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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

ff

REPORTER'S TRANSCRIPT
(Trial to Jury: Volume 104)

ff

MATSCH, Proceedings before the HONORABLE RICHARD P.
Judge, United States District Court for the District of
Colorado, commencing at 1:40 p.m., on the 3d day of
December,
Denver, 1997, in Courtroom C-204, United States Courthouse,
Colorado.

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23
24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
Produced via Computer by Paul Zuckerman, 1929 Stout
P.O. Box 3563, Denver, Colorado, 80294, (303)

12213

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Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,
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6 ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the
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7 Attorney General, 1961 Stout Street, Suite 1200,
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9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,
and
10 REID NEUREITER, Attorneys at Law, 1120 Lincoln Street,
Suite
11 1308, Denver, Colorado, 80203, appearing for Defendant
Nichols.

12

* * * * *

13

PROCEEDINGS

14

(Reconvened at 1:40 p.m.)

15

THE COURT: Be seated, please.

16

(Jury in at 1:40 p.m.)

17
the stand,

THE COURT: Miss Martinez, if you'll resume

18

please.

19

Mr. Ryan, you may continue your questioning.

20

MR. RYAN: Thank you, your Honor.

21

(Mary Martinez was re-called.)

22

CROSS-EXAMINATION CONTINUED

23

BY MR. RYAN:

24
you.

Q. Miss Martinez, I just have a few more questions for

25

A. Yes, sir.

12214

Mary Martinez - Cross

1
FBI, you

Q. Originally when you were -- when you spoke to the

2
before the

told them that the date of the sighting was the day

3
bombing or April 18; is that correct?

4
A. I did.

5
Q. And today you've testified it's not April 18, it's

6
April 17?

7 A. Right.

8 Q. Did I understand you correctly?

9 A. Yeah.

10 Q. You've changed your testimony or your recollection
based on
11 some information you reviewed from the hospital?

12 A. I reviewed, yeah, from Mr. Newtermeyer.

13 Q. Let me show you what's been received in evidence as
14 Defendant's Exhibit 1737. While we're waiting for it
to come
15 on, let me ask you a question or two. You remember you
told me

16 this morning that the truck that you saw that morning
had this
17 cab part of the box that came over the top of the cab?

18 A. Uh-huh.

19 Q. Now, do you see what -- the first one down, they
get
20 increasingly smaller, in this Exhibit 1737?

21 A. Yep.

22 Q. You see that? And the only one that has something
over the
23 cab is this second one?

24 A. Right.

25 Q. Do you see that?

Mary Martinez – Cross

- 1 A. Uh-huh.
- I'm
2 Q. Where it says "one to two bedrooms"? You see what
3 talking about?
- 4 A. Yes, I see it, sir.
- 5 Q. Is that the kind of cab -- is that the kind of
compartment,
6 storage compartment over the cab that you were
referring to?
- 7 A. I don't recall.
- 8 Q. Well, how did it differ from that, what you recall
seeing?
- 9 A. I remember the Ryder truck being a great big Ryder
truck.
- 10 Q. Yes, ma'am.
- 11 A. And I can't remember the front of it.
- 12 Q. You remember when you told Mr. Bodley --
- 13 A. Yes.
- 14 Q. -- on October 17 that it had a extension
compartment over
15 the truck cab?
- 16 A. Uh-huh.
- 17 Q. Is that the type of extension compartment you were
18 referring to?
- 19 A. Yes.
- 20 Q. The one that's shown, the second one down here?
- 21 A. I guess, yeah.

22 Q. Okay.
23 A. But it was -- it looked like it was bigger than
that one.
24 Q. But the other two bigger ones on this exhibit don't
have
25 that extension --

12216

Mary Martinez - Cross

1 A. I know.
2 Q. -- over the cab, do they?
3 A. No, they don't.
4 Q. All right. Finally, Mrs. Martinez, you've lived in
5 Junction City for how long?
6 A. About . . . about 12 years.
7 Q. And your husband is retired military, is he not?
8 A. Right. We lived on Fort Riley for 12 years.
9 Q. There's a lot of military people at Fort Riley;
correct?
10 A. Yes.
11 Q. Back in 1995, there were quite a few servicemen
stationed
12 there, were there not?
13 A. Yes, sir.
14 Q. Do you know how many?
15 A. No, sir.
16 Q. There would be 10-, 15,000 soldiers there at any

one time,

17 would there not?

18 A. Yes, sir.

19 Q. And lots of moving in and out; is that correct?

20 A. Yes, sir.

is that 21 Q. Lots of moving vans in Junction City at all times;

22 fair?

23 A. In the summertime, yes, sir.

24 Q. As these soldiers are coming in and out --

25 A. Right.

12217

Mary Martinez - Cross

vehicles 1 Q. -- of their assignments, there's a lot of storage
2 moving around the Junction City area?

early in 3 A. That's what struck me odd was because it was so
4 the year.

didn't 5 Q. But you thought yourself, this was somebody moving,
6 you?

And I 7 A. Well, I looked at it and I said, "Somebody moving."
he's 8 said -- I looked at the man driving and I said, "Oh,
9 military. They're starting early this year."

10 Q. And the reason you felt that way is there's a lot
of people

11 in Junction City -- lot of men stationed at that Fort
Riley --

12 A. Yes.

13 Q. -- with short haircuts, is there not?

14 A. Yes.

15 Q. And a lot of military people have military
haircuts; right?

16 A. Yes, sir.

17 Q. So you've seen many, many people, men, every day in
18 Junction City with short, crew-cut hair?

19 A. Yes, sir.

20 MR. RYAN: That's all I have. Thank you, your
Honor.

21 THE COURT: Mr. Thurschwell, do you have some
22 follow-up?

23 MR. THURSCHELL: Yes, I do.

24 REDIRECT EXAMINATION

25 BY MR. THURSCHELL:

12218

Mary Martinez - Redirect

1 Q. Mrs. Martinez, you were just asked about the
presence of

2 moving vans in Junction City and the fact that there's
an Army

vans with 3 base there. When do you usually see moving -- moving

4 military-looking people driving them?

5 A. Around June.

typical time 6 Q. Around June. And is that because that's the

7 when the new recruits come in?

8 A. Yeah, June, July, and August.

9 Q. I want to show you once again what's been marked as
the 10 Government's Exhibit G318. Mrs. Martinez, is this what

11 driver of the Ryder truck that you saw looked like?

12 A. Yes, sir.

13 Q. Have you ever seen Timothy McVeigh in person?

14 A. No, sir.

of 15 Q. You could not, then, compare one certain sighting

McVeigh, could 16 Timothy McVeigh with another sighting of Timothy

17 you?

18 MR. RYAN: Objection, leading.

19 THE WITNESS: No, sir.

20 THE COURT: Overruled.

21 THE WITNESS: No, sir.

22 BY MR. THURSCHELL:

conducted 23 Q. Now, you were asked about an interview that was

24 with the FBI some time ago; correct?

25 A. Yes, sir.

12219

Mary Martinez – Redirect

1 Q. And you were asked some questions about your
description of

2 the passenger in the truck to the FBI at that time. Do
you

3 remember that?

4 A. Excuse me. Go ahead.

5 Q. Do you remember being asked about your descriptions
of the

6 passenger when you were speaking to the FBI, by Mr.
Ryan, just

7 now?

8 A. The first time or the second time?

9 Q. Well, he was asking you about the first time, I
think.

10 A. Very first time, about a year and a half ago.

11 Q. Okay.

12 A. Or two years ago.

13 Q. And Mr. Ryan was just asking you about that and the
things

14 that you told the FBI?

15 A. Uh-huh.

16 Q. Do you remember telling the FBI at that time about
the

17 passenger, one time he did raise up and appear to move
his legs

18 in an effort to shift away from the driver?

He was

19 A. I don't know if it was away or toward the driver.

20 trying to get situated on another sitting position.

21 Q. He was shifting from one side to another?

forgot

22 A. Yeah. I don't know whether it was away or to. I

23 that part.

stood up,

24 Q. When you said that the driver -- that the person

25 is that what you were referring to?

12220

Mary Martinez - Redirect

1 A. Yeah, he stood up and moved over.

erect or

2 Q. Okay. Was he -- could you tell if he was fully

3 that his knees were bent?

4 A. No, he was fully standing up.

tell, an

5 Q. Okay. Was he -- was this individual, could you

6 adult or a child?

7 A. He was an adult.

8 MR. THURSCHELL: No further questions.

9 THE COURT: Mr. Ryan?

10 MR. RYAN: No recross, your Honor.

11 THE COURT: I take it she's excused.

yes. 12 MR. THURSCHELL: She is excused, your Honor,

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

14 Next, please.

15 MR. WOODS: Nancy Kindle, your Honor.

right 16 THE COURTROOM DEPUTY: Would you raise your

17 hand, please.

18 (Nancy Kindle affirmed.)

please. 19 THE COURTROOM DEPUTY: Would you have a seat,

and 20 Would you state your full name for the record

21 spell your last name.

