

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.

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

ffffffffff  
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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23  
24      Proceeding Recorded by Mechanical Stenography,  
Transcription  
Street,      Produced via Computer by Paul Zuckerman, 1929 Stout  
629-9285      P.O. Box 3563, Denver, Colorado, 80294, (303)

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23 \* \* \* \* \*  
24  
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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 that you 20th by Special Agent Scott Crabtree, did you tell him

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 that, that on the 17th when this transaction took place  
that

8 there were afternoon before the picking up of the truck, that

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 this Are you trying to say that you're not certain whether

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

what 6 remember anything else that he said to you other than

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?

what 12 A. He just went over -- he just asked me questions on

could 13 that I'd went over before with him that night on, if I

happened in 14 tell anything different or anything I remember what

told 15 the transaction other than what I told at first. And I

16 him no.

17 Q. Did he say anything else to you?

18 A. No.

actually 19 Q. And then when you saw him again -- well, I'm not

Sergeant 20 sure it was him again -- on the 27th when you saw

Department. 21 Robert Story of the Junction City, Kansas, Police

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.

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.

Ronald  
7 Q. When you met with Sergeant Story and Special Agent

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?

the same  
11 A. I don't remember. I think they just asked about

12 questions they'd asked before.

13 Q. Which was?

that I  
14 A. On the, any description I give or anything else

rental of  
15 could think of that might be further helpful on the

16 the truck. And I told them I couldn't.

person  
17 Q. Okay. Now, when did you make a selection that the

you  
18 you saw on the photo spread was the Robert Kling that

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  
remember?

24 A. That time was on the early morning of the 20th at  
Fort

25 Riley.

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Eldon Elliott - Redirect

the  
1 Q. All right. And then was it shown to you again? By

2 Government?

3 A. Yes.

4 Q. And when was that, sir?

5 A. It was when we was in Oklahoma.

that

6 Q. And I went back during the lunch hour and found out

a bell,

7 you may have been in Oklahoma in June. Does that ring

8 or was it before then?

9 A. I'm not sure.

10 Q. What was the purpose of your being in Oklahoma?

me all

11 A. The, when I went down to Oklahoma, they just asked

grand

12 the questions. I think it was getting me ready for the

13 jury; I'm not sure.

14 Q. All right. Had you been served a subpoena?

15 A. Yes.

were

16 Q. Were you served a subpoena before you went down, or

17 you served the subpoena when you were there?

18 A. I was served a subpoena before I went down.

been

19 Q. When you went down to talk with them after you had

grand

20 served with the subpoena, you didn't appear before the

21 jury that day?

22 A. No.

accompany

23 Q. Now, earlier before lunch you said "we," at least I

24 understood you to say "we went down." Did somebody

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?

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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?  
at the  
10 A. Well, we was all setting (sic) in the chairs by --  
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.

walked 17 Q. And how long had the set been on before Mr. McVeigh

18 out?

or ten 19 A. It wasn't very long. It was just -- probably five

20 minutes.

walked out? 21 Q. And did you watch it intermittently before he

22 A. No.

23 Q. Was the sound on?

24 A. The sound was not turned up.

25 Q. Was it on?

1 A. The sound?

2 Q. Yes.

3 A. It was not up loud enough for me to hear it.

the 4 Q. I see. So the people were more interested in what

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

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 because seen him on there, I just turned around and walked away

8 haven't I didn't want to be looking at any more news and I

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 looked Look at that, and I looked up at it; and then after I

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.

work and 11 Q. Well, you haven't been keeping records about your

since you've 12 identification and trips with the FBI in this case

13 been in business, have you, sir?

I go, 14 A. I give them to my gal to put down the expenses when

15 yes.

City, 16 Q. And you think the expenses of traveling to Oklahoma

deductible 17 say to talk with the FBI or the U.S. Attorney, is a

18 expense?

my 19 A. I do not know. I put all that down, and it goes to

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?

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

Noble 25 officer that you'd seen Mr. McVeigh walk out of the

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Eldon Elliott - Redirect

1 County Courthouse?

2 A. I don't remember if I did or not.

read the 3 Q. Had you received any request or instruction not to

Oklahoma 4 newspaper or watch television as it relates to the

5 City bombing case?

6 A. Yes, I had.

7 Q. When did you receive that?

to our 8 A. I believe it was like on the 20th or when we talked

read any 9 security guy that was out there, he says, Don't try to

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  
part of it. 15 anything. And I didn't, so I just took it that was

and you 16 Q. When you were going to Fort Riley with Ms. Beemer

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.

Honor. 3 MR. JONES: Excuse me just a moment, your

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

U.S. 9 investigators asked you and Ms. Beemer to come to the

10 Army's Criminal Investigation Division office on Fort

Riley for

did not 11 the purpose of meeting with an FBI sketch artist, you

who had 12 say to Miss Beemer or did not ask her whether the man

a beard? 13 rented the Ryder truck by the name of Robert Kling had

14 A. No, I did not.

you were 15 Q. Mr. Elliott, have you been told or do you know why

with the 16 not shown a photo spread until your meeting in June

17 prosecutors in Oklahoma City?

18 A. I don't know the reason why.

time, 19 Q. And how many photo spreads were you shown at that

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.

or just 24 Q. And did you select an individual from both of them

25 from one of the sheets?

1 A. Just from one of them.

2 Q. About how many times, Mr. Elliott, have you been

this           3   interviewed or had a conversation with FBI agents about

least none   4   case where there were no prosecutors present or at

              5   to your knowledge?

              6   A. Counting right at first and now, probably 20 times.

present?      7   Q. And how many times where there were prosecutors

              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?

have          11   A. I've had once or twice maybe someone come in, but I

              12   not talked to any of them.

              13   Q. In fact, you declined to talk to them?

              14   A. That's right.

respect to    15   Q. Now, have you received any type of advice with

              16   these matters from Ryder?

              17   A. Would you repeat that again?

these          18   Q. Yes. Have you received any advice with respect to

              19   matters from Ryder?

said, when    20   A. No matter at all except right at first. Like I

said don't    21   the security guy was there and Ryder was there, they

FBI.          22   talk to anything, anybody about this. Other than the

              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.

