 A. It's hard to say. I was only one shift, and I'm not sure

11 of even how many were on my shift.

12 Q. So you have no estimate?

13 A. No.

14 Q. How many employees were on your shift?

15 A. Sometimes four.

16 Q. Sometimes more, or sometimes less?

17 A. Sometimes less.

18 Q. On the early morning hours of April 19, how many were on

19 duty?

20 A. Near as I can recall, three.

21 Q. And how many are on duty during the day shift?

22 A. I have no idea.

23 Q. Did, to your knowledge, your other two co-workers see this

24 Ryder truck?

25 A. Not to my knowledge.

270

Fredrick Wade Skrdla - Direct

1 Q. To your knowledge did any of your customers claim to have

2 seen this Ryder truck?

3 A. Not that I know of.

4 Q. What first attracted your attention to the Ryder truck?

5 A. When it pulled in front of the windows in front of the

6 store where I was working.

7 Q. How is that any different than any other car or truck that

8 pulls in?

9 A. There is not a lot of large trucks that pull in the way it

10 did in front of the store. Most of the large trucks fueled on

11 the diesel islands, which are to the east of the store, I

12 believe; and it pulled in in front, which is the north side of

13 the store.

14 Q. You think Ryder trucks use diesel?
15 A. I'm not certain what all they use. This one pulled to a
16 gasoline pump.
17 Q. Well, isn't that what 90 percent of them use?
18 MR. MACKEY: Objection.
19 BY MR. JONES:
20 Q. Do you know whether 90 percent of them use gasoline?
21 A. I have no idea, sir.
22 Q. Had you ever filled up a Ryder truck before?
23 A. Not that I recall.
24 Q. Well, anyway, the truck pulled up to the gasoline pump?
25 A. Yes, sir.

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Fredrick Wade Skrdla - Direct

1 Q. Was -- and how many people were in the truck?
2 A. I didn't notice.
3 Q. This individual that you saw: What did you see him doing?
4 A. What I saw was the truck pulled in differently than most
5 trucks pull into the truck stop. It pulled in facing out with
6 the back of the truck towards us; and I didn't pay much
7 attention when the person got out of the truck.
8 All I had to do was authorize the sale. I just looked
9 out and saw a Ryder truck; and when they picked up the gas
10 pump, you have to hit the keys when they're flashing to
11 authorize the sale; and then I went on about my business
12 waiting on other customers.
13 Q. So then you have to prepay?
14 A. No, you don't have to prepay. You just have to get the
15 authorization -- I have to authorize it through the register so
16 that -- so that they can go ahead and go pumping their fuel.
17 Q. All right. And is there any kind of surveillance or

- 18 security camera there?
- 19 A. Not to my knowledge, no.
- 20 Q. Well, in any event, you authorized it and the person
- 21 started pumping gas?
- 22 A. Correct.
- 23 Q. How much did they pump?
- 24 A. I don't recall.
- 25 Q. So you don't know whether they got one gallon or

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Fredrick Wade Skrdla - Direct

- 1 30 gallons?
- 2 A. I don't recall the exact amount, no.
- 3 Q. You don't remember how long the pump was on?
- 4 A. No. There was other people in the store I was waiting on
- 5 at the time.
- 6 Q. So when is the next time you saw this individual?
- 7 A. When they were paying.
- 8 Q. And when did they come -- how did they pay?
- 9 A. Cash, as I recall.
- 10 Q. Do you remember the denomination?
- 11 A. No, sir.
- 12 Q. Did they come in the store?
- 13 A. I assume they did, yes, because I received a cash on the
- 14 sale.
- 15 Q. Do you have a memory of them coming in the store?
- 16 A. I don't remember them walking in the store, no.
- 17 Q. Were you the person that handled the transaction?
- 18 A. Yes, sir. I was the only person handling any transactions
- 19 behind the counter that night.
- 20 Q. All right. So you rang the transaction up on the cash
- 21 register?
- 22 A. Yes, sir.

23 Q. And then the person left?

24 A. Yes, sir.

25 Q. Do you remember the transaction before that person?

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Fredrick Wade Skrdla - Direct

1 A. No, sir.

2 Q. Do you remember the transaction after that person?

3 A. No, sir.

4 Q. Do you remember any other transaction that night during

5 your shift?