22 THE WITNESS: Nancy Jean Kindle, K-I-N-D-L-E.

23 THE COURTROOM DEPUTY: Thank you.

24 THE WITNESS: Uh-huh.

25 DIRECT EXAMINATION

12221

Nancy Kindle - Direct

1 BY MR. NEUREITER:

2 Q. Hello, Miss Kindle. How are you?

3 A. Fine.

4 Q. We've met before, haven't we?

5 A. Yes.

6 Q. Over the last few days?

7 A. Yes.

8 Q. How old are you, Miss Kindle?

9 A. 22.

10 Q. Where are you from?

11 A. Junction City, Kansas.

12 Q. What do you do for a living?

13 A. I work at Denny's, and I'm a home health aide.

14 Q. Do you go to college?

15 A. Yes.

16 Q. Where do you go to college?

17 A. At Cloud Community College.

18 Q. What are you studying?

19 A. Nursing.

20 Q. Do you have a son?

21 A. Yes.

22 Q. How old is he?

23 A. Six. Well, he'll be six in January.

24 Q. I want to take you back to the Easter time period
of 1995.

25 Do you remember Easter, 1995?

12222

Nancy Kindle - Direct

1 A. Yes.

2 Q. Did you have to work on Easter, 1995?

3 A. Yes.

4 Q. Where were you working on Easter, 1995?

5 A. At Denny's.

6 Q. And what was your shift that day?

7 A. 6 a.m. till 2 p.m.

8 Q. Do you remember a specific group of individuals who
came in
9 and tried to get seated that day?

10 A. Yes.

11 Q. Could you tell us about that.

12 A. I was waiting tables, and I wasn't busy, so I went
up to
13 help the hostess. And I come across a three -- party
of three
14 for smoking.

15 MR. TIGAR: Excuse me, your Honor. Could we
ask
16 Miss Kindle to keep her voice up just a little bit. I
for one
17 am having just a little trouble hearing.

18 THE WITNESS: Sorry.

19 BY MR. NEUREITER:

20 Q. Actually, if you could lean towards that
microphone, it
21 really helps.

22 A. Okay.

23 Q. So you just said you came up to a party of three,

you were

24 helping out the hostess?

25 A. Yes.

12223

Nancy Kindle - Direct

1 Q. And then what happened?

2 A. And I asked the gentleman how many, and he said
three for

3 smoking. And I asked him to spell his name for me.

4 Q. And what did he say his name was?

5 A. McVeigh.

6 Q. And how did he spell his name?

7 A. M-C big V-E-I-G-H, or however it's spelled.

8 Q. Did you have some conversation with the gentleman
about the

9 spelling of his name?

10 A. Yes.

11 Q. Tell us about that.

12 A. Well, I was just commenting on how it was silly to
have it,

13 you know, M-C and then a big letter and my aunt had a
name like

14 that and just kind of just chitchatting.

15 Q. Was there a prior time when you testified in court?

16 A. Yes.

17 Q. Do you recall? And did you see a gentleman named

Timothy

18 McVeigh when you testified that time?

19 A. Yes.

Sunday, 20 Q. And was that the same person that you saw on Easter

21 1995?

22 A. Yes.

23 Q. And how do you know that that was the same person?

spelled 24 A. Because I remembered him by his eyes and the way he

25 his name.

12224

Nancy Kindle - Direct

1 Q. Now, you said it was a group of three?

2 A. Yes.

gentlemen 3 Q. Do you have a recollection of what the other two

4 looked like?

kind of 5 A. The second man was about 5' 7", real scraggly hair,

attention to 6 out of sorts. And the third one I didn't pay much

7 at all.

8 Q. Were the gentlemen seated?

9 A. Yes.

10 Q. Where were they seated?

11 A. In non-smoking.

12 Q. Did you have a discussion with Mr. McVeigh about
that?

13 A. Yes.

14 Q. Tell us about that.

15 A. I was just kind of joking 'cause they had -- they
had to
16 sit there and wait, and they was the last people
waiting. And
17 we finally said, you know, "We have one open in non.
You know,
18 would you take it?" And they finally said yes.

19 Q. And you see a lot of people at Denny's?

20 A. Yes.

21 Q. Is there a reason why you remember this encounter
22 specifically on Easter Sunday, 1995? Let me ask it
this way.

23 Did you do something else on Easter Sunday, 1995?

24 A. Yes.

25 Q. Where did you go after you got off work?

12225

Nancy Kindle - Direct

1 A. I went to get my son, and then I went home to get
ready
2 'cause I was going to a Easter-egg hunt out at Milford
Lake,
3 and I ran into him at the gas station.

4 Q. What time did you get off work?

5 A. About 3, 3:30.

6 Q. By the way, I'm not sure we fixed the time of the
first
7 encounter. About what time would that first encounter
have
8 been?

9 A. It was about 12:30, 1:00.

10 Q. Around the noon hour?

11 A. Yes.

12 Q. Easter Sunday?

13 A. Yes.

14 Q. Was that a busy time at Denny's?

15 A. Yes.

16 Q. Is that why you went to help the hostess?

17 A. Yes.

18 Q. So now getting to you got off work. What time did
you get
19 off work that day?

20 A. About 3, 3:30.

21 Q. And then what did you do?

22 A. Then I went to get my son. And then I went home
and
23 changed, and then I went to get gas.

24 Q. And there was an Easter-egg hunt that day?

25 A. Yes.

Nancy Kindle - Direct

1 Q. Is that where you were taking your son?

2 A. Yes.

3 Q. And where did you go get gas?

4 A. At Texaco.

5 Q. Tell us about the encounter at Texaco.

6 A. I was walking in, and the gentleman -- he was
walking out.

7 Q. Who was walking out?

8 A. McVeigh.

9 Q. And was it the same individual that you had seen
earlier

10 that day?

11 A. Yes.

12 Q. Did you say something to him at that time?

13 A. Yes. I said, "Hi, how you doing?" You know, "Hey,
what's
14 going on?" And he spoke. And I walked in, and he
walked out.

15 Q. What's the best that you can fix that second
encounter in

16 your mind, to your recollection, given that he got off
work

17 between 3, 3:30? What time around do you think it
would have

18 been that you had that second encounter with Mr.
McVeigh?

19 A. It was between 4:30.

20 Q. 4 and 4:30?

21 MR. RYAN: Objection, leading.

22 MR. NEUREITER: Sorry.

23 BY MR. NEUREITER:

24 Q. What's your best recollection of that time?

25 A. In between 4:30.

12227

Nancy Kindle - Direct

1 THE COURT: In between 4:30?

at 5,

2 THE WITNESS: Well, I was supposed to be there

mile

3 so I know I was trying to rush 'cause it's like a 15-

4 drive.

5 BY MR. NEUREITER:

6 Q. Around the 4:30 time period?

7 A. Yeah.

your

8 MR. NEUREITER: If I could have one moment,

9 Honor?

10 THE COURT: Yes.

11 BY MR. NEUREITER:

City?

12 Q. Where is the Denny's that you work at in Junction

13 A. It's on Washington.

14 Q. Is it near McDonald's there?

15 A. 1032 South Washington.

16 Q. Is there a -- is it near McDonald's there?

17 A. Yes, a block away.

18 Q. And are there two McDonald's in Junction City, to
your

19 knowledge?

20 A. Yes.

21 Q. And which McDonald's is your Denny's near?

22 A. The one right beside the interstate.

23 MR. NEUREITER: No further questions, your
Honor.

24 THE COURT: Mr. Ryan.

25 CROSS-EXAMINATION

12228

Nancy Kindle - Cross

1 BY MR. RYAN:

2 Q. Good afternoon, Miss Kindle. My name is Pat Ryan.
I'm one

3 of the prosecutors in this case.

4 Did you get a call yesterday asking if you
would agree

5 to talk to me about your testimony?

6 A. Yes.

7 Q. And did you tell the lady that called that you
wouldn't

8 agree to speak to one of the prosecutors?

9 A. I told her that I was supposed to be going on this
10 afternoon and she had my testimony and . . . she could
just
11 read the testimony.

12 Q. Did you tell her that you wouldn't talk to one of
the
13 prosecutors?

14 A. I told her that I was going on; I didn't want to,
yes.

15 Q. Now, you've told us today that you saw a man who
resembled
16 Timothy McVeigh; is that correct?

17 MR. NEUREITER: Objection, your Honor.

18 THE COURT: Sustained. Sustained.

19 BY MR. RYAN:

20 Q. Have you previously said that you saw a man who
resembled
21 Timothy McVeigh?

22 A. Yes.

23 Q. And what time was that?

24 A. What time I seen him?

25 Q. When you first saw that person?

12229

Nancy Kindle – Cross

1 A. At 12, 12:30. I mean 12:30, 1. Sorry.

2 Q. And they were waiting in the smoking section?

3 A. No, they were waiting --

4 Q. Is that what you said?

5 A. They were waiting in the front of the restaurant.

6 Q. Were they in a section designated for smoking in
your --

7 MR. NEUREITER: Objection, your Honor.

8 BY MR. RYAN:

9 Q. Waiting --

10 MR. NEUREITER: Mischaracterizes the
testimony.

11 THE COURT: He asked were they in a section
for

12 smoking.

13 Is that your question?

14 MR. RYAN: Yes, your Honor.

15 THE COURT: The objection is overruled.

16 THE WITNESS: No, they were in the front,
right as you

17 walk in the door, waiting.

