

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

3 Criminal Action No. 96-CR-68

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs.

7 TIMOTHY JAMES McVEIGH and TERRY LYNN NICHOLS,

8 Defendants.

AA

9

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

11

AA

12

13 Proceedings before the HONORABLE RICHARD P. MATSCH,

14 Judge, United States District Court for the District of

15 Colorado, reconvened at 1:30 p.m., on the 19th day of February,

16 1977, in Courtroom C-204, United States Courthouse, Denver,

17 Colorado.

18

19

20

21

22

23

Produced via Computer by Paul Zuckerman, 1929 Stout Street,
25 P.O. Box 3563, Denver, Colorado, 80294, (303) 629-9285

1 APPEARANCES

2 SEAN CONNELLY, LARRY A. MACKEY, BETH WILKINSON, SCOTT

3 MENDELOFF, JAMIE ORENSTEIN and AITAN D. GOELMAN, Special
4 Attorneys to the U.S. Attorney General, 1961 Stout Street,
5 Suite 1200, Denver, Colorado, 80294, appearing for the
6 plaintiff.

8 Jones, Wyatt & Roberts, 114 East Broadway, Suite 100, Post
9 Office Box 472, Enid, Oklahoma, 73702-0472; JERALYN MERRITT,
10 303 East 17th Avenue, Suite 400, Denver, Colorado, 80203;
11 CHERYL A. RAMSEY, Attorney at Law, Szlichta and Ramsey, 8 Main
12 Place, Post Office Box 1206, Stillwater, Oklahoma, 74076; and
13 CHRISTOPHER L. TRITICO, Attorney at Law, Essmyer, Tritico &
15 Defendant McVeigh.

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

20 * * * * *

21

22

23

24

25

442

1 PROCEEDINGS

2 (In open court at 1:30 p.m.)

3 THE COURT: Be seated, please. Bring in the witness.

4 (Leslie Earl, III, affirmed.)

5 COURTROOM DEPUTY: Would you have a seat, please.

6 Would you state your full name for the record and spell your
7 last name.

8 A. It is Leslie R. Earl, E-A-R-L, the Third.

9 THE COURT: Move the microphone a little, please.

10 Proceed, Ms. Merritt.

11 DIRECT EXAMINATION

12 BY MS. MERRITT:

13 Q. Yes. Agent Earl, how are you employed?

14 A. I'm a special agent with the Federal Bureau of
15 Investigation.

16 Q. And how long have you been so employed?

17 A. Approximately seven and a half years.

18 Q. And when was your first involvement with the investigation
19 of the Oklahoma City bombing?

20 A. I believe it was on April 21, 1995.

21 Q. And where are you stationed from?

22 A. Wichita, Kansas.

23 Q. And what was your first assignment on April 21?

24 A. My first assignment was to go to the Marion County
25 sheriff's office in Kansas.

443

Leslie Earl, III - Direct

1 Q. Okay. Tell me what your first involvement was with an
2 individual named Tim Donahue.

3 A. I met Mr. Donahue at his father's residence in rural Marion
4 County, Kansas.

5 Q. Can you tell me what date and what time you met
6 Mr. Donahue?

7 A. That was April 21, 1995, sometime in the afternoon.

8 Q. Okay. Was this prior to the -- what we refer to as the

10 A. I have no knowledge of when that occurred.

11 Q. Okay. Now, what did you discuss with Mr. Donahue on
12 April 21?

13 A. His knowledge of Terry Nichols.

14 Q. And did Mr. Nichols -- did Mr. Donahue describe to you

15 another individual besides Mr. Nichols?

17 Q. And who was the individual that he described? How did he

18 characterize him?

19 A. As a friend or associate of Mr. Nichols.

20 Q. And what did he tell you about that individual?

21 A. He provided a physical description of him.

22 Q. And can you tell me, did he tell you about how old he

24 A. Approximately mid-thirties. Approximately mid -- 35 years

25 of age.

Leslie Earl, III - Direct

1 Q. Did he give you an approximate height for him?

2 A. Yes, he did.

3 Q. What was the height he gave you?

4 A. I can't recall without referring to my report.

5 Q. Would you like to see a copy of your report?

6 A. Sure.

7 THE COURT: Do you have one we can hand to him?

8 MS. MERRITT: Yes, your Honor.

9 THE COURT: All right. Get it.

10 BY MS. MERRITT:

11 Q. Does that appear to be a copy of your report?

12 A. Yes, it does.

13 Q. Okay. Now, can you tell me, after reviewing your report,

14 what height estimation Mr. Donahue gave you concerning the

15 friend of Terry Nichols.

16 A. 5 feet 11 inches tall.

17 Q. Did he describe his build?

18 A. Yes, he did.

19 Q. What kind of build did he have?

20 A. He described it as thin.

21 Q. How did he describe his hair?

22 A. He described it as dark and worn about mid-ear length.

23 Q. Did he describe any facial hair?

24 A. Yes. He advised that the friend had a scraggly brown

25 beard.

445

Leslie Earl, III - Direct

1 Q. Did he say anything about whether or not this individual

2 wore eyeglasses?

3 A. Yes. He indicated the individual did not wear eyeglasses.

4 Q. Did he comment upon the tidiness of the individual?

5 A. Yes. He described him as sloppy in appearance.

6 Q. What else -- did you discuss anything else about this

7 individual with Mr. Donahue on April 21?

8 A. Yes.

9 Q. What did you discuss?

10 A. Discussed his vehicle.

11 Q. And we're talking now to the friend of Terry Nichols?

12 A. Correct.

13 Q. Okay. Let me take you back. What was the first time that

14 Mr. Donahue told you he had seen this friend of Terry Nichols?

15 A. You're asking me when did --

16 Q. When did Mr. Donahue --

17 A. -- first see the friend?

18 Q. -- first see -- did he tell you when he first saw this

19 friend?

20 A. He did not provide a date to me.

21 Q. Okay. Did he tell you on how many occasions he encountered

22 the friend of Terry Nichols?

23 A. He indicated twice.

24 Q. Okay. Now, did he give you any approximate time frame for

Leslie Earl, III - Direct

2 Q. Okay. What did he tell you about the individual that he

3 saw on this first encounter? How did he describe him?

4 A. You're referring to the friend again?

5 Q. Yes.

6 A. He described him with the description I just gave you.

7 Q. Okay. That was from the first encounter?

9 Q. Are you saying that he gave you the same description of the

10 individual for both encounters?

11 A. He didn't differentiate between the encounters. He gave
12 one description of the friend.

13 Q. Okay. Now, do you know whether or not Mr. Donahue, at this

14 point in time that he's speaking with you, had seen any media

15 depictions of Mr. McVeigh?

16 A. Not that I know of.

17 Q. Did you interview Mr. Donahue on any other occasion?

18 A. Not that I can recall.

19 Q. Did -- at the time you spoke with Mr. Donahue, did he know

20 the identity of the friend of Terry Nichols that he described

21 to you?

22 A. No.

23 MS. MERRITT: May I have a moment, your Honor?

24 THE COURT: Yes.

25 MS. MERRITT: No further questions.

Leslie Earl, III - Direct

1 THE COURT: Mr. Mackey.

2 MR. MACKEY: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. MACKEY:

5 Q. Agent Earl, tell us again approximately what time of day it
6 was that you met Tim Donahue near Marion, Kansas.
7 A. It was afternoon.
8 Q. All right. Was it early afternoon or late, or can you be
9 more specific?
10 A. I can't be more specific than that.
11 Q. Can you be specific in answer to this question: Had you
12 heard the name Tim McVeigh before you went to see Tim Donahue?
13 A. No, I had not.
14 Q. Did you have any descriptive information about an
15 individual known as Tim McVeigh when you went to see Tim
16 Donahue --
17 A. No, I didn't.
18 Q. -- on April 21?
19 A. No.
20 Q. Did you, in the course of your interview of Mr. Donahue,
21 suggest to him in any form or fashion the descriptive
22 information that he gave you?
23 A. No.
24 MR. MACKEY: I have nothing else.
25 THE COURT: May the witness be excused?

448

Leslie Earl, III - Cross

1 MS. MERRITT: Yes, your Honor.
2 THE COURT: All right. You may step down. You're
3 excused. Next, please.
4 MS. MERRITT: Your Honor, we would call Christopher
5 Budke.
6 (Christopher Budke affirmed.)
7 COURTROOM DEPUTY: Have a seat, please.
8 THE WITNESS: Thank you.
9 COURTROOM DEPUTY: State your name -- full name for

10 the record and spell your last name.

11 THE WITNESS: My name is Christopher, middle initial
12 is A., last name is Budke, B-U-D-K-E.

13 COURTROOM DEPUTY: Thank you.

14 DIRECT EXAMINATION

15 BY MS. MERRITT:

16 Q. Agent Budke, how are you employed?

17 A. I'm a special agent with the Federal Bureau of
18 Investigation.

19 Q. And how long have you been employed by the FBI?

20 A. Approximately 13 years.

21 Q. And where are you stationed?

22 A. Kansas City office.

23 Q. Can you tell me when your first involvement with the
24 Oklahoma City investigation was concerning the bombing.

25 A. It would have been several days after the arrest of

449

Christopher Budke - Direct

1 Mr. Nichols. I don't have an exact date, but it would have
2 been a -- anywhere between two to three days after that
3 occurred in Herington.

4 Q. And did you have occasion in the latter part of April,
5 early part of May to interview someone named Timothy Donahue?

6 A. Yes, I did.

7 Q. And can you tell me when that interview took place.

8 A. It was May 1.

9 Q. And at whose instance was the interview being conducted?

10 A. I don't have a strong recollection as to whether I called
11 out there. I believe -- I don't know if I called before I went
12 out there or whether I just showed up out there. I just don't
13 have a recollection of that. But I -- it was an area that I

14 wanted to go. There was an area of discussion that I wanted to
15 talk to him about, so I believe I would have initiated it.
16 Q. What did you want to talk to him about?
17 A. I wanted to talk to him about the -- what happened on
18 September 30, which would have been the last day of employment
19 for Mr. Nichols.
20 Q. Okay. Let's back up a little bit. Was -- did Mr. Nichols
21 work for Mr. Donahue?
22 A. Yes.
23 Q. And Mr. Donahue was a farmer?
24 A. I believe he was at least part owner in many different
25 businesses; but yes, he was a farmer.

450

Christopher Budke - Direct

1 Q. Well, was Terry Nichols employed in connection with the
2 farming or ranching business?
3 A. Yes.
4 Q. And was Terry Nichols, according to Mr. Donahue, living in
5 a house that was rented that was approximately two miles from
6 the farm?
7 A. Yes. I'm not certain about the distance; but, yes, he was
8 living in a house that was rented by the Nichols.
9 Q. Directing -- going back to September 30, is that what you
10 discussed with Mr. Donahue?
11 A. About September 30?
12 Q. Yeah.
13 A. Yeah. That was one of the areas I discussed with him.
14 Q. And did you discuss a certain friend of Terry Nichols with
15 Mr. Donahue?
16 A. That came up during the discussion, yes.
17 Q. Okay. Can you tell me how that came up?

Christopher Budke - Direct

1 McVeigh in television coverage and that he now wanted to convey
2 to me that he had seen Tim McVeigh at the ranch on a couple of
3 occasions.

5 related to the FBI that he believed Terry Nichols' friend that
6 he had encountered was Timothy McVeigh was to you on May 1,
7 1995; right?

8 A. That's the first time he conveyed it to me, yes.

9 Q. Okay. And on May 1, 1995, he told
you that as a result of

10 viewing the media depictions of Timothy McVeigh, he came to
11 this conclusion and wanted to relay it to you; right?

12 A. No. He -- he indicated that he had seen the television
13 coverage. He was quite certain that he had seen Tim McVeigh.

14 Q. Well, prior to seeing the tel -- the television coverage,
15 he didn't call you on the phone and say I now know or I now

16 believe that the friend of Terry Nichols
is Timothy McVeigh;

17 right?

18 A. That's correct. However, he didn't call me this time,
19 either. I mean -- I initiated the -- the interview.

20 Q. Are you aware of any other interviews between Mr. Donahue
21 and any member of the FBI between his first interview on
22 April 21 and your interview on May 1?

23 A. No. I -- I mean, I don't know how
many times he had been

24 interviewed prior. I know that he had been interviewed prior,
25 but I couldn't tell you when that happened or how many times

4 5 3

Christopher Budke - Direct

1 that happened.

2 Q. Okay. But I believe my question is: Are you aware of any

3 other interviews --

4 A. I'm not aware.

5 Q. -- between April 21 and May 1?

6 A. No, I'm not.

7 Q. And it wasn't until May 1 that he advised you that having
8 seen television, Mr. -- the person he knew as Terry Nichols'
9 friend, he believed to be Timothy McVeigh. That was the first
10 time he advised you of this?

11 A. That's correct.

12 Q. Did he tell you what television he had watched, what
13 station, when?

14 A. No.

15 Q. Did he describe the a -- now, did he tell you that he had
16 encountered this friend of Mr. Nichols on two separate
17 occasions?

18 A. He said a couple of times.

19 Q. Did he give a description of this friend at any time to
20 you?

21 A. No, he did not.

22 Q. So you asked him what the friend looked like?

23 A. No. I didn't. He was certain that it was Tim McVeigh that
24 he had seen there, so he didn't -- there was no need to get a
25 physical description of him.

454

Christopher Budke - Direct

1 Q. And so he didn't get into any description of what the
2 encounter was about or how he happened to encounter this
3 friend?

4 A. Yes. Yes. He did give a description of the encounters,
5 yes.

6 Q. Okay. Why don't you give a description of the first

7 encounter.

8 A. He said the first encounter occurred sometime around the
9 end of August, first of September. He was working at an
10 adjoining ranch. I believe it was called the Clover Cliff
11 Ranch. And he indicated that Tim McVeigh pulled up in a car,
12 described the car as being a late '70s, possibly early '80s,
13 two-door, gray or silver sedan. He thought it might have been
14 a Toyota or a Datsun type. And that McVeigh's wife was with
15 him -- I'm sorry -- Nichols' wife was with him and that McVeigh
16 had asked -- had some interaction with him, asked him where
17 Nichols was, indicated they needed a car seat for the baby
18 because they were going to Wichita.

19 Q. Did he tell you how long that encounter lasted?

20 A. I don't recall him telling me that.

21 Q. Did he tell you whether or not the person that he believed
22 to be Mr. McVeigh ever exited the vehicle that he drove up in?

23 A. I don't recall him saying that.

24 Q. Did he tell you whether or not he had a good view of that
25 individual?

455

Christopher Budke - Direct

1 A. I don't recall him saying that, either.

2 Q. Okay. Now, directing your attention to page 2 of your
3 report, the final paragraph.

4 A. I don't have --

5 Q. You don't have your report?

6 A. No.

7 Q. Okay. Do you have your report in front of you?

8 A. Yes, ma'am.

9 Q. Okay. Directing your attention to the last paragraph on
10 page 2, the second sentence. Does it not say that after having
11 seen television coverage of the bombing, Donahue believes that

12 the visitor was Timothy James McVeigh?

13 A. Yes, it does.

14 Q. Thank you. Did he describe -- can you think of anything

15 else that he told you about the individual who drove up with

16 Marife Nichols than what you've told us today?

17 A. No.

18 Q. What did he tell you about the second encounter with the

19 friend of Terry Nichols?

21 he indicated that he had seen him a couple times. He described

22 this first time and then he described a -- he had seen McVeigh

23 at the house three or four days prior to McVeigh leaving -- I'm

24 sorry -- Nichols leaving on October 2. I then got into more of

25 the details of the last day of employment that I wanted to

456

Christopher Budke - Direct

1 discuss with him; and as he was giving me the details of that,

2 he indicated that he had seen Terry Nichols and Tim McVeigh

4 employment.

5 Q. Now, I'm not interested in eliciting any of the details

6 about September 30 other than the -- his recollection of what

7 happened -- his vision of the person he believed to be Timothy

8 McVeigh.

9 A. Okay.

10 Q. Did he describe that individual to you at that time?

11 A. No, he did not.

12 Q. Did he tell you what he saw the individual doing?

13 A. Yeah. He -- he indicated he had seen Terry Nichols and Tim

14 McVeigh working on or -- or placing a camper shell on the back

15 of Terry Nichols' truck.

16 Q. Did he tell you what time of day this was, whether it was

17 day or night?

18 A. He thought it would be sometime around 7 p.m. in the

19 evening.
20 Q. Okay. In the end of September, almost October?
21 A. September 30.
22 Q. Did he tell you if it was light out or dark out?
23 A. No, he did not.
24 Q. Did he tell you whether he had a clear view of this
25 individual or not?

457

Christopher Budke - Direct

1 A. No, he did not.
2 Q. Did he tell you how long he was able to observe this
3 individual?
4 A. No, he did not.
5 Q. Do you recall any other time that Mr. Donahue advised you
6 he encountered this friend of Terry Nichols?
7 A. No, he did not.
8 Q. So as you sit here today, you have never had a conversation
9 with Mr. Donahue about this individual's height, weight, build;
10 is that correct?
11 A. That's correct.
12 Q. Hair color, hair length; is that correct?
13 A. That's correct.
14 Q. Is everything that you can think of that -- about this
15 encounter with Mr. Donahue contained within your report?
16 A. I believe so, yes.
17 Q. Okay. So you haven't left anything out?
18 A. Not to my recollection.
19 Q. Okay.
20 MS. MERRITT: May I have a moment, your Honor?
21 THE COURT: Yes.
22 MS. MERRITT: No further questions.
23 THE COURT: Mr. Mackey.

24 CROSS-EXAMINATION

25 BY MR. MACKEY:

458

Christopher Budke - Cross

1 Q. Agent Budke, could you tell the Judge why it was that you
2 did not go through with Mr. Donahue and elicit specific facts
3 about the conditions of these observations or physical
4 descriptions of the person he was describing?

5 A. Mr. Donahue was quite certain that the individual he had
6 seen on those two occasions was, in fact, Tim McVeigh, so I did
7 not go into details of height and description and those
8 matters.

9 Q. Did you have a photograph of Tim McVeigh with you when you
10 saw Tim Donahue on May 1?

11 A. No, I did not.

12 Q. Did you have any physical descriptive data about Tim
13 McVeigh when you saw Tim Donahue?

14 A. I may have had some in my head, but I didn't have anything
15 to show him as far as height and weight. I mean, I had been
16 briefed at some point in time.

17 Q. And whatever you may have known about Mr. McVeigh, you did
18 not volunteer to Mr. Donahue when you met him?

19 A. That's correct.

20 Q. Who was it that raised the subject of association between
21 the man on TV of Tim McVeigh and the person seen at the Donahue
22 ranch?

23 A. This Mr. Donahue.

25 MS. MERRITT: No further questions, your Honor. I'm

459

1 sorry.

2 THE COURT: May he be excused?

3 MS. MERRITT: Yes, your Honor?

4 MR. MACKEY: Yes, your Honor.

5 THE COURT: You may step down. You're excused.

6 Next, please.

8 would be FBI Agent Stuart Doyle.

9 THE COURT: Okay.

10 I just excused Agent Budke, but did you want him,
11 Mr. Woods?

12 MR. WOODS: Your Honor, I think he understands that
13 he's coming back here.

15 and see that he's scheduled to testify again. All right.

16 (Stuart Doyle affirmed.)

17 COURTROOM DEPUTY: Would you have a seat, please.
18 Would you state your full name for the record and spell your
19 last name.

20 THE WITNESS: Stuart Doyle, D-O-Y-L-E.

21 COURTROOM DEPUTY: Thank you.

22 DIRECT EXAMINATION

23 BY MS. MERRITT:

24 Q. Agent Doyle, how are you employed?

25 A. I'm a special agent with the FBI.

460

Stuart Doyle - Direct

1 Q. And how long have you been so employed?

2 A. 13 years.

3 Q. And when did you first become involved in the Oklahoma City
4 bombing investigation?

5 A. I believe it was the 19th of April.

6 Q. And do you recall encountering an individual named Glynn
7 Tipton?

8 A. Yes.

9 Q. Can you tell me when that occurred, when the first time it
10 was that you met him?

11 A. May 1 of 1995.

12 Q. And why were you meeting him?

13 A. I was following up a lead from the OKBOM case
14 investigation.

15 Q. And what lead were you following up?

16 A. We were following up several credit card calls that had
17 been placed around the country.

18 Q. And did you -- how did you contact Mr. Tipton and let him
19 know that you wanted to follow up on a lead about credit card
20 calls?

21 A. I believe we showed up at his business, VP Racing.

22 Q. And what is VP Racing?

23 A. It's a business that sells racing additives to people,
24 dragsters.

25 Q. And at this time, did you ask Mr. Tipton about a telephone

461

Stuart Doyle - Direct

1 call he received on October 7, 1994?