6 A. No, sir.

7 Q. And the only way that that distinguishes this in your mind

8 is that the person came in, in a truck, and pulled up to the

9 gasoline instead of the diesel -- large truck, I believe you

10 said.

11 A. The person walked out of the store and went towards the

12 truck. That's how I distinguished the person with the truck.

13 Q. What do you mean -- why wouldn't he walk to the truck?

14 A. I'm just saying that's how I distinguish that person.

15 Q. What was there about that that distinguished the person?

16 A. Excuse me?

17 Q. What was there about that that distinguished the person?

18 A. With the truck?

19 Q. Yes.

20 A. That was the only vehicle at -- on the fuel pump island at

21 that time.

22 Q. Have you been able to determine by looking at your records

23 what the amount of the cash transaction was?

24 A. No, sir. I didn't have any access to the records, nor did

25 I try to.

Fredrick Wade Skrdla - Direct

1 Q. Did the individual buy anything besides gasoline?

2 A. Not that I recall.

3 Q. How long did it take for him to pay?

4 A. Well, there was other people in the store, as I recall; so

5 I couldn't estimate the time.

6 Q. Pretty brief?

7 A. 5, 10 minutes at the most.

8 Q. It took him 5 to 10 minutes to pay?

9 A. Well, I was waiting on other customers. It's not just a

10 convenience store for gas. I had diesel trucks in there, too.

11 Diesel transactions.

12 Q. Is it fair to say, then, that your attention was

13 distracted?

14 A. Possibly, yes.

15 Q. Do you remember during that 5 to 10 minutes how many other

16 customers you waited on?

17 A. No.

18 Q. What kind of clothing was this individual wearing?

19 A. T-shirt, blousy pants.

20 Q. What do you mean blousy pants?

21 A. Loose-fitting pant.

22 Q. Do you remember anything about the color of them?

23 A. Like a light green.

24 Q. Did you subsequently participate in any kind of photo

25 spread where they showed you some pictures and you pick

Fredrick Wade Skrdla - Direct

1 somebody out?

2 A. Not that I recall, no.

3 Q. How many times have you been interviewed by the FBI? Just

4 once?

5 A. I believe three.

6 Q. When were the other two times?

7 A. I think you said the first account was on May 2.

8 Q. Yes, sir. That's my information.

9 A. Let's see. I believe it was around five weeks ago, and

10 then just last week or the other day. Excuse me.

11 Q. Oh. So they interviewed you one time back in May of 1995,

12 and then they got interested in you again how long ago?

13 A. I believe it was five, six weeks ago, sir.

14 Q. Where did you see them then?

15 A. I saw them -- no, excuse me. I'm mistaken.

16 I had -- one time was at the truck stop where I

17 worked; another time was at the next job I was working at, at

18 the machine shop; and the last time was in Oklahoma City, five

19 weeks ago.

20 Q. And the first time was at the truck stop: Was that on

21 May 2? Well, let me put it another way: Were you only

22 interviewed once at the truck stop?

23 A. Correct.

24 Q. And then the second time you were working some other place?

25 A. Correct.

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Fredrick Wade Skrdla - Direct

1 Q. Where was that?

2 A. A to Z Machining, Ponca City.

3 Q. When did they interview you there?

4 A. I believe it was August, sometime in August. I don't

5 remember the exact date.

6 Q. Of what year?

7 A. '95.

8 Q. All right. And that was an FBI agent?
9 A. Yes, as I recall.
10 Q. One, or two?
11 A. I believe there was three there.
12 Q. Three. Same ones that interviewed you on May 2, or at the
13 truck stop?
14 A. No, sir.
15 Q. Different ones?
16 A. Two different ones, yes.
17 Q. Were they all FBI agents?
18 A. As I recall, the first two were FBI agents, and the second
19 time I believe it was someone from the U.S. Attorney's office
20 and maybe a couple FBI agents.
21 Q. And the third time, the one five to six weeks ago?
22 A. Would have been attorney here, and Agent Zimms.
23 Q. Floyd Zimms?
24 A. Yes, sir.
25 Q. That's the man that's walking by Mr. McVeigh as he leaves

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Fredrick Wade Skrdla - Direct

1 the Noble County Courthouse, isn't it?
2 A. Probably so, yes.
3 Q. Do you have some hesitancy about that?
4 A. No, sir.
5 MR. JONES: I believe that's all. Thank you, sir.
6 THE COURT: Mr. Mackey, did you have questions?
7 MR. MACKEY: Thank you, your Honor.
8 CROSS-EXAMINATION
9 BY MR. MACKEY:
10 Q. Mr. Skrdla, if you had it your way, would you rather not be
11 here?
12 A. Oh, yes, sir.