18 BY MR. RYAN:

19 Q. Do you have a recollection of them wanting to be
seated in

20 the smoking section and the hostess, Miss D'Avino -- I
may not

21 be pronouncing that correctly.

22 A. D'Avino.

23 Q. -- asking them if they would rather be seated
earlier in

24 the non-smoking section?

25 A. Yes.

12230

Nancy Kindle - Cross

1 Q. Now, you said you got off between 3 and 3:30; is
that

2 correct?

3 A. Yes.

4 Q. Was this gentleman and the other two men -- were
they still

5 there?

6 A. No, they had already left.

7 Q. And when had they left?

8 A. I wasn't really paying attention. I was trying to
do side

9 work and go home, 'cause I wanted to get to my son.

10 Q. Was it close to 3:00 that they left, or do you
know?

11 A. I couldn't tell you for sure.

12 Q. You said you looked at Mr. McVeigh's eyes?

13 A. Yes.

14 Q. Or the man that you saw, you looked at his eyes?
What

15 color were his eyes?

16 A. Blue.

17 Q. The -- you said that you later saw this -- well,

before we

18 do that, let's talk about the other two men that were
with this

19 gentleman.

20 You said one of them was 5' 7" --

21 A. Yes.

22 Q. -- or so?

23 A. Yes.

24 Q. Short, brown hair?

25 A. No, the hair was not short.

12231

Nancy Kindle - Cross

Marcus 1 Q. Did you -- were you interviewed by Special Agent

2 Moet?

3 A. Yes.

4 Q. On April 29, 1995?

5 A. Yes.

6 Q. And did you tell Agent Moet the second individual
was 5' 7"

7 with short, brown hair?

8 A. Scraggly, brown hair.

9 Q. My question was did you tell him that the second
man was 5'

10 7" with short, brown hair.

11 A. I don't remember.

12 Q. Now, this third person -- how tall was he?

13 A. I don't remember.

14 Q. What color was his hair?

15 A. I don't remember.

16 Q. Length of his hair?

17 A. I don't remember.

18 Q. Any clothing that you can recall?

19 A. No.

20 Q. Color of his eyes?

21 A. No.

22 Q. Mustache or beard?

23 A. No.

24 Q. Don't recall? When you say "no," are you saying
you don't

25 recall?

12232

Nancy Kindle - Cross

1 A. I don't recall.

2 Q. So no matter what person I gave you, asked you if
it was

3 that person, you wouldn't know because you have no
picture

4 whatsoever in your mind of this person?

5 A. Yes.

6 Q. Is that true?

7 A. Yes.

8 Q. Could have been anyone?

9 A. Yes.

10 Q. And similarly, with respect to this person that was
5' 7"

11 with the brown hair, do you recall any other features
of this

12 person?

13 A. I just remember he looked rough and kind of dirty.

14 Q. Weight?

15 A. He was medium build.

16 Q. Do you know how much he weighed? Do you have an
estimate

17 for us?

18 A. No.

19 Q. Did he have any tattoos or marks?

20 A. No.

21 Q. No, you don't recall; or, no, he did not?

22 A. No, I don't recall.

23 Q. Do you know what race he was?

24 A. White.

25 Q. Can you tell us anything about his clothing?

12233

Nancy Kindle - Cross

1 A. No.

2 Q. Now, you say that later that afternoon, you saw
this same
3 man who had been in the Denny's at a Texaco; is that
correct?
4 A. Yes.
5 Q. And you were there to buy gas?
6 A. Yes.
7 Q. And you were running a little late for an Easter-
egg hunt;
8 is that correct?
9 A. Yes.
10 Q. Easter-egg hunt was at 5:00?
11 A. Yes.
12 Q. Did you have your son with you -- or your child?
13 A. Yes.
14 Q. And that's, what, about a 15-minute drive to where
the
15 Easter-egg hunt was?
16 A. Yes.
17 Q. So when you said between 4:30, were you talking
about 4:30,
18 4:45, something like that?
19 A. Yes.
20 Q. And was your car parked at one of the gas lanes
where you
21 had just gotten gas?
22 A. Yes.
23 Q. You were going in to pay when you saw this

gentleman again?

24 A. Yes.

25 Q. Is that correct? And he was walking out?

12234

Nancy Kindle - Cross

1 A. Yes.

2 Q. As if he had just paid for gas or paid for
something

3 inside?

4 A. Yes.

5 Q. It was a gas station; right?

6 A. Yes.

7 Q. Now, did you at any time, at this time frame of
4:30, 4:45

8 the Sunday afternoon, see a yellow Mercury Marquis?

9 A. No.

10 Q. Did you at any time that afternoon see a Ryder
truck?

11 A. No.

12 Q. Did this man who you saw -- was he with these other
two

13 people again?

14 A. All I saw was him.

15 Q. And did you talk to him?

16 A. I said hello as I was walking in, and he said hello
back.

17 Q. You were in a hurry?

18 A. Yes.

19 Q. He was not?

20 A. He was walking out. I was walking in.

21 Q. He didn't appear to be in any hurry, did he?

22 A. I don't know how you can clarify "hurry."

23 Q. Was he walking particularly fast? Did he seem real
focused
24 on where he was going? Did he seem like someone who
was in a
25 rush?

12235

Nancy Kindle – Cross

1 A. No.

2 Q. Did he seem like someone who was very determined to
get in
3 a vehicle and make a long trip and just was very
focused on
4 making that trip?

5 MR. NEUREITER: Objection, your Honor.

6 THE COURT: Sustained.

7 BY MR. RYAN:

8 Q. Did you ever see this man with a vehicle of any
kind?

9 A. No.

10 Q. Or get into a vehicle?

11 A. No.

12 Q. You say this was 4:30 to 4:45?

13 A. Yes.

14 MR. RYAN: Thank you. No further questions,
your
15 Honor.

16 MR. NEUREITER: Just a couple, your Honor.

17 THE COURT: All right.

18 REDIRECT EXAMINATION

19 BY MR. NEUREITER:

20 Q. Miss Kindle, after you testified in the prior
proceeding we

21 talked about, were you contacted by the FBI?

22 A. Yes.

23 Q. Was that a pleasant experience for you?

24 A. No.

25 MR. RYAN: Objection, your Honor.

12236

Nancy Kindle - Redirect

1 THE COURT: Sustained.

2 BY MR. NEUREITER:

3 Q. Is the reason why -- tell the jury why you decided
not to
4 talk to the prosecutors this time.

5 A. Because I've been bothered by so many people that I
didn't

6 know who was calling me, if it was reporters, who it
was. And

7 I just wanted to be left alone. That's all I've ever
asked.

8 I've asked reporters to give me and my family peace,
especially

9 my son.

10 Q. The last time that you testified and you were then
11 contacted by the FBI, did the FBI get you to change --
try and

12 get you to change your testimony?

13 MR. RYAN: Objection, your Honor.

14 THE COURT: Sustained.

15 BY MR. NEUREITER:

16 Q. Did you feel -- describe --

17 THE COURT: You can ask what they asked about
--

18 MR. NEUREITER: Very well, your Honor.

19 THE COURT: -- but not characterize it.

20 BY MR. NEUREITER:

21 Q. Describe to the jury the conversations you had with
the FBI
22 after your last testimony.

23 A. They just -- I put them on speakerphone so my
family could

24 hear how they kept on asking me over and over if I'm
sure I

25 didn't remember some or if I'm sure that that was the
man I

12237

Nancy Kindle - Redirect

1 seen. And then it started to get me irritated because
they had
2 two of them on the phone talking back and forth; and
finally, I
3 said, you know, "I've had enough," you know, "I'm
home," you
4 know, "Can you -- sorry -- can you please leave me
alone."

5 Q. Would they leave you alone?

6 A. They kept on asking me questions.

7 MR. NEUREITER: No further questions, your
Honor.

8 MR. RYAN: Make I have just a moment, your
Honor?

9 THE COURT: Yes.

10 RE-CROSS-EXAMINATION

11 BY MR. RYAN:

12 Q. Miss Kindle, the fact is you've been contacted
twice in
13 your entire life about this matter by the FBI; is that
correct?

14 A. No. They contacted my hotel about six times.

15 Q. To try to get you to talk to someone before you
testified
16 in another trial?

17 A. No.

18 Q. Is that right?

19 A. No.

20 Q. And you at any time testify -- and you didn't talk
to a

21 prosecutor the last time you testified either, did you?

22 A. No.

23 Q. And you wouldn't testify -- you wouldn't talk to a
24 prosecutor this time?

25 A. They didn't ask me last time.

12238

Nancy Kindle - Recross

1 Q. You wouldn't even if they'd 've asked you?

2 MR. NEUREITER: Objection, your Honor.

3 THE COURT: Sustained.

4 MR. RYAN: No further questions.

5 MR. NEUREITER: The witness is excused.

6 Thank you, Miss Kindle.

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

8 Next, please.

9 MR. WOODS: Yes, your Honor. Miss Weigel,
Miss

10 Estella Weigel.

11 THE COURTROOM DEPUTY: Would you raise your
right

12 hand, please.

13 (Estella Weigel affirmed.)