2 A. Yes.

3 Q. And this interview was on May 1, 1995; correct?

4 A. Yes.

5 Q. So you were inquiring about a telephone number that you had
6 that had been dialed to -- or that had been dialed to his place
7 of business --

8 A. Yes.

9 Q. -- back in October?

10 A. Yes.

11 Q. And was Mr. Tipton able to recall that telephone call from

12 back in October?
13 A. Yes, he was.
14 Q. Did you give him any details to assist him?
15 A. I gave him the date the call had been placed, the time the
16 call had been placed, and possibly, I gave him the duration of
17 the call. I don't recall that.
18 Q. Do you know how many times that call had been placed --
19 that number had been dialed between October and May?
20 A. No, I don't.
21 Q. What did Mr. Tipton tell you about the call?
22 A. About the call?
23 Q. Uh-huh.
24 A. He said that a man had called him, wanting to follow up on
25 a conversation that he'd had earlier in the week about getting

462

Stuart Doyle - Direct

1 some anhydrous hydrazine and whether Mr. Tipton was able to get
2 that additive or not.
3 Q. Did he tell you -- okay. That was the call; correct?
4 A. Yes, ma'am.
5 Q. Did he tell you whether or not he ever encountered an
6 individual who was seeking to purchase that substance?
7 A. Yes, he did.
8 Q. And did he tell you when that occurred?
9 A. The weekend of October 1 and 2 of '94.
10 Q. Did he give you a date during that weekend that this
11 occurred?
12 A. I believe he gave me the 1st. The Saturday.
13 Q. And was he working at the Sears Craftsman National Drag
14 Race in Topeka that weekend?
15 A. Yes.
16 Q. Now, it's your recollection that he told you Sunday,

17 October 2?

18 A. No. He told me the 1st. Saturday.

19 MS. MERRITT: Your Honor, may I have his 302 handed to
20 him?

21 THE COURT: Yes.

22 BY MS. MERRITT:

23 Q. Directing your attention to the first page of the report,
24 the second paragraph, third line. Does that not indicate that
25 it was Sunday, October 2, he told you that he encountered an

463

Stuart Doyle - Direct

1 individual at the racetrack?

2 A. Yes, it does.

3 Q. Now, what did the individual -- the individual told him his
4 name was John; is that correct?

5 A. Yes, ma'am.

6 Q. And the individual inquired about purchasing anhydrous
7 hydrazine; is that correct?

8 A. Yes, ma'am.

9 Q. Now, Mr. Tipton didn't tell this person no, he told him
10 he'd check and see if he could do that; correct?

11 A. Correct.

12 Q. And he told him that he would check the next day, which was
13 Monday, October 3; is that correct?

14 A. He told him he would check with his supplier and get back
15 to him, yes.

16 Q. But didn't he say that he would check on October 3?

17 A. Yes.

18 Q. Now, this encounter was on -- did he later come to tell you
19 that the encounter was on October 1 instead of October 2?

20 A. In reviewing my notes, he said October 1, Saturday.

21 Q. So this was a typographical error in the report?
22 A. Yes, ma'am.
23 Q. Okay. Now, to your knowledge, had Mr. Tipton ever seen
24 John again? Did he ever have a meeting with this individual
25 named John about purchasing the anhydrous hydrazine after

464

Stuart Doyle - Direct

1 October 1, 1995?
2 A. Personally meet him, no.
3 Q. So -- and you're -- you're not speaking to him about this
4 until May 1 -- I'm sorry. It was October 1, 1994. Now, you're
5 not speaking to him until May 1, 1995; correct?
6 A. Yes.
7 Q. So in this time period, he's seen this individual once;
8 correct?
9 A. Yes.
10 Q. Did he -- how did he physically describe the person to you?
11 A. He described him as a white male, mid-twenties, slender
12 build, brown hair, 5' 10" to 6-foot, two- to three-day growth
13 of whisker stubble.
14 Q. Did he give you a height?
15 A. He gave me several heights.
16 Q. How about on this date in -- on May 1, 1995? What height
17 did he give you?
18 A. Initially, he gave me a height of 5' 8".
19 Q. Did he alter that height to you on May 1?
20 A. Yes, ma'am.
21 Q. Okay. When on May 1 did he alter his description of the
22 height?
23 A. After we talked more in the interview, he --
24 Q. Go ahead.
25 A. He remembered that he was not standing on the same level as

Stuart Doyle - Direct

- 1 the subject known as John and he altered the height.
- 2 Q. Okay. And what did he alter the height to?
- 3 A. To my height.
- 4 Q. Okay. And is that contained in your report?
- 5 A. The 6-foot is, yes.
- 6 Q. Okay. Now, he saw this individual in October and he's
- 7 relating the description of him to you in May; correct?
- 8 A. Yes.
- 9 Q. But he told you about several other contacts he had in
- 10 between October and May with respect to this individual, didn't
- 11 he?
- 12 A. I only recall the phone call. If you call that a contact.
- 13 Q. Didn't he tell you that after speaking with his supplier
- 14 about the request of this individual to purchase anhydrous
- 15 hydrazine, that he contacted the office of the ATF in New
- 16 Orleans, Louisiana?
- 17 A. Yes, he did.
- 18 Q. And wasn't -- didn't he tell you that he was told by the
- 19 ATF in New Orleans to contact the ATF in Kansas City?
- 20 A. Yes, ma'am.
- 21 Q. And didn't he also tell you that he contacted the ATF in
- 22 Kansas City?
- 23 A. Yes, he did.
- 24 Q. And didn't he also tell you that he received no follow-up
- 25 from that telephone call?

Stuart Doyle - Direct

- 1 A. Yes, he did.

2 Q. And he was calling at that time to report it was somewhat
3 strange that someone wanted to purchase anhydrous hydrazine
4 because he had now obtained new information about it?

5 MR. GOELMAN: Objection, your Honor. This is outside
6 the subject matter.

7 THE COURT: Yes. Why are we in this area?

8 MS. MERRITT: To talk about the different times that
9 he had conversations with this person and another person, but
10 didn't have any physical opportunity to view the person.

11 THE COURT: So how is that relevant?

12 MS. MERRITT: Well, it's relevant to show that his
13 description is based on something that occurred back in October
14 and also to report that he didn't have a significant enough
15 degree of attention to think it warranted following up again on
16 the telephone call and reporting it, especially after the
17 bombing.

18 THE COURT: Sustained.

19 BY MS. MERRITT:

20 Q. Did --

21 MS. MERRITT: I understand that the Court ruled on
22 that objection. Are you ruling on it for the whole topic as
23 to --

24 THE COURT: Yes. It has nothing to do with what we're
25 here for.

467

Stuart Doyle - Direct

1 MS. MERRITT: Okay.

2 BY MS. MERRITT:

3 Q. Now, the first -- when you spoke to him on May 1, it was
4 post-bombing; correct?

5 A. Yes.

6 Q. And it was your understanding that he had seen media

7 depictions of the individual who was brought out of the Noble
8 County Jail on April 19 -- April 21; correct?
9 A. I don't recall him saying that, no.
10 Q. What do you recall him saying about what he viewed in terms
11 of media depictions?
12 A. I don't recall him saying anything about media.
13 Q. Did you show any pictures to Mr. Tipton?
14 A. Yes.
15 Q. And did you show him two pictures?
16 A. Two pictures.
17 Q. And was one of these pictures of Timothy McVeigh and one of
18 these pictures of Terry Nichols?
19 A. Yes.
20 Q. And did you ask him to select the person he knew as John
21 from the two photographs of Terry Nichols and Timothy McVeigh?
22 A. That's not the way I worded it.
23 Q. Okay. Why don't you tell me how you worded it.
24 A. I asked him if he could identify either of these subjects
25 as the subject known to him as John that he had met on that

468

Stuart Doyle - Direct

1 weekend, August 1 and 2 of 1994.
2 Q. Now, what other admonitions did you give him prior to
3 showing him these two photographs?
4 A. No.
5 Q. Did you give him any other admonitions?
6 A. No.
7 Q. Did you -- you didn't tell him to base his selection, if
8 there was going to be one, on his own memory and not on any
9 media depictions he might have seen?
10 A. I asked him to think back to that weekend and recall that

11 weekend.

12 Q. Okay. So the answer to my question is no, you didn't tell
13 him not to use -- you didn't tell him to disregard any media
14 depictions he saw?

15 A. I don't understand your question. Repeat your question.

16 Q. Did you say to him, Mr. Tipton, when you are looking at
17 these photographs, please rely only on your own memory and
18 don't rely on anything you saw in the media or on television,
19 or words to those effect -- that effect?

20 A. I don't recall that.

21 Q. Okay. Did you tell him that the individual that he knew as
22 John might or might not be in those two photographs?

23 A. No, I did not tell him that.

24 Q. Did you tell him that you believed that the individual
25 he -- he met named John was one of those two photographs?

469

Stuart Doyle - Direct

1 A. No.

2 Q. What did he tell you as he looked at the photographs? How
3 long did it take him to review the photographs?

4 A. Mr. Nichols' photograph, it was not that long at all, as I
5 recall. He discounted him.

6 Q. He discounted Mr. Nichols. And then what did he do with
7 respect to the other photograph?

8 A. He looked at Tim McVeigh's photograph and said that their
9 faces were similar in the fact that they were both slender-
10 faced and that he would -- couldn't be positive, but he thought
11 McVeigh resembled the subject known as John.

12 Q. So he said that Mr. McVeigh resembled the subject, but he
13 couldn't be positive; correct?

14 A. Yes, ma'am.

15 Q. Now, have you had any training in displaying photo spreads
16 to suspects or to individuals to identify suspects?

17 A. Training?

18 Q. Uh-huh.

19 A. I --

20 Q. Training in what you're supposed to say to the person
21 viewing the photograph?

22 A. I wouldn't call it training, but I know what to say,

23 usually, yeah.

24 Q. Okay. Can you tell me what you said to Mr. McVeigh -- to

25 Mr. Tipton.

470

Stuart Doyle - Direct

1 A. I thought I said -- I showed him -- I said, I'll give --
2 show you two photographs. Can you recall if either of these
3 subjects were John on the weekend of August 1?

4 Q. Did anyone tell you to only show two photographs -- one of

5 Mr. Nichols and one of Mr. McVeigh -- to Mr. Tipton?

6 A. No.

7 Q. This was your decision?

8 A. Well, we were given those two photographs mainly to
9 discount people or to rule them out.

10 Q. When you say "we were given those photographs," who else
11 was given that photograph besides you?

12 A. Several of the team members at the OKBOM investigation out
13 of Junction City.

14 Q. You were all provided with only two photographs, one of
15 Mr. Nichols and one of Mr. McVeigh?

16 A. Unless you were shown a lineup, yes.

17 Q. Were you -- were other members of the team, to your
18 knowledge, given more photographs?
19 A. I don't recall that.
20 Q. Okay. So to your knowledge, you don't -- you don't have
21 any personal knowledge of any members of your team receiving
22 photographs in addition to those of Mr. Nichols and
23 Mr. McVeigh?
24 A. I don't understand your question.
25 Q. Of your own personal knowledge, you don't know whether any

471

Stuart Doyle - Direct

1 other agent received pictures of individuals other than
2 Mr. Nichols and Mr. McVeigh?
3 A. Yes. I don't recall.
4 Q. Now, how did Mr. Tipton indicate his selection of the
5 photograph of Mr. McVeigh to you?
6 A. By what I said he -- I recall that he said that he couldn't
7 be positive that Tim McVeigh was the subject known as John, but
8 they both had slender faces and he resembled him.
9 Q. Now, did you lay these photographs out? Did he view them
10 by taking them in his hand? How -- what was he doing as he was
11 looking at these photographs from what point?
12 A. I don't remember.
13 Q. Do you recall whether, when he made his selection, he
14 pointed at the photograph or he picked it up, anything like
15 that?
16 A. I don't recall, ma'am.
17 Q. What did you say to him after he selected the photograph of
18 Mr. McVeigh?
19 A. That ended the interview.
20 Q. You made no comment to him whatsoever concerning his
21 selection?

- 22 A. Not that I recall.
- 23 Q. Did you indicate to him in any fashion that you knew which
- 24 photograph was Timothy McVeigh?
- 25 A. I don't recall that.

Stuart Doyle - Direct

- 1 Q. Is it possible that you did that?
- 2 A. Possible.
- 3 MS. MERRITT: May I have a moment, your Honor?
- 4 THE COURT: Yes.
- 5 MS. MERRITT: No further questions.
- 7 MR. GOELMAN: Yes, your Honor. Thank you.

8 CROSS-EXAMINATION

- 9 BY MR. GOELMAN:
- 10 Q. Good afternoon, Agent Doyle.
- 11 A. Good afternoon.
- 12 Q. You indicated to Ms. Merritt that it was possible that you
- 14 A. Excuse me?
- 15 Q. You just said to Ms. Merritt that it was possible that you
- 16 said something about Mr. McVeigh when you handed the picture to
- 17 Ms. Merritt; is that right?
- 18 A. Only a statement that I made to her about do you recall
- 19 either of these subjects being the subject known as John on the
- 20 weekend of the 1st or 2nd.
- 21 Q. Do you recall -- do you remember saying anything to
- 22 Mr. Tipton about Mr. McVeigh?
- 23 A. No.
- 24 MR. GOELMAN: That's all I have, your Honor.
- 25 MS. MERRITT: Nothing further.

1 THE COURT: All right. You may step down. You're
2 excused.

3 Next, please.

4 MS. MERRITT: I'm sorry. Agent Larry Tongate.

5 THE COURT: Here we are. He's standing here.

6 (Larry Tongate affirmed.)

7 COURTROOM DEPUTY: Have a seat, please.

8 State your full name for the record and spell your
9 last name, please.

10 THE WITNESS: Larry G. Tongate, T-O-N-G-A-T-E.

11 COURTROOM DEPUTY: Thank you.

12 DIRECT EXAMINATION

13 BY MS. MERRITT:

14 Q. Agent Tongate, how are you employed?

15 A. I'm a special agent with the FBI, assigned to Kansas City,
16 Missouri.

17 Q. And how long have you been so employed?

18 A. Approximately 24 years.

19 Q. And where are you stationed?

20 A. Kansas City.

21 Q. And when was your first involvement in the Oklahoma City
22 bombing investigation?

23 A. As I recall, I did review some records in the Kansas City
24 area on April 20, 1995, but my real active involvement began on
25 April 21 -- the afternoon of April 21 when I went to Herington,

474

Larry Tongate - Direct

1 Kansas.

2 Q. Did you have an opportunity on May 2, 1995, to contact an
3 individual named Fred Skrdla?

4 A. No, I did not.

5 Q. Okay. You're right.

6 Did you have an opportunity to contact Marian Ogden on
7 November 14, 1995?

8 A. That one, I recognize, yes.

9 Q. Okay. How did you -- how did you have an opportunity to
10 contact him? Why did you contact him?

11 A. I had been conducting a number of interviews in the Marion,
12 Kansas, area regarding this investigation, and I learned of
13 Mr. Ogden's name from one of the local citizens there in
14 Marion; that he may have purchased some furniture from Terry
15 Nichols or Terry Nichols' residence from a sale that Terry
16 Nichols had in the fall of 1994.

17 Q. So you were investigating something that happened a year
18 previously; correct?

19 A. Yes.

20 Q. And this was also something that happened six months before
21 the bombing, approximately?

22 A. Approximately.

23 Q. Okay. Where did you contact Mr. Ogden? Where did you find
24 him?

25 A. I found him at Marion High School.

475

Larry Tongate - Direct

1 Q. And when you contacted him, did you advise him that you
2 wanted to interview him concerning the Oklahoma bombing?

3 A. Yes, I did.

4 Q. And did you tell him that he was being interviewed
5 concerning a possible furniture purchase from the residence of
6 Terry Nichols back in October, 1994?

7 A. I think I said the fall of 1994.

8 Q. And what was his response?

9 A. He knew why I was there and that he had knowledge

10 concerning that furniture sale at Terry Nichols' residence.

11 Q. When you say that he knew you were -- why you were there,

12 did he ever tell you why he hadn't contacted you?

13 A. I don't believe he did.

14 Q. Did you ever ask him?

15 A. I don't recall asking him why. I just indicated that I had

16 come up with his name and he indicated that he did have

17 information regarding that sale.

18 Q. Okay. Did he tell you when the sale was?

19 A. He didn't remember specifically. He knew it was in the

20 fall of 1994. I did give him some information, asked him if he

21 had responded to an advertisement, and that's what led him to

22 what he believed was Terry Nichols' residence.

23 Q. Did you have a copy of the advertisement with you at this

24 time?

25 A. I'm not sure. I probably did.

476

Larry Tongate - Direct

1 Q. Do you remember if you showed Mr. Ogden a copy of this

2 advertisement?

3 A. I don't believe I did.

4 Q. Did you ever tell him the date on the advertisement?

5 A. I did not.

6 Q. So he was never able to be more specific with you than this

7 happened during the fall of 1994; is that correct?

8 A. That's correct.

9 Q. Now, what did he tell you about his encounter at the garage

10 sale house, the house he went to to go to the garage sale?

11 A. Well, he indicated that he had read an ad in the Marion

12 Record and that he had called a number and talked to a male who

13 gave him directions to a residence. He then drove to that

14 residence, drove into the driveway, knocked on the door and Tim

15 McVeigh answered the door.

16 Q. He said to you Tim McVeigh answered the door?

17 A. Yes, he did.

18 Q. Did he tell you whether he knew Mr. McVeigh prior to the

19 time that he purchased -- that he was at that residence?

20 A. No, he did not tell me that. I didn't ask him if he knew

21 him prior, but it was my understanding from the context of the

22 interview that was the first encounter he had had with him.

23 Q. And did he tell you that he didn't know the person or he

24 did not have any reason to know who Timothy McVeigh was or that

25 that person might be Timothy McVeigh at the time he encountered

477

Larry Tongate - Direct

1 him back in October of 1994, or the fall of '94?

2 A. What he told me was at the time that he went to the

3 residence, that the individual he met did not give his name as

4 Tim McVeigh to him.

5 Q. Did he give any name?

6 A. Not that he -- he could recall is what he told me.

7 Q. And he told you that after he saw media depictions of

8 Mr. McVeigh in April of 1995, he came to believe that the

9 individual he encountered back in October of 1994 was Timothy

10 McVeigh?

11 A. Yes.

12 Q. Did he describe the person he encountered in October 1994

13 at Terry Nichols' residence?

14 A. Yes, he did.

15 Q. And how did he physically describe him to you?

16 A. As I recall, he indicated that the individual was a white

17 male, tall, and slender with the same face as Timothy McVeigh.

18 Q. Well, did he say the same face as Timothy McVeigh or the

19 same facial features he observed on news accounts?
20 A. I'm playing with words here. I guess the same facial
21 features, but I take it to mean in my discussions with him that
22 he was describing the face of Timothy McVeigh.
23 Q. Okay. And have you reviewed your report recently?
24 A. Yes.
25 Q. Okay. And isn't true that in your report, you state that

478

Larry Tongate - Direct

1 he told you the individual had the same facial features as he
2 had observed on news accounts?
3 A. Yes.
4 Q. Thank you. Did he give you a height estimate for this
5 individual?
6 A. I just -- I recall him just saying he was tall.
7 Q. Did he give you a hair color for this individual?
8 A. He did not.
9 Q. Did he give you a hair length for this individual?
10 A. He did not.
11 Q. Did he describe the build of this individual?
12 A. Slender.
13 Q. Okay. Did he describe any facial features such as acne,
14 glasses, anything like that?
15 A. He simply said that it was the same facial features of Tim
16 McVeigh.
17 Q. Okay. Did he tell you how long his encounter with Mr. --
18 with this person was?
19 A. About 15 minutes.
20 Q. Did he tell you whether he had ever had occasion to
21 personally encounter this individual again?
22 A. He did not.
23 Q. So he is telling -- he is recollecting for you his

24 description of an individual he had seen a year before on a
25 single occasion; correct?

479

Larry Tongate - Direct

1 A. Yes.

2 Q. And his standard of reference for his identify -- his
3 selection of that individual is media accounts of the portrayal
4 of that individual; correct?