13 Q. But you were working, were you not, at the Cimarron truck
14 plaza in the early morning hours of April 19, 1995?
15 A. Yes, sir.
16 Q. Your regular shift?
17 A. Yes, sir.
18 Q. And that was what?
19 A. It was 10 p.m. to 8 a.m., Monday through Thursday.
20 Q. Doing what?
21 A. As a cashier.
22 Q. And focusing your attention sometime after midnight and
23 before 3 a.m., did you notice at that time a large Ryder truck
24 enter the gasoline pump island area?
25 A. Yes, I did.

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Frederick Wade Skrdla - Cross

1 Q. Did you notice it at the time it went past the store?
2 A. Excuse me?
3 Q. Did you notice it at the time it went past your window?
4 A. Yes, I did.
5 Q. Mr. Skrdla, take a look in that white notebook next to you.
6 Start at Exhibit 30. See the tab that says 30?
7 Mr. Skrdla, just take a moment at your own pace and
8 look at Exhibits 30, 31, 32, 33 and 34. Then I have a question
9 for you.
10 Have you had a chance to look at those?
11 A. Yes.
12 Q. Do each of those accurately depict various vantage points
13 of your former place of employment?
14 A. Yes, they do.
15 Q. Incidentally, Mr. Skrdla, how long did you work at the
16 Cimarron?

17 A. I believe it was February to July.
18 Q. It would be 1995?
19 A. Yes.
20 Q. And did you leave at that time for a better paying job?
21 A. Yes, I did.
22 Q. A day-shift job?
23 A. Yes.
24 Q. I'm going to direct your attention to Exhibit 34. Do you
25 have that in front of you?

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Frederick Wade Skrdla - Cross

1 A. Yes, sir.
2 MR. MACKEY: Your Honor, at this time I'd move to
3 admit Exhibits 30 through 34.
4 MR. JONES: No objection.
5 THE COURT: They are received.
6 MR. MACKEY: Ask permission to publish 34.
7 THE COURT: You may.
8 BY MR. MACKEY:
9 Q. What is shown there in Exhibit 34, Mr. Skrdla?
10 A. That would be the front of the building of Cimarron Travel
11 Plaza.
12 Q. And where might the photographer be standing to take that
13 shot?
14 A. At -- I would say close to the gas pumps.
15 Q. You told Mr. Jones earlier that the gas pumps are dedicated
16 one side of the building and diesel the other?
17 A. Yes, sir.
18 Q. In the early morning hours, the third shift, where is most
19 of your business?
20 A. Most of it is on the diesel pumps, which would be on the
21 east side.

22 Q. All night, over-the-road truck drivers?

23 A. Mostly.

24 Q. Like Seb Johnson?

25 A. Yes, sir.

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Frederick Wade Skrdla - Cross

1 Q. Does this Exhibit No. 34 depict the area that the Ryder
2 truck drove by your vantage point on the early morning hours of
3 April 19?

4 A. Yes, sir.

5 Q. Can you, as you reflect on that vision in your mind,
6 estimate the size of that Ryder truck?

7 A. About 20 or 26 feet.

8 Q. And at what point did you first notice it going by your
9 window?

10 A. When it pulled by the front doors there.

11 Q. And did you see the word "Ryder" on the side?

12 A. Yes.

13 Q. Now, turn your attention now, Mr. Skrdla, to Exhibit 30.
14 And does that exhibit essentially reverse position, show what
15 you might be seeing from inside the store looking out to the
16 gas pumps?

17 A. Yes, it does.

18 Q. And in particular, does it identify the island where the
19 Ryder truck parked on the early morning hours of April 19?

20 A. Correct.

21 Q. Do you recall which of the two on the far right-hand side
22 of the photograph the truck pulled into, if you remember?