Golden 18 Q. Okay. And what is Golden -- what kind of street is

40 that 19 Belt Boulevard?

20 A. Golden Belt Boulevard is actually the old Highway

City, 21 used to run from Denver through Junction City to Kansas

parallel to 22 and it's called Golden Belt Boulevard. It runs

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

commercial 1 Q. Between your business and the beginning of the

-- 2 area of Junction City, what do we find there?

town. Right 3 A. Between me and town? Going from my place into town

a 4 there's a house about halfway between my place and

was 5 down close to town there's apartments, and then there's

described, how 6 Kentucky Fried Chicken -- I'm sorry -- there's -- it

7 Bonanza and then Country Kitchen.

8 Q. Now, Mr. Elliott, that route that you just

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

right at 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 McDonald's 18 Bonanza, the Country Kitchen, and a motel there, and  
McDonald's

18 right across the street and a couple Quick Sacks.

Junction 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.

1 Q. And that's the man that you identified as Robert

Kling; is

2 that right?

3 A. Yes.

were  
4 Q. When you made the -- when you waited on him, you

is that  
5 standing behind the counter, I believe you testified;

the  
6 right?

7 A. I was setting (sic) at the thing when I typed it in

the copy  
8 computer, and then I was standed up when I presented

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.

his face  
13 Q. How far away were you from -- was your face from

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?

not very  
17 A. Because my counter's not a very wide -- my desk is

(sic) a  
18 wide, and that counter that's on top of my desk sets

standing  
19 foot from the edge of the desk back over, so when I'm

real  
20 up on the edge of the desk and lean on it, it put us

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

164

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

165

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

I'm used  
Iowa a  
from

8 insurance?

9 A. Yes, he did. He said, I'm not going very far, and  
halves  
any

10 to driving big trucks out of Fort Riley and deuce and a  
any

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

I would

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.

sheet?

24 Q. When you printed that out, what did you do with the  
turned

25 A. I stood up and laid it up on the counter to him and

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      needed to out the place on the reservation form where Mr. Kling

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

167

Eldon Elliott - Cross

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?

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?

I walked 7 A. He was standing right at the corner of the desk as

8 around the corner of my office.

9 Q. How many feet away?

5 feet 10 A. When I first seen him, I was probably about roughly

11 away.

12 Q. And at that point in time, is that when you had the  
insurance 13 conversation you described this morning regarding

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.

that in 18 Q. Now, when you asked him about the insurance, was

with 19 relation to the conversation you'd had two days earlier

20 him about insurance?

21 A. Right.

how far 22 Q. And when you spoke with him about the insurance,

23 away were you then?

24 A. Not over 2-foot maximum.

25 Q. Where were your eyes focused?

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 When it was your opinion that this man was with Mr. Kling.  
were you

17 Mr. Kling arrived that Monday afternoon in your shop,

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.  
him  
4 Q. I believe at that point you had a conversation with  
5 regarding insurance; is that right?  
6 A. Yes, I did.  
7 Q. What did he say?  
want  
8 A. I said, Did you -- You didn't change your mind and  
9 insurance? And he says, No, I don't.  
10 Q. Then did you invite him to accompany you any more?  
around.  
11 A. I invited him to come out with me to do the walk-  
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.

came in  
7 Q. Now, let me just ask you: When you -- after you

the  
8 from doing the inspection, did you see Mr. Kling and/or

9 other man leave?

10 A. Seen them leave?

11 Q. Yes.

12 A. No, I did not.

separately?  
13 Q. Do you know whether they left together or

separate.  
14 A. I don't know whether they left together or

drove or  
15 Q. Do you know whether or not they -- the second man

any of  
16 went with Mr. Kling or went by himself? Do you know

17 those questions?

shop,  
18 A. I don't know that, either. I went back out in the

19 and there's no windows there in that end of the shop.

car that  
20 Q. Now, in direct examination, you were asked about a

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?

Eldon Elliott - Cross

1 A. No, I hadn't.

truck  
2 Q. If that car was a car that was driven by another

was?  
3 rental customer, would you have known whose car that

4 A. No, I wouldn't.

April 19  
5 Q. I believe you testified that on the afternoon of

interview with  
6 you had a conversation with Scott Crabtree, an

7 Scott Crabtree, an FBI agent; is that right?

8 A. Yes.

told  
9 Q. And you were asked questions about whether you had

voice of  
10 Scott Crabtree that you didn't recognize or hear the

those  
11 the renter, Mr. Kling, on the 17th; do you remember

12 questions?

13 A. Yes.

interviewed you  
14 Q. All right. Now, at the time Mr. Crabtree

had  
15 about this, how long had you known that your business

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  
them

5 reservations for the Ryder people coming in and calling

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

to 12 examination of you regarding whether you made a comment

beard, 13 Vickie Beemer to the effect of, Didn't that guy have a

that? 14 and you were speaking of John Doe 1? Do you remember

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

guy 25 Beemer -- if you had said to Vickie Beemer, Didn't that

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Eldon Elliott - Cross

those 1 have a beard, regarding John Doe 1? Do you remember

2 questions of Mr. Jones?

3 A. Yeah.

that 4 Q. Now, do you know whether or not you may have said

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:

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.

put out

19 Q. During that photo spread process, were you asked to  
20 of your mind any media you might have seen?

21 A. Yes.

rely

22 Q. And when you made that selection, were you able to  
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 business nearly 200 people have been killed and your place of

25 he's coming may have rented the truck that carried the bomb and

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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?

I told him questions that he answered that night, and that's what

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?

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 contact         that, according to your testimony, had face-to-face

7 with this individual twice?

8 A. Right.

9 Q. Well, isn't the truth of the matter is you simply  
forgot?

10 and              MR. MENDELOFF: Objection, your Honor. Asked

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.

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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?

I didn't 5 A. No, I said I didn't even look at -- what I'd said,

or didn't 6 even look enough at John Doe 2 whether he had a beard

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.

beard? 10 Q. So you didn't even ask about John Doe 2 having a

11 A. No.

between you 12 Q. So your version was there was no conversation

beard? 13 and Ms. Beemer about whether either one of them had a

14 A. There was not.

there were 15 Q. But you're clear and certain in your mind that

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?