5 A. That and his 15-minute meeting with this individual.

6 Q. But it was the media account that made him believe that the
7 individual he encountered back in October was Mr. McVeigh --

8 A. That's correct.

9 Q. -- correct?

10 MS. MERRITT: May I have a moment, your Honor?

11 THE COURT: Yes.

12 MS. MERRITT: No further questions.

13 MR. GOELMAN: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. GOELMAN:

16 Q. Did the person who led you to interview Mr. Ogden say
17 anything to you about Mr. Ogden having seen Tim McVeigh?

18 A. He did not.

19 Q. So at the time you spoke to Mr. Ogden, did you personally
20 have any idea that Mr. Ogden had seen Tim McVeigh?

21 A. I did not.

22 Q. You said -- told Ms. Merritt that Mr. Ogden said that he
23 knocked on the door and Tim McVeigh answered?

24 A. That's exactly how he described it to me when I asked him
25 to describe the events of what happened when he went out to the

480

Larry Tongate - Cross

- 1 house.
- 2 Q. Okay. To that point in the conversation, had you mentioned
- 3 the name Tim McVeigh?
- 5 Q. Did Mr. Ogden tell you anything about his level of
- 6 certainty that the man he observed was Tim McVeigh?
- 7 A. He was absolutely certain that the man he met was Tim
- 8 McVeigh.
- 9 Q. Did you do anything to reinforce his belief, Agent Tongate?
- 10 A. I did not.

- 12 MS. MERRITT: No further questions, your Honor.
- 13 THE COURT: All right. You may step down. I guess
- 14 you're not excused. You have to be present.
- 15 Next witness, please.
- 16 MS. MERRITT: Eric Gerstein, your Honor.
- 17 THE COURT: Okay.
- 19 COURTROOM DEPUTY: Have a seat, please.
- 20 Please state your full name for the record and spell
- 21 your last name.
- 22 THE WITNESS: Eric Gerstein, G-E-R-S-T-E-I-N.
- 23 COURTROOM DEPUTY: Thank you.
- 24 DIRECT EXAMINATION
- 25 BY MS. MERRITT:

481

Eric Gerstein - Direct

- 1 Q. Agent Gerstein, how are you employed?
- 2 A. I'm a special agent with the Federal Bureau of
- 3 Investigation, currently assigned to the Kansas City division.
- 4 Q. Okay. How long have you been employed with the FBI?
- 5 A. About five years and nine months.
- 6 Q. And can you tell me when your first involvement in the
- 7 investigation of the Oklahoma City bombing was.

8 A. I was sent down to Oklahoma City the day after the bombing
9 on April 20 and responded down there. I was assigned down in
10 Oklahoma City for about three weeks.

11 Q. And on May 2, 1995, did you have an occasion to interview
12 someone named Fred Skrdla?

13 A. Yes, I did.

14 Q. And what was your purpose in contacting Mr. Skrdla?

15 A. I believe that I was assigned to attempt to identify Fred,
16 last name unknown, who had spoken with a trucker, Seb Johnson,
17 who had called into the FBI and stated that Fred at the Texaco
18 station on I-35 north of Oklahoma City had told him he saw
19 someone that he believed was the individual identified in
20 Composite Drawing No. 1.

21 Q. Now, do you know when this tip or lead came in?

22 A. I believe it came in on the 2nd. May 2.

23 Q. So you went out there the same day?

24 A. That's correct.

25 Q. Okay. And was Mr. Skrdla at the Texaco station when you

482

Eric Gerstein - Direct

1 arrived there?

2 A. No, he was not.

3 Q. How did you find him?

4 A. I talked to employees there at the Texaco. They advised me
5 they had an employee there named Fred Skrdla, and they provided
6 me with his address and telephone number.

7 Q. Did you go to his house?

8 A. No, I did not.

9 Q. How did you contact him?

10 A. I contacted him by telephone from the Texaco station.

11 Q. When you contacted him by telephone, did you tell him that
12 you were investigating the Oklahoma City bombing?

13 A. Yes, I did.

14 Q. What else did you relate to him?

15 A. I relayed to him that -- the way in which we had gotten his
16 name, which was through the trucker, Seb Johnson. And that I
17 was currently at the Texaco station and had been given his name
18 and telephone number by the employees there at the Texaco.

19 Q. How did he respond?

20 A. He was familiar with -- I believe he was familiar with
21 Mr. Johnson, and he seemed familiar with the composite drawings
22 that were on the news.

23 Q. Did it seem like he was expecting you to call him?

24 A. I don't recall.

25 Q. What did he relate to you about his encounter with an

483

Eric Gerstein - Direct

1 individual that looked like someone in a composite drawing?

2 A. He advised me that an individual that he believed was the
3 individual depicted in Composite Drawing No. 1 had purchased
4 gas from him on the morning of April 19. He said that the
5 individual was driving a Ryder truck. He estimated the truck
6 was 22 to 26 feet in length. And that the man had paid in
7 cash.

8 Q. Did he tell you what time in the morning this occurred?

9 A. Yes. He stated between 1 and 3 a.m. in the morning.

10 Q. Did he tell you what kind of vehicle he was driving?

11 A. Yes. He said a Ryder truck.

12 Q. Did he tell you whether -- did he give you any reason for
13 why he would pay attention to this?

14 A. He noticed the Ryder truck because it was parked at the

15 gasoline island, and he told me that this was unusual. Most of
16 the trucks there were parked at the diesel island.

17 Q. Did he seem like there were -- that he had encountered
18 numerous Ryder trucks before at the diesel island -- I mean at
19 the Texaco station?

20 A. He didn't say.

21 Q. But he had had some experience because that's why he told
22 you he thought it was unusual?

23 A. It was unusual to see a large truck at the gasoline island.

24 He didn't specify Ryder versus any other type of truck.

25 Q. Okay. So he didn't tell you he saw an individual in a

484

Eric Gerstein - Direct

1 Ryder truck?

2 A. No. He did say there was an individual in a Ryder truck.

3 He did not say that it was unusual to see a Ryder truck
4 necessarily at the -- at the gasoline island versus the diesel
5 island.

6 Q. But he told you that he thought it was unusual that this
7 particular truck, which happened to be a Ryder, pulled up to
8 the gasoline island instead of the diesel island; correct?

9 A. That's correct. Because it was a large truck.

10 Q. Okay. Are you aware of whether Ryder trucks that are
11 somewhere in excess of 20 feet use diesel or gasoline?

12 A. I'm not aware of that.

13 MR. MACKEY: Objection, your Honor.

14 THE COURT: Well, he's already answered.

15 BY MS. MERRITT:

16 Q. Now, did Mr. Skrdla tell you where he was located

17 physically at the time he saw the Ryder truck drive up to the
18 gasoline island?

19 A. No, he did not.

- 20 Q. He didn't mention to you whether he was being inside
21 someplace as a cashier, or outside pumping gas?
22 A. I don't recall.
23 Q. Did he tell you whether the individual was accompanied by
24 any other individuals?
25 A. He told me that he did not see any other individuals.

485

Eric Gerstein - Direct

- 1 Q. And did he tell you that the gas station was very busy that
2 night?
3 A. Yes, he did.
4 Q. And he told you that it was specifically busy at the time

6 A. That's correct.
7 Q. And he told you that he saw in some form of the media a
8 composite drawing of Un. Sub. No. 1?
9 A. That's correct.
10 Q. And did he tell you that when he saw this composite
11 drawing, that's when he recognized the -- that he or -- that's

13 purchased gas from him on the early morning hours of April 19
14 was the person depicted in Composite Drawing No. 1?
15 A. He stated that the person depicted in Composite Drawing No.
16 1 was the person he saw on the morning of the 19th.
17 Q. Now, did he tell you what about the composite and the
18 person reminded him of each -- what about them were similar?

20 Q. Did he tell you about -- anything about the person that was
21 different than the composite?
22 A. Not that I recall.
23 Q. So he didn't give you any differing features, only similar
24 features?
25 A. I don't know that I specifically compared his description

Eric Gerstein - Direct

- 1 with the composite. My 302 documented what he told me.
- 2 Q. Okay. Now, he told you that he recognized the person when
- 3 he saw the composite drawing; is that correct?
- 4 A. That's correct.
- 5 Q. And then he told you that when he saw the walkout from the
- 6 Noble County Jail, he was certain that was the person; correct?
- 7 A. That's correct.
- 8 Q. And to your knowledge, he has never -- strike that.
- 9 What was the physical description that he gave you of
- 10 this -- of the customer?
- 11 A. He described the customer as a white male, 6-foot to
- 12 6-foot-1 in height, 175 pounds, in his mid-twenties with a crew
- 13 cut, brown hair. Clothing description was a white T-shirt and
- 14 loose-fit baggy pants and lace-up boots.
- 15 Q. Did he say anything about -- did he connect his appearance
- 16 in any fashion to the military?
- 17 A. He said that he had a military look about him based on his
- 18 clothes and his physical appearance.
- 19 Q. And did he tell you that one of the reasons that he
- 20 remembered this individual is because he didn't look like a
- 21 professional truck driver?
- 22 A. I don't recall that.
- 23 Q. To your knowledge, has he ever given a description of this
- 24 customer or Mr. McVeigh prior to the time he saw him depicted
- 25 in the composite -- the person he believes to be him depicted

Eric Gerstein - Direct

- 1 in Composite No. 1?
- 2 A. Do you mean prior to my contact?

3 Q. Yeah. Do you have any knowledge of him ever describing
4 this individual prior to that?

5 A. No, I don't.

6 Q. Have you ever talked to any other people about Mr. Skrdla's
7 encounter with this individual?

8 A. No, I have not.

9 Q. Do you know of any other customers of that gas station
10 between 1 and 3 in the morning?

11 A. Not that I know of.

12 Q. You haven't interviewed any of the other customers who were
13 at that gas station between 1 and 3 in the morning?

14 A. I have not.

15 Q. You don't recall that he told you he was inside a cashier
16 booth?

17 A. I don't recall that.

18 Q. Do you recall that he was ringing up food sales at the same
19 time he was ringing up gas sales?

20 A. I just recall that he said he was very busy. I didn't ask

21 him what his exact duties were at the time.

22 Q. Did he tell you how he pinned down the time?

23 A. When I reviewed my notes, I noticed that he said the time
24 was prior to the time he called in for EFS, and I don't recall

25 exactly what that stood for.

488

Eric Gerstein - Direct

1 Q. Did you ask him?

2 A. I don't recall.

3 Q. So he just told you that he -- it was before he did

4 something else; but you don't know what that something else he
5 did was other than make a telephone call?

6 A. In my notes, it said EFS. And I don't recall at this time
7 what -- what that was.

8 Q. You've mentioned your notes a couple of times now. Do you
9 have handwritten notes still of your encounter with Mr. Skrdla
10 or your interview of him?

11 A. They were provided to the U.S. Attorney's office, and I
12 have a copy here with me, if you'd like them.

13 Q. Did he tell you how many gas islands or diesel islands
14 there were; or since you were there, can you tell us how many
15 gas islands and how many diesel islands were at the station?

16 A. I don't know.

17 Q. Did you have an occasion to look at the viewpoint from the
18 cash register out to the islands?

19 A. I don't believe I looked at that.

20 Q. Do you know what time his shift started or ended?

21 A. I don't think I asked him that.

22 Q. Did you have any -- strike that.

23 Now, this happened on April 19 -- correct -- his
24 encounter with this individual?

25 A. That's correct.

489

Eric Gerstein - Direct

1 Q. And as of May 1, he hadn't called to report it; is that
2 correct?

3 A. Not to my knowledge.

4 Q. Did you ever ask him why not?

5 A. No, I didn't.

6 Q. Did you ever ask him who else he discussed his encounter

7 with?

8 A. No. I don't believe so.

9 Q. But you would agree, would you not, that on May 1, he is
10 reconstructing something that happened some 9 days -- some 11
11 days earlier?

12 MR. MACKEY: Objection to the form of the question.

13 THE COURT: Sustained.

14 BY MS. MERRITT:

15 Q. How certain was he?

16 A. He seemed very certain.

17 Q. Okay. Do you -- he was very certain when he talked to you;
18 correct?

19 A. That's correct.

20 Q. Okay. You don't know how certain he was at the time he
21 viewed either of these composites -- the composite; correct?

22 MR. MACKEY: Objection.

23 THE COURT: Sustained.

24 BY MS. MERRITT:

25 Q. When he said the pants were baggy and loose, did he give

490

Eric Gerstein - Direct

1 you any other description of them?

2 A. He said khaki. But my recollection was that that was -- he
3 was trying to describe the style rather than the color; and in
4 style, he meant loose fit and baggy.

5 Q. What did "khaki" mean to you?

6 A. In his description, it was unclear that -- the clearest
7 terms that he used were loose fit and baggy, because he said
8 khaki, but not -- not referring to the color. And his other
9 words were "baggy and loose fit," so that's what I included in
10 the 302.

11 Q. Now, he said he was wearing a white T-shirt, or he said the

12 person was wearing a white T-shirt?
13 A. That's correct.
14 Q. Did he give you any information as to whether the entire
15 T-shirt was white or whether there were any pictures on the
16 T-shirt or anything else about the T-shirt?
17 A. He didn't say anything else about the T-shirt.
18 Q. He didn't tell you whether it was long sleeved or short
19 sleeved?
20 A. No.
21 Q. Now, to the best of your knowledge, is everything that
22 Mr. Skrdla told you contained in your 302?
23 A. Yes, it is.
24 MS. MERRITT: May I have a moment, your Honor?

491

2 MR. MACKEY: None. Thank you.
3 THE COURT: You may step down. You're excused.
4 MR. MENDELOFF: Your Honor, at this point, I think
5 we've completed the witnesses the defense has listed for their
6 portion of this proceeding. We have three witnesses relating
7 to the McVeigh brief concerning the Noble County walkout, and
9 went on to the Nichols part of the case.
10 THE COURT: Yes.
11 MR. MENDELOFF: Thank you, your Honor.
12 MR. GOELMAN: Your Honor, the Government calls James
13 Adams.
14 (James Adams affirmed.)
15 THE COURTROOM DEPUTY: Have a seat, please.
16 Would you state your full name for the record and
17 spell your last name, please.
18 THE WITNESS: James F. Adams. A-d-a-m-s.

19 THE COURTROOM DEPUTY: Thank you.

20 THE COURT: Proceed.

21 MR. GOELMAN: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. GOELMAN:

24 Q. Good afternoon, Mr. Adams.

25 A. Good afternoon.

492

James Adams - Direct

1 Q. What is your job?

2 A. I'm currently the agent in charge of the Dallas FBI office.

3 Q. And how many agents do you supervise there, sir?

4 A. 238 agents and 192 support.

5 Q. How long have you worked for the FBI?

6 A. Just short of 27 years.

7 Q. Were you in the military before joining the FBI?

8 A. I was.

9 Q. Describe that experience briefly, please.

10 A. I was in the Marine Corps. for approximately four years.

11 Q. In the course of your military and FBI experience, have you

12 had experience with the use of helicopters, sir?

13 A. Yes, I have, both in Vietnam and also an instructor at

14 Quantico.

15 Q. What did you -- what course did you instruct at Quantico?

16 A. I taught helicopter extraction and rappelling.

17 Q. What was your position at the time of the bombing in

18 Oklahoma City, sir?

19 A. I was a senior assistant special agent in charge of the

20 Dallas FBI.

21 Q. After the bombing, were you assigned to work on that

22 investigation?

23 A. Yes, I was.

24 Q. When was that?

25 A. I was called the day of the bombing, and I reported to

493

James Adams - Direct

1 Oklahoma City the next morning.

2 Q. That would be Thursday, April 20, 1995?

3 A. That's correct.

4 Q. What were your responsibilities on that day?

5 A. I was assigned to assist Danny Coulson in the recovery of

6 evidence, bodies, and also any -- any other situation that took

7 place around the crime scene, itself.

8 Q. Mr. Adams, the next day, Friday, April 21, 1995, did you

9 come to learn that there was a suspect in the bombing that was

10 in Oklahoma state custody?

11 A. Yes, I did.

12 Q. And who was that?

13 A. The suspect was Timothy McVeigh.

14 Q. Where was he in custody, sir?

15 A. He was located up in the vicinity of Perry, Oklahoma; Noble

16 County Sheriff's Office.

17 Q. And where is that in relation to the command post in

18 Oklahoma City?

19 A. Approximately 70, 75 miles north on Interstate 35.

20 Q. What did you do when you heard that Mr. McVeigh was in

21 custody in Perry?

22 A. I was instructed to start formulating plans to go up and

23 make sure that the sheriff in Noble County knew of our interest

24 in this and also eventually to arrest and transport

25 Mr. McVeigh.

494

James Adams - Direct

- 1 Q. And did there come a time when you, in fact, went up to
2 Perry?
3 A. Yes, there was.
4 Q. How did you get there, sir?
6 Q. And who did you go with?
7 A. Approximately eight other agents.
8 Q. Approximately what time did you arrive at the Noble County
9 Jail, sir?
10 A. 12:30 to 1:00.
11 Q. And when you left the command post in Oklahoma City, what
13 Perry jail?
14 A. Our exact purpose was to go up and notify the sheriff of
15 our interest in this matter and also to await the signing of
16 the arrest warrant/search warrant and then to transport Timothy
17 McVeigh back to Oklahoma City.
18 Q. Was it your understanding that you had the authority to
20 Noble County Jail?
21 A. No. We didn't take him into custody as soon as we got
22 there. We waited until the warrant was signed.
23 Q. Was it your understanding that you had legal authority to
24 take him into custody before the warrant was signed?
25 A. No. That's -- that's not what my understanding was.

495

James Adams - Direct

- 1 Q. What is FBI policy with regard to arresting suspects?
2 A. Short of an emergency or exigent circumstances, we wait and
3 arrest on a warrant; on the issuance of a warrant.
4 Q. And over the course of the afternoon of April 21, 1995,
5 sir, were those of you in the Noble County Jail in contact with
6 the command post in Oklahoma City?

7 A. The person that was in command post -- with the contact
8 within Oklahoma City was Danny Coulson.

9 Q. And what was your relationship with Mr. Coulson, sir?

10 A. I was Mr. Coulson's assistant. I was second in command.

11 Q. Where physically were you and Mr. Coulson located in the
12 afternoon of April 21? Where inside the building?

13 A. In the sheriff's office and in the squad room area.

14 Q. And sir, did there come a time when you learned that the
15 arrest warrant for Mr. McVeigh had, in fact, been signed?

16 A. Yes.

17 Q. Approximately what time was that?

18 A. To the best of my recollection, between 4 and 4:30.

19 Q. Was Mr. McVeigh arrested immediately upon hearing that
20 news?

21 A. He was -- he was told of the warrant and read the
22 circumstances, but not taken into custody.

23 Q. Do you know when he was taken into custody, sir?

24 A. About an hour -- about 45 minutes to an hour later.

25 Q. Mr. Adams, will you please open the notebook on the witness

496

James Adams - Direct

1 stand and turn to Government Exhibit 47.

2 A. I'm sorry. What number?

3 Q. 47, sir.

4 A. 47.

5 Okay.

6 Q. Do you recognize that?

7 A. Yes, I do. This is the arrest log that was made for the
8 arrest of Timothy McVeigh.

9 Q. And does it contain a date on it, sir?

10 A. Yes, it does. 4-21-95.

11 Q. Do you know who prepared that log, sir?

12 A. One of the agents that signed it at the bottom of the log
13 prepared it.
14 Q. How do you know this is, in fact, the arrest log prepared
15 in connection with the federal arrest of Tim McVeigh?
16 A. Because they -- I know that they made an arrest log that
17 day, and I know these agents were assigned to arrest Timothy
18 McVeigh.
19 Q. Is this a record that the FBI customarily makes and keeps
20 when it arrests a suspect, sir?
21 A. Yes, it is.
22 MR. GOELMAN: Your Honor, we move to admit Government
23 Exhibit 47 into evidence.
24 MR. NIGH: Your Honor, I object on hearsay grounds.
25 He didn't prepare it. And I don't think it meets the business

497

James Adams - Direct

1 records exception.
2 THE COURT: What are you offering it for?
3 MR. GOELMAN: Just to time the exact time of
4 Mr. McVeigh's arrest and time his exit from the Perry
5 courthouse.
6 THE COURT: Objection sustained.
7 BY MR. GOELMAN:
8 Q. Did you notice a crowd gathering outside the courthouse
9 building on April 21, sir?
10 A. Yes, I did.
11 Q. Approximately when did you first notice that?
12 A. When we arrived at the courthouse, there were several
13 people that were outside of it initially; and then it -- the
14 crowd continued to grow as the afternoon went on.
15 Q. Who was in this crowd?

16 A. Citizens that I'm aware of. And ultimately, we saw some
17 individuals that appeared to be news media.
18 Q. And did you take any action with respect to monitoring this
19 crowd?
20 A. Yes. I kept an eye on the crowd, and I also asked the
21 sheriff to make sure that the crowd, for security reasons --
22 that the crowd is kept back away from the courthouse.
23 Q. And did Sheriff Cook take any steps in that regard?
24 A. Yes, he did. He put some men outside and established a
25 perimeter.