23 A. I can't really recall the exact side.

24 Q. Was it as shown in this exhibit with the vehicle in the far
25 left-hand side parked in the opposite direction; that is, the

Frederick Wade Skrdla - Cross

- 1 truck?
- 2 A. The back of the truck was facing me.
- 3 Q. Does most of the business, at least during the time you
- 4 worked there on the gas side, involve customers who drive their
- 5 car forward so that the front of the vehicle is looking towards
- 6 the store?
- 7 A. Yes, sir.
- 8 Q. And what drew your attention on this particular occasion
- 9 was the size of the truck and that it went the opposite
- 10 direction?
- 11 A. Correct.
- 12 Q. Mr. Skrdla, do you know what a drive-off is?
- 13 A. Oh, yeah. Yes, sir.
- 14 Q. As a former gas station attendant, what is a drive-off?
- 15 A. It's when someone gets fuel and drives off and doesn't pay
- 16 for it.
- 17 Q. And that happens; correct?
- 18 A. Yes, it does.
- 19 Q. It's happened to you over time?
- 20 A. Yes.
- 21 Q. Based on that experience and instructions from supervisors,
- 22 do you try to pay attention to people who pull up and begin to
- 23 consume fuel from your business?
- 24 A. Yes, sir.
- 25 Q. Were you mindful of that responsibility in the early

Frederick Wade Skrdla - Cross

- 1 morning hours of April 19?
- 2 A. Yes, sir.

3 Q. Tell his Honor, please, Mr. Skrdla, what's shown in Exhibit
4 31.

5 A. That would be the check stand or where you would go to pay
6 for your items, your fuel, purchases or anything else.

7 Q. And does that fairly accurately represent your work station
8 on that day?

9 A. Yes, sir.

10 Q. There is a counter, red in color.

11 A. Yes, sir.

12 Q. See that? And you'd be on the reverse side; that is, the
13 opposite side of the counter from this vantage point?

14 A. Yes, sir.

15 Q. Is that counter, your work station, elevated over the floor
16 where the customer stands?

17 A. Yes, it is.

18 Q. Approximately what distance?

19 A. Probably 6 inches. About I'd say as high as this step
20 here.

21 Q. As high as the step that you mounted in taking the witness
22 stand this afternoon?

23 A. This first step, yes.

24 Q. From that vantage point, then, can you see people who are
25 waiting in line to be waited on by you from head to toe?

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Frederick Wade Skrdla - Cross

1 A. Well, I can't if they're standing right against the
2 counter, of course; but if they're standing a few feet back,
3 yes.

4 Q. And where was this person standing in the early morning
5 hours of April 19?

6 A. Would have been to my left.

7 Q. And some distance from the counter?

8 A. Yes, sir.

9 Q. Why was he -- why was that person some distance from the

10 counter?

11 A. He was waiting to pay for his fuel, his purchases.

12 Q. Is that because there were other customers you were

13 attending to?

14 A. Yes.

15 Q. Before you actually did the transaction with that

16 individual, Mr. Skrdla, did he catch your eye?

17 A. Yes.

18 Q. Did you take a look at him?

19 A. Yes, I did.

20 Q. Did you take a good look at him?

21 A. Yes, I did.

22 Q. In conditions of lighting that are depicted in these

23 photographs?

24 A. Yes.

25 Q. And you remember then his facial features, his build, and

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Frederick Wade Skrdla - Cross

1 his clothing?

2 A. Yes, I do.

3 Q. Took a mental note?

4 A. Yes, I did.

5 Q. Approximately how long between the time he first caught

6 your eye and the time that he exited the door was he there for

7 you to see?

8 A. Probably five or ten minutes.

9 Q. And as he left the store, did you see what direction he

10 walked?

11 A. Walked out to the -- into the right of the doors at an

12 angle towards the truck.
13 Q. And that again, as you testified earlier, was the only
14 vehicle situated at the gas pumps?
15 A. As I recall it, yes.
16 Q. Incidentally, Mr. Skrdla, when the vehicle first drove in,
17 that would be the passenger side was closest to your counter;
18 correct?
19 A. Correct.
20 Q. Were you able to look in and see if it had any occupants on
21 the passenger's side of that vehicle?
22 A. I didn't pay much attention to that.
23 Q. Mr. Skrdla, how tall are you?
24 A. About 6 foot.
25 Q. And with that point of reference, can you estimate how tall

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Frederick Wade Skrdla - Cross

1 this male customer was on April 19?
2 A. Probably a little over 6 foot.
3 Q. As you think about the mental picture that you placed in
4 your mind on April 19, which of those physical features stuck
5 out most in your mind? What did you remember most about this
6 customer?
7 A. The person was -- had a fit, trim look and a haircut.
8 Q. Describe the haircut.
9 A. It was short and --
10 Q. On or about the next day, Mr. Skrdla, do you remember
11 seeing Government's Exhibit 4 in the newspaper, on the TVs?
12 A. Yes, sir.
13 Q. And is that the artist's sketch that you told the Court
14 earlier struck a chord with you?
15 A. That's the sketch. I don't know the number of it.