14 THE COURTROOM DEPUTY: Would you have a seat,
please.

15 Would you state your full name for the record
and
16 spell your last name.

17 THE WITNESS: Estella Weigel, W-E-I-G-E-L.

18 THE COURTROOM DEPUTY: Thank you.

19 DIRECT EXAMINATION

20 BY MR. NEUREITER:

21 Q. Hello, Miss Weigel. How are you?

22 A. Fine.

23 Q. We met for the first time a couple days ago; is
that right?

24 A. Yes.

25 Q. Where are you from, Miss Weigel?

12239

Estella Weigel - Direct

1 A. I live in Salina, Kansas, and I work in Newton,
Kansas.

2 Q. How old are you?

3 A. I am 41.

4 Q. I hope you don't take offense at my asking.

5 A. I'm 41.

6 Q. What do you do for a living?

7 A. I'm a health information management technician.

8 Q. And what does being a health information management
9 technician entail?

10 A. It makes -- what I do is I make sure that the
completion of

11 the medical record is done, and I also know a little
bit about

12 the regs. that require that the record be completed.

13 Q. In your view, does that job require attention to
detail?

14 A. Yes.

15 Q. Do you consider yourself a detail-oriented person?

16 A. Yes.

17 Q. Let me show you a map that's been designated and I
believe

18 admitted as D1732.

19 Have you seen this before?

20 A. Yes.

21 THE COURTROOM DEPUTY: That has not been
admitted.

22 MR. NEUREITER: It's not been admitted?

23 It has not been admitted. Permission to
approach,

24 your Honor.

25 MR. MACKEY: We have no objection to its
admission.

Estella Weigel – Direct

1 THE COURT: All right. Now it is. D1732.

2 BY MR. NEUREITER:

3 Q. You've seen this before?

4 A. Yes.

5 Q. Is that a map of central Kansas?

6 A. Yes.

7 Q. Is there a way that you could describe for the jury
both

8 where you live and where you work looking at this map?
And if

9 you talk me through it, I'll walk through it with the
pen.

10 MR. TIGAR: Your Honor, the screen there by
the jurors

11 does not show the --

12 THE COURT: Thank you.

13 MR. TIGAR: There we go.

14 MR. NEUREITER: Now we're set.

15 THE COURT: Thank you.

16 THE WITNESS: I live in Salina, which is an
17 intersection between -- well, a junction between
Interstate 135

18 and Interstate 70.

19 BY MR. NEUREITER:

20 Q. Is this where Salina is on this map?

21 A. Yes.

22 Q. And is that I-70?

23 A. Yes.

24 Q. And the road going vertically north and south is?

25 A. 135.

12241

Estella Weigel - Direct

1 Q. And where do you work?

2 A. I work at Newton. And it's by the junction of
Interstate

3 135 and Highway 50.

4 Q. Is this Highway 50 down here?

5 A. Yes.

6 Q. And is this 135?

7 A. Yes.

8 Q. And if I put the pen right there, does that
accurately

9 indicate where Newton is?

10 A. Yes.

11 Q. So what kind of a commute do you have each morning?

12 A. It's about a 60-mile commute.

13 Q. It's a long drive?

14 A. Yes.

15 Q. What time do you get up in the morning to go to
work?

16 A. I usually get up -- I leave by 7:00, so I usually
get up by

17 5:30.

18 Q. Okay. I want to take you back to the Easter time
period,

19 1995. Did you have plans that Easter?

20 A. Yes. I went home to my parents' house which is in
21 Victoria, Kansas. And we celebrated my sister's
birthday.

22 Q. And did you go to work on Monday, the day after
Easter,

23 1995?

24 A. Yes.

25 Q. Did you go to work on Tuesday?

12242

Estella Weigel - Direct

1 A. Yes.

2 Q. I didn't ask you, but what route do you take when
you drive

3 to work?

4 A. I take Interstate 135.

5 Q. Do you take it down from Salina to Newton?

6 A. Yes.

7 Q. Did you see something unusual on your drive to work
Tuesday

8 after Easter, 1995?

9 A. Yes.

10 Q. Okay. Tell the jury what you saw.

upon a 11 A. Okay. It was real shortly after McPherson. I came
of that 12 slow-moving Ryder -- yellow Ryder truck, and in front
two 13 truck was a car without a license plate. There were
the 14 occupants in the yellow Ryder truck and one occupant in
15 car.

saw 16 Q. What kind of car, if you recall, was it that you
17 without a license plate on that day?

18 A. It reminded me of my sister's '78 Mercury.

19 Q. And what color was it?

20 A. Beige.

fast do 21 Q. And you're on the interstate, you told us. How
22 people usually travel on the interstate?

they've 23 A. At that time it was about 65 miles per hour, and
24 raised it now.

-- of the 25 Q. Was there something about the speed of automobile

12243

Estella Weigel - Direct

them? 1 vehicles that you passed that caused you to notice

per 2 A. Yes. They were moving very slowly, around 40 miles

3 hour. There was also road construction that was
beginning in
4 that area, and that is why I thought they were moving
very
5 slowly was because of the contents of the Ryder truck.
6 Q. You came up behind them as you're driving south on
I-35.
7 Describe for the jury -- stop action by stop action --
what
8 happened precisely as you passed the Ryder truck and
the
9 yellow -- excuse me, I said yellow -- beige Mercury.
10 A. As I mentioned, road construction was beginning,
and so the
11 road constructor workers were putting up the yellow
12 construction barrels. And I was coming upon the slow-
moving
13 vehicle, and I was trying my best to judge the distance
between
14 the point of where I could go and pass them. And as I
was -- I
15 was behind them for a short period of time, and I
finally was
16 able to pass them.
17 And as I was passing those two vehicles,
I . . . I
18 glanced -- as I was passing, I glanced on -- at the
driver of
19 the Ryder truck; and I also was using my rearview
mirror and my
20 side mirror as I was going, passing those two vehicles.
There

me to go 21 was not enough room between the car and the truck for
passing 22 in between and pass the car, so I basically ended up
23 the car.

on the 24 When I noticed that there was no license plate
one of 25 car, I looked to see if there was a temporary license,

12244

Estella Weigel - Direct

1 those paper things, and I didn't see anything.
truck 2 Q. Now, you said you looked at the driver of the Ryder
driver of 3 and you glanced at him. Did you get a look at the
4 the car?

5 A. Yes. Yes.

your 6 Q. And tell us your recollection of, to the best of
driver of 7 ability here, a couple years after the fact, what the
8 the car looked like.

John Doe 9 A. It looks similar to the sketch that came out of

10 No. 2.

right? 11 Q. Were you able to see -- you see Mr. Nichols here;

12 A. Yeah.

13 Q. Does that look like the driver of the Ryder truck
to you?

14 A. No.

15 Q. Were you able to see the passenger of the Ryder
truck?

16 A. Not very well. No.

17 Q. So you couldn't tell whether Mr. Nichols was the
passenger,

18 or not?

19 A. No.

20 Q. Did there come a time when you contacted -- or did
there

21 come a time when the FBI was informed of what you had
seen?

22 A. Yes.

23 Q. Tell us how that came about.

24 A. What happened was I -- after I had seen the
sketches on the

25 TV, I went to my supervisor at work and told my -- I
was

12245

Estella Weigel - Direct

1 struggling to determine if I had information that might
help

2 with the Oklahoma City bombing.

3 He knew the police chief of Newton and said he
would

Newton, 4 talk with him. He did talk with the police chief of
5 and the police chief of Newton told my boss that he
thought it 6 was significant information.

7 He gave me a number for the FBI, and I tried
that 8 number, and I got no answer. It was a while before I
was able 9 to get an answer.

10 So I went ahead and looked up the phone number
of the 11 Wichita FBI building office in Wichita. And I finally
got an 12 answer, and I was told at that time the reason I didn't
have -- 13 didn't get an answer with the number that I was given
by the 14 Newton police chief was because they were transferring
from 15 building -- from one building.

16 Q. In any event, you did tell the FBI what you had
seen?

17 A. Yes.

18 Q. Did you contact any newspapers or publicity to try
and --

19 A. No, 'cause I didn't want to get involved.

20 MR. NEUREITER: Thank you very much for
speaking with 21 us today.

22 Pass the witness.

23 THE COURT: Mr. Ryan.

24 CROSS-EXAMINATION

25 BY MR. RYAN:

12246

Estella Weigel - Cross

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. My name is Pat Ryan. We haven't met, have we?

4 A. No.

5 Q. Are you a little nervous?

6 A. Yes.

7 Q. Well, there's some water there and some glasses you
can't
8 see on the other side of that pitcher, if you'd care
for a
9 drink of water.

10 Now, the date that you saw this Ryder truck
did you

11 tell us was the 18th of --

12 A. 1995. It was a Tuesday.

13 Q. April 18, Tuesday, the day before the bombing?

14 A. Yes.

15 Q. Is that correct?

16 A. Uh-huh.

17 Q. And you had -- at the time that you talked to the
FBI, you

18 were trying to be helpful?

19 A. Uh-huh.

20 Q. Is that correct?

21 A. Uh-huh.

22 Q. Wanted them to know what information you had seen?

23 A. Yes.

24 Q. You didn't know whether it was significant or not,
or even
25 if it was the same people that were involved in the
bombing, or

12247

Estella Weigel - Cross

1 not?