498

James Adams - Direct

1 Q. Did you again speak to Sheriff Cook when you learned that
2 the warrant was about to be signed, sir?
3 A. Yes, we did.
4 Q. And what did you tell him on that occasion?
5 A. The sheriff had volunteered the use of his van to transport
6 Timothy McVeigh, and we wanted to -- to pre-position the
7 vehicles. And we also wanted to ensure that the crowd was kept
8 back when we came out of the building.
9 Q. You said that the sheriff had offered the use of his van.
10 Is that his personal van, or is that a Noble County vehicle?
11 A. It's my understanding that it was his personal van.
12 Q. And did you accept his offer?
13 A. Yes.
14 Q. Why is that?
15 A. Because the van was to our advantage as far as being able
16 to get Timothy McVeigh, who was handcuffed, into the vehicle.
17 It's much easier to get them into a van than it is the back
18 seat of a sedan.
19 Q. Did you discuss which door to bring Mr. McVeigh out of,
20 sir?

21 A. Yes, we did.

22 Q. And what did you ultimately decide?

23 A. We decided to bring him out the main entrance there, where
24 the sidewalk -- where the long sidewalk is that goes right down
25 to the parking lot.

499

James Adams - Direct

1 Q. What were your reasons for that?

2 A. We could pre-position the vehicles that we were going to
3 use to transport him from the courthouse to the helicopter.
4 And it was also better for -- for us as far as the security
5 was.

6 Q. And why is that?

7 A. We could keep the crowd back. It was a better position to
8 keep the crowd back.

9 Q. How many other entrances were available to you at the Noble
10 County courthouse building, sir?

11 A. That I can recall, I think there were -- I think there were
12 three other entrances. Two or three. To be honest, I think
13 it's two or three.

14 Q. And what was the relative distance from those doors to
15 where you could position vehicles on that end of the
16 courthouse?

17 A. One of them was about the same; and the other two, if I'm
18 not mistaken, were a little bit further.

19 Q. You said that the front door was best because you could
20 pre-position vehicles, plural, there?

21 A. That's correct.

22 Q. How many vehicles are we talking about?

23 A. To the best of my recollection, three: A lead vehicle, the
24 vehicle that Timothy McVeigh was in, and then a chase

25 vehicle -- what we refer to as a chase vehicle.

500

James Adams - Direct

1 Q. And who decided to use a lead and chase vehicle, sir?

2 A. Myself and Danny Coulson.

3 Q. Why?

4 A. That's pretty much the way that we transport when we're --

5 when we have a convoy. We wanted to make sure we could get to

6 the -- to the location where the helicopter was located as

7 quickly as possible and with the least amount of interference,

8 also.

9 Q. Okay. Sir, you indicated that you had a helicopter at your

10 disposal?

11 A. Yes, we did.

12 Q. Is there a reason that you didn't just land the helicopter

13 on the roof and take Mr. McVeigh out that way?

14 A. The roof isn't configured for a helicopter landing. There

15 were also trees and power lines in the area. That was -- that

16 was never a serious consideration.

17 Q. Well, in order to get Mr. McVeigh out that way, what would

18 you have had to do?

19 A. Well, actually, we couldn't have landed the helicopter, so

20 the only way you could have gotten him out was to extract him

21 out on a rope and that was -- we weren't going to do that.

22 That wasn't even a consideration.

23 Q. Why couldn't you drive a vehicle straight into an

24 underground garage, sir?

25 A. I don't believe there was an underground garage.

501

James Adams - Direct

1 Q. Was Mr. McVeigh put in a bulletproof vest for his walk from

2 the courthouse?

3 A. No, he wasn't.

4 Q. And did he ask for one, sir?

5 A. Not to my knowledge.

6 Q. Why didn't you put him in a bulletproof vest anyway?

7 A. One, we were more concerned about an assault with a rifle
8 at that particular time; and the bulletproof vests that we have
9 don't stop a rifle round. And quite frankly, I didn't think to
10 put the bulletproof vest on him.

11 Q. How many agents were with Mr. McVeigh when he was
12 transferred from the courthouse to the van?

13 A. There was myself and Danny Coulson, two other FBI agents
14 and ATF agents, several sheriff's deputies. So seven to eight.

15 Q. How close were these men standing to Mr. McVeigh during the
16 transfer?

17 A. Right next to him.

18 Q. What was Mr. McVeigh wearing when he was moved from the
19 courthouse?

20 A. An orange -- an orange-type coveralls outfit.

21 Q. Where did he get that from?

22 A. From the sheriff's office.

23 Q. Was there a reason that you didn't change him into street
24 clothes, sir?

25 A. His clothes were maintained as evidence, and we didn't have

502

James Adams - Direct

1 any other clothes for him.

2 Q. Sir, what was your primary concern in effectuating the
3 transfer of Mr. McVeigh from the courthouse to the van?

4 A. My primary concern was the least amount of exposure
5 possible for Timothy McVeigh and the agents and sheriff's

6 deputies, quite frankly.

7 Q. SIC Adams, have you ever heard of a "perp. walk"?

8 A. No, I haven't.

9 Q. Why wasn't Tim McVeigh moved until the time that he was on

10 April 21, 1995?

11 A. We didn't have the authority for the warrant until

12 approximately 4:30; and after that, it took another hour or so

13 to -- to take care of administrative things that -- with the

14 judge in Perry, Oklahoma.

15 Q. You say "administrative things." What's your understanding

16 of what those things were?

17 A. The -- the judge wanted to have a hearing, and he also had

18 a discussion with Danny Coulson about turning Timothy McVeigh

19 over to federal custody.

20 Q. SIC Adams, did you ever hear anyone in the Government, FBI,

21 ATF, Department of Justice suggest that you should delay

22 transferring Mr. McVeigh until there was a big enough crowd

23 assembled?

24 A. No.

25 Q. Did you ever hear anyone suggest you should delay

503

James Adams - Direct

1 transferring Mr. McVeigh until there was media assembled

2 outside?

3 A. No.

4 Q. SIC Adams, will you please turn in your book to Government

6 A. Okay.

7 Q. Do you recognize that, sir?

8 A. Yes. That's the area outside of the vicinity where we

9 transported Timothy McVeigh from the courthouse to the

10 vehicles.

11 Q. Is that a fair and accurate depiction of that area as it

13 1995?

14 A. To the best of my recollection, it is, yes.

15 MR. GOELMAN: Your Honor, I move to admit Government
16 Exhibit 45 into evidence.

17 MR. NIGH: No objection, your Honor.

18 THE COURT: 45 received.

20 THE COURT: Yes.

21 BY MR. GOELMAN:

22 Q. SIC Adams, directing your attention to the screen below
23 you, can you describe for the Court what that is?

24 A. That's the area immediately outside the door and the area
25 there where we -- where we pre-positioned the vehicles to

504

James Adams - Direct

1 transport Timothy McVeigh.

2 Q. And can you see the door from the courthouse -- the
3 courthouse that Mr. McVeigh was taken out of in that picture?

4 A. It's to the right of the picture.

5 Q. Is that the small blue thing in the far right of the
6 picture?

7 A. I mean, it doesn't -- it is -- I know where the door is. I
8 mean, it doesn't look blue to me.

9 Q. I'm a little color-blind, sir.

10 A. No. It's -- that's the door, with the sidewalk leading
11 from it.

12 Q. And where was the van that Mr. McVeigh was loaded into
13 position?

14 A. Right at the end of that sidewalk. The van was directly in
15 front of that sidewalk. Right there.

16 Q. Right in the middle of this particular frame?

17 A. That would be right in the middle of it, that's right.

18 Q. And who are the gentleman who are standing around in this
19 picture?

20 A. To the best that I can recall, they are sheriff's deputies.

21 Most of them are sheriff's deputies. There may be some highway
22 patrolmen in there. I can't tell you from the picture.

23 Q. Okay. Keep your eye on the screen, sir. What's the area
24 to the -- what's that big item right in the middle of the
25 picture, sir? Do you recognize that?

505

James Adams - Direct

1 A. To the best of my recollection, that's like a little
2 gazebo-area-type setup.

3 Q. And who are the people standing way over on the other side
4 of the gazebo, sir?

5 A. Well, to the very, very far left are -- are civilians that
6 I know of, and the other people that are standing there, one
7 with the dog, are sheriff's deputies.

8 Q. Okay. Approximately how far was it from the door of the
9 courthouse to the waiting van, sir?

10 A. 20, 25 feet, I'd say.

11 Q. And approximately how far was it from the van to where the
12 press was kept by, sir?

13 A. I'd say that's 35, 40 feet, maybe further.

14 Q. Sir, how good are you at estimating feet and distances?

15 A. Well, I mean, I'm usually pretty good.

16 MR. GOELMAN: Your Honor, I understand you previously
17 expressed hesitation about us playing a video in court. We do
18 have a video of the Perry walkout that we think would be
19 illuminating for the Court to watch.

20 THE COURT: I believe it's been shown at an earlier
21 hearing, which was on the change of venue.

22 MR. NIGH: That's correct, your Honor, it was.
23 THE COURT: So I've seen it.
24 MR. GOELMAN: Thank you, your Honor. I have nothing
25 further.

506

James Adams - Direct

1 Your Honor, Court's indulgence?
2 THE COURT: Yes.
3 MR. JONES: Could we just have the record clear that
4 your Honor will consider it for whatever weight it may have on
5 the issues in this case?
6 THE COURT: Yes. I don't remember the particular
7 exhibit number, but it certainly was -- was displayed.
8 MR. GOELMAN: Thank you, your Honor.
9 THE COURT: All right. Mr. Nigh.
10 MR. NIGH: Thank you, your Honor.
11 CROSS-EXAMINATION
12 BY MR. NIGH:
13 Q. Agent Adams, when did you receive word on the morning of
14 the 21st that you were to travel to Perry?
15 A. To the best of my recollection, it was probably about
16 11:30, 12:00.
17 Q. Did you telephone Sheriff Cook before you went?
18 A. I didn't personally, no.
19 Q. Do you know if Sheriff Cook was telephoned prior to the
20 time that you arrived?
21 A. I'm not personally aware that he was.
22 Q. At the time you were told you were going to Perry, were you
23 also told that, eventually, you would be arresting Mr. McVeigh?
24 A. Yes.
25 Q. And so -- you were in Oklahoma City at the time; is that

James Adams - Cross

- 1 correct?
- 2 A. That's correct. I was in the command post.
- 3 Q. And did the command post have access to bulletproof vests?
- 4 A. Oh, I'm sure we did, yes.
- 5 Q. And are there bulletproof vests that will stop a rifle
- 6 shot, or at least impede it?
- 7 A. Yes, there are.
- 8 Q. And you had access to those things?
- 9 A. I didn't personally, but I'm sure the command post did,
- 10 yes. We could have gotten a bulletproof vest for that, if
- 11 that's what you're asking.
- 12 Q. That's what I'm asking.
- 13 A. That's correct.
- 14 Q. And you didn't do so?
- 15 A. No, we didn't.
- 16 Q. And you flew to Perry; is that correct?
- 17 A. Yes.
- 18 Q. In a helicopter?
- 19 A. Yes.
- 20 Q. How long did it take you to get there?
- 21 A. Oh, by the time we got to the helicopter and actually flew
- 22 up there, it took us 45 minutes or an hour. The helicopter
- 23 wasn't sitting at the command post. It was an airport that's
- 24 located in the vicinity of the command post.
- 25 Q. So what time did you arrive in Perry?

James Adams - Cross

- 1 A. I would say between 12:30 and 1:00. We arrived -- we
- 2 arrived -- we flew first to the vehicle which was located along
- 3 side of the road on Interstate 35 -- landed there and got into
- 4 an Oklahoma highway patrol car and were driven in to the Noble

5 County Sheriff's Office.

7 A. Yes, we did.

8 Q. And what time did you first see Sheriff Cook?

9 A. It must have been 1:30. That's an estimate on my part. I
10 did not keep notes on that.

11 Q. And at the time, did you tell Sheriff Cook that you were
12 going to be taking Mr. McVeigh into custody that day?

14 Q. And that you were awaiting a warrant from Oklahoma City?

15 A. Yes.

16 Q. And that when the warrant arrived, you would arrest
17 Mr. McVeigh; is that correct?

18 A. That is correct.

19 Q. Then several hours passed, did they not?

20 A. Yes.

21 Q. And you were able to see what was going on outside?

22 A. Yes.

23 Q. And a crowd was beginning to develop outside; is that
24 right?

25 A. That is correct.

509

James Adams - Cross

1 Q. There were media representatives in the crowd?

2 A. It -- they appeared to be media, yes. I didn't identify
3 them personally, but they had the necessary vehicles.

4 Q. Had --

5 A. There was media there. I'm sure there was.

6 Q. And it was clear to you that they were media?

7 A. Yes.

8 Q. And you saw television cameras and satellite trucks and
9 things of that nature?

10 A. I don't personally recall satellite trucks; but I do

11 remember the shoulder-held cameras and things, yes.
12 Q. And the more time that passed, the more people that
13 gathered and the more media representatives that appeared; is
14 that right?
15 A. That would be correct.
16 Q. And you asked Sheriff Cook to help you in controlling the
17 area; is that right?
18 A. Yes. Yes. That's right.
19 Q. Did you tell Sheriff Cook how far to keep people back?
20 A. We told him in general, yes. And he set the perimeter up,
21 and it was satisfactory to us.
22 Q. 35 feet to 40 feet was satisfactory?
23 A. Well, wherever that was. If that -- if my distance is
24 wrong, then I -- I may be wrong there; but whatever the picture
25 shows was satisfactory at the time.

510

James Adams - Cross

1 Q. Well, I understood your answer to Mr. Goelman's question
2 was you're pretty good at estimating distances.
3 A. Well, 35 to 40 feet from the van, which is what I
4 indicated, yes.
5 Q. Could you have kept them back much further than that?
6 A. I -- I imagine we could have. The sheriff's deputies could
7 have, yes.
8 Q. They could have kept them back as far as 200 yards, could
9 they not?
10 A. I -- I don't know that.
11 Q. Did you ask the sheriff to keep them back any further?
12 A. No.
13 Q. During that several hours that passed, did you make any
14 efforts to obtain any civilian clothing for Mr. McVeigh?

15 A. No.

16 Q. Did you ask Sheriff Cook if he had any civilian clothing on
17 hand for trustees or for other people?

18 A. I didn't personally.

19 Q. Did anybody working for the Federal Government, to your
20 knowledge, ask Sheriff Cook such a question?

21 A. I don't know that.

22 Q. During those two hours, did you make any attempts to find a
23 bulletproof vest for Mr. McVeigh?

24 A. No.

25 Q. Did you ask Sheriff Cook if he had any other kind of jail

511

James Adams - Cross

1 uniform other than orange?

2 A. No.

3 Q. You would agree with me that orange is a pretty bright
4 color and that somebody wearing orange stands out like a sore
5 thumb; isn't that correct?

6 A. Orange is a bright color, that's correct.

7 Q. And in fact, that's why jail uniforms are designed orange,
8 is it not?

9 A. Some are orange. Some are different colors.

10 Q. The reason that the orange ones are made orange is so that
11 they stick out; isn't that right?

12 MR. GOELMAN: Objection, your Honor.

13 THE COURT: If you know.

14 THE WITNESS: Well, I mean, I don't know that that's
15 necessarily why they design them orange.

16 THE COURT: Okay. That's your answer.

17 BY MR. NIGH:

18 Q. In Government's Exhibit 45 -- do you still have that in
19 front of you?

20 A. Yes, I do.

21 Q. I'm trying to place it on the screen in front of you, as

22 well.

23 There's a sidewalk leading right up to that door, is

24 there not?

25 A. Yes, there is.

512

James Adams - Cross

1 Q. How wide is that sidewalk?

2 A. I'm guessing 10 to 15 feet.

3 Q. Plenty wide for Sheriff Cook's van to drive right up there,

4 wasn't it?

A . I t c o u l d
h a v e d r i v e n u p
t h e r e . C o u l d
h a v e b a c k e d u p
t h e r e ,

6 that's correct.

7 Q. Could have backed right up to the door and Mr. McVeigh

8 could have been put in the back doors; isn't that right?

9 A. I honestly don't recall if the van had back doors; but if

10 it did, it could have, yes.

11 Q. Was any effort made to back the van up there to that door?

A . N o . T h e
w a s n o e f f o r t
d o t h a t , n o .

13 Q. Now, Agent Adams, have you seen media depictions of the

14 arrest of Terry Nichols?

15 A. Of the arrest of Terry Nichols?

16 Q. Yes.

17 A. I've seen media depictions of him in custody after the

18 arrest. The actual arrest, I don't -- I can't say that I saw

i t , n o .

20 Q. I misspoke. Have you seen media depictions of Mr. Nichols
21 being transported in custody?

22 A. Yes, I did.

23 Q. And the clothes that Mr. Nichols was wearing were not

25 A. No.

513

1 Q. And Mr. Nichols was wearing a bulletproof vest, was he not?

2 A. Yes.

3 MR. NIGH: Your Honor, may I have a moment?

4 THE COURT: Yes.

5 MR. NIGH: Thank you, your Honor.

6 BY MR. NIGH:

8 No. 2 warrant was issued; isn't that correct?

9 A. I don't know that.

10 Q. You had no information about John Doe warrants being issued
11 by the FBI on April 20 in reference with the Oklahoma City

12 bombing?

13 A. I had no personal knowledge of that.

15 A. I had heard about John Doe No. 1 and 2, but not any

16 warrants being issued.

17 Q. On your instructions on April 20 or April 21, you didn't

18 receive any information concerning John Does' warrants?

19 A. I didn't personally, no.

20 Q. Did you know of anybody that did?

21 A. No. I was at sea most of the time.

22 Q. When you made arrangements to travel to Perry, did you

23 maintain radio silence to make sure that your transmissions

24 weren't intercepted in reference to what you were doing?

25 A. I believe we did, yes.

James Adams - Cross

1 Q. Do you recall that you did?

2 A. Yes.

3 Q. Did you tell Sheriff Cook not to tell anybody what was
4 going on?

5 A. I didn't talk to Sheriff Cook.

6 Q. To your knowledge, did anybody with the FBI or with the
7 federal government inform Sheriff Cook not to make known what
8 was going on?

9 A. I -- I am not aware of that.

10 Q. So as far as you know, Sheriff Cook was free to discuss the
11 matter with anybody he saw fit?

12 A. As far as I -- I don't have any knowledge of that.

13 Q. And you don't have any knowledge of him being told
14 otherwise?

15 A. No, I don't. That's correct.

16 Q. That could well be how the media got there?

17 MR. GOELMAN: Objection, your Honor. Calls for
18 speculation.

19 THE COURT: Sustained.

20 MR. NIGH: I'm sorry, your Honor.

21 Thank you. That's all I have.

22 THE COURT: Redirect?

23 MR. GOELMAN: Yes, your Honor. Very briefly.

24 REDIRECT EXAMINATION

25 BY MR. GOELMAN:

James Adams - Redirect

1 Q. Mr. Adams, were any of the agents who were surrounding

2 Mr. McVeigh when he was transferred from the courthouse to the

3 van wearing bulletproof vests?

4 A. No.

5 Q. Would it have been in the interests of the investigation,
6 in your opinion, for Mr. McVeigh to have been harmed at that
7 point?

8 A. Oh, absolutely not. We wouldn't -- we didn't want him
9 harmed.

10 Q. You indicated that you did not change Mr. McVeigh from his
11 orange prison uniform to civilian clothes; is that right?

12 A. That is correct.

13 Q. What was your primary concern in doing the transfer of
14 Mr. McVeigh?

15 A. Our primary concern was the security of Timothy McVeigh and
16 the security of the FBI agents and the sheriff's deputies.

17 Q. And did that call for a speedy transfer?

18 A. Yes, it did.

19 Q. Would changing Mr. McVeigh's clothes have delayed the
20 transfer?

21 A. Yes, it would have.

22 MR. GOELMAN: Court's indulgence.

23 BY MR. GOELMAN:

24 Q. Directing your attention to Government Exhibit 45, sir.

25 A. Okay.

1 Q. That sidewalk area in front of the door that Mr. Nigh was
2 asking you about --

3 A. Yes.

4 Q. -- do you see the metal railing between the photographer
5 and that sidewalk, sir?

6 A. Yes, I do.

7 Q. What was the reason -- was there a reason that bringing the
8 three-car convoy -- three-vehicle convoy up to the sidewalk was
9 not logistically feasible?

10 MR. NIGH: I object to suggesting the answer, your
11 Honor.

12 THE COURT: Sustained.

13 BY MR. GOELMAN:

14 Q. Could you have practically brought the van up onto the
15 sidewalk in the way that Mr. Nigh described, sir?

16 A. We could have put the van on the sidewalk, but we would not
17 have been able to leave as quickly as we wanted to get out of
18 the area as soon as we got Timothy McVeigh in the -- in the
19 van.

20 Q. Did you have any concern about putting a vehicle on
21 surfaces that were not designed to carry vehicles, sir?

22 MR. NIGH: I object. Suggesting an answer.

23 THE COURT: Sustained.

24 BY MR. GOELMAN:

25 Q. Mr. Nigh asked you whether or not you prohibited Sheriff

1 Cook from discussing this matter with anyone. Did you consider
2 that the FBI had the power to silence Sheriff Cook or any of
3 the state employees in Noble County on that day?