16 Q. Thank you. Mr. Skrdla, when you told Seb Johnson that you
17 think you waited on Tim McVeigh, did you intend for him to pass
18 that information on to the FBI?

19 A. No.

20 Q. When you told your mother that you thought you had waited
21 on Tim McVeigh at the Cimarron, did you trust her to keep it
22 secret?

23 A. Yes, I did.

24 Q. Did you share with her at that time your own concerns about
25 becoming wrapped up in this particular case?

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Frederick Wade Skrdla - Cross

1 A. Yes.

2 Q. Is there anything, Mr. Skrdla, 2 million or \$20 million
3 reward that would lead you into this courtroom to testify
4 falsely under oath?

5 A. No.

6 MR. MACKEY: I have nothing else.

7 THE COURT: Do you have any follow-up questions?

8 REDIRECT EXAMINATION

9 BY MR. JONES:

10 Q. Mr. Skrdla, are you familiar with The Daily Oklahoman?

11 A. Yes, sir.

12 Q. Do you read it?

13 A. On occasion. Not every day.

14 Q. Did you read it after the Oklahoma City bombing?

15 A. The only thing I saw or had anything to do as far as the --
16 that paper was I saw the picture in it, I believe, the
17 composite drawing.

18 Q. Did you see the picture in it of Mr. McVeigh coming out of
19 the Noble County courthouse?

20 A. Not that I recall, no, sir.

21 Q. When you say not that you recall, you mean this person
22 whose sketch that you thought you might recognize as being
23 escorted out of the Noble County courthouse right within 30, 40
24 minutes' driving distance of where you saw him and you didn't
25 read The Daily Oklahoman article of it?

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Frederick Wade Skrdla - Redirect

1 A. No, sir.

2 Q. Did not? Did you ever read anything else in the Oklahoman
3 about it?

4 THE COURT: I'm not clear about what.

5 MR. JONES: About the bombing.

6 THE COURT: Oh.

7 MR. JONES: Well, or Mr. McVeigh.

8 THE WITNESS: The bombing itself.

9 BY MR. JONES:

10 Q. Or Mr. McVeigh.

11 A. Not that I recall, no.

12 Q. In a given 24-hour period, do you have an opinion as to how
13 many Ryder trucks come into your truck stop?

14 A. No, I don't. I know I -- I did not see that many.

15 Q. What is "that many"?

16 A. Possibly two the whole time I worked there.

17 Q. This would be one of them?

18 A. Yes, sir.

19 Q. And did you always work the night shift?

20 A. The third shift, Monday through Thursday.

21 Q. Right.

22 A. That was the only shift I ever worked for them.

23 Q. What time did this individual come in with the Ryder truck?

24 A. Sometime between 12 and 2:30 a.m.

25 Q. Between 12 midnight and 2:30 a.m.?

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Frederick Wade Skrdla - Redirect

1 A. I didn't -- yes. I didn't keep a close watch on time.

2 Q. And is your truck stop located on the east or west side of
3 the interstate?

4 A. Be the east side.

5 Q. Which is the northbound lane?

6 A. Yes, sir.

7 Q. So if this were Mr. McVeigh driving from Kansas to
8 Oklahoma, he would be going in the south lane; is that correct?