There was 21 A. I don't know whether they was together or not.

22 two people in there.

together, 23 Q. Well, what is your statement there, they came

24 they were there together and left together or not?

come and 25 A. I seen them together there, but I didn't see them

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 States Attorney showed you?

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.

2 MR. JONES: Mr. Donahue, your Honor.

3 THE COURT: All right.

4 (Timothy Patrick Donahue was sworn.)

Would you like to add any other information?

6 state your full name for the record and spell your last name,

7 please.

8 THE WITNESS: Timothy Patrick Donahue. D-0-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

give 10 agents of the Federal Bureau of Investigation, did you

11 them a description of this acquaintance --

12 A. Yes.

Nichols 13 Q. -- male acquaintance that had been by to see Mr.

14 twice?

15 A. Repeat that question, if you would, please.

April 21, 16 Q. Sure. When you were interviewed by the FBI on

individual 17 1995, did you give them a description of what the

Nichols on 18 looked like, this male that had come by to see Mr.

19 these two occasions?

30 that 20 A. I give them a description of the time on September

21 I remembered at that time. The time I give them the

22 description, I did not remember my first meeting this

23 individual.

occasions, a 24 Q. Well, didn't you tell them that on a couple of

25 friend, name unknown, visited Nichols at the house?

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 builded 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.

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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  
The description that you gave them on April

21 21st --

22 about  
A. I did not say that about having my foot in my mouth

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.

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

I was  
1 implement, servicing it, to work in the field that day.

and my  
2 outside my vehicle. My pickup was setting (sic) there,

tractor,  
3 tractor was setting there, and I was servicing my

4 getting ready to work in the field.

5 Q. This is central Kansas?

6 A. Yes.

highway  
7 Q. So I take it there would be no obstruction from the

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?

car  
12 A. Yes. When I was standing there, I seen the silver

13 pulling up toward me.

the  
14 Q. At that precise point in time, did you recognize

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.

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

Timothy Patrick Donahue - Cross

there            1    Mr. McVeigh got out, and them two had a conversation

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.

car            9    Q. How close was your vehicle from where the silver

10   stopped?

11   A. Oh, just 20 feet maybe.

to the        12   Q. Did you have an unobstructed view from your vehicle

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.

long did 21 Q. Could you hear what they were talking about? How  
work in 22 they engage in conversation?  
23 A. Oh, I don't really know. I left and went back to  
the field.  
24 Q. Now, as opposed to your first encounter, this was  
your

195

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 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 paper. And Mr. Nichols had advertised in the paper, the local  
paper.

19 I stopped there, and Terry and Mr. McVeigh was working  
outside

20 over to by Terry's pickup. And I stopped there, and Terry come

front 21 me; and we -- I asked him to see the water bed, on the  
front

and 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?

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Timothy Patrick Donahue - Cross

1 and often A. Oh, it varies quite a bit, but rarely before six

2 seven-thirty to eight.

3 you end Q. Approximately what time of day on September 30 did

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 and 29. Take a look, please, at Government Exhibits 26, 27, 28,  
and 29.

13 man, A. 26 is the ranch house that we provide for our hired

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 encounter Q. Those four photographs depict the scene of your

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

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.

in the 22 Q. When you did so, did you notice any vehicles parked  
23 driveway?  
24 A. Yes. There was a silver car setting there.  
before? 25 Q. Was it the same silver car you had seen weeks

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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.  
and how 13 Q. Using that photograph, tell the Court where you saw  
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.

the 19 Q. And when you say "backed up," was it entered into

20 garage area?

the 21 A. No, it was in -- it was, oh, I'm sure 10 feet from

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

It would 1 A. Oh, it was -- well, it's kind of hard to explain.

ways. 2 be east and south of the front door there a little

you 3 Q. And approximately what time of evening was it that

4 arrived at the Nichols' home on September 30?

frame. 5 A. Well, it was seven, seven-thirty, in that time

went 6 Q. So I take it shortly after getting off work you

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.

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.

out on the 23 Which took two, three minutes; and then we come back  
front porch.  
much 25 Q. Incidentally, on Friday evening, did you notice how

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Timothy Patrick Donahue - Cross

furnishing was still in the house?  
remember 2 A. Yeah, there was quite a bit in there yet. I  
set 3 seeing a refrigerator there, and it was a dining room  
there.  
came 5 Q. Did you have conversation with Mr. Nichols when you  
out of the residence about that furnishing?  
trying 7 A. Yes. I told him, being the way he was leaving and  
leave 8 to sell all of his stuff, I requested that he didn't  
that 9 anything behind that I would have to be responsible for  
somebody had purchased and hadn't picked up before  
Terry left.  
place on 11 Q. And is that conversation with Mr. Nichols taking  
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

the 10 leaving the coun -- state, and I told him, When you get

bring 11 house cleaned up, ready to move out, tell me, and I'll

12 you your check.

13 Well, that night, I decided just to get  
everything

final 14 over with right then; so I decided to give him his

make sure 15 paycheck that night. And I just requested that, to

honor 16 he left things in good order and just kind of went on

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?

cover the 21 A. Yes, I wrote him a personal check of my own to

night. 22 cost of the water bed. I purchased it from him that

written 23 Q. Did you have that check predrawn? Had you already

24 it out before you arrived?

25 A. No, I wrote it there on the front step.

Timothy Patrick Donahue - Cross

1 Q. And you dated it what date?

2 A. September 30.

this  
3 Q. Throughout all these events with Mr. Nichols on

the  
4 elevated spot, you could see this male person behind

5 pickup?

6 A. Yes.

stop and  
7 Q. On that occasion, Mr. Donahue, did Terry Nichols

truck?  
8 introduce you by name to the person there at the pickup

9 A. No.

had been  
10 Q. On the earlier occasion when that same individual

introduce  
11 with Mrs. Nichols out in the field, did Terry Nichols

12 that person to you by name?