4 A. No, we didn't -- we didn't feel that that was within our --

5 we didn't have Timothy McVeigh in custody and until we had him
6 in custody, he wasn't -- we weren't able to control that.

7 Q. One last question, Mr. Adams. Was the transfer of Tim
8 McVeigh to federal custody effectuated safely on April 21,
9 1995?

10 A. Absolutely.

11 MR. GOELMAN: Nothing further.

12 MR. NIGH: No, your Honor.

13 THE COURT: You may step down. You're excused.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Next.

16 MR. GOELMAN: Your Honor, would this be a convenient
17 stopping place for the afternoon break, sir?

18 THE COURT: Well, I suppose it could be. We'll take a
19 recess until 3:25.

20 (Recess at 3:03 p.m.)

21 (Reconvened at 3:25 p.m.)

22 THE COURT: Be seated, please.

23 MR. GOELMAN: Your Honor, the Government calls Mark
24 Gibson.

25 (Mark Gibson affirmed.)

518

1 THE COURTROOM DEPUTY: Would you have a seat, please.
2 Would you state your full name for the record and
3 spell your last name.

4 THE WITNESS: My name is Mark, M-A-R-K, initial L.,
5 Gibson, G-I-B-S-O-N.

6 THE COURTROOM DEPUTY: Thank you.

7 DIRECT EXAMINATION

8 BY MR. GOELMAN:

9 Q. Good afternoon, Mr. Gibson.

10 A. Good afternoon.

11 Q. What do you do for work?

12 A. I'm an assistant district attorney in Noble County,

13 Oklahoma.

14 Q. How long have you done that?

15 A. Seven years come May.

16 Q. At the time of the Oklahoma City bombing, how many

17 prosecutors were there working in Noble County?

18 A. There was me.

19 Q. Taking you to 4:30 in the afternoon on Friday, April 21,

21 A. Yes, sir.

22 Q. -- did you have occasion to file a written motion at

23 approximately that time?

24 A. I believe I actually filed a motion to dismiss state

25 charges at 4:42 that afternoon.

519

Mark Gibson - Direct

1 Q. And was this motion ultimately granted?

2 A. Eventually, yes, sir.

4 A. Yes, sir.

5 Q. Do you recognize that?

6 A. I do.

7 Q. And what is it?

8 A. That is a copy of the motion I prepared and filed on that

9 date at that time as well as the order of dismissal that was

10 signed by District Judge Danny Allen.

11 MR. GOELMAN: Your Honor, we have a certified copy

12 here which we'd move into evidence.

13 THE COURT: All right.

14 MS. RAMSEY: No objection, your Honor.

15 MR. GOELMAN: May I publish it, your Honor?

16 THE COURT: Yes. What's the number?

17 MR. GOELMAN: 44, I believe. It's 44, sir.

18 THE COURT: 44. Thank you.

19 You may publish it.

20 MR. GOELMAN: Thank you, your Honor.

21 BY MR. GOELMAN:

22 Q. Does the top half of that exhibit, Mr. Gibson -- is that

23 your motion to dismiss?

24 A. Yes, sir.

25 Q. Can you see the time stamp on that?

520

Mark Gibson - Direct

1 A. 4:41 p.m. I was in error a moment ago.

2 Q. And is the bottom half of that Judge Allen's signature and

3 order?

4 A. Yes, sir.

5 Q. And does that indicate a time, sir?

6 A. Yes, sir. He signed it at 5:28 p.m.

7 Q. What happened between 4:41 and 5:28?

8 A. Immediately after filing the motion, I presented it to

9 Judge Allen in chambers. Mr. Royce Hobbs was also present.

10 There was some relatively extensive conversation at that

11 time --

12 Q. Mr. Gibson, who is Mr. Royce Hobbs?

13 A. Mr. Hobbs at that time was the primary public defender for

14 Noble County.

15 Q. Okay. Go on.

16 A. At that time, pursuant to the discussion of both -- between

17 myself and Judge Allen and also including Mr. Hobbs, Judge

18 Allen refused to dismiss the state charges.

19 Q. And did Judge Allen order the sheriff to do something at

20 that time?

21 A. Yes, sir. The judge ordered that Mr. McVeigh be brought
22 before him shortly thereafter.

23 Q. Did you leave the hearing at that time, sir?

24 A. Well, that wasn't actually a hearing. At that time we were
25 simply in chambers. I left judge's chambers, and to the best

521

Mark Gibson - Direct

1 of my recollection I returned to the sheriff's office on the
2 first floor of the courthouse, which is where the federal
3 agents were congregated; and at that time I informed the
4 sheriff as well as the agents that were present that in fact

5 now the judge had ordered that Mr. McVeigh be brought before
6 him.

7 Q. What was the FBI's reaction to that news?

8 A. They were upset and disappointed. We discussed that it
9 might happen, and they were frustrated that they were going to
10 be further delayed in removing Mr. McVeigh.

11 Q. So did the delay between 4:41 p.m. and 5:28 p.m. on Friday,

12 April 21, have anything to do with the federal agents present
13 in Noble County then?

14 A. No, sir.

15 MR. GOELMAN: Court's indulgence.

16 THE COURT: Yes.

17 MR. GOELMAN: I have nothing further.

18 THE COURT: Any questions?

19 MS. RAMSEY: Yes, your Honor.

20 THE COURT: Ms. Ramsey.

21 CROSS-EXAMINATION

22 BY MS. RAMSEY:

23 Q. When did you receive the call from the media or from the
24 FBI with regard to Mr. McVeigh?

25 A. I personally received a call from no federal agency.

522

Mark Gibson - Cross

1 Q. Then how did you learn that Mr. McVeigh was a special
2 prisoner?

3 A. Between 9:30 and 10:00, to the best of my recollection on
4 that morning I was in court on some juvenile matters that had
5 been set at 9 a.m. Mr. McVeigh's arraignment had originally
6 been scheduled for 9:30 that morning and, however, the juvenile
7 matters were taking longer than had been anticipated, so we
8 were still in court at that time.

9 Sheriff Cook came into the courtroom and handed me a
10 note that said basically Tim McVeigh is the fella the FBI is
11 looking for; and after telling him that I thought he was
12 yanking my chain, he assured me that he was not; and after the
13 juvenile hearings concluded, then I left the courtroom and I
14 placed a phone call to the U.S. Attorney's office to verify
15 that information.

16 Q. And what time did you leave the courtroom?

17 MR. GOELMAN: Your Honor, I'm going to object to any
18 questions about the time period other than between 4:41 and
19 5:28 in the afternoon.

20 THE COURT: Why?

21 MR. GOELMAN: Because it's beyond the scope of direct,
22 and Mr. Gibson was called to explain that delay.

23 THE COURT: Overruled.

24 THE WITNESS: I don't know exactly. It was between
25 10:00 and 10:30, to the best of my recollection.

523

Mark Gibson - Cross

1 BY MS. RAMSEY:

2 Q. And who did you talk to in the U.S. Attorney's office?

3 A. I don't know for certain. It was one of two women. It was
4 either Arlene Joplin or it was Vicki Behenna. I spoke to each
5 of those ladies at some time in the couple of weeks that
6 followed, and I'm not sure which lady it was that morning.

7 Q. Were you given any instructions with regard to Mr. McVeigh
8 and the media?

9 A. No, ma'am.

10 Q. Did you personally contact or did you have someone at your
11 direction contact any media of any kind?

12 A. Absolutely not.

13 Q. Are there any television stations, radio stations, bureaus
14 of national news media in Perry?

15 A. Eventually that day there were.

16 Q. I mean regularly situated in Perry?

17 A. No, ma'am.

18 Q. There is a radio station though, isn't there?

19 A. There is now. I couldn't swear there was at that time.

20 Q. But you did not contact any media?

21 A. No, ma'am.

22 Q. Were you given any instructions by anyone in the United
23 States Attorney's office with regard to the contacting of
24 media?

25 A. I never had any discussion with any member of the U.S.

524

Mark Gibson - Cross

1 Attorney's office about media at any time.

2 Q. Were you given any instructions by the U.S. Attorney's
3 office with regard to transporting Mr. McVeigh?

4 A. No, ma'am.

5 Q. Were you in any way going to be involved in the

6 transporting of Mr. McVeigh?

7 A. In the physical transporting of him?

8 Q. Yes, or the timing of the transporting of Mr. McVeigh?

10 technically from my standpoint before the FBI could take

11 physical custody of Mr. McVeigh and transport him to wherever I

12 would have to -- well, the Court would have to dismiss the
13 state charges and release the bond that had already been placed

14 on Mr. McVeigh on our charges.

15 Q. When did the FBI physically arrive in Noble County?

17 Q. And you were not in your office at that time; is that

18 correct?

19 A. That's correct.

20 Q. And when you arrived back at your office at approximately

21 1:15, did you have any conversations with the FBI with regard

22 to publicity, media, or identification of Mr. McVeigh?

24 whatsoever about media or publicity. I certainly discussed

25 with them -- I'm not sure what you're asking about.

Mark Gibson - Cross

1 Identification? I certainly discussed with them, you know, is

2 this really the guy you're looking for and if he is, he's

3 upstairs, and we certainly discussed him.

4 Q. When you discussed the FBI with the FBI (sic) with regard

5 to Mr. McVeigh, was that prior to his going to court in the

6 afternoon?

7 A. Yes, ma'am.

8 Q. And did he appear in court in front of Judge Allen that

9 afternoon?

10 A. Late in the day, he did, yes, ma'am.

11 Q. Is it customary in Noble County for arraignments to be held

12 at approximately 1:30?

13 A. More or less. Now, we had already done an arraignment by

14 that time.

15 Q. All right. And the first arraignment when you had

16 Mr. McVeigh brought to Judge Allen, what time was that?

17 A. Between 10:30 and 11 a.m. I think it was right around

18 11 o'clock.

19 Q. And when you had his initial appearance or arraignment in

20 front of Judge Allen, had you had any conversations with the

21 FBI or with the U.S. Attorney's office with regard to anything

22 you were to obtain from Mr. McVeigh?

23 A. About anything to be obtained? Absolutely not.

24 Q. In the initial appearance or arraignment that you had with

25 Mr. McVeigh at approximately 11:00, you asked him if he was

526

Mark Gibson - Cross

1 right- or left-handed?

2 A. Yes, ma'am.

3 Q. Why did you do that?

4 A. Because we have a court minute for them to sign and I hand

5 him the pen and -- in fact, he was in shackles at that time;

6 and so I turned the page one way or the other, depending upon

7 whether you're right-handed or left-handed.

8 Q. And did he sign that court minute?

9 A. Yes, ma'am.

10 Q. It was your understanding or was it your understanding that

11 there was a John Doe 1 and John Doe 2 warrant pending at that

12 time that had previously been issued?

13 A. It was not my understanding that there was -- well, I don't

14 have an understanding of that, ma'am, as far as a warrant

15 having been issued. I don't know.

16 Q. What was your understanding as to why the FBI did not take

17 Mr. McVeigh immediately upon arriving at the Noble County

18 Courthouse?
19 A. Because they were waiting for a federal arrest warrant.
20 Q. For specifically Mr. McVeigh, as opposed to John Doe 1 or
21 John Doe 2?
22 A. Again, ma'am, I don't know if there was ever a warrant for
23 John Doe 1. I know they were waiting to receive an arrest
24 warrant for Timothy James McVeigh.

527

Mark Gibson - Cross

2 A. Yes, ma'am.
3 Q. And what time was that?
4 A. Just shortly after I returned from the lunch hour at 1:15,
5 right around 10.
6 Q. And what was the purpose of that?
7 A. As I understand it -- excuse me. As I understood, it was
9 Q. And who actually closed the Noble County Courthouse, to
10 your knowledge?
11 A. Well, I think Judge Allen is who made the decision; and I
12 don't know who had requested it of him, but I met with Judge
13 Allen for a hearing I had scheduled at 1:30 and he informed me
14 over my objection that I wasn't going to be allowed to proceed.
15 Q. Was that a hearing with regard to Mr. McVeigh or something
16 else?
17 A. Something else entirely.
18 Q. And you were not going to be able to proceed because the
19 courthouse was closed?
21 Q. Was it normal and typical for the courthouse to be closed
22 in Noble County other than on bad weather days and holidays?
23 A. Only on whatever day we can come up as a holiday.
24 Q. Would that draw attention, do you think, to people coming
25 in and out of the courthouse with regard to something going on?

Mark Gibson - Cross

- 1 A. When I came back from lunch, there was already plenty of
2 attention drawn to the courthouse, ma'am.
- 4 returned at 1:15 as an estimate?
- 5 A. I'm horrible at numbers; but my estimate would be 50, give
6 or take 20.
- 7 Q. Were these civilians, so to say, or were they news media?
- 8 A. I did not notice any news media whatsoever when I came back
9 at 1:15.
- 10 Q. And when did you first notice news media?
- 11 A. Within a half hour thereafter.
- 12 Q. Did you have any idea who contacted them?
- 13 A. No, ma'am.
- 14 Q. And were these trucks or just people with tape-recorders?
15 How did you identify them as being news media?
- 16 A. I want to say, ma'am, that the first truck I noticed was
17 Channel 9 out of Oklahoma City. That's the first one I vividly
18 remember seeing.
- 19 Q. And that was at approximately 2:00?
- 20 A. All I could commit to, ma'am, was between 1:15 and 2 p.m.
- 21 Q. And what time did Mr. McVeigh go back before Judge Allen?
- 22 A. It was after the judge had refused my motion to dismiss,
23 which I filed at 4:41.
- 24 Q. So approximately 5:00? Somewhere in there?
- 25 A. Yes, ma'am.

Mark Gibson - Cross

- 1 Q. Why did the judge refuse your request to dismiss the case
2 at 4:41?
- 3 A. He never answered me when I asked him that.
- 4 Q. Had you previously filed the motion to dismiss before you

5 had talked to Judge Allen, or did you file the motion
6 afterwards?

7 A. No. In fact, I had already orally moved to dismiss my
8 state charges sometime within the hour prior to filing this
9 written motion.

10 Q. In the 3:00 hour?

11 A. It was 3:30 and 4:00.

12 Q. Well, the motion to dismiss and the order are on the same
13 page. Did they, as you've seen -- were they on the same page
14 at the time that you filed them so that the motion to dismiss
15 and the order with the order being blank as far as the judge's
16 signature -- was that how it was filed initially at 4:41?

17 A. Yes, ma'am. His signature did not appear on this at 4:41.
18 The top half of this -- everything appeared here except Judge
19 Allen's signature and where he also wrote, Signed 5:28 p.m.,
20 and that marking there is his initials; but the order was
21 blank, as is the custom in Noble County.

22 Q. Had you had any conversations with Mr. Hobbs prior to the
23 in-chambers hearing at approximately 4:40?

24 A. Yes, ma'am.

25 Q. And what were your conversations with Mr. Hobbs regarding?

530

Mark Gibson - Cross

1 A. His desire to see Mr. McVeigh.

2 Q. And had he, to your knowledge, been retained by
3 Mr. McVeigh?

4 A. Absolutely not. He told me he had not been.

5 Q. Did he tell you that Mr. McVeigh had tried to contact him
6 on three occasions at his office that morning?

7 A. He told me --

8 MR. GOELMAN: Your Honor, I'm going to object to this
9 line of questioning.

10 THE COURT: Yes. Sustained.

11 MS. RAMSEY: I would request the Court allow me to go

12 into this area because it does have to do with Mr. Hobbs

13 perhaps being involved in the securing of other clothes for

14 Mr. McVeigh and the transporting of him.

15 THE COURT: We've been over Mr. Hobbs previously

16 before you were in the case, and the call that was to the

17 people, you know -- I've heard all this.

18 MS. RAMSEY: If the Court will just take that under

19 advisement as far as considering this, that will be fine.

20 THE COURT: I'll take note of it, yes.

21 MS. RAMSEY: Thank you, your Honor.

22 BY MS. RAMSEY:

23 Q. Did you participate in anything with regard to the --

24 Mr. McVeigh and his case in Noble County or the federal case

25 after you left the judge's chambers approximately 4:45 to 5:00?

531

Mark Gibson - Cross

1 A. Yes, ma'am. After I had gone back to the sheriff's office

2 to inform them that Mr. McVeigh was going to be brought before

3 the judge by the court's order, I returned to Judge Allen's

4 courtroom basically just to observe what he was about to do.

5 Q. But did you have anything directly to do with him?

6 A. I made certain statements on the record during that

7 proceeding that followed.

8 Q. After the -- after you left that hearing, though, did you

9 have anything else to do with that?

10 A. After I left the courtroom, no, ma'am.

11 Q. Were you present when Mr. McVeigh was taken from the

12 courthouse?

13 A. Yes, ma'am.

14 Q. And where were you located?

15 A. To the best of my recollection, I was standing just outside
16 with one or more of the local law enforcement officers.

17 Q. Outside of the west door?

18 A. Yes, ma'am. I'm sorry. Outside of the doorway that

20 Q. And did you secure or attempt to secure any other clothing
21 for Mr. McVeigh other than the orange jail uniform?

22 A. No, ma'am.

23 Q. Is it typical for someone who is being transferred from one
24 county to another jurisdiction, say from Noble County to
25 another county, to remain in an orange Noble County jumpsuit?

532

Mark Gibson - Cross

1 A. I don't want to quibble with "typical." It's certainly not

3 MS. RAMSEY: If I might have just a moment, your
4 Honor?

5 THE COURT: Yes.

6 MS. RAMSEY: I have no further questions, your Honor.

7 THE COURT: All right. Any redirect?

8 MR. GOELMAN: No, your Honor.

10 excused from this hearing.

11 THE WITNESS: Thank you, your Honor.

12 THE COURT: Next witness.

13 MR. MENDELOFF: I'm sorry, your Honor. We're
14 finished. We're not going to call any further witnesses.

15 THE COURT: Ready to proceed, Mr. Woods?

16 MR. WOODS: Yes, your Honor. Agent Budke.

17 And I'll need the exhibit at the desk, Kathy.

18 MR. MENDELOFF: I'm sorry, your Honor, but this
19 relates to the testimony of Rick Schlender; and as I understand
20 it, the relevant witness -- excuse me -- the agent's testimony
21 wouldn't be relevant until the witness testifies.

22 MR. WOODS: That's not exactly true. This agent took
23 the 302 from Mr. Schlender, and I'd prefer to start with him,
24 your Honor.

25 THE COURT: You're entitled to choose the order in

533

1 which you wish to hear from witnesses; so recall Mr. Budke.

2 You're being recalled under the oath earlier taken,
3 Agent Budke.

4 THE WITNESS: Okay.
5 (Christopher Budke was recalled to the stand.)

6 THE COURT: Proceed, Mr. Woods.

7 DIRECT EXAMINATION

8 BY MR. WOODS:

9 Q. Mr. Budke, my name is Ron Woods. I'm one of the lawyers
10 appointed to represent Terry Nichols. You and I have never
11 met. We haven't had a chance to discuss your testimony; is
12 that correct?

13 A. Yes, sir.

14 Q. I want to ask you questions today concerning the interview
15 with Mr. Schlender. You took three 302's from him on April 30
16 and May 2; is that correct?

17 A. That's correct.

18 Q. You mentioned earlier in your testimony that you got
19 assigned to the case a few days after Terry Nichols' arrest?

20 A. I believe that's when it was. I don't have a real strong
21 recollection as to exact date.

22 Q. He was arrested as a material witness on Friday, April 21.
23 Did you come in that weekend, Saturday or Sunday?

24 A. What day of the week would that have been?

25 Q. That was Friday, April 21.

Christopher Budke - Direct

1 A. No. I believe it would have been probably like a Monday or
2 a Tuesday. I believe that would come in -- I don't have a
3 terribly strong recollection about that.

4 Q. Now, were you assigned to the division that was
5 investigating Terry Nichols, as opposed to that group that was
6 investigating Tim McVeigh?

7 A. I was not assigned to either investigation.

8 Q. What --

9 A. Either group, I mean. I was assigned to the Un. Sub. 2.

10 Q. To Un. Sub. 2?

11 A. Yes, sir.

12 Q. Did you attend the preliminary hearing for Mr. Nichols in
13 Wichita on Wednesday, the 26th?

14 A. No, sir.

15 Q. Did you know anything about the facts of the case before
16 you interviewed Mr. Schlender on Sunday, April 30?

17 A. Yeah, I knew some of the facts of the case. Yes.

18 Q. Why did you go to McPherson to interview Frederick
19 Schlender?

20 A. I had been assigned to go by my supervisor, but

21 specifically the reason to go there is that we had identified

22 two sales slips of one ton each of ammonium nitrate having been
23 purchased from there; and so I went there to find out who had
24 facilitated the sale and to talk to that individual and see if
25 they had any recollection.