9 A. Could you repeat that, please.

10 Q. Someone going to Oklahoma City from Kansas would be in the
11 south lane, would they not? They'd be driving south?

12 A. They would be driving south, yes.

13 Q. Which means they would have to exit and come back across to
14 where you are; is that correct?

15 A. Yes, sir.

16 Q. How long does it take to drive to Oklahoma City from your
17 truck stop?

18 A. I believe it's somewhere around 80 miles. 80, 85 miles, as
19 I recall. I'm not certain.

20 Q. When the truck left, did you see where it went?

21 A. No, sir.

22 MR. JONES: Nothing further. Thank you.

23 THE COURT: Yes, Mr. Mackey.

24 RE-CROSS-EXAMINATION

25 BY MR. MACKEY:

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Frederick Wade Skrdla - Recross

1 Q. Mr. Skrdla, if you miss your gas station, is it another

2 20 miles south before you get another chance to fill up?
3 A. I believe it's 20 to Perry, yes.
4 MR. MACKEY: Thank you.
5 THE COURT: Are you excusing the witness now?
6 MR. JONES: Yes, your Honor.
7 THE COURT: All right. You may step down, Mr. Skrdla.
8 I'd remind you, though, that you may be back during
9 the trial, so you should not talk about your testimony with
10 other people who may be witnesses in the case. Understand?
11 THE WITNESS: Yes, sir.
12 THE COURT: Okay. You can leave.
13 Next witness?
14 MR. JONES: Your Honor, our next witness I think will
15 be the FBI sketch artist. I notice it's 10 to 5, and they will
16 take more than 10 minutes.
17 THE COURT: Well, we'll get started.
18 MR. JONES: Okay.
19 THE COURT: What's the name of the witness?
20 MS. MERRITT: Raymond Rozycki.
21 THE COURT: All right.
22 THE COURTROOM DEPUTY: Would you raise your right
23 hand, please.
24 (Raymond Thomas Rozycki was sworn.)
25 THE COURTROOM DEPUTY: Would you have a seat, please.

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1 Would you state your full name for the record and
2 spell your last name.
3 THE WITNESS: Raymond Thomas Rozycki. Last name is
4 R-O-Z-Y-C-K-I.
5 THE COURTROOM DEPUTY: Thank you.

6

DIRECT EXAMINATION

7 BY MS. MERRITT:

8 Q. Agent Rozycki, how are you employed?

9 A. I'm employed with the FB -- I'm sorry. I'm employed with
10 the FBI in the laboratory division as the visual information
11 specialist.

12 Q. What is a visual information specialist?

13 A. Visual information specialist covers graphic information
14 for use in investigation and trial work.

15 Q. Can you speak up a little bit, because I'm having trouble
16 hearing you.

17 A. Sorry. Visual information specialist specializes in
18 graphic work for investigations and trial work.

19 Q. When you say that you engage in graphic presentations --
20 graphic presentations, do you consider yourself an artist?

21 A. Yes, I do.

22 Q. Can you tell me what training that you've had?

23 A. My training has been a BFA, bachelor of fine arts, in
24 painting and print making. I've also had a number of years as
25 a fine artist starting back in 1972, where I've had to maintain

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Raymond Thomas Rozycki - Direct

1 my own studio for a number of years during that period and have
2 maintained my skills through that period.

3 I've also had training at the FBI academy in the FBI
4 police composite art drawing school.

5 Q. How long have you been employed by the FBI?

6 A. 15 years.

7 Q. And have you been doing graphic art renditions since the --
8 the whole time?

9 A. Yes, ma'am.

10 Q. When did you first become involved in the Oklahoma City

11 bombing case?
12 A. On the 19th of April, '95.
13 Q. And what was your first connection to the case?
14 A. I was called in the evening of the 19th to fly to Fort
15 Riley, Kansas, to do an artist's composite.
16 Q. Where were you located at the time?
17 A. At -- in Washington, D.C., at my home.
18 Q. And what time did you arrive in Fort Riley?
19 A. Roughly four in the morning, I believe.
20 Q. And did you go right to work?
21 A. Yes, ma'am.
22 Q. What was the thing you did?
23 A. First thing is -- well, met with the agents and found out
24 what their assessment of -- we were dealing with three
25 witnesses and dealt with their assessment, and they indicated

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Raymond Thomas Rozycki - Direct

1 that Mr. Kessinger will be the best and first witness.
2 Q. Okay. Let's back up a little bit. What agents did you
3 meet with?
4 A. Agent Crabtree and Smith.
5 Q. And what did Agent Crabtree and Agent Smith tell you?
6 Well, let's start with Agent Crabtree. What did he tell you?
7 A. Well, he told me very little. He indicated that basically
8 that there were witnesses available and when he indicated -- I
9 indicated to him that I didn't want to know anything further
10 than the bare essentials and who these people were.
11 Q. Why did you only want to know the bare essentials?
12 A. So that I wouldn't be influenced in any way by any of the
13 information that he might have.
14 Q. What were the bare essentials that he told you?