13 A. No.

had you  
14 Q. At any point before the FBI first talked to you,

Tim?  
15 heard Terry Nichols refer to a friend by the name of

16 A. Yes.

17 Q. In what context?

various  
18 A. Oh, it was just, we was just driving to work, to

name of 19 job sites; and he was telling me about a friend, first  
military 20 Tim, that had served in Desert Storm.

21 Q. Heard the name as related to an individual with  
background? 22

23 A. Yes, uh-huh.

he was 24 Q. Prior to September 30, had Mr. Nichols told you why  
leaving your employ? 25

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Timothy Patrick Donahue - Cross

to 1 A. He told me he was going to work for a friend, going  
friend with 3 Q. And in those conversations, did he identify the  
a name? 4 whom he would be going into the gun trade shows with by  
male 6 Q. Other than family members, Mr. Donahue, was the  
only person 7 individual you've described here this afternoon the  
time he 8 that you saw in the company of Terry Nichols during the  
9 was in your employ?  
10 A. Yes.

the

11 Q. Did you see any other unknown vehicles, other than

anytime

12 silver car you described at the Nichols residence

13 during his employ?

14 A. No.

question, but

15 Q. Mr. Donahue, I mean no respect (sic) by this

ages of

16 after years of raising cattle, are you better guessing

17 cattle than you are people?

18 A. I hope so.

19 Q. How many head do you have?

keep out

20 A. We run about a thousand mother cows, and then we

keep out

21 thousand head

all of our own calves, so there's usually several

22 around at one time.

house, the

23 Q. When you described on April 21 the man at the

24 Nichols house have a scraggly brown beard --

25 A. Yes.

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.

seen  
7 Q. Prior to that first interview by the FBI, had you

prior to  
8 anything in the newspaper with the name Tim McVeigh,

9 April 21, the interview with the FBI?

10 A. No.

of your  
11 Q. Had you seen any physical description, to the best

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,

you saw  
19 that the man you saw in the field was the same man that

20 at the residence in the fall of 1994?

21 A. I'm certain.

that you  
22 Q. And how certain are you that that man was the man

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

your 1 MR. JONES: Nothing further of this witness,

2 Honor.

3 THE COURT: I take it he may be excused.

Court, I 4 MR. WOODS: Your Honor, may it please the

5 have three questions of Mr. Donahue that go directly to

6 Mr. Schlender's testimony, who will be the witness  
coming up.

work or 7 And I am not going to get into anything about Nichols'

8 anything like that.

9 THE COURT: All right.

10 relevant. 11 MR. WOODS: It's three questions that are

12 THE COURT: Very well.

13 MR. WOODS: Thank you, your Honor.

14 BY MR. WOODS:

lawyers 15 Q. Mr. Donahue, my name is Ron Woods. I'm one of the

You and I 16 that have been appointed to represent Terry Nichols.

17 have never met; is that correct?

CROSS-EXAMINATION

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 That 1 starter, for starter fertilizer through our planters.

2 would be the only time we do, yes.

3 Q. And you plant wheat there?

4 that 4 A. That would be used for corn or sorghum which is --

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 association. 9 A. It's custom applied for us by the co-op

10 spread it 10 Q. You have a co-op bring it out and deliver it and

have

March to

license

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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

check.

7:30 was

time; is

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?

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?

210

Glynn Allen Tipton - Direct

1 A. BP racing fuel.

2 Q. That's easy enough. I'm sorry I asked.

3 through

4 October 2, you were at the Sears Craftsman 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 you the there, were you approached by an individual who gave

11 to name John and who wanted to make an inquiry of you as

gallon 12 whether BP Racing Fuels sold anhydrous hydrazine in 55-

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?

the 22 A. I saw the individual one time, and that was October

23 1st.

2d? 24 Q. Now, did you originally think it was October the

25 A. No.

211

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

a 14 were kind of narrow, light brown hair, facial growth of  
a

jeans, 15 couple days or so, wearing a dark-colored T-shirt, dark  
jeans,

sport 16 T-shirt had screening on it, but it wasn't a motor  
sport

17 screening.

that this 18 Q. All right. Do you recall whether you told them  
that this

with a 19 John, last name unknown, was 5-foot 10 to 6 feet tall  
with a

the event 20 two- to three-day growth of whisker stubble and that  
the event

been 5' 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?

Glynn Allen Tipton - Direct

Judge. 1 MR. MENDELOFF: Objection. Compound question,

2 THE COURT: All right, break it down.

3 MR. JONES: Okay.

4 BY MR. JONES:

this 5 Q. Did you tell the special agents of the FBI that

and had 6 individual was about 5' 8", weighed 150 to 160 pounds,

7 growth all over, possibly a mustache?

8 MR. MENDELOFF: Objection.

9 THE COURT: That's the same question.

the 10 MR. JONES: No. The question before included

11 other description, I believe.

at a 12 THE COURT: You're asked to break it down one

13 time on the description. That's the objection.

14 MR. JONES: All right. Fair enough.

15 BY MR. JONES:

pounds? 16 Q. Did you tell him he weighed about 150 to 160

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.

213

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.

214

Glynn Allen Tipton - Direct

face of

1 Q. And did you tell them that at that time that the

John but

2 Mr. McVeigh in the picture was thin like the subject

subject?

3 you could not be positive that Mr. McVeigh was the

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.

the

24 Q. Well, did you call him approximately one week after

25 bombing and discuss the bombing?

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

216

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.

217

Glynn Allen Tipton - Cross

Jones -- 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

218

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.

have

5 Q. Did the man make any remark about his ability to

6 access to that material at that time?

have

7 A. He had mentioned that at one point in time he did

8 access to that particular material.

the man

9 Q. All right. Now, what is the reason that you told

make

10 that you might be able to get an height?

thought it

11 A. Well, BP owns a chemical company as well, and I

12 would be something that would be possible that we could

make

13 the sale on.

Monday,

14 Q. After you told the customer that you'd check on

15 about supplying him with anhydrous hydrazine, did the

16 conversation continue?

information to be

17 A. Yeah. Basically I just tried to get the

phone

18 able to get back with him, asked him for his name, his

me a

19 number. He said that basically he was unable to give

I

20 phone number because he was in the process of moving.