535

Christopher Budke - Direct

1 Q. Did you obtain those two receipts there at McPherson, or
2 did you obtain them somewhere else and then that led you back
3 to the McPherson Mid-Kansas Co-op?

4 A. I didn't obtain them directly from the co-op. They had
5 been obtained and they were given to me to go cover this lead.

6 Q. What day were they obtained from the co-op?

7 A. You know, I don't have a very -- I'm not sure that I know
8 that date. I don't know.

9 Q. You were given two receipts, the September 30 receipt and
10 the October 18 receipt; is that correct?

11 A. That's correct.

12 Q. Who gave them to you?

13 A. There were a number of individuals who were directing me to
14 do leads, so I'm not sure specifically which individual gave me
15 those receipts.

16 Q. Did you go to Mid-Kansas Co-op with another agent?

17 A. Yes, I did.

18 Q. Was that Mr. Coffey with ATF?

19 A. Yes.

20 Q. Were you aware that Mr. Coffey had been to the Mid-Kansas
21 Co-op the previous Thursday on the 27th to determine whether or
22 not any large sales had occurred there and had determined that
23 there were no large sales?

24 A. I don't recall -- I mean I don't know where he was prior to

25 him and I going there, but I know that we had some agents going

536

Christopher Budke - Direct

1 to the various co-ops; so it doesn't surprise me that that

2 would have happened.

3 Q. So you have no recollection who gave you these two receipts

4 for you to go interview Mr. Schlender; is that correct?

5 A. That's correct. Somebody working on the investigation. I

6 mean somebody in the position of assigning leads would have

7 given it to me.

8 Q. And what day did you interview Mr. Schlender the first

9 time?

10 A. It would have been April 30.

11 Q. That's a Sunday.

12 A. I'll take your word for it. I haven't checked to see what

13 day.

14 Q. Do you have any recollection of that day?

15 A. Sure.

16 Q. What day was it?

17 A. What day of the week?

18 Q. Yes, sir.

19 A. I don't know what day of the week it was.

20 Q. Was the store open?

21 A. I -- I believe it was. We went down there a couple of

22 times, and I know that there was --

23 Q. Excuse me, Mr. Budke. Lets start with the first day you

24 went there, April 30. At least that's the first 302 I have

25 where you interviewed Mr. Budke -- interviewed Mr. Schlender.

537

Christopher Budke - Direct

1 Is that the first time you interviewed him?

2 A. Yes. I don't remember being interrupted by a customer that
3 first interview, so it would be possible it wasn't open; but
4 I -- I don't know what the hours of the co-op were, so I don't
5 know.

6 Q. Did you call ahead and make an appointment for the
7 interview, or did you just show up?

8 A. I did not call, but a call could have been made to say
9 that; but I don't remember calling directly out there.

10 Q. Who was present at the Mid-Kansas Co-op when you arrived?

11 A. I remember Mr. Schlender -- Rick being there on the first
12 interview. He may have been the only one there at the time;
13 and I don't remember being interviewed by a customer, so it's
14 very likely it might have been closed, but I don't think that
15 was part of our discussion.

16 Q. What time did you get there?

17 A. I'm guessing it would have been in midafternoon. It was --
18 seems to me it was still light out and I still made it back
19 into the Junction City field or -- field office to make the
20 7:00 briefing; so I'm guessing it would have been sometime
21 after lunch but before evening.

22 Q. How long did you stay -- how long did the interview with
23 Mr. Schlender take?

24 A. I didn't record the amount of time, but I'm guessing it
25 would have taken somewhere between an hour and maybe an hour

1 and a half, somewhere in that time frame.

2 Q. Did you determine who the sales person was that issued
3 either or both of the two tickets that you had in your
4 possession?

5 A. Yes, I did.

6 Q. Let's start with the September 30 one.

7 A. Who did it? Who sold it?

8 Q. In your interview with Mr. Schlender, who was the person at
9 the co-op who wrote up that sales ticket?

10 A. The September transaction was written up by Jerry
11 Showalter.

12 Q. All right. Let's start with the next one then, October 18.

13 A. The October 18 was written up by Rick.

14 Q. Now, did he have a recollection of this event from the
15 sales ticket of October 18, 1994, on April 30, '95, some six
16 and a half months later?

17 A. Yes, he did.

18 Q. Do you -- have you reviewed your 302 recently before taking
19 the witness stand, Mr. Budke?

20 A. Yes, I have.

21 Q. Can you give us the information that Mr. Schlender gave you
22 as to his recollection of that sales transaction on October 18,
23 '94?

24 A. Okay. We asked him to take as long as he needed to to
25 think about it. We asked him to think about the specific date,

539

Christopher Budke - Direct

1 if there was anything that had occurred in his family,
2 birthdays or otherwise that might put him in the right time
3 frame.

4 We asked him if he would refer to his personal
5 calendar to see if he -- if there is anything there that might
6 help him with his recollection, and he did that and he started
7 to recall some of the events.

8 Do you want me to continue with the description?

9 Q. Yes, if you would. What did he say about the sales ticket?

10 What did he recall about the incident that was reflected in the
11 sales ticket? The sales ticket reflects a sale of 40 bags. Is
12 that correct?

13 A. That's correct. Forty 50-pound bags.

14 Q. Of -- 50-pound bags of fertilizer?

15 A. Yes, sir.

16 Q. What was his recollection as to the event that he wrote up
17 as reflected in that sales ticket?

18 A. Well, he recalled that there were two white males involved
19 in the transaction; that they had arrived to the co-op in a
20 pickup truck that was pulling a trailer.

21 He recalled that the driver of the pickup truck came
22 into the co-op. He had some recollection of a basic physical
23 description of that individual.

24 That individual placed the order. He indicated that
25 he was going to use the ammonium nitrate -- ammonium nitrate

540

Christopher Budke - Direct

1 to -- on some wheat that he had just planted. He specifically
2 recalled that because he thought it was unusual for a couple of
3 reasons, one being it had rained the day before and farmers
4 generally do not plant their wheat the day after a rain, and
5 then also he thought it was unusual because most farmers had
6 switched to using a liquid nitrogen fertilizer as opposed to
7 the ammonium nitrate in a bag form.

8 And he indicated --

9 Q. Let me stop you there one second. You indicated that he
10 told you that the person told him that he had just planted his
11 wheat and was going to put fertilizer on it?

12 A. No, that he was going to plant his wheat.

13 Q. Right.

14 A. And -- I'm not a farmer, so -- but the indication was that
15 you plant it and fertilize it at the same time.
16 Q. And that's what the person told Mr. Schlender that he was
17 going to do on that day; is that correct?
18 A. That's correct.
19 Q. Did he give a description of the individual?
20 A. Yes. He said he was a white male. He said approximately
21 6-foot tall. He described him as having light brown hair and
22 being medium to slight built and being in his mid-30's to
23 approximately 40 years of age.
24 Q. Any further description?
25 A. He indicated he may have been wearing a coat, but he -- he

541

Christopher Budke - Direct

1 couldn't recall the color of the coat.
2 Q. Any further description as to eyeglasses, no eyeglasses?
3 A. He did not say one way or the other.
4 Q. Any facial hair, mustache, beard?
5 A. He did not say one way or the other.
6 Q. Any obvious scars or tattoos?
7 A. He did not say.
8 Q. Did he give you a description of the other individual that
9 was with him?
10 A. Yes. He didn't see the other individual until they had
11 backed the truck and trailer up to the entrance of the
12 warehouse so that they could load the ammonium nitrate onto the
13 trailer. So at that point in time, the passenger in the
14 vehicle exited to watch him load it, and he gave a -- somewhat
15 of a description of that individual, indicating that he had
16 dark hair -- I'm sorry -- clean-cut hair on this interview and
17 that he was approximately the same age, white male.
18 Q. Did he give the height?

19 A. You know, without referring to my --
20 Q. If you would --
21 A. -- 302, I can't --
22 Q. In front of you, there is Exhibit No. T, is your first 302.
23 It's in the packet, not the notebook.
24 A. Here?
25 Q. Yes, sir.

542

Christopher Budke - Direct

1 A. Which number?
2 Q. No. T. And you can unclip from the top, if you'd like.
3 A. Okay.
4 Q. And if you would, go through there. I believe your
5 description starts on page 3.
6 If you would go through there and read into the record
7 anything that relates to the description of the person that was
8 driving the pickup and also the passenger.
9 A. Okay. "Schlender described the individual making the
10 purchase is approximately 6-foot tall, medium to slight build,
11 light brown hair, middle 30's to 40 years of age. Schlender
12 believes that the purchaser may have been wearing a coat but
13 could not specifically recall the color of the coat."
14 Do you want me to read about what the purchaser said
15 to him, as well or just the physical description?
16 Q. No, that's fine right there.
17 A. Okay. And the passenger: "Schlender briefly saw the
18 passenger as he loaded the fertilizer into the trailer. The
19 passenger exited the truck to watch Schlender load the
20 fertilizer. Schlender could recall the passenger being a white
21 male, approximately same age, middle 30's or a little older,
22 with clean-cut hair."

23 Q. So the first person was mid-30's to 40. The second person
24 is mid-30's or a little older with clean-cut hair. That's the
25 only description you got, white male and clean-cut hair? Did

543

Christopher Budke - Direct

1 you get a height?

2 A. No, sir.

3 Q. Did you get a weight?

4 A. No.

5 Q. Any facial hair?

6 A. Did not.

7 Q. Scars or tattoos?

8 A. No.

9 Q. Did you ask those questions?

10 A. I probably would have asked him, but if he didn't have a
11 recollection, then I wouldn't have put that in there; but I --
12 as I would have gone through the list, I would have said, Do
13 you remember a tattoo, do you remember a mustache, or something
14 to that effect.

15 Q. Or his build: heavy, light, slight?

16 A. You know, I did ask that in the first one; and I don't see
17 a reference to that in the second one, so I don't know if I
18 would have forgotten to ask that question or whether or not he
19 had no recollection. I just -- I don't remember.

20 Q. Did he describe the vehicle that the two individuals were
21 in?

22 A. Yeah. He had a stronger recollection of the vehicle than
23 he had of the individuals. He did recall the vehicle being a
24 larger-than-standard-size truck. He recalled it being
25 dark-colored, possibly black. He thought it could possibly be

544

Christopher Budke - Direct

1 a Dodge. It could have been a three-quarter ton, could have
2 been a four-wheel drive, but the emphasis being it was a
3 larger-than-standard truck. And he recalled it had a white --
4 a light-colored, possibly white cab-height camper shell on the
5 back; and he recalled the trailer to be --

6 Q. Let me stop you one minute.

7 A. Okay.

8 Q. Stay on the pickup truck. Did he indicate a license plate?

9 A. Yeah. He thought that it may have had a license plate, may
10 have been a Kansas license plate with a Marion tag, but he was
11 not --

12 Q. Did you understand -- did you understand what he meant by a
13 Marion tag?

14 A. Well, Marion "sticker" I believe is the word he used; and
15 yeah, in the Kansas license plates, you get a sticker for
16 whatever county you live in.

17 Q. And how large is that sticker?

18 A. It's -- I don't know the exact, but it's a rather small --
19 maybe an inch and a half by an inch and a half, or an inch by
20 an inch.

21 Q. That goes on the corner of the license plate?

22 A. That's correct.

23 Q. And how does it sit -- what does it say for Marion County?

24 A. I don't know what it says for Marion County.

25 Q. Any further description of the vehicle?

545

Christopher Budke - Direct

1 A. Well, he indicated that it was in good condition for the
2 age that he thought it was. He thought it was a late 70's
3 model vehicle. He didn't recall seeing any primer paint on it

4 or anything that would indicate it was showing signs of wear
5 and tear for a vehicle that would have been that old.

6 Q. All right. And you mentioned that he told you there was a
7 trailer involved. Did he give you a description of the
8 trailer?

9 A. Yeah. He recalled the trailer appeared to be the type of
10 trailer would be made out of a rear portion of a pickup truck.
11 He said that it -- you know, it looked like what a rear portion
12 of a 1970's or '60's Ford pickup truck would look like. He had
13 a -- more of a recollection of it being red in color, and he
14 had a recollection of there being on the back tailgate portion
15 of it some white lettering. He thought it could have possibly
16 said Ford but just white lettering, which would indicate,
17 identify to some extent what the trailer was.

18 Q. How did you write that up in the bottom of page 3?

19 A. "Schlender described the trailer as a bed portion of a
20 single-axle pickup truck, believed it was made from a '60's
21 model three-quarter ton Ford pickup. He recalled the trailer
22 was red in color with white Ford lettering on the tailgate."

23 Q. And what further description did he give of the trailer?

24 A. "He indicated the trailer was in fairly good condition with
25 a bumper and standard taillights. He did not recall the -- if

546

Christopher Budke - Direct

1 the taillights were working. Schlender could not recall the
2 trailer having a license tag."

3 Q. Did you understand what he meant by a pickup bed cut off to
4 make a trailer? Have you seen those in Kansas?

5 A. Yeah. I've seen a pickup truck trailer, yeah.

6 Q. In fact, after this 302 was written, the FBI went out and
7 made a search for cutoff-bed pickup trailers, didn't they?

8 A. Yeah. They looked for -- for trailers that would fit this

9 type of a description.

10 Q. In fact, a cursory review of the 302's reflects that 12
11 people were found right away that had similar pickup bed
12 trucks. Are you aware of that?

13 MR. MENDELOFF: Object, your Honor. Foundation.

14 THE COURT: Well, you asked if he was aware.

15 MR. WOODS: Yes, your Honor.

16 THE COURT: Are you?

17 THE WITNESS: It's not in my 302; and no, I was not
18 aware of that.

19 BY MR. WOODS:

20 Q. Well, you said that you go back for a 7:00 conference on
21 the case. Do you learn things about the case while you're
22 working on it?

23 A. Sure.

24 Q. And was that one of the leads that you brought back that
25 night that perhaps the FBI should work on?

547

Christopher Budke - Direct

1 A. I brought back the information, but I don't assign the
2 leads. But yes, I know that there were agents that went out
3 and looked for this type of a trailer.

4 Q. Did you ever learn how many they found?

5 A. No.

6 Q. You are based in Kansas City; is that correct?

7 A. That's correct.

8 Q. How long have you been in Kansas City?

9 A. Approximately five years.

10 Q. Have you covered leads throughout the state, or just in the
11 city?

12 A. Most of my work is primarily in the state of Missouri. I

13 work public corruption from the state of Missouri.
14 Q. Now, you went back two days later on Tuesday to interview
15 Mr. Schlender again. What was the purpose of that?
16 A. Well, there was a couple things we wanted to check out.
17 One was the inventory levels to determine what the inventory
18 would have been approximately at that time frame. We wanted to
19 determine if Rick had seen any television coverage of the -- of
20 a -- Mr. Nichols' trucks to -- to get an idea whether that
21 would have somehow tainted his recollection of the truck; and
22 there were a couple of other areas that we covered. I also
23 asked for an additional -- if he recalled any additional
24 description of the -- of the individuals involved in the
25 purchase on the 18th.

548

Christopher Budke - Direct

1 Q. If you would look at Exhibit U in front of you, which is
2 your 302 written concerning your interview of May 2. On the
3 bottom of page 2, you write up what Mr. Schlender tells you
4 again about the description of the individuals.

5 A. U, you said?

6 Q. Should be U.

7 A. This stops at S, so -- well, I'm sorry. Here it is in
8 this -- here it is.

9 Okay. Page 2?

10 Q. Have you reviewed this one lately?

11 A. Yes, I have.

12 Q. Look at the bottom of page 2.

13 A. Okay.

14 Q. What did Mr. Schlender tell you that day about the
15 description of the individuals?

16 A. He -- do you want me to read it, or --

17 Q. Well, I think it works better than relying on your memory.

18 A. Okay. "Mr. Schlender advised he believes the driver of the
19 vehicle, who was also the purchaser of the ammonium nitrate,
20 had light brown hair which was trimmed short but not a crew
21 cut. The passenger accompanying the purchaser had dark-colored
22 hair which was slightly longer than the purchaser's hair."
23 Q. Will you continue with that sentence at the bottom?
24 A. Okay. "Schlender advised he had seen television coverage
25 of the bombing of the federal building in Oklahoma City and had

549

Christopher Budke - Direct

1 specifically seen photographs of Timothy James McVeigh.
2 Schlender does not believe that the purchaser of the ammonium
3 nitrate on October 18, 1994, nor the passenger accompanying the
4 purchaser was McVeigh. Schlender advised he had also seen
5 photographs of Terry Lynn Nichols, and Nichols may have been
6 the purchaser of the ammonium nitrate on October 18, 1994."
7 Q. Excuse me. Did he advise you whether or not he had seen
8 the -- any video or TV of Nichols' GMC pickup?
9 A. He said he had not seen any of the vehicles -- any press
10 coverage of the vehicles involved other than the tan-colored
11 Mercury that Mr. McVeigh had been arrested in.
12 Q. By this day on May 2, had you learned enough facts to know
13 that Mr. Nichols had a GMC and not a Dodge pickup?
14 A. Yes.
15 Q. And that it had a half ton, not a three-quarter ton?
16 A. I may have been aware of that.
17 Q. That he had a two-wheel drive, not a four-wheel drive?
18 A. I'm not sure I even know that to this date.
19 Q. Did you ever go look at it?
20 A. No.
21 Q. Okay. Did -- when you talked with Mr. Schlender, did he

22 have any recollection of the other ticket, 9-30-94, when 40
23 bags were sold earlier? You stated that he was the one who
24 wrote up the October 18 ticket. But did he have any
25 recollection at all of the prior one?

550

Christopher Budke - Direct

1 A. Well, I don't recall talking to him about that because we
2 had talked to Mr. -- Jerry Showalter after we talked to Rick;
3 and because Jerry was the one --

4 Q. Was Showalter there that day?

5 A. He was the one that wrote up the September 30 purchase; and
6 we -- he was not there on the first interview. He was there on
7 the second interview.

8 Q. Well, you have a 302 written reflecting you interviewed
9 Showalter on April 30.

10 A. Okay. Then I'm sorry. I'm incorrect about that.

11 Q. Was he there in the store?

12 A. No. We interviewed him -- actually, he was outside of the
13 store. I can remember that because the weather wasn't
14 particularly good and it was kind of cold standing out there
15 talking to him.

16 He was working on some sort of equipment of some sort,
17 and we were asking him questions about that.

18 Q. This is on Sunday, April 30?

19 A. You know, I'm sorry, but I don't recall the specific date,
20 but I mean I could look at the 302 or I'll take --

21 Q. Well, let's go back to --

22 A. Okay.

23 Q. -- what you can recall from Schlender.

24 A. Okay.

25 Q. It was Showalter who wrote up the September 30 ticket; is

Christopher Budke - Direct

1 that correct?

2 A. Showalter wrote up the September 30 ticket, yes.

3 Q. Did Schlender have any recollection of the transaction?

4 A. I did not ask him that. I -- what I did do, because he did

5 not write up that ticket, is I went and talked to Showalter

6 about that. And Showalter did not have a particularly strong

7 recollection of it; and so it kind of became a dropped issue.

8 I just figured he was the one that wrote up the ticket and if

9 he didn't have a recollection, I had -- there wasn't a whole

10 lot more I could do about that.

11 Q. Do you have any other memory of what Schlender told you

12 about the individuals or the automobile, the vehicle?

13 A. No.

14 Q. Other than what you've described for us today by reading

15 your 302's of April 30 and May 2?

16 A. None beyond what's in my 302, no.

17 Q. Now, you stated that Mr. Schlender indicated to you that he

18 had seen the television coverage of the bombing?

19 A. Yeah. What I asked him was if he had seen any of the

20 television or press coverage of the bombing; and he responded

21 yes, he had.

22 Q. What did he tell you he had seen?

23 A. I asked -- the format of the question was I asked him if he

24 had seen any of the television or press coverage of it; and he

25 said yes, he had.

Christopher Budke - Direct

1 And then I asked him whether or not any of that

2 coverage helped him in his recollection of or influenced his

3 recollection of the individuals involved in the purchase. And
4 then he told me that he had specifically seen the photograph of
5 Tim McVeigh and a photograph of Terry Nichols.

6 Q. And did it help him?

7 A. He said he did not believe but he was -- he did not believe
8 that the -- McVeigh was a purchaser or the passenger; but he
9 did believe that Nichols may have been the purchaser.