2 A. Right.

3 Q. But you were concerned enough that you wanted to
let the
4 FBI know what you had learned, what you had seen?

5 A. Yes.

6 Q. And they sent an agent out to talk to you; is that
right?

7 A. No.

8 Q. It was on the telephone?

9 A. Yes.

10 Q. In any event, during that conversation, you relayed
to the
11 agent your best recollection of what you had seen?

12 A. Yes.

13 Q. Does the date May 2 sound about right; that would
be about

14 two weeks after the bombing?

15 A. I know that is the date of the report the Agent
Nolan

16 filed, yes.

17 Q. Does that sound about right to you?

18 A. I spoke with him on the 27th of April.

19 Q. You spoke with him on the 27th of April, all right.
So you

20 spoke to him about eight days after the bombing?

21 A. Yes.

22 Q. Now, did you keep a note of this? Do you have
notes of

23 your conversation?

24 A. No.

25 Q. Excuse me?

12248

Estella Weigel - Cross

1 A. No.

2 Q. And at the time that you talked to him on the 27th,
you had

3 seen and read, I assume, media reports about the
Oklahoma City

4 bombing?

5 A. Yes.

6 Q. Is that correct? And you had been familiar with
the fact

7 that a Mercury had been driven by Timothy McVeigh, I
take it?

8 You knew that?

9 A. I guess I don't understand your question.

10 Q. My question is at the time you talked to the FBI
eight days

11 after the bombing, at that time had you seen media
reports

12 stating that Mr. McVeigh was associated with a 1978
Mercury

13 automobile?

14 A. No, I did not know that.

15 Q. Did you tell the Agent Nolan that you had seen the
Mercury

16 on TV?

17 A. Yes.

18 Q. So you had seen the Mercury? Prior to the time
that you

19 talked to the FBI, you had seen that on television?

20 A. Okay. It had to be that Friday or Monday. After
the

21 bombing.

22 Q. All right. I'm not trying to confuse you now. So
let's

23 just take it slow. My question is simply: At the time
that

24 you spoke to the FBI agent on April 27, prior to that
you had

25 seen reports in the media of Mr. McVeigh's Mercury
automobile?

12249

Estella Weigel - Cross

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 Q. All right. And you knew that a Ryder truck was
reportedly

5 the vehicle in which the bomb was delivered?

6 A. Yes.

7 Q. You knew that as well?

8 A. Uh-huh.

9 Q. And did you know that the truck was at least
reported to

10 have been rented in Kansas?

11 A. I -- that's -- yes.

12 Q. And you'd seen these sketches of Un. Sub. 1 and 2
in the

13 newspapers or on television?

14 A. You mean the suspects?

15 Q. Yes.

16 A. Yes.

17 Q. Excuse me. I apologize. We're kind of used to
that

18 vernacular. The sketches of John Doe 1 and 2, you'd

seen those

19 on television?

20 A. Yes.

21 Q. And had you also seen in the media that the Mercury
that

22 Mr. McVeigh was arrested in was reportedly seen without
a tag

23 at the time of his arrest?

24 A. Yes. And that's the reason why I'm going "This is
the car

25 and this is the truck." And that is when I decided to
-- I was

12250

Estella Weigel - Cross

1 struggling to determine if I needed to give this
information to

2 the FBI.

3 Q. And you had -- did you also know that Mr. McVeigh
4 reportedly had a gun on him at the time he was
arrested?

5 A. I believe it was a weapon, yes.

6 Q. Right. You didn't know what kind, you just knew it
was a

7 firearm?

8 A. Yes.

9 Q. And so everything that you had seen or heard in the
media

10 you saw that morning of the 18th; correct?

11 A. Yes.

12 MR. NEUREITER: Objection, your Honor.

13 BY MR. RYAN:

14 Q. You saw --

15 MR. NEUREITER: I'm not sure there's been any
16 testimony about Mr. McVeigh, the person she saw, having

a

17 weapon.

18 THE COURT: Well, the objection is overruled.

19 BY MR. RYAN:

20 Q. On the date of the 18th, you saw the Ryder;
correct?

21 A. Uh-huh.

22 Q. And you'd earlier heard about that on the media?

23 A. Uh-huh.

24 Q. You saw the Mercury? You'd earlier heard about
that on the

25 media?

12251

Estella Weigel - Cross

1 A. Uh-huh.

2 Q. You saw no tag on the Mercury? You'd earlier heard
about

3 that on the media; is that correct?

4 A. Uh-huh.

5 Q. You saw this person who resembled John Doe 2?
You'd heard

6 about that on the media; right?

7 A. Uh-huh.

8 Q. And you saw a firearm that day, didn't you?

9 A. Yes.

10 Q. In one of the vehicles?

11 A. Yes.

12 Q. And you'd heard about that on the media?

13 A. Yes.

14 Q. Now -- did you give any details to the agent about
what

15 this person driving the Mercury looked like?

16 A. I said it resembled the sketch of John Doe No. 2.

17 Q. I understand you said it resembled the sketch; but
did you

18 tell the agent what it was that you saw, what the
person looked

19 like?

20 A. No, I did not tell the agent.

21 Q. Do you have a recollection of that?

22 A. Yes, I do.

23 Q. And did you see the sketch yesterday?

24 A. No.

25 Q. Have you seen the sketch since you've been here in
Denver?

Estella Weigel - Cross

1 A. No.

2 Q. Could you tell us how much the person weighed?

3 A. No.

4 Q. Or how tall he was?

5 A. That would be kind of difficult.

6 Q. Do you recall the length of his hair?

7 A. Yes. It was right above the ear, and the length
was about

8 right below the earlobe.

9 Q. Did he have a ball cap on?

10 A. Yes. It was turned backwards.

11 Q. And did you see the color of the ball cap?

12 A. I don't recall.

13 Q. And you previously to this day had seen John Doe 2

14 photograph with a ball cap on backwards, I take it?

15 A. Yeah. At the time of the . . .

16 Q. Now, was the time that you saw this event on the
interstate

17 on the 18th of April -- was that about 7:45 in the
morning?

18 A. Yes.

19 Q. Now, you know where Junction City is; correct?

20 A. Yes.

21 Q. And are you familiar with the McDonald's in
Junction City

22 at I-70 and Washington Street?

23 A. No.

24 Q. Well, let me ask it this way: Could a person who
was at

25 McDonald's at 7:30 in the morning on the 18th travel to
where

12253

Estella Weigel - Cross

1 you saw this event by 7:45?

2 MR. NEUREITER: Objection.

3 THE COURT: Well, if you know the answer to
that, you

4 can answer it.

5 THE WITNESS: I don't know it.

6 THE COURT: All right.

7 BY MR. RYAN:

8 Q. Do you know the distance between Junction City and
where

9 you were?

10 A. I know the distance between Salina and Junction
City is

11 about an hour's drive, and the distance between Salina
and

12 McPherson is about a half hour's drive.

13 Q. So how far does that make you from Junction City?

14 MR. NEUREITER: Again, your Honor, as the crow
flies,

15 it's not clear.

16 THE COURT: If that's an objection, it's
overruled.

17 BY MR. RYAN:

18 Q. How far from Junction City was it to where you saw
these

19 vehicles? Approximately. I'm not asking for a
specific mile.

20 Just approximate.

21 A. I guess 90 sounds good.

22 Q. About 90 miles?

23 A. Yeah.

24 Q. It would be at least an hour, maybe an hour and a
half from

25 Junction City to where you saw these vehicles?

12254

Estella Weigel - Cross

1 A. Yes.

2 Q. Is that right?

3 A. Uh-huh.

4 Q. So you know it would not be possible to get from
Junction

5 City to where you saw these vehicles in the length of
time from

6 7:30 to 7:45; is that fair?

7 A. Yes.

8 MR. RYAN: No further questions. Thank you

for

9 answering my questions.

10 THE COURT: Any redirect?

11 MR. NEUREITER: A moment, your Honor.

12 No more questions, your Honor.

13 Thank you, Miss Weigel.

14 THE COURT: You may -- I take it she's
excused.

15 MR. NEUREITER: Yes, your Honor.

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

17 Next, please.

18 MR. WOODS: Yes, your Honor. Rose Mary Zinn.

19 THE COURT: Miss Zinn.

20 THE COURTROOM DEPUTY: Would you raise your
right
21 hand, please.

22 (Rose Mary Zinn affirmed.)

23 THE COURTROOM DEPUTY: Would you have a seat,
please.

24 Would you state your full name for the record
and

25 spell your last name.

12255

1 THE WITNESS: Okay. It's Rose Mary Zinn, Z-I-
N-N.

2 THE COURTROOM DEPUTY: Thank you.

3 DIRECT EXAMINATION

4 BY MR. NEUREITER:

5 Q. Miss Zinn, how are you?

6 A. Nervous.

7 Q. We met for the first time a couple days ago; is
that right?

8 A. Right.

9 Q. Where are you from, Miss Zinn?

10 A. Lost Springs, Kansas.

11 Q. Are you married?

12 A. Yes.

13 Q. Do you have children?

14 A. Yes. Four.

15 Q. Four children?

16 A. Five grandchildren.

17 Q. What do you do for a living presently, Miss Zinn?

18 A. School bus driver.

19 Q. What have you done in the past?

20 A. I've been a clerk, waitress, fry cook.

21 Q. I want you to think back to the April of 1995 time
period

22 and tell us what you were doing then.