21 believe he was from Junction City.

you remain

22 Q. Now, during the course of this conversation, did

23 in the cab of the truck, or did you move somewhere?

point

24 A. Throughout the whole conversation, we moved, at one

to get

25 in time I moved back into the truck, off of the steps

219

Glynn Allen Tipton - Cross

paper.

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

probably.

3 A. Came back down the steps, one or two steps,

recall

4 Q. Now, during the course of this conversation, do you

me, as

5 ever being on the same level as Mr. McVeigh -- excuse

6 the person you were talking to?

7 A. Never were we at the same height.

you ask

8 Q. Now, when you got the piece of paper and a pen, did

9 the person for any identifying information?

10 A. Could you repeat that one more time?

the

11 Q. When you got the piece of paper and the pen out of

12 cab --

13 A. Yes.

some

14 Q. -- did you ask the man that you were talking to for

15 sort of identifying information?

where I

16 A. Yes, I asked him for his name and a phone number  
17 could reach him.

phone

18 Q. And that's when he told you he couldn't give you a  
19 number because he was moving?

20 A. Yes, that is correct.

do?

21 Q. After you got his name, what did you tell him to  
with him on

22 A. I told him I'd check on it and I could get back  
23 the product, and that's when he told him that I  
wouldn't be

of me

24 able to get ahold of him, that he would get back ahold  
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 get this Monday morning to find out whether it was possible to  
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.

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 remember if you provided. One thing, I don't think -- I don't  
remember if

20 identifier of he asked you -- is whether he provided you the

21 man was? age. Do you remember what age you told the FBI this

22 A. I believe it would have been mid-20s.

the  
23 Q. Now, is it your testimony that you're certain that

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 if 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 asked you to for BP Racing, has anybody ever come up to you and

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 selling them when you're talking to something, somebody about

16 for in racing fuel, they have something that they're looking

17 they ask particular, you know, to use it in a certain way, and

18 do this a lot of questions on, you know, what's the best way to

19 didn't or what's the best way to do that. So he just 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.  
the  
10 Q. Want to be sure. So you never told the FBI that  
transaction occurred on October the 2d?  
11 A. No, I did not.  
12 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 hold; is 3 something that you consciously caused your memory to

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

remember  
20 mind. Are you telling the Court today you don't

21 whether you were shown two photographs or three?

22 A. Yes, that's what I'm telling him.

other  
23 Q. Okay. Might you also be less positive about some

place?  
24 things? Like the date the transaction first took

25 A. No.

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

228

Glynn Allen Tipton - Redirect

been 1 showed you and even though you knew Mr. McVeigh had

2 arrested and charged with a crime?

3 A. That is correct.

certain? 4 Q. Now, when did you decide that you were 90 percent

but at 5 A. I don't recall exactly when I made that decision,

visit 6 one point in time, I knew that they were going to come

7 me, and I knew that that's where, pardon the expression, the

have 8 rubber meets the road, and that I had to be, you know,

like that 9 some idea of how certain I was of this 'cause I felt

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?

able to  
13 A. Well, it was the point in time that I needed to be

was, you  
14 tell them if I was a hundred percent certain or if I

percentage  
15 know, and which I was not. So I wanted to put a

that  
16 point to it to tell them, yes, this is how certain I am

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.

you  
24 Q. And how far were you from Mr. Mendeloff's face when

25 told him you were 90 percent certain?

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 RECROSS-EXAMINATION

11 BY MR. MENDELOFF:

12 Q. Mr. Tipton, Mr. Jones stated in his questions to  
you just

feet 13 now that you had said that the person you saw was 5

14 8 inches tall. Is that what your testimony is?

15 A. No, that is not what my testimony is.

height? 16 Q. Can you tell us what your testimony is regarding

17 A. I am not sure of the height.

you 18 Q. And did you originally state 5 feet 8 inches before

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?

able to 22 A. Well, when I was talking to him, I remembered being

look 23 see him face to face, not have to look up, not have to

24 down, at least not to a great extent.

25 Q. And you were standing on a step?

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

right  
1 THE COURT: Okay.  
2 THE COURTROOM DEPUTY: Would you raise your  
3 hand, please.  
4 (Marion Charles Ogden affirmed.)  
5 THE COURTROOM DEPUTY: Have a seat, please.  
and  
6 Would you state your full name for the record  
7 spell your last name, please.  
is  
8 THE WITNESS: Marion Charles Ogden. Last name  
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

the FBI.  
1 A. I think that was the date, but I was contacted by  
first?  
2 Q. Did you contact them first, or did they contact you  
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.  
in  
8 Q. Did they advise you that you were being interviewed  
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.

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 get And I said, There was no address. How may I  
get

4 there?

5 how to get 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 Friday 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?

I know 13 A. If I had to pinpoint it down, no, I wouldn't. All  
I know

to me 14 is that it was sometime in the fall. It was immaterial  
to me

fall. 15 as far as what month it was; but it was sometime in the  
fall.

County 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.

235

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.

the 13 Q. And it was approximately six or more months before

14 Oklahoma City bombing?

15 A. Sometime between there, yes.

16 Q. Sometime between where?

bombing. 17 A. From the time I went to the garage sale until the

18 That's what you're talking about; right?

months. 19 Q. Right. And I'm asking whether it was about six

Is that 20 A. If it was September and the bombing was in April?

21 correct?

22 Q. Yes. Well --

23 A. A little over six.

house 24 Q. Now, when you arrived at -- you went over to the

25 after the person gave you directions?

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

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?

FBI 4 A. Handcuffs on an individual surrounded by, I assume,

5 agents.

6 Q. So the person you saw was in custody?

7 A. Yes.

wearing? 8 Q. Do you remember what kind of clothing he was

9 A. He could have been in some type of a jumpsuit.

prison 10 Q. Would that -- when you say jumpsuit, do you mean a

11 jumpsuit?

12 A. Yes.

13 Q. Now, when you saw either of the composites on  
television or

14 in your the walk-out from the jail, did you make any connection

15 sketches mind between this person or the person depicted in the

16 and the person you saw at Terry Nichols' house?