10 Q. How did he phrase it exactly? May be, might be, possibly,
11 or what? What did he say?

12 A. I believe that the verbiage that's in the 302 was the
13 verbiage that he used and that he said he believed.

14 Q. This came from your notes?

15 A. Yes.

16 Q. May have been the purchaser.

17 A. Yes.

18 Q. Now, the TV coverage in Kansas was quite extensive that
19 week from April 21, the day of the arrest, through the
20 following week, the preliminary hearing of Mr. Nichols in
21 Wichita, Kansas, on Wednesday, the preliminary hearing of
22 McVeigh on Thursday, all of the facts coming out about alleged
23 renting of the truck in Junction City, Mr. McVeigh allegedly
24 staying in the Dreamland hotel, Terry Nichols living in
25 Herington, Kansas, the search of the house, having worked at

553

Christopher Budke - Direct

1 Marion, Kansas. You saw all that on TV, I assume, didn't you?

2 A. No, I did not. I was very busy. I was working about
3 18-hour days.

4 Q. Where were you staying when you were assigned out there?

5 Where were you staying?

6 A. It was a hotel room -- a hotel near the McDonald's. The
7 name of the hotel -- I believe it might have been a Best

8 Western or -- but one of the hotels there in Junction City.

9 Q. When you would get up in the morning, you did not have the
10 television on, you did not see any --

11 A. On occasion, when I had an opportunity to, I would turn to
12 the national news and watch the national CNN coverage of the
13 news.

14 Q. It was quite heavy, wasn't it?

15 A. Sure.

16 Q. And at night before you go to bed, do you watch television?

17 A. Generally not, because I was very tired and needed to get
18 up early the next morning.

19 Q. The point being the television coverage in Kansas was quite
20 extensive during that week, was it not?

21 A. I'm not sure that I can answer that. I can assume that it
22 probably was, but I did not have time to watch that much
23 television to know what the coverage was.

24 MR. WOODS: All right. Thank you.

25 No further questions of Mr. Budke, your Honor.

554

Christopher Budke - Direct

1 THE COURT: Mr. Mendeloff?

2 MR. MENDELOFF: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. MENDELOFF:

5 Q. During the course of Mr. Woods' questions, he asked you
6 whether you knew of Mr. Coffey's visit to Mid-Kansas Co-op on
7 the 27th. Do you remember that question?

8 A. Yes.

9 Q. And I believe Mr. Woods asked you whether you were aware
10 that Mr. Coffey had gone there and they weren't able to find
11 any records of large purchases of ammonium nitrate. Do you

12 remember that question that Mr. Woods asked you?

13 A. Yes.

14 Q. Do you know -- did you know or do you know that the search

15 they did went back only to January 1, 1995, and not before

16 that?

17 A. I have no knowledge of what was done on that visit.

18 Q. During the interview with Mr. Schlender regarding his

19 initial -- regarding his experience on October 18, did he tell

20 you how many times he had occasion to see the purchaser of that

21 ammonium nitrate that day?

22 A. He saw him twice. He saw him once when the individual came

23 into the store and made the purchase and there was a brief

24 exchange of conversation, and then he also saw them -- saw the

25 individual as he was loading the ammonium nitrate into the

555

Christopher Budke - Cross

1 trailer.

2 Q. Mr. Woods asked you whether during the course of your

3 interview of Mr. Schlender he had stated whether the purchaser

4 had glasses. Did you ask Mr. Schlender whether he had glasses;

5 do you recall?

6 A. I don't think I did. I don't have a strong recollection,

7 but I don't believe that I did.

8 Q. Now, as you were explaining the course of your questioning

9 of Mr. Schlender which precipitated his comment that Terry

10 Nichols may have been the driver of the vehicle and the

11 purchaser of the ammonium nitrate --

12 A. Right.

13 Q. -- you indicated that you asked Mr. Schlender whether any

14 of the media that he had seen had -- first you said "helped,"

15 then you said "influenced" his identification.

16 A. Right.

17 Q. Do you recall which it is?
18 A. Well, what I asked him is based on what he had seen, does
19 that -- does that at all affect -- whether I used "help" or
20 "influenced" or "helped" or -- you know, the exact verbiage, I
21 don't know; but the idea was did -- does your recollection
22 change in any way because of what you had seen on the
23 television; and he said no, other than the fact that he thought
24 that perhaps Mr. McVeigh -- I mean Mr. Nichols may have been
25 the purchaser.

556

Christopher Budke - Cross

1 Q. Did you make clear that you wanted him to focus on his
2 experience in September and October of 1994 and not on whatever
3 he had seen on television?

4 A. Yes.

5 Q. Did you or any agent to your knowledge ever inform Rick
6 Schlender at the time of these interviews that the Mike Havens'
7 receipt had been found in Terry Nichols' home on April 23?

8 A. I did not tell him and I have no knowledge of anybody
9 telling him that.

10 Q. All right. Now, Mr. Schlender also identified or stated
11 that there was a passenger accompanying the person he said may
12 have been Terry Nichols.

13 A. That's correct.

14 Q. Did he state how long he had an opportunity to observe that
15 passenger?

16 A. He didn't give me a time frame but indicated he had only
17 seen that individual -- he did indicate he noticed that the --
18 there were two males in the vehicle when they pulled up in
19 front of the co-op, so he apparently could have seen them as
20 they pulled up, but he didn't actually get a good look at that

21 individual until he was loading the ammonium nitrate onto the
22 trailer and that individual got out of the passenger side of
23 the truck and walked around to watch.
24 Q. Did he tell you how long he looked at that person, whether
25 it was a glance or whether it was a longer --

557

Christopher Budke - Cross

1 A. He didn't indicate.
2 Q. Now, when Mr. Woods was talking to you, he asked you
3 questions about Mr. Schlender's statement that the vehicle was
4 possibly a Dodge.
5 A. Yes.
6 Q. Was he clear that this was a Dodge?
7 A. No, he was not.
8 Q. You said that he said it could have been a three-quarter or
9 four-wheel drive -- three-quarter-ton, four-wheel-drive truck.
10 Do you know whether or not a three-quarter-ton truck and a
11 half-ton truck look any different from the outside?
12 A. No, I don't.
13 Q. Do you know whether there is any discernible -- what the
14 discernible difference is between a four-wheel-drive and a
15 non-four-wheel-drive vehicle?
16 A. Yes.
17 Q. What is that?
18 A. It's the -- the actual mechanics of it?
19 Q. No, the discernible difference from the outside.
20 A. Oh, from the outside?
21 Q. Do you know --
22 A. Based on my experience, I've noticed that four-wheel-drive
23 vehicles tend to sit up a little higher.
24 Q. Can you distinguish that from a truck with struts or with
25 raised shock absorbers?

Christopher Budke - Cross

- 1 A. I could -- I probably could not.
- 2 Q. All right. Now, as to the question of color of this
3 vehicle --
- 4 A. Uh-huh.
- 5 Q. -- can you tell us whether Mr. Nichols (sic) was stronger
6 on the fact that it was a dark vehicle with a light camper
7 shell or the specific colors involved?
- 8 A. He was telling me it was a dark vehicle with a
9 lighter-colored camper shell.
- 10 Q. Of all the factors that he mentioned with the people and
11 the vehicles, what were the factors -- the characteristics that
12 you -- you felt he was clearest about?
- 13 A. He seemed to be more clear about the fact that it was
14 darker-colored truck with a lighter-colored camper shell and
15 that it had been a red-colored trailer.
- 16 Q. Get to the trailer in a minute.
- 17 A. Okay.
- 18 Q. You indicated that during the course of your interview
19 Mr. Schlender indicated that he may -- the pickup truck may
20 have had a Marion County tag.
- 21 A. Yes.
- 22 Q. All right. Now, did Mr. Schlender indicate that he was
23 certain about this?
- 24 A. No, he was not certain.
- 25 Q. Did he tell you in any way why he said that?

Christopher Budke - Cross

- 1 A. No, he did not.

2 Q. When you went to interview Mr. Schlender on April 30, did
3 you know what Terry Nichols' vehicle looked like?

4 A. No, I did not.

5 Q. How is it that you remember that?

6 A. Well, I remember that because when I went back to the
7 command post and passed on the information that had been
8 relayed to me that had generated some excitement among my
9 supervisors who I was passing the information up, and at that
10 point in time they directed me to a photograph of Mr. Nichols'
11 truck.

12 Q. Now, Mr. Nichols (sic) also described the trailer that was
13 attached to that vehicle -- is that right -- during your

14 interview on April 30?

15 A. Yes.

16 Q. And I believe you testified that in that interview he said
17 that the vehicle or the trailer was the bed portion of a

18 single-axle pickup truck?

19 A. Yes.

20 Q. Do you recall whether Mr. Schlender said that the trailer

21 looked like it was a bed portion of a single-axle pickup, or
22 whether it was made up of the bed portion of a single-axle
23 pickup?

24 A. I don't have a terribly strong recollection, but what I do

25 recall is that he -- it would be or appeared to be or used some

Christopher Budke - Cross

1 sort of adjective along that line of describing the appearance
2 of the trailer.

3 Q. All right. And you stated white Ford lettering. When he

4 described the lettering, did he say that the trailer said Ford
5 on it?

6 A. He recalled more the white lettering, and then he said it
7 could possibly have said Ford on it.

8 MR. MENDELOFF: One moment, please, your Honor.

9 THE COURT: Yes.

10 MR. MENDELOFF: Nothing further, your Honor. Thank
11 you.

12 THE COURT: All right.

13 REDIRECT EXAMINATION

14 BY MR. WOODS:

15 Q. Mr. Budke, are you telling us that a person can't tell the
16 difference between a three-quarter ton pickup and a half-ton
17 quarter --

18 A. I said I personally probably could not tell the difference.
19 I believe he asked whether I knew the difference; and no, I
20 don't know the difference.

21 Q. Mr. Schlender kept telling you it was a larger pickup, a
22 larger bed pickup? Is that correct?

23 A. The words I recall him saying were larger than standard.

24 Q. Do you understand a three-quarter-ton being longer, more
25 extended than a half-ton?

Christopher Budke - Redirect

1 A. I don't know the difference between pickup trucks. I've
2 never owned a pickup truck. No one in my family has owned a
3 full sized pick up truck. My father now owns a small pickup
4 truck, but I don't know much about pickup trucks.

5 Q. As to the Ford lettering, Mr. Mendeloff is suggesting that
6 it was Ford-type lettering. How did you write it up in your
7 302?

8 A. Well, I did write it up in my 302 as -- let's see. I'll
9 have to go back.

10 "Schlender could recall the trailer was red in color
11 with white Ford lettering on the tailgate."

12 Q. You try to write up your 302's to be as specific as you
13 can, especially in a major investigation like this?

14 A. Yes. And the word "Ford" was brought up initially, and he
15 did indicate that it was white lettering, could have been
16 "Ford," and so that is -- the 302 reads stronger than the
17 verbiage that he relayed to us.

18 Q. What was your verbiage when you got back to the command
19 post to pass along this lead that sent all these agents out to
20 look for Ford cutoff-bed trucks?

21 A. I think -- and again, I'm not the one that would have sent
22 off the lead, but --

23 Q. You're the one who got it, weren't you?

24 A. Any leads that were sent probably would have been sent
25 based on what the 302 read.

Christopher Budke - Redirect

1 Q. And how does the 302 read? Does it say Ford cutoff pickup
2 bed trailer?

3 MR. MENDELOFF: Objection, your Honor.

4 THE COURT: We've got it.

5 MR. WOODS: Yes, your Honor. Thank you.

6 BY MR. WOODS:

7 Q. Now, Mr. Budke, you mentioned early in your testimony with
8 Ms. Merritt that you were very interested in going back to talk
9 with Mr. Donahue about the events and the timing of
10 September 30.

11 A. Yes.

12 Q. And of course, that was the day that Terry Nichols ended
13 his employment there. That's probably what you were going to
14 look for. Is that correct?

15 A. That's correct.

16 Q. Did you determine when you went there that Terry Nichols
17 did not have a camper on his truck until approximately 7:00
18 that night, when it was being mounted on there?

19 A. Well, the information that was provided to us was that he
20 had seen -- Mr. Donahue had seen Terry Nichols and Tim McVeigh.
21 He thought they were putting on the trailer at that time.

22 Q. Did you ask him if he had ever seen a camper on that GMC
23 pickup up until that time?

24 A. Yes.

563

Christopher Budke - Redirect

2 MR. WOODS: Thank you.

3 THE COURT: You said putting on the trailer. Is that
4 what you meant?

5 THE WITNESS: Yes, sir. He indicated that he thought
6 that -- I didn't get into the specifics as to what led him to
7 that conclusion, but he did indicate that it appeared as if

9 BY MR. WOODS:

10 Q. The judge has a good point. We're speaking of the camper

11 top that's on the GMC, not the trailer?
12 A. Yeah, I'm sorry. The camper top.
13 THE COURT: Camper top.
14 BY MR. WOODS:
15 Q. By the way, you never saw any Ford cutoff pickup bed truck
16 there at Terry's house, did you?
17 A. No. We did drive there on the way out and did notice a
18 flat-bed trailer on the grounds, but --
19 Q. Now, you're a city boy, but can you tell the difference
21 A. Yes.
22 Q. Even you can do that; right?
23 A. Yes, I can.
24 MR. WOODS: Thank you.
25 No further questions, your Honor.

564

Christopher Budke - Redirect

1 THE COURT: All right. You may step down. Now you're
2 excused.
4 THE COURT: We'll take care of it.
5 Next witness.
6 MR. WOODS: Yes, your Honor. We would call Jon
7 Hersley.
8 THE COURT: All right.
9 Resume the stand, please.
10 (Jon Hersley was recalled to the stand.)
11 DIRECT EXAMINATION
12 BY MR. WOODS:
13 Q. Mr. Hersley, you're one of two case agents on this case; is
14 that correct?
15 A. That's correct.
16 Q. And in the past several months, you and Mr. Mendeloff have
17 been meeting with various witnesses; is that correct?
18 A. Yes.

19 Q. When did you first meet with Mr. Frederic Schlender?
20 A. We first met with Mr. Schlender on -- I believe it was
21 September 5 of 1996.
22 Q. That's the first time you personally had met him?
23 A. No. I thought you were talking about Mr. Mendeloff and
24 myself. I had met Mr. Schlender on a previous occasion, which
25 I believe is going to be in November of '95, close to --

565

Jon Hersley - Direct

1 Q. What was the occasion for you meeting with Schlender in
2 November, '95?
3 A. Myself and Mr. Mackey and Mr. Pat Ryan, the U.S. Attorney
4 from Oklahoma City, had stopped in to visit with Mr. Schlender.
5 Q. What was the visit about?
6 A. More of an orientation meeting, where Mr. Mackey and
7 Mr. Ryan could meet Mr. Schlender and learn a little bit about
8 his business, the procedures and what type of business they
9 were in, things of that nature.
10 Q. Were any of the facts of the case discussed with
11 Mr. Schlender at that time?
12 A. In general terms, the facts that there was a purchase of
13 ammonium nitrate, a one-ton quantity, made on September 30 of
14 '94 by a Mike Havens and again on October 18, 18994, by Mike
15 Havens.
16 Q. Did you have the 302's of Agent Budke with you at that
17 time?
18 A. I did not.
19 Q. Did Mr. Mackey or Mr. Ryan?
20 A. I don't recall if they had the 302's there at that time or
21 not. I know -- the 302's were not out and gone over at that
22 point. I do know that.

23 Q. Who was asking the questions of Mr. Schlender at that time
24 amongst your group?
25 A. Primarily Mr. Ryan.

566

Jon Hersley - Direct

1 Q. What about the grand jury testimony? Was that available?
2 A. It would have been available, but it was not there and
3 being gone over. By "available," I mean it could have been
4 there, but I did not see it.
5 Q. At that time, to interview Mr. Schlender, what information
6 would the prosecutor have available to him other than the
7 interviews of Mr. Schlender by Mr. Budke and the grand jury
8 testimony?
9 A. I presume that Mr. Ryan had reviewed those materials prior
10 to meeting with Mr. Schlender, although I'm not certain of
11 that. It was more of a get-to-know-you type of meeting, where
12 they could meet Mr. Schlender and find out about his business.
13 Q. You certainly had read the two 302's and the grand jury
14 testimony, had you not?
15 A. Yes, I believe so.
16 Q. During the conversation with Mr. Schlender, did he come up
17 with facts different than those reflected in the two 302's and
18 the grand jury testimony?
19 A. I say I had reviewed the grand jury testimony. I believe I
20 had reviewed the 302's at that point and Mr. Schlender's -- the
21 conversation insofar as it pertained to the material in the
22 302's was pretty much similar at that point.
23 Q. So he is still staying with the same story in November,
24 '95?
25 A. In November of '95, he was staying with the same story. We

Jon Hersley - Direct

1 did find out that he had some uncertainties about what he had
2 seen. He had primarily had a better recollection of the
3 transaction on October 18 than he did of the September 30

4 transaction because he said he had handled the -- that entire
5 transaction. He had written up the ticket for it, met with the
6 individual identifying himself as Mike Havens inside the co-op,
7 and then he went outside and loaded the ton of ammonium nitrate

8 himself; so he had a better recollection of that.

9 He did point out that he was not certain of the
10 description that he had provided of the pickup, that being that

11 it was a Dodge pickup. He had indicated in the 302's that it
12 was possibly a Dodge and he was reinforcing that; that he
13 really wasn't sure of the make of the vehicle, but he was kind
14 of ballparking it.

15 Q. When did you read his grand jury testimony?

16 A. It would have been sometime before myself and Mr. Mendeloff
17 met with Mr. Schlender either on the September 5, but, more
18 than likely, on the October 15 meeting in 1996.

20 the 5th?

21 A. I believe it was September 5, yes, sir.

22 Q. Where did that take place?

23 A. That meeting was at a law enforcement center that's located

24 across the street from the co-op there in McPherson.

25 Q. Okay. And who was present?

568

Jon Hersley - Direct

1 A. Myself and Mr. Mendeloff and Rick Schlender.

3 A. The meeting with Mr. Schlender on this occasion was pretty

4 brief. It was in the -- I believe in the afternoon, and we

5 only were able to meet with him for about 30 minutes, maybe an

6 hour at the most. I think probably closer to 30 minutes on

7 this first occasion.

8 Q. What was discussed at that time?

10 that he had observed on the October 18 and on the September 30

11 meeting. We --

12 Q. So he now recalls the September 30 meeting?

13 A. He said that he still had a much better recollection of the

14 October 18 meeting, but he believed that it was the same

15 vehicle that he had loaded on September 30.

16 Q. And what else did you discuss with him?

17 A. We showed him some photographs of a pickup on this

18 occasion.

19 Q. In the 302 that Mr. Budke wrote up, Mr. Schlender indicated

20 that he would like to see a lineup of pickups; that that would

21 help him identify the pickup, did he not?

22 A. He offered to look at a photo lineup of pickups and said

23 that he felt like that he would be able to identify the pickup

24 that he had seen.

25 Q. And what kind of photo lineup did you give him?

Jon Hersley - Direct

1 A. We did not present him with a photo lineup at that time.

2 Q. When did you first give him a photo lineup, as you call it?

3 A. We didn't provide him with a photo lineup of the pickup.

4 We showed him three different photographs of the same pickup on
5 September 5 of 1996.

6 Q. And that was Mr. Nichols' blue GMC pickup; is that correct?

7 A. That's correct.

8 Q. And is that a three-quarter-ton pickup?

9 A. No, it's not.

10 Q. Is it four-wheel drive?

11 A. No, it's not.

12 Q. Is it black?

13 A. No.

14 Q. Would you characterize it as light blue, medium blue, or
15 dark blue?

16 A. That pickup -- I've seen different photographs of it.

17 Sometimes depending on how the sun is, it's a real dark blue

18 pickup. At other times, it's kind of a medium blue.

19 Q. So you gave him three pictures of the same pickup for him
20 to make his choice from?

21 A. We told him that we wanted to show him some photographs of

22 a pickup; that we wanted him to compare his memory of the

23 pickup that he was speaking of on October -- of seeing on

24 October 18 of 1994 and then tell us how his memory compared to

25 the photographs of the pickup that we were showing him.

Jon Hersley - Direct

1 Q. And did those three photos of the same truck help him in

2 his identification of the truck?

3 A. He said that when he looked at the -- when he looked at the

4 photographs, he said that he did -- that the pickup looked very
5 familiar to him and that it was consistent with the pickup that
6 he had seen on October 18; that it looked very similar to it.

7 Q. Did you show him more than three?

8 A. Not on that occasion.

9 Q. So at this time, it's similar, but he hasn't identified it;
10 is that correct?

11 A. He said that the pickup looked just like the pickup he had
12 seen on October 18 except that the window -- the windows in the
13 back looked like they had a darker tint on the camper topper
14 shell than what he remembered. He thought you could see into
15 them a little bit better than what he could see into on this
16 one.

17 I asked him if there was any other inconsistencies
18 that he could see in this pickup and the pickup that was in his
19 memory, and he said that that was the only inconsistencies that
20 he could see.