15 A. The names of the witnesses and again his assessment that
16 one would be -- one would have more information, had a better
17 vantage point, and would in his estimation make a better
18 witness.

19 Q. Did he tell you why other than that he had a better vantage
20 point?

21 A. No.

22 Q. And that individual was Tom Kessinger; is that correct?

23 A. Yes, ma'am.

24 Q. Did you -- and what did the other agent tell you?

25 A. He was really not that involved in the orientation.

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Raymond Thomas Rozycki - Direct

1 Q. Was he present when you were talking about Agent Crabtree?

2 A. I don't remember.

3 Q. So what did you do after you stopped talking to Agent

4 Crabtree?

5 A. Was introduced to Mr. Kessinger. He was brought in. Sat
6 down with him and went through pleasantries and began orienting

7 him to the process that we would go through and told him that

8 we would first talk about the individual that he saw in general

9 and the situation that he was in, and then I would talk about

10 the booklet that we use, the facial identification catalogue

11 and how -- and the form that accompanies that and how that

12 would be used in the process that we were going through.

13 Q. Now, when you were talking with Mr. Kessinger, were you two

14 in a room by yourselves, or was Agent Crabtree and another

15 agent with you?

16 A. There were two agents in there initially, and they stayed

17 for perhaps a half an hour; and then it was just me and

18 Mr. Kessinger.

19 Q. Did you ask Mr. Kessinger any questions about what he had

20 seen, or did he start the description process, or did you do it
21 by asking different kinds of questions?
22 A. I did it by asking some -- asking some basic general
23 questions: Give me a little description of where you were and
24 what -- what was going on.
25 Q. What did he tell you about where he was and what was going

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Raymond Thomas Rozycki - Direct

1 on?
2 A. He indicated that there were two individuals in the room,
3 Ms. Beemer was at a desk, at a computer and for some reason he
4 was to the side, behind of Ms. Beemer and overheard some of the
5 conversation which caught his attention. And he lingered and
6 throughout the transaction, I would assume.
7 Q. Can you recall the physical description he gave you of the
8 person that he saw or any people that he saw?
9 A. Not without my notes, no. The 383.
10 Q. Do you have notes?
11 A. No, ma'am, I don't.
12 Q. You said not without my notes, so --
13 A. Correct.
14 Q. Where are your notes?
15 A. They're back in -- they're at the -- well, we have copies
16 of them with the attorneys and back at the office.
17 Q. Well, if you reviewed your notes, would it help you --
18 would it refresh your recollection as to what Mr. Kessinger
19 told you as to the physical description of the persons he was
20 describing for you?
21 A. Yes, ma'am. That's all indicated on there, yes.
22 THE COURT: Well, we're at 5:00. Would you like him
23 to review his notes overnight?

24 MS. MERRITT: Yes, I would, your Honor.

25 THE COURT: All right. And you have the notes there,

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1 Mr. Mackey?

2 So we'll return and continue this at 9:00 tomorrow
3 morning; but you're being requested to review your notes during
4 this recess, so please do so.

5 You may step down.

6 MR. MENDELOFF: Your Honor, one matter we'd like to
7 take up with your Honor in chambers after today's session, if
8 possible.

9 THE COURT: All right. I'll see you then as soon as
10 we recess. We'll be in recess till 9:00 tomorrow morning.

11 (Recess at 5 p.m.)

12 (Volume III is sealed and not part of the public record and
13 is comprised of pages 299 - 304.)

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1 REPORTERS' CERTIFICATE

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

4 Dated at Denver, Colorado, this 18th day of February,
5 1997.

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7

Paul Zuckerman

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13 Proceedings before the HONORABLE RICHARD P. MATSCH,
14 Judge, United States District Court for the District of
15 Colorado, commencing at 5:08 p.m., on the 18th day of February,
16 1977, in Courtroom C-234, United States Courthouse, Denver,
17 Colorado.

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24 Proceeding Recorded by Mechanical Stenography, Transcription
Produced via Computer by Paul Zuckerman, 1929 Stout Street,
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22 Defendant Nichols.