17 A MR. GOELMAN: Your Honor, I'm going to object.

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 composite or Sub.2, did you make any connection between that

23 Nichols' drawing and the person you encountered at Terry  
house

24 in the fall of 1994?

25 A. No.

239

Marion Charles Ogden - Direct

1 County Q. When you saw Mr. McVeigh being led out of the Noble

2 connection Courthouse in April of 1995, did you make any

Terry

3 between that person and the person you encountered at

seen him

4 Nichols' house in November or the fall of 1994?

didn't

5 A. He looked familiar, but I didn't know where I had

6 before; so there was some type of connection, but I

7 place it.

connection?

sale

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

mentioned

10 and a -- the location of the house. Whenever they

in my

11 the location of the house, why, then, something clicked

the

12 mind as to the fact that that was the guy that was at

13 house.

14 Q. Let's break that down a little bit.

back to

15 You say when you saw the house. Did you go

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?

242

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

when they officers about your encounter at Terry Nichols' house

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 employment?

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?

FBI  
11 A. I just thought that if it was material enough, the  
12 would find me.

the  
13 Q. But you didn't think it was material enough to call

14 FBI?

15 A. No.

16 Q. And tell them?

17 A. No.

went  
18 Q. Now, let me back over to another subject: When you

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

you 15 lamp between November of 1994 or the fall of 1994, when

16 purchased it, and April 19, 1995?

17 A. Yes.

discussed 18 Q. Can you tell me the names of any persons that you

19 selling it to?

20 A. No.

any 21 Q. Did you have any conversations face to face with

22 persons about selling the lamp?

23 A. Yes. The individual that I sold it to.

individual 24 Q. Did you try and sell it to anyone other than the

25 that you sold it to?

245

Marion Charles Ogden - Direct

me to 1 A. No one else was interested enough in the lamp for

2 tell them the story.

I'm 3 Q. Okay. Well, let's back up. I guess first of all,

sell the 4 trying to find out whether you made any attempts to

it to. 5 lamp before you actually sold it to the person you sold

6 A. I put a price on the lamp. I set the lamp on a

shelf, and

by and 7 if somebody wanted the lamp, why, then, they could come

8 pick it up and buy it.

I never 9 As far as putting an advertisement on it, no,

10 did.

shelf? 11 Q. Where did you put this lamp with a price tag on a

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.

to this 21 MR. GOELMAN: Your Honor, I'm going to object

22 line of questioning as irrelevant now.

23 THE COURT: What's the relevance?

factors, it 24 MS. MERRITT: Under the Neil vs. Biggers

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?

I'll go  
21 A. If they don't have a price tag on them, why, then

22 ahead and ask if they're for sale.

items that  
23 Q. Are you examining the items to see if they are

24 you might want to purchase?

25 A. Well, yes.

247

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.

I've  
12 A. I have no idea or account of all the things that

13 purchased that fall.

things 14 Q. Do you remember what all the people you buy these  
15 look like?

trouble 16 A. Pretty much so. I can remember faces. I just have  
17 with names.

night 18 Q. Now, you said that you decided to sell the lamp the  
19 that you purchased it in 1994; correct?

belonged 20 A. Yes.

21 Q. Now, at that time, you didn't know that the lamp  
22 to Timothy McVeigh; correct?

23 A. I had no idea.

24 Q. And you --

you 25 THE COURT: Belonged to Timothy McVeigh? Did

248

Marion Charles Ogden - Direct

1 intend that?

2 MS. MERRITT: Well, he said that --

the 3 THE COURT: I just asked you if you intended  
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 purchased from had no reason to think that that lamp was being

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?

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 story 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 Agent Q. Now, you said that you have discussed this with  
Agent

10 first were Tongate two or three times since the time that you  
first were

11 contacted by him in November of 1995; right?

12 witness did 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 with 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

250

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?

251

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.

we're

to the

City

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  
referring to would be in.

15 Q. Are you aware of a reward for information leading  
conviction of the person who committed the Oklahoma  
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.

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 And I an advertisement for either a moving or a garage sale.

19 number. think it was a moving sale and there was a telephone

20 contained Q. Was it unusual to not have an address or a time

21 in the ad?

22 A. Yes.

you seen

23 Q. Approximately how many ads for moving sales have

24 that didn't have address or time information in it?

25 A. Hardly any.

253

Marion Charles Ogden - Cross

residence

1 Q. Approximately what time did you arrive at the

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.

that it was

7 Q. You told Ms. Merritt, sir, that you didn't know

8 a Thursday or a Friday that you went out there?

9 A. That is correct.

other?

10 Q. Is it more likely that it was more one day than the

the

11 A. More likely it was a Thursday, since I do read all

12 garage sale ads; and sometimes in order to get good

I'm not

13 merchandise, you have to be there early, so normally

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 no car got -- followed my directions correctly; and there was

21 saw or vehicles in the drive. I pulled in the drive, and I

22 I got that the door was open with the screen door closed, so

23 this was out with the intention of asking and making sure that

24 the right residence for a sale.

25 It's Q. Mr. Ogden, I'm showing you Government's Exhibit 29.

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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 mean by Q. When you say it looks like the house, what do you

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.

Marion Charles Ogden - Cross

house,  
1 Q. What were the lighting conditions like inside the

2 sir?

in the  
3 A. Light. I mean I can't recall any lights being on

was  
4 house, but the windows were not shaded in any way. It

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?

if this  
8 A. When I walked in, I knocked on the door, asked him

in,  
9 was the place where the sale was; and he said yes, come

10 told him that I had been the person that called him.

him --  
11 And when I walked in, I stepped in and I asked

he said,  
12 I said -- asked him what he had for sale. And I think

13 I'll show you.

guns on  
14 And then the first thing, I asked him if the

15 the floor behind the couch were for sale.

military, and  
16 And he said, No. I just got out of the

17 I'm going to take those back to Michigan with me.

Agent  
18 Q. Sir, let's turn to the discussion that you had with

suggest to  
19 Tongate after the bombing. Did Agent Tongate ever

Tim

20 you that the man you saw at the house might have been

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 you that there, did he in any way suggest or hint or confirm to

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 the \$40 you bought from Tim McVeigh for \$40. When do you put

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.