23 A. I was working at Tie Meiers. It's a grocery store
in

24 Lincolnville.

admitted 25 Q. I'm going to show you a map that's been previously

12256

Rose Zinn - Direct

1 as D1732. Have you seen that map before?

2 A. Yes. Do you want to know where Lincolnville is?

3 Q. I'd like you to tell us where Lincolnville is.

4 A. It's right in between Herington and Marion. It's
exactly

5 12 miles from Marion and 12 miles from Herington.

6 Q. So it would be around where the pen is?

7 A. Yes.

8 Q. And what is the road that connects Marion and
Herington?

9 A. 77.

10 Q. Now, is Lincolnville right on 77?

11 A. Well, it's just to the side, but . . .

12 Q. How much to the side?

13 A. It's right there. It's sitting there.

14 Q. Is your store right on 77, the Tie Meiers store?

15 A. No.

16 Q. Where is that located?

17 A. It's about a -- let's see. About two blocks from
77.

18 West.

19 Q. What were your working hours when you were there in

April,

20 1995? What were the working hours?

21 A. 8 in the morning to 5:30 in the afternoon.

after

22 Q. Did something happen that you remember the day

23 Easter, 1995?

24 A. Yeah.

25 Q. Can you tell the jury about that.

12257

Rose Zinn - Direct

there by

1 A. Okay. Well, my boss just went to lunch, and I was

in

2 myself, and these two guys came in the front door. And

no

3 Lincolnville, you always know strangers 'cause there's

4 strangers.

5 Q. How big is Lincolnville?

6 A. Oh, it's probably got maybe 200.

7 Q. 200 people?

8 A. That's probably exaggerating.

9 Q. Including cats and dogs?

10 A. Well, yeah.

11 Q. So you were there, a couple people came in?

the

12 A. Yeah, these two guys. One was blond and white, and

13 other one was a dark-complected guy.

14 Q. Can you describe the facial features of the two
men?

15 A. Not --

16 Q. Any more than you just have?

17 A. No.

18 Q. Okay. Did it cause you some concern to have two
people
19 come in that you hadn't seen before?

20 A. Yeah. Well, the dark-colored guy looked mean. So
I know

21 this might sound silly, but I thought, uh-oh, I'm going
to be

22 robbed.

23 Q. Is that why you remember that event?

24 A. Yep.

25 Q. Did they buy anything?

12258

Rose Zinn - Direct

1 A. Yeah.

2 Q. What did they buy?

3 A. Well, I think they bought cigarettes and pop. I
know they

4 bought pop, but I'm not sure on the cigarettes.

5 Q. After they made their purchases, what did they do?

6 A. They just -- they left.

7 Q. And what did you do?

8 A. I went up to the front of the store to see where
they was

9 going, and they got in a Ryder truck.

10 Q. Did you follow them out to see what vehicle they
were

11 getting in?

12 A. Yeah. Well, they -- the front's all window, and
that truck

13 was setting right there in front. It was facing west.
It

14 wasn't parked diagonal.

15 Q. Can you describe the truck a little bit, best you
recall?

16 A. Yeah. Well, I'd say it would hold -- well, now,
when we

17 moved, we used U-Hauls. We could get five rooms of
furniture

18 in it. But it was probably about three-room.

19 Q. Three-room Ryder truck?

20 A. Yeah. It was just square, no overhang, no . . .

21 Q. Did it have a van front or a truck front?

22 A. Truck front.

23 Q. Truck front. I'm going to show you a brochure --

24 MR. NEUREITER: Actually, one moment, your
Honor.

25 BY MR. NEUREITER:

Rose Zinn - Direct

1 Q. Soon we will show you a brochure --

2 A. Okay.

3 Q. -- with a number of Ryder trucks. We'll ask you to
pick
4 out the one that you think best matches.

5 I'm going to show you a black-and-white copy
of what
6 has previously been admitted as D1737.

7 A. It would be the third one from the top.

8 Q. And you say -- we found it. Now I'm going to show
you a
9 color copy of the same thing previously admitted as
D1737.

10 A. Still the third one.

11 Q. And it will be the third one from the top?

12 A. Yeah.

13 Q. And if I zoom in, can you tell me how many bedrooms
that
14 particular truck will hold?

15 A. That says three.

16 Q. Okay. Now, to the best of your recollection, how
tall were
17 the two individuals who came in?

18 A. See, I'm not good with guessing heights, but the
dark guy
19 was pretty tall and the white guy wasn't. He wasn't
real tall.

20 Q. So that's the best of your recollection?

21 A. Yeah.

22 Q. But you're not very good at guessing heights?

23 A. No. I couldn't even guess your height. You're
tall.

24 MR. NEUREITER: I thank you for coming in
today.

25 THE WITNESS: Yeah.

12260

1 MR. NEUREITER: And I think I pass the
witness, your

2 Honor.

3 THE COURT: All right. Mr. Ryan.

4 CROSS-EXAMINATION

5 BY MR. RYAN:

6 Q. Good afternoon, Miss Zinn.

7 A. Good afternoon.

8 Q. How are you?

9 A. Fine. Better.

10 Q. Mrs. Zinn, when you -- after the Oklahoma City
bombing, you

11 knew that Ryder truck was associated with that, you
read that

12 in the paper?

13 A. I saw it on TV.

14 Q. Right. And because you had seen a Ryder truck

around the

15 time of the bombing, you called in to the FBI to give
them your

16 information?

17 A. Well, I didn't call FBI.

18 Q. How did they get in touch with you?

19 A. My boss -- she lived in -- she lives in Nebraska,
and she

20 come down; and I was telling her about it, and she went
to the

21 phone and called them.

22 Q. Was that with your permission?

23 A. Yeah.

24 Q. Okay. And you recall this event and recall telling
it to

25 the FBI around May 11; does that sound about right?

12261

Rose Zinn - Cross

1 A. I couldn't tell you. I don't remember when I --

2 Q. Couple --

3 A. It was a little bit after the bombing.

4 Q. Couple weeks after the bombing?

5 A. Yeah.

6 Q. All right. And do you recall telling the special
agent --

7 was it by telephone?

8 A. No, he came to the store.

9 Q. Was this James Keely or Kiely?

10 A. Could have been.

11 Q. Do you remember telling this FBI agent that the
white

12 gentleman that you saw was about 5' 7"?

13 A. No. Really, after I got -- talked to -- the FBI
said that.

14 'Cause I told him, the manager there at the store, that
was --

15 he was about that height, and he put down 5' 7".

16 Q. I'm sorry, I didn't understand what you just said.

17 A. The FBI agent put down 5' 7". I didn't say he was
5' 7".

18 Q. Did you not just say yesterday that the man was 5'
7"?

19 A. Yeah. Well, I told you that. Then I got to
thinking that

20 I had told the FBI agent that my boss was about the
height, and

21 the FBI agent wrote down 5' 7".

22 Q. How tall is your husband?

23 A. He's probably about 5' 10".

24 Q. And this -- the white man that you saw was a good
deal

25 shorter than your husband; fair?

1 A. Well, he was shorter.

2 Q. Shorter than 5' 10"?

3 A. Yeah.

4 Q. And the darker man who was with him was taller than
the
5 white man?

6 A. Right.

7 MR. RYAN: I believe that's all I have, your
Honor.

8 Thank you.

9 THE COURT: Anything else of this witness?

10 MR. NEUREITER: I don't believe so, your
Honor.

11 THE COURT: All right. I take it she's
excused, then.

12 MR. NEUREITER: Yes, your Honor.

13 THE COURT: You may step down. You are
excused.

14 Next, please.

15 MR. WOODS: Yes, your Honor. Darrell McCaleb.

16 THE COURTROOM DEPUTY: Would you raise your
right
17 hand, please.

18 (Darrell McCaleb affirmed.)

19 THE COURTROOM DEPUTY: Would you have a seat,
please.

20 Would you state your full name for the record
and

21 spell your last name.

22 THE WITNESS: Darrell McCaleb, M-C-C-A-L-E-B.

23 THE COURTROOM DEPUTY: Thank you.

24 DIRECT EXAMINATION

25 BY MR. NEUREITER:

12263

Darrell McCaleb - Direct

1 Q. Hello, Mr. McCaleb. How are you?

2 A. Hello.

3 Q. We met for the first time a couple of days ago?

4 A. Uh-huh.

5 Q. Where are you from, Mr. McCaleb?

6 A. Junction City.

7 Q. Where did you grow up?

8 A. I grew up in Dwight, Kansas.

9 Q. How old are you?

10 A. 43.

11 Q. What is your line of work?

12 A. Electrical contractor. Electrician.

13 Q. Do you have experience with DRMO at Fort Riley,
Kansas?

14 A. Yes.

15 Q. Why do you have that experience?

16 A. We oftentimes go out, we look for items for the
business.

17 Q. How often do you go out?

18 A. I try to go every month.

19 Q. How long have you been going out every month?

20 A. I've been probably three years -- two-and-a-half,
three
21 years now.

22 Q. Do you recall attending a viewing session at the
DRMO on
23 the 18th of April, 1995?

24 A. Yes.

25 MR. NEUREITER: I'd like to show the witness
an

12264

Darrell McCaleb - Direct

1 exhibit, your Honor.