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1 PROCEEDINGS

2 (In chambers at 5:08 p.m.)

3 THE COURT: Please.

4 MR. MENDELOFF: Your Honor, the reason I asked for a
5 few moments of your time is that in a prior proceeding, we
6 inquired as to whether or not the vehicle descriptions
7 specifically regarding Mr. Schlender were going to be part of
8 this hearing; and it was our understanding that they were not.

9 We've ranged slightly into vehicles today during the
10 course of the examinations, and I wanted to just make sure
11 prior to the time that Mr. Schlender is called that that will
12 not be part of the examination that will be permitted of him.

13 THE COURT: I take it he's referring your three
14 multiples -- multiples of three questions.

15 MR. WOODS: Your Honor, I will be asking Mr. Schlender
16 questions concerning his description to the FBI and to the
17 grand jury of the person who came to his co-op and purchased
18 the ammonium nitrate. The description is intertwined with the
19 description of the individual and the automobile. I think it's
20 rather hollow for them to complain, since we've spent a whole

21 day talking about a inanimate ball cap, the vehicle that
22 McVeigh was driving -- the silver import -- and a great deal
23 about the length of the Ryder truck. It seems to me their
24 complaints are not well placed.
25 THE COURT: What's the problem? It does seem they're

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1 intertwined. The vehicle is part of his memory of the event.

2 MR. MENDELOFF: Your Honor, it's not our view that
3 they are intertwined; and I would quarrel with Mr. Wood's
4 characterization along those lines.

5 THE COURT: Well, I read the pleadings; and in the
6 pleadings. It's my recollection that Mr. Schlender talks about
7 the vehicle.

8 MR. MENDELOFF: Of course, your Honor. Of course, he
9 does.

10 THE COURT: And that's a part of his memory of the
11 event that gives rise to his ability to describe Mr. Nichols.

12 MR. MENDELOFF: Your Honor, that part, I don't -- I
13 don't agree with.

14 The reason is, Judge, of course he has a memory of the
15 event. He has a memory of the transaction that is going to
16 form the corpus of his entire testimony; but that doesn't mean
17 that there is any connection between his ability to remember
18 Mr. Nichols and his ability to describe these vehicles. In
19 fact, they are really fairly unique in his testimony.

20 THE COURT: Well, we'll have to see what he says; but
21 if he says what he said in the 302, I think they're
22 intertwined.

23 MR. MENDELOFF: Very well, your Honor.

24 THE COURT: So proceed accordingly.

25 MR. MACKEY: Judge, I have one other item.

1 We are done with all the eyewitness testimony. The
2 civilian witnesses are completed. Those that we gave notice to
3 the defense about, the Court has now heard.

4 We're now moving into the second tier of people, those
5 who had conversations with those people. I don't think there
6 is any record yet made, and now it can't be made, to suggest
7 that Government suggestivity was at play here. Each one of
8 these people has been on the stand; and it's clear either by
9 absence of questions or by denials that nobody from the FBI or
10 the Government planted descriptions in their mouth that they
11 repeated throughout the course of this investigation; so I just
12 don't see that we can't take a good hard look at the next list
13 of 14 witnesses and determine whether they ought to be
14 permitted. It's a renewed objection, Judge.

15 THE COURT: Well, it's a suggestion to defense
16 counsel; and you should discuss the suggestion.

17 MR. MACKEY: No, no. I made it to them first, Judge.
18 Twice already. I wouldn't bother you without going there
19 first.

20 MR. JONES: He's discussed it with me.

21 THE COURT: All right.

22 MR. JONES: In his usual abrasive, demanding way we've
23 come to associate him with. And that's a humorous aside.

24 THE COURT: Yeah.

25 MR. MACKEY: Honestly, Judge --

1 THE COURT: Well, what are you asking me to do?

2 MR. MACKEY: That they should be barred from calling
3 agents.

4 THE COURT: They're not. I'll see you at 9:00 in the
5 morning.

6 (Recess at 5:13 p.m.)

7 * * * * *

8 REPORTER'S CERTIFICATE

9 I certify that the foregoing is a correct transcript from
10 the record of proceedings in the above-entitled matter. Dated
11 at Denver, Colorado, this 18th day of February, 1997.

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Paul A. Zuckerman

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