21 Q. And he had earlier described a 70's Dodge; is that correct?

22 A. He described it as possibly being a 1970's -- late 1970's
23 Dodge style.

24 Q. And this is an '84 GMC?

25 A. That's correct.

571

Jon Hersley - Direct

1 Q. Did you get into the description of the individuals with
2 him during this meeting?

3 A. No.

4 Q. Why not?

5 A. We ran out of time. And I think this was the trip that we
6 were -- we barely were able to make it back to Wichita to catch
7 our plane back to Denver. We ran out of time and we told

8 Mr. Schlender that we would get together with him again when we
9 were able to get back out to Wichita.

10 Q. When was your next meeting?

11 A. October 15 of '96.

12 Q. Where was that?

13 A. It was also at the law enforcement center across the street
14 from the Mid Kansas Co-op.

15 Q. And how long did it last?

16 A. I'd say probably maybe an hour and a half to two hours.

17 Q. What did you discuss in this meeting?

18 A. In this meeting, we had obtained some other photographs of
19 the 1984 GMC pickup belonging to Mr. Nichols and these
20 photographs, the lighting in that back topper shell, you could
21 see in the windows quite a bit better and what we wanted to
22 determine from Mr. Schlender how that -- how these photographs
23 compared with the pickup that he had seen on October 18.

24 Q. And what was his response this time?

25 A. He said it looked just like it.

572

Jon Hersley - Direct

1 Q. Okay. And again, did you show him any photos other than
2 the photos of Mr. Nichols' truck?

3 A. No.

4 Q. Did you talk to him about the description of the
5 individuals?

6 A. Yes, we did.

7 Q. What did you learn concerning the description of the driver
8 of the vehicle and the description of the passenger, if any?

9 A. Mr. Schlender had told us that he had seen some of the
10 television coverage of the Oklahoma City bombing and that he
11 had seen Mr. Nichols in this coverage and that he said that he
12 would rank his certainty of whether or not this was the

13 individual that he had loaded the fertilizer for on the 18th
14 and that he had helped on the transaction inside on the 18th
15 somewhere between possible and probably. He said that he would
16 rank it a little bit over or some amount over 50 percent; that
17 he was more than 50 percent certain it was Nichols.
18 Q. Was he saying that having seen the television coverage
19 helped him in his identification or influenced him?

20 A. No. He said he was able to go back to his memory from what
21 he had seen on October 18 and compare that to the coverage,
22 photograph that he had seen of Mr. Nichols.

23 Q. In April, some seven months later?

24 A. Yes.

25 Q. What else did you show Mr. Schlender during this meeting in

573

Jon Hersley - Direct

1 October?

2 A. We showed him some photographs of red trailers.

3 Q. In the package in front of you, Exhibits A through Q, are
4 the photos that the Government has provided to us. I assume
5 these are the photos that you showed Mr. Schlender?

6 A. A through Q?

7 Q. A through Q.

8 A. Okay. Now, these are the pickup photographs.

9 Q. Well, you got 10 pictures of Nichols' pickup --

10 A. Okay. Here we go.

11 Q. -- with no others and you got seven pictures of trailers.

12 A. Okay.

13 Q. Did you include any pictures of any Ford pickup cutoff bed
14 trailers?

15 A. No.

16 Q. What did you include?

17 A. There were search photographs, I believe, consisting of
18 three different red trailers.
19 Q. And those are trailers from the Donahue farm, are they not?
20 A. That's correct.
21 Q. And you would call those flat-bed trailers, wouldn't you?
22 A. Flat-bed trailer, to me, where I grew up is like the back
23 of a pickup truck or a three-quarter-ton pickup truck that I
24 used to load hay onto and it doesn't have side panels on it.
25 I'm not certain that that's the only description of it, but

574

Jon Hersley - Direct

1 that's what I'm familiar with.
2 Q. Where did you grow up?
3 A. Out in west Texas.
4 Q. So did I. What town?
5 A. Hereford.
6 Q. I'm about 50 miles away and I never heard of flat-bed truck
7 described that way.
8 MR. MENDELOFF: Objection, your Honor. Who is
9 testifying?
10 THE COURT: Your testimony is stricken.
11 MR. WOODS: Yes, your Honor. I withdraw it.
12 BY MR. WOODS:
13 Q. I assume that you got Mr. Schlender to identify those
14 trailers as the ones that he saw back in October, '94; is that
15 correct?
16 MR. MENDELOFF: Objection. Argumentative, your Honor;
17 that he got Mr. Schlender to identify.
18 MR. WOODS: I'll rephrase it.
19 THE COURT: All right.
20 BY MR. WOODS:

21 Q. Did Mr. Schlender identify these Donahue flat-bed trailers
22 as the one he had earlier described as a Ford pickup bed cutoff
23 trailer?

24 A. He identified one of these trailers in that manner and said
25 that the other two were not similar to what his memory was of

575

Jon Hersley - Direct

1 the trailer on October 18.

2 Q. Those are all pretty much identical trailers, aren't they,
3 Donahue makes over in Durham, Kansas?

4 A. Well, if you look at the trailers quickly, I mean, they
6 detail, there is siderails and different wheels on them. These
7 are things that Mr. Schlender said that he was specifically
8 able to remember.

9 Q. Any of them have a bumper?

10 A. No.

11 Q. You recall in his 302 that he remembers a bumper and the

13 A. Yes.

14 Q. Now, do you remember that in his grand jury testimony,
15 Mr. Schlender goes into detail about the license plate, Kansas
16 license plate and the Marion sticker?

17 A. I remember him talking about those, yes.

18 Q. And in the 302, also?

20 Q. Now, during the interviews that you and Mr. Mendeloff have
21 conducted with him, he now says that he's probably mistaken;
22 there was no Kansas license plate?

23 A. He says he doesn't recall a Kansas license plate being on
25 branch that he's at in McPherson received a call from one of

576

1 two branches east of him for inquiring if they had a ton of
2 ammonium nitrate fertilizer for sale and that when the
3 individual showed up to purchase that that he linked that
4 together and thought that that -- that the pickup was probably
5 from Marion County. He says he's not certain at all that he
6 remembers seeing a license plate on the vehicle.

8 explaining his change of testimony, you say that, "Finally,
9 please note that Mr. Schlender has indicated that he believes
10 that it is very possible that he did not see a license plate on
11 the Havens pickup and he just assumed that the truck had a
12 Marion County sticker. Mr. Schlender states that this
13 assumption was likely based upon Havens' remark to the effect

15 A. That was part of his statement, also.

16 Q. And in the 302, is there any mention of Mr. Schlender
17 saying that Havens said he farmed east of McPherson?

18 A. In the two 302's --

19 Q. Yes, if you would look at those two 302's?

20 A. I'm aware of what the content of them is.

21 Q. And is there anyplace in there where Mr. Schlender related
22 that fact?

23 A. No.

24 Q. In the grand jury testimony, is there anyplace in that
25 grand jury testimony where Mr. Schlender states that Havens

577

Jon Hersley - Direct

1 told him that he farmed east of McPherson?

2 A. No.

3 Q. Thank you. Now, the other letter I've gotten from you all
4 concerning his other change of the night before last -- let me
5 refer you to Exhibit No. S, letter S. Have you -- I assume
6 you've seen this letter.

7 Have you seen this letter, Mr. Hersley?

8 A. No, I have not.

9 Okay.

10 Q. Are you aware in his grand jury testimony where he goes on

11 for two and a half pages where this was not an uncommon

12 transaction?

13 A. Yes.

14 Q. Yet for the debriefings of you and Mr. Mendeloff, he's now

15 changed that; is that correct?

16 A. Yes, he has changed.

17 MR. WOODS: Thank you. I have no further questions of

18 Mr. Hersley, your Honor.

19 THE COURT: All right, Mr. Mendeloff.

20 CROSS-EXAMINATION

21 BY MR. MENDELOFF:

22 Q. Agent Hersley, during the time that you interviewed

23 Mr. Schlender with Larry Mackey and Pat Ryan, I believe you

24 testified that he indicated that he recalled loading the sale

25 on September 30.

578

Jon Hersley - Cross

1 A. Yes, I believe that's correct.

2 Q. And do you remember Mr. Woods' question: Oh, so now he

3 says he remembers loading that transaction?

4 A. Yes.

5 Q. Did Mr. Schlender say that in the grand jury some five

6 months before that?

7 A. Yes, he did.

8 Q. Now, just so we're clear on the two sets of photos you

9 showed Mr. Schlender, the first set of photos you showed

10 Mr. Schlender were of Terry Nichols' pickup. What kind of

11 lighting was there in those photos?

12 A. The lighting was poor. Those photos were taken while that

13 pickup was parked, I believe, outside of the Herington

14 Department of Public Safety.

15 Q. Dark day?

16 A. Yes.

17 Q. And how did that lighting reflect in the opaqueness of the

18 windows?

19 A. It was harder to see into the windows in those photographs

20 because of the lighting.

21 Q. And all the windows?

22 A. Yes.

23 Q. All right. As a result of your conversation with

24 Mr. Schlender, did you -- did the FBI go out and take some more

25 pictures of Terry Nichols' pickup?

Jon Hersley - Cross

- 1 A. Yes.
- 2 Q. And that is the second set of photographs?
- 3 A. That is correct.
- 4 Q. What was the lighting in those pictures?
- 5 A. It was a bright sunny day that day.
- 6 Q. And did the lighting reflect -- did that lighting reflect
- 7 itself -- no pun intended -- in the opaqueness of the windows
- 8 that day?
- 9 A. Yes, it did.
- 10 Q. Did Mr. Schlender note that difference?
- 11 A. Yes, he did.
- 12 Q. Now, I believe you testified that Mr. Schlender, in your
- 13 pretrial interviews with him, related to you his knowledge of
- 14 the explosion of the media.
- 15 A. Yes.
- 16 Q. You testified that he had seen television coverage of the
- 17 bombing coverage?
- 18 A. Yes.
- 19 Q. Did Mr. Schlender tell you anything about print coverage,
- 20 as well?
- 21 A. Yes.
- 22 Q. Which coverage did he say he relied on in making his
- 23 recognition, to the extent there was one, of Terry Nichols?
- 24 Television, or news print?
- 25 A. He talked about the news print and having seen Mr. Nichols'

Jon Hersley - Cross

1 photograph in the newspaper, also.

2 Q. Which newspaper was that?

3 A. The Hutchinson News.

4 Q. Did he say where he had seen Mr. McVeigh's face to be able

5 to make his determination about whether Mr. McVeigh looked like

6 either the passenger or the driver?

7 A. I don't recall if that was -- I believe that was in the

8 news coverage, but I'm not certain.

9 Q. Television coverage?

10 A. Yes.

11 Q. When you spoke earlier about Mr. Nichols -- Mr. Schlender

12 having seen television coverage, were you speaking of the

13 McVeigh, as opposed to the Nichols identification?

14 A. That may be correct, yes.

15 Q. Now, let me ask you: Mr. Woods had certain questions for

16 you regarding the license tag on the pickup.

17 A. Yes.

18 Q. And he asked you whether or not that was reported --

19 Mr. Schlender's words in that regard were reported in an FBI

20 302 report as well as in his grand jury testimony?

21 A. Yes.

22 Q. Did that original 302 report state that Mr. Schlender was

23 certain that a tag was on the pickup?

24 A. No, it did not.

25 Q. Did it state why he was not certain? Did the 302 report

581

Jon Hersley - Cross

1 state that the pickup may have had a tag?

2 A. It said it may have had a tag, possibly had a tag. Kansas

3 tag.

4 Q. Did you explain in your direct examination why it is that

5 he was uncertain?

6 A. Yes.

7 Q. Now, finally, Mr. -- Mr. Woods asked you certain -- a
8 series of questions regarding the wheat farming question; that
9 is, the statement by Mr. Schlender that Mike Havens, when
10 Mr. Schlender waited on him on October 18, stated that he was
11 going to be farming -- that he was going to use the fertilizer
12 to farm wheat in Durham?

13 A. Mr. Schlender did not go over that with me. I think that
14 was Mr. Budke. I recall that testimony.

15 Q. Well, when did that come up in your interviews with
16 Mr. Schlender?

17 A. I believe that was during the interviews on October 15.

18 Q. And that was the one-and-a-half-hour to two-hour interview?

19 A. Yes.

20 Q. How did that come up?

21 A. When we were noting for Mr. Schlender that in his 302
22 statement, that it said that the tag on the pickup was possibly
23 from Kansas with a Marion tag and we asked him whether or not
24 he was certain of that and why his statement read that he just
25 believed that it may have been, and that's when he said, well,

582

Jon Hersley - Cross

1 I'm not sure I really saw the tag. I recall either himself or
2 one of the other employees, he said, got a telephone call from
3 one of the branches over east and that he presumed when they
4 showed up to get the ammonium nitrate that it was somebody from
5 Marion County because that's the county located to the east of
6 them.

7 Q. And how did the -- Mr. Nichols' statement that Mike Havens
8 had told him that he was going to use the ammonium nitrate to

9 plant wheat in Durham -- how did that come up in your
10 interviews with Mr. Schlender?
11 A. That was part of his explanation about why he presumed that
12 the pickup had a Kansas tag on it, Marion County.
13 Q. Because Mike Havens told him that during the transaction?
14 A. Yes, and he said that Durham was over to the east and he
15 linked that up with Marion County.
16 MR. MENDELOFF: One moment, please, your Honor.
17 Nothing further, your Honor. Thank you.
18 THE COURT: Mr. Woods?
19 REDIRECT EXAMINATION
20 BY MR. WOODS:
21 Q. Mr. Hersley, is there any 302 reflecting that statement by
22 Mr. Schlender, stating that Havens told him he was farming in
23 Durham?
24 A. No.
25 Q. That would have been a great lead for the FBI, wouldn't it?

583

Jon Hersley - Redirect

1 At that time when he was interviewed by Mr. Budke or when he
2 went to grand jury in July?
3 A. It would have been a great lead?
4 Q. Yes.
5 A. As to whether or not Mr. Nichols was farming over there?
6 Q. As to trying to identify who Mike Havens was. You hadn't
7 identified him at that time and you still haven't identified
8 him. Wouldn't it be a good lead if that was reflected
9 somewhere in some 302 that Mike Havens said that he farmed in
10 Durham?
11 A. We were trying -- we were trying to determine the identity
12 of Mike Havens at that time. Whether or not if Mr. Schlender
13 had said that at that particular time, I'm sure that would have

14 been followed up on, yes.

15 Q. It would have been in the 302 by Mr. Budke; right?

16 A. I believe so, yes.

17 Q. And if it happened, he probably would have mentioned it in

18 his grand jury testimony where he testified at length; correct?

19 MR. MENDELOFF: Objection, your Honor.

20 THE COURT: Sustained.

21 MR. WOODS: Thank you, your Honor. That's all.

22 MR. MENDELOFF: I just have a couple questions, Judge.

23 RE-CROSS-EXAMINATION

24 BY MR. MENDELOFF:

25 Q. Mr. Hersley, Mr. Woods just asked you whether you still had

584

Jon Hersley - Recross

1 not identified Mike Havens. What is your answer to that

2 question?

3 A. We have identified Mike Havens and that is Terry Nichols.

4 MR. MENDELOFF: Thank you. Nothing further, Judge.

5 THE COURT: You may step down.

6 Is your next witness Mr. Schlender?

7 MR. WOODS: Yes, your Honor.

8 THE COURT: Well, I guess we'll recess early and take

9 his testimony all tomorrow instead of breaking it up.

10 Ms. Wilkinson?

11 MS. WILKINSON: Yes, your Honor. One thing about

12 tomorrow morning concerning Daubert.

13 THE COURT: We're going to argue this matter first,

14 but --

15 MS. WILKINSON: I was just hoping that in preparation

16 for the argument on Daubert, we could agree that we would have

17 one presentation on the general nature of the proposed hearing

18 and then go through each expert one by one. I think that would
19 be easier for the Government and the defense to prepare for.

20 MR. NIGH: That would work for us, your Honor.

21 THE COURT: All right.

22 MS. WILKINSON: Thank you.

23 THE COURT: Well, what I anticipate is that we'll have
24 this remaining witness on these motions and argue these motions
25 and then Daubert tomorrow.

585

1 MR. NIGH: Your Honor. Sorry.

2 MR. TIGAR: No, go ahead.

3 MR. NIGH: Your Honor, in reference to the Daubert
4 argument, part of our brief in that regard concerns the
5 discovery and the six witnesses that we identified in that
6 motion. Will the Court hear argument about that, as well?

7 THE COURT: You mean you didn't receive adequate
8 discovery on that point?

9 MR. NIGH: That's correct.

10 THE COURT: Is that what you're talking about?

11 MR. NIGH: That's correct.

12 THE COURT: I don't remember whether it's six
13 witnesses, but there are witnesses.

14 MR. NIGH: Yes, your Honor.

15 THE COURT: Yes, we'll cover that, too.

16 MR. NIGH: Thank you, your Honor.

17 THE COURT: Now Mr. Tigar.

18 MR. TIGAR: I'm sorry, your Honor. I'm a little slow.
19 You want us to argue the general scope of Daubert Prong 2
20 first, 1, 2, 3, seriatim and then go through the witnesses? Is
21 that what has been proposed?

22 THE COURT: That's what I heard Ms. Wilkinson suggest.

23 Right?

24 MS. WILKINSON: The reason for that, your Honor, is
25 there has been quite a bit of briefing about the scope of a

586

1 potential hearing and what should be heard under Daubert. If
2 we argue that to the Court, then it will make it easier to go
3 into the factual arguments about each expert.

4 THE COURT: It seems a reasonable approach.

5 MR. TIGAR: All right, your Honor. We will do that.
6 During the initial part, I had planned to talk, to use a couple
7 of examples to illustrate the kind of a Daubert Prong 2
8 hearing. If I --

9 THE COURT: Including these witnesses, you mean?

10 MR. TIGAR: Yes, your Honor.

11 THE COURT: Well, that's all right.

12 MR. TIGAR: All right. I just wanted to make sure I
13 understood what I'm supposed to do.

14 THE COURT: That's right. And we'll have your client
15 here.

16 MR. TIGAR: Thank you.

17 THE COURT: All right. Yes --

18 MR. JONES: I believe Mr. McVeigh waived his
19 appearance.

20 THE COURT: Yes, he did. Just -- Mr. Nichols did not,
21 so we'll bring Mr. Nichols --

22 MR. JONES: Thank you, your Honor.

23 THE COURT: -- for the Daubert argument. We won't
24 bring him in until we're ready for the Daubert argument, but
25 he'll be here.

1 MR. WOODS: Your Honor, so I'm clear, we're going to
2 finish Mr. Schlender and then argue the suggestiveness motions?

3 THE COURT: Exactly, yes. So it may be that we'll
4 have Daubert in the afternoon. I don't know how long these
5 arguments will take.

6 MR. WOODS: Mine is really brief.

7 MR. JONES: Three questions.

8 THE COURT: I won't rise to that occasion, but we will
9 rise to recess till 9:00.

10 (Recess at 5 p.m.)

11 * * * * *

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 INDEX

2 Item Page

3 WITNESSES

4	Leslie Earl, III	
5	Direct Examination by Ms. Merritt	442
6	Cross-examination by Mr. Mackey	447
7	Christopher Budke	
8	Direct Examination by Ms. Merritt	448
9	Cross-examination by Mr. Mackey	457
10	Stuart Doyle	
11	Direct Examination by Ms. Merritt	459
12	Cross-examination by Mr. Goelman	472
13	Larry Tongate	
14	Direct Examination by Ms. Merritt	473
15	Cross-examination by Mr. Goelman	479
16	Eric Gerstein	
17	Direct Examination by Ms. Merritt	480
18	James Adams	
19	Direct Examination by Mr. Goelman	491
20	Cross-examination by Mr. Nigh	506
21	Redirect Examination by Mr. Goelman	514

22	Mark Gibson	
23	Direct Examination by Mr. Goelman	518
24	Cross-examination by Ms. Ramsey	521
25		

589

1	Christopher Budke	
2	Direct Examination by Mr. Woods	533
3	Cross-examination by Mr. Mendeloff	554
4	Redirect Examination by Mr. Woods	560
5	Jon Hersley	
6	Direct Examination by Mr. Woods	564
7	Cross-examination by Mr. Mendeloff	577
8	Redirect Examination by Mr. Woods	582
9	Recross-examination by Mr. Mendeloff	583

10 PLAINIFF'S EXHIBITS

11 Exhibit Offered Received Refused Reserved Withdrawn

12	44	519	519		
13	45	503	503		
14	47	496		497	

15

16

17

18

19

20

21

22

23

24

25

1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct transcript
3 from the record of proceedings in the above-entitled matter.

4 Dated at Denver, Colorado, this 19th day of February,
5 1997.

6

7

Paul Zuckerman

8

9

Bonnie Carpenter

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25