2 THE COURT: Yes.

3 MR. NEUREITER: Show the witness Government
1956.

4 BY MR. NEUREITER:

5 Q. Have you seen that before?

6 A. Yes, I have.

7 THE COURT: Well, you can't have this little
private
8 conversation.

9 MR. NEUREITER: I'm sorry.

10 BY MR. NEUREITER:

11 Q. Do you recognize that document?
12 A. Yes, I do.
13 Q. I'm displaying now what has been previously marked
and
14 admitted, I believe, as G -- Government Exhibit 1956.
Can you
15 tell us what this document is?
16 A. It's a sign-in sheet.
17 Q. Sign-in sheet for what?
18 A. For the DRMO inspections. Sales.
19 Q. You previously identified your signature on this
document.
20 A. Not on this one. But, yes, I have.
21 Q. Well, let me turn -- I'm turning to the second
page, third
22 page, fourth page, fifth page. I'm zooming in. What
do you
23 see there, sir?
24 A. That's my signature.
25 Q. Does that indicate that you signed in at the DRMO
--

12265

Darrell McCaleb - Direct

1 A. Yes.
2 Q. -- on 4-18, 1995?
3 A. Yes.
4 Q. Look over at the -- is this the time that you would

have

5 signed in --

6 A. Yes, it is.

7 Q. -- to your knowledge?

you

8 What does it say down at the bottom for when

9 signed in?

10 A. I believe 10:50.

11 Q. Let me move over. There's your name.

12 A. 10:50.

the DRMO,

13 Q. 10:50. And what is your practice when you go to

14 sir, in terms of viewing items?

15 A. Well, I try to go by the way they're listed in the

16 catalogue.

person --

17 Q. On this particular date, did you notice that the

mans

18 tell us what you noticed about the person who sometimes

19 the sign-in desk?

20 A. They left their post. They left the sign-in desk.

21 Q. Why did you remember that?

usually

22 A. Well, I thought it was kind of strange, 'cause they

sign-in

23 have somebody there for the items that they have by the

24 desk.

person left

25 Q. While you were there, did you notice that the

Darrell McCaleb - Direct

1 their post?

2 A. Yes.

3 Q. And have you observed that -- excuse me. You have
been

4 there how many times, would you say, in the last three
years?

5 A. I'd say 15 or 20. Probably 15.

6 Q. And have you observed that on a number of
occasions?

7 A. Yes, I have.

8 Q. So in your experience, is the person at the sign-in
desk

9 always there?

10 A. Not always.

11 Q. And on this particular occasion, did you notice
people

12 entering the DRMO without signing in?

13 A. Don't recall that.

14 Q. Do you recall talking to the FBI on 6-17, 1995?

15 A. Yes.

16 MR. NEUREITER: And I'd like to refresh his
17 recollection, your Honor.

18 THE COURT: You may show it to him.

19 MR. NEUREITER: I'm asking the witness to look

at the

20 last paragraph.

21 THE WITNESS: Okay.

22 BY MR. NEUREITER:

23 Q. Having seen that, does that refresh your
recollection that

24 on 6-18, 1995, a lot of people arrived during this
period and

25 walked into the sale without signing the log?

12267

Darrell McCaleb - Direct

1 A. Yes.

2 MR. GOELMAN: I'm going to object to Counsel
reading

3 from the document.

4 THE COURT: He asked a question. The
objection was

5 overruled.

6 What was your answer?

7 THE WITNESS: Repeat the question, please.

8 BY MR. NEUREITER:

9 Q. Having looked at this document, does that refresh
your

10 recollection that on this date, 4-18, 1995, you noticed
a lot

11 of people arrive during this period and walked into the
sale

12 without signing the log?

13 A. If that's what I said, yes.

14 THE COURT: Well, no, that isn't. The
question is

15 whether you remember that. Not what you read here. Do
you

16 remember that, from that day?

17 THE WITNESS: No, I really don't remember
that.

18 BY MR. NEUREITER:

19 Q. You do remember that the person was not at the
desk,

20 though?

21 A. Yes, I do.

22 Q. Mr. McCaleb, is there a place where someone can get
a soda

23 or a candy bar there at the DRM0?

24 A. I believe there is, yes.

25 Q. And where is that location?

12268

Darrell McCaleb - Direct

1 A. I'd say in the northeast corner of the building.

2 Q. Would it help you if I showed you a map of the DRM0
area?

3 A. Yes, it would.

4 Q. I'm going to show you a document that I do not
believe has

5 been admitted into evidence. It's marked for
identification as

6 D172.

7 I'm not going to show it to the jury. Have
you seen

8 this before?

9 A. Yes, I have.

10 Q. And does that fairly and accurately represent the
layout of

11 the DRMO and in the salvage storage area?

12 A. Yes, it does.

13 MR. NEUREITER: Move the admission of D172,
your

14 Honor.

15 MR. GOELMAN: No objection.

16 THE COURT: Received. D172.

17 MR. NEUREITER: If I could ask the marshal for
the --

18 admission (sic) to publish, your Honor.

19 THE COURT: You want to put it on the easel?

20 MR. NEUREITER: Yes, your Honor.

21 BY MR. NEUREITER:

22 Q. If you could describe --

23 THE COURT: All right.

24 MR. NEUREITER: Your Honor, if it would be
easier, if

25 I could question --

Darrell McCaleb - Direct

1 THE COURT: I think it works better if you put
it at 2 the end of the jury box here --

3 MR. NEUREITER: Very well.

4 THE COURT: -- as we have other exhibits.

5 BY MR. NEUREITER:

6 Q. Can you see that, Mr. McCaleb?

7 A. Yes.

8 Q. Mr. McCaleb, D172, you've just described as a map
of the 9 DRMO area. What is the big, shaded rectangle there?

10 A. That's the building that contains the offices and
the -- 11 some of the items for sale.

12 MR. NEUREITER: Okay. If the witness, your
Honor, 13 could have a microphone, I think it would be easier for
him to 14 get down and demonstrate.

15 THE COURT: All right.

16 MR. NEUREITER: Thank you.

17 BY MR. NEUREITER:

18 Q. Okay. If you could step down.

19 There's an area on that document that's marked
20 "salvage storage." Could you explain to the jury what
that is.

viewing. 21 A. This is the area where they have outside items for

area? 22 Q. And is there a gate by which customers access that

23 A. Yes. Right there.

24 Q. Is there a sign-in desk at that gate?

25 A. No, there is not.

12270

Darrell McCaleb - Direct

1 Q. If you're interested in outside items, are you
required to

2 sign in before going through that gate?

3 A. No. Before you go to that gate, no.

rectangle. 4 Q. Now, we were talking before about the big

allow 5 Explain the various doors that you are aware of that

rectangle 6 entry into that big rectangle and tell us what the

7 is, please.

the items 8 A. This is the building -- contains the offices plus

9 for inside viewing.

in to 10 Q. Where would the doors be if you were going to sign

11 look at items on the inside?

it's 12 A. Normally, they got a door to each one of these; and

13 usually at one of those doors.

14 Q. Now, is there a door facing out onto the salvage
storage

15 area, the outside area?

16 A. Yes, there is.

17 Q. And what does that door lead to?

18 A. It leads to a big room with tables.

19 Q. And are there soda machines in that room?

20 A. I believe so, yes.

21 Q. Is there a candy machine in that room?

22 A. I believe so.

23 Q. Can you wait in that room if the weather's bad?

24 A. Yes, you can.

25 Q. Will they kick you out of there?

12271

Darrell McCaleb - Direct

1 A. No, I don't believe so.

2 Q. If -- is that door immediately accessible from the
outside

3 area? In other words, do you have to go into the
building by

4 another entrance, or can you get into that room from
the

5 outside area?

6 A. You can get in from the outside.

7 MR. NEUREITER: Thank you, you can have a seat
now.

8 Pass the witness, your Honor.

9 Do you want the exhibit up?

10 If I may retrieve the exhibit, your Honor.

11 THE COURT: All right.

12 Mr. Goelman.

13 MR. GOELMAN: Thank you.

14 CROSS-EXAMINATION

15 BY MR. GOELMAN:

16 Q. Good afternoon, Mr. McCaleb.

17 A. Hi.

18 Q. You said that one of the reasons you remembered
that no one

19 was at the sign-in desk was that it was unusual; is
that right?

20 A. I thought it was unusual, yes.

21 Q. And the reason for that is that the overwhelming
majority

22 of the time there is someone at the sign-in desk, isn't
there?

23 A. Yes.

24 Q. In fact, you've been to DRMO most months for the
last

25 several years; isn't that right?

12272

Darrell McCaleb - Cross

1 A. Yes.

you? 2 Q. Each time you went to DRMO, you signed in, didn't

3 A. That's correct.

the 4 Q. Each time you went to DRMO, there was someone at

5 sign-in desk?