A. 12                  THE WITNESS: Fredrick Wade Skrdla, S-K-R-D-L-

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.

Travel             24                  THE WITNESS: Yes. I was working at Cimarron

25                  Plaza, which is a truck stop on I-35, in Billings,  
Oklahoma.

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

the 19th 1 Q. So the only two times you watched anything were on

2 and 20th?

come -- I 3 A. I didn't watch it actually faithfully as it would

it came 4 didn't look for it every day. If I was watching TV and

5 on, I would watch what was ever on at the time.

where you 6 Q. I understand. Was the television on at the place

7 worked, sir?

8 A. No.

at work? 9 Q. So you didn't watch the television while you were

10 A. No.

drawing of 11 Q. Do you remember seeing the composite sketch or

2? 12 Unidentified Subject No. 1 and Unidentified Subject No.

13 A. Yes, I do.

newspapers? 14 Q. And did you see that on television or in the

15 A. Both.

1 or 16 Q. When you saw the sketch of Unidentified Subject No.  
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  
had  
3 you saw on the television and the paper and the one you  
station?  
4 seen at the -- the person you had seen at the gas  
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?

Fredrick Wade Skrdla - Direct

How did 1 You had seen on television? Read about it in a book?

2 the person look familiar to you?

3 A. A face that I had seen before.

that face 4 Q. All right. And where did you think you had seen  
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.

the 11 Q. And did you see it first on television or first in  
12 newspaper?

13 A. I believe I saw it on TV.

familiar, 14 Q. Now, when you saw it and you thought it looked  
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?

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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

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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?

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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?

Fredrick Wade Skrdla - Direct

in the  
1 Q. Did you tell your mother what this person was doing

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.

County  
6 Q. When you saw Mr. McVeigh come out of the Noble

you that  
7 courthouse in custody -- excuse me -- how certain were

station?  
8 that was the person that you had seen in the service

9 A. Pretty certain.

that  
10 Q. Were you able to make a positive identification at

11 time?

12 A. Yes, sir.

mother?  
13 Q. And did you tell anyone else other than your

14 A. Not that I recall, no.

law  
15 Q. Now, you had a contact -- your first contact with

2. Is  
16 enforcement was with Special Agent Eric Gerstein on May

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?

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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

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 fact 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 had already told the FBI before they contacted you that she

20 a.m. and seen a Ryder truck on April 18, 1995, between 10:30

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.

at the 25 Q. Do you know whether there were any other employees

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Fredrick Wade Skrdla - Direct

truck in 1 Cimarron truck stop who claimed to have seen a Ryder

2 the 24 hours before the Oklahoma City bombing?

3 A. Not to my knowledge.

of 4 Q. When did you become aware that there was a reward

the 5 \$2 million leading to information that might result in

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?

said I was 15 A. He point-blank asked me was I aware of it; and I

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.  
I-35;  
23 Q. Are there -- at the Cimarron truck stop that's on  
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.  
the  
8 Q. How many vehicles do you think stop there a day on  
9 average?  
not sure  
10 A. It's hard to say. I was only one shift, and I'm  
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.

see this

23 Q. Did, to your knowledge, your other two co-workers

24 Ryder truck?

25 A. Not to my knowledge.

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Fredrick Wade Skrdla - Direct

to have

1 Q. To your knowledge did any of your customers claim

2 seen this Ryder truck?

3 A. Not that I know of.

truck?

4 Q. What first attracted your attention to the Ryder

the

5 A. When it pulled in front of the windows in front of

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 fueled on did in front of the store. Most of the large trucks

I 11 the diesel islands, which are to the east of the store,

12 side of believe; and it pulled in in front, which is the north

13 the store.

14 Q. You think Ryder trucks use diesel?

15 to a A. I'm not certain what all they use. This one pulled

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.

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.

the  
11 A. The person walked out of the store and went towards

truck.  
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

person.  
14 A. I'm just saying that's how I distinguish that

person?  
15 Q. What was there about that that distinguished the

16 A. Excuse me?

person?  
17 Q. What was there about that that distinguished the

18 A. With the truck?

19 Q. Yes.

island at  
20 A. That was the only vehicle at -- on the fuel pump

21 that time.

records  
22 Q. Have you been able to determine by looking at your

23 what the amount of the cash transaction was?

nor did  
24 A. No, sir. I didn't have any access to the records,

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.  
photo  
24 Q. Did you subsequently participate in any kind of  
25 spread where they showed you some pictures and you pick

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Fredrick Wade Skrdla - Direct

1 somebody out?  
2 A. Not that I recall, no.  
FBI? Just  
3 Q. How many times have you been interviewed by the  
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.  
and  
9 A. Let's see. I believe it was around five weeks ago,  
10 then just last week or the other day. Excuse me.  
of 1995,  
11 Q. Oh. So they interviewed you one time back in May  
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.  
I  
16 I had -- one time was at the truck stop where

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.

at the  
12 Q. Three. Same ones that interviewed you on May 2, or

13 truck stop?

14 A. No, sir.

15 Q. Different ones?

16 A. Two different ones, yes.

17 Q. Were they all FBI agents?

second  
18 A. As I recall, the first two were FBI agents, and the

office  
19 time I believe it was someone from the U.S. Attorney's

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.

leaves  
25 Q. That's the man that's walking by Mr. McVeigh as he

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.

truck       13   Q. But you were working, were you not, at the Cimarron

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.

and       22   Q. And focusing your attention sometime after midnight

Ryder truck   23 before 3 a.m., did you notice at that time a large

24   enter the gasoline pump island area?

25   A. Yes, I did.

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 question look at Exhibits 30, 31, 32, 33 and 34. Then I have a

9 for you.

10 Have you had a chance to look at those?

11 A. Yes.

12 points Q. Do each of those accurately depict various vantage

13 of your former place of employment?

14 A. Yes, they do.

15 the Q. Incidentally, Mr. Skrdla, how long did you work at

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.

Do you  
24 Q. I'm going to direct your attention to Exhibit 34.

25 have that in front of you?

279

Frederick Wade Skrdla - Cross

1 A. Yes, sir.

to  
2 MR. MACKEY: Your Honor, at this time I'd move

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?

Travel  
10 A. That would be the front of the building of Cimarron

11 Plaza.

take that  
12 Q. And where might the photographer be standing to

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.

is most

18 Q. In the early morning hours, the third shift, where

on the

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.

280

Frederick Wade Skrdla - Cross

Ryder

1 Q. Does this Exhibit No. 34 depict the area that the

hours of

2 truck drove by your vantage point on the early morning

3 April 19?

4 A. Yes, sir.

mind,

5 Q. Can you, as you reflect on that vision in your

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 show what  
And does that exhibit essentially reverse position,

15 to the  
you might be seeing from inside the store looking out

16 gas pumps?

17 A. Yes, it does.

18 where the  
Q. And in particular, does it identify the island

19 19? Ryder truck parked on the early morning hours of April

20 A. Correct.

21 hand side  
Q. Do you recall which of the two on the far right-

22 remember?  
of the photograph the truck pulled into, if you

23 A. I can't really recall the exact side.

24 the far  
Q. Was it as shown in this exhibit with the vehicle in

25 is, the  
left-hand side parked in the opposite direction; that

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,

begin to 22 do you try to pay attention to people who pull up and

23 consume fuel from your business?

24 A. Yes, sir.

early 25 Q. Were you mindful of that responsibility in the

282

Frederick Wade Skrdla - Cross

1 morning hours of April 19?

2 A. Yes, sir.

Exhibit 3 Q. Tell his Honor, please, Mr. Skrdla, what's shown in

4 31.

to pay 5 A. That would be the check stand or where you would go

6 for your items, your fuel, purchases or anything else.

station 7 Q. And does that fairly accurately represent your work

8 on that day?

9 A. Yes, sir.

10 Q. There is a counter, red in color.

11 A. Yes, sir.

is, the 12 Q. See that? And you'd be on the reverse side; that

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

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

285

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 being whose sketch that you thought you might recognize as

23 within 30, 40 escorted out of the Noble County courthouse right

24 didn't minutes' driving distance of where you saw him and you

25 read The Daily Oklahoman article of it?

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 RECROSS-EXAMINATION

25 BY MR. MACKEY:

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Frederick Wade Skrdla - Recross

another 1 Q. Mr. Skrdla, if you miss your gas station, is it

up? 2 20 miles south before you get another chance to fill

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.

Skrdla. 7 THE COURT: All right. You may step down, Mr.

during 8 I'd remind you, though, that you may be back

with 9 the trial, so you should not talk about your testimony

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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and

1                   Would you state your full name for the record

2                   spell your last name.

name is

3                   THE WITNESS: Raymond Thomas Rozycki. Last

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

and have 1 my own studio for a number of years during that period

2 maintained my skills through that period.

the FBI 3 I've also had training at the FBI academy in

4 police composite art drawing school.

5 Q. How long have you been employed by the FBI?

6 A. 15 years.

since the -- 7 Q. And have you been doing graphic art renditions

8 the whole time?

9 A. Yes, ma'am.

City 10 Q. When did you first become involved in the Oklahoma

11 bombing case?

12 A. On the 19th of April, '95.

13 Q. And what was your first connection to the case?

Fort 14 A. I was called in the evening of the 19th to fly to

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?

of the

12 A. So that I wouldn't be influenced in any way by any  
13 information that he might have.

14 Q. What were the bare essentials that he told you?

that

15 A. The names of the witnesses and again his assessment

better

16 one would be -- one would have more information, had a  
17 vantage point, and would in his estimation make a  
18 witness.

vantage

19 Q. Did he tell you why other than that he had a better  
20 point?

21 A. No.

correct?

22 Q. And that individual was Tom Kessinger; is that

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

Crabtree?

1 Q. Was he present when you were talking about Agent

2 A. I don't remember.

Agent

3 Q. So what did you do after you stopped talking to

4       Crabtree?

in. Sat     5   A. Was introduced to Mr. Kessinger. He was brought

orienting     6   down with him and went through pleasantries and began

him that     7   him to the process that we would go through and told

general     8   we would first talk about the individual that he saw in

about     9   and the situation that he was in, and then I would talk

catalogue     10   the booklet that we use, the facial identification

that     11   and how -- and the form that accompanies that and how

through.     12   would be used in the process that we were going

you two     13   Q. Now, when you were talking with Mr. Kessinger, were

another     14   in a room by yourselves, or was Agent Crabtree and

agent with you?

stayed     15   A. There were two agents in there initially, and they

16   for perhaps a half an hour; and then it was just me and

17   Mr. Kessinger.

he had     18   Q. Did you ask Mr. Kessinger any questions about what

you do it     19   seen, or did he start the description process, or did

20   by asking different kinds of questions?

21   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  
--

Kessinger 18 would it refresh your recollection as to what Mr.  
he was

19 told you as to the physical description of the persons  
describing for you?

21 A. Yes, ma'am. That's all indicated on there, yes.

like him 22 THE COURT: Well, we're at 5:00. Would you

23 to review his notes overnight?

24 MS. MERRITT: Yes, I would, your Honor.

there, 25 THE COURT: All right. And you have the notes

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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.

like to 6 MR. MENDELOFF: Your Honor, one matter we'd

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.)

14 \* \* \* \* \*

15

16

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## 1 WITNESSES (continued)

2 Raymond Thomas Rozycki

3 Direct Examination by Ms. Merritt  
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4 PLAINTIFF'S EXHIBITS

|           | 5 | Exhibit | Offered | Received | Refused | Reserved |
|-----------|---|---------|---------|----------|---------|----------|
| Withdrawn |   |         |         |          |         |          |

6 2A 144

7 26 - 29 196 197

8 30 - 34 279 279

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## REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct  
transcript

3 from the record of proceedings in the above-entitled matter.

5 1997.

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Paul Zuckerman

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Kara Spitler