6 A. Yes, there was.

7 Q. Each time you went to DRMO, after you parked, you

8 immediately signed in; isn't that right?

9 A. Yes, I did.

yard 10 Q. Did you ever spend six hours wandering around the

11 before you signed in?

12 A. No.

than an 13 Q. Each time you went to DRMO, sir, you spent less

14 hour total, both inside and outside; isn't that right?

15 A. Yes.

it was 16 Q. Defense counsel showed you a diagram -- I believe

17 defense 172 -- of a map of the DRMO; is that right?

that map 18 Now, is that entire area labeled "salvage" on

19 open to customers on viewing days?

20 A. Yes, I believe it is.

section 21 Q. Is that area divided up based on which particular

22 is for sale on viewing days?

23 A. They usually have it divided, yes.

24 Q. In fact, you've gone into an area where there were
items

25 that were not for sale before, have you not?

12273

Darrell McCaleb - Cross

1 A. Yes, I have.

2 Q. And within a minute or two, you were instructed to
go to

3 the area where the sale items were; isn't that right?

4 A. Yes.

5 Q. And who instructed you to do that?

6 A. One of the employees.

7 Q. One of the DRMO employees, sir?

8 A. Yes.

9 Q. You testified that there -- you have seen the sign-
in table

10 where there was not someone sitting right there; is
that right?

11 A. Yes.

12 Q. And you noticed this because you were already in
the

13 warehouse and you'd look up and there was nobody
sitting behind

14 the table; is that right?

15 A. Yes.

any
it, sir?
to your
DRMO
seeing

16 Q. That doesn't necessarily mean that there weren't
17 employees in the area, in the warehouse itself, does
18 A. No, it doesn't mean that.
19 Q. And the DRMO employees: They don't wear uniforms,
20 knowledge, do they, sir?
21 A. No.
22 Q. You're not familiar with the identity of all the
23 employees?
24 A. No, I'm not.
25 Q. And sitting here today, you don't remember ever

12274

Darrell McCaleb - Cross

1 anyone walk in without signing in, do you, sir?
2 A. No, I don't.
3 Q. Sir, do you still have the sign-in log up there?
4 A. No, I don't.
5 MR. GOELMAN: May I approach, your Honor?
6 THE COURT: Yes.
7 BY MR. GOELMAN:
8 Q. Could you turn to -- I think it was the third page,
where

9 you signed in.

10 I believe it was the back of the third page,
the last

11 entry.

12 A. It's farther down than that.

13 Sixth page.

14 Q. Sixth page?

15 A. Yes.

16 Q. And what time does your sign-in indicate, sir?

17 A. 10:50.

18 Q. Now, is that approximately the right time that you
recall

19 from your independent recollection of signing in on
April 18,

20 1995?

21 A. Yes, it is.

22 Q. Do you remember what the weather was like that day?

23 A. No, I do not.

24 Q. Do you remember what the size of the sale was, sir?

25 A. No. I don't remember that particular size, no.

12275

Darrell McCaleb - Cross

1 Q. Now, you first heard of the bombing in Oklahoma
City on

2 April 19, is that right?

3 A. Yes, I did.

you? 4 Q. And shortly thereafter, the FBI came out to talk to

5 A. Yes.

6 Q. Did they tell you how they found you, sir?

7 A. Uh-huh. Yes, they did.

8 Q. And was that through the sign-in sheet?

9 A. Yes.

on the 10 Q. If you could, could you count the number of entries

right that 11 sheet? There should be nine. Just tell me if I'm

12 there are nine entries on each sheet.

13 A. Yes, there is.

think 14 Q. And could you turn now, sir, to the 93d entry. I

15 it's the eighth page, and it's at 12:50 sign-in.

16 A. Okay.

using the 17 Q. That indicates, does it not, a sign-in of someone

down 18 name "Terry Nichols" at 12:50 p.m.? It's about halfway

19 the page, I think, the third entry on that page?

20 A. Yes, it does.

21 Q. And that's a full two hours after you signed in?

22 A. Yes, it is.

already 23 Q. Now, the time the FBI came out to see you, you had

right? 24 seen Terry Nichols' picture on television; is that

25 A. Yes.

12276

Darrell McCaleb – Cross

1 Q. And they asked you, did they not, if you had seen

2 Mr. Nichols at the April 18, 1995, sale at DRMO?

3 A. Yes, they did.

4 Q. You told them you didn't remember seeing Mr.
Nichols there;

5 isn't that right?

6 A. That's correct.

7 Q. And you, Mr. McCaleb, went to both the inside and
the

8 outside area; isn't that right?

9 A. Yes.

10 Q. Now, Defense Counsel asked you about a room where
there's a

11 Coke machine; and there's also vending machine for
snacks.

12 What kind of snacks are in that vending machine?

13 A. Couldn't tell you. I've never used it.

14 Q. There's no coffee shop at the DRMO, is there?

15 A. Not that I'm aware of.

16 Q. Have you ever been at the DRMO without a vehicle
for six

17 hours, sir?

18 A. No, I haven't.

all? 19 Q. Have you ever been at the DRMO without a vehicle at

20 A. No, I have not.

21 Q. Have you ever seen people just sitting in that room
22 drinking Cokes and eating potato chips for six hours?

23 A. No, I have not.

was from 24 Q. You don't know, do you, sir, where Terry Nichols

25 8 a.m. to 12:50 p.m. on April 18, 1995?

12277

1 MR. NEUREITER: Objection.

2 THE COURT: Sustained, objection.

3 MR. GOELMAN: I have nothing further.

4 THE COURT: Any redirect?

5 MR. NEUREITER: No, your Honor.

6 Thank you, Mr. McCaleb.

excused. 7 THE COURT: You may step down. You're

8 THE WITNESS: Thank you.

9 THE COURT: Next, please.

O'Connell. 10 MR. WOODS: Yes, your Honor. Robert

right 11 THE COURTROOM DEPUTY: Would you raise your

12 hand, please.

13 (Robert O'Connell affirmed.)

14 THE COURTROOM DEPUTY: Would you have a seat,
please.

15 Would you state your full name for the record
and

16 spell your last name.

17 THE WITNESS: Robert Hugh O'Connell. O
apostrophe

18 C-O-N-N-E-L-L.

19 THE COURTROOM DEPUTY: Thank you.

20 DIRECT EXAMINATION

21 BY MR. NEUREITER:

22 Q. Hello, Mr. O'Connell. How are you today, sir?

23 A. Okay.

24 Q. Where are you from, Mr. O'Connell?

25 A. I live in Jewell, Kansas.

12278

Robert O'Connell - Direct

1 MR. NEUREITER: Hold on one moment.

2 If I may approach one moment, a matter with
respect to

3 this witness.

4 THE COURT: All right.

5 (At the bench:)

6 (Bench Conference 104B1 is not herein transcribed
by court

7 order. It is transcribed as a separate sealed
transcript.)

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12282

Robert O'Connell - Direct

1 (In open court:)

2 THE COURT: Proceed.

3 BY MR. NEUREITER:

4 Q. Mr. O'Connell, where are you from?

5 A. Jewell, Kansas.

6 Q. Where is Jewell, Kansas?

7 A. North and west of Salina, Kansas, about 60 miles
west,

8 further west of Junction City.

9 Q. What do you do for a living, sir?

10 A. I'm a registered nurse.

11 Q. And what have you done in the past?

12 A. I owned a Radio Shack for a number of years. I've
been in

13 the military. That's pretty much it.

14 Q. When did you get your nursing degree?

15 A. In '94.

16 Q. And since that time, have you been a practicing
registered

17 nurse?

18 A. I've practiced as a registered nurse; that's
correct.

19 Q. Do you attend the DRMO at Fort Riley on occasion?

20 A. Yes, I have.

21 Q. And what is the basis of your interest in the DRMO?

22 A. When I went and requested the catalogues be sent to
my

23 home, I was considering getting back into an
electronics

24 service business.

DRM0? 25 Q. How many times would you say you've attended the

12283

Robert O'Connell - Direct

1 A. Probably eight to ten times.

2 Q. Do you recall attending the DRM0 on April 18, 1995?

3 A. Yes.

Government 4 Q. I'm going to show you an exhibit marked G19 --

5 Exhibit 1956, and the second-to-last page of that.

6 A. Okay.

7 Q. Do you recognize that document?

8 A. Yeah, the sign-in sheet.

9 Q. And if I zoom in?

10 A. That's my name and is my signature.

11 Q. And what time does it say that you signed in?

be 2:34 12 A. 1434, I would say is what that says. Which would

13 in the afternoon.

the 14 Q. Mr. O'Connell, do you have a particular interest in

15 different areas at the DRM0?

mentioned, 16 A. When I was going to DRM0, I was looking, as I

looked 17 for electronic test equipment. The other areas that I

tents. I 18 at -- I looked for tentage, GP medium, GP small army
rebuilt 19 looked over some of the canisters that they put the
of the -- 20 diesel engines in. And I paid some attention to some
was 21 they're called 880's, they're a Dodge pickup truck that
22 used by the National Guard for a number of years.
located in the 23 Q. Are those latter items that you talked about
24 inside area, or the outside area of the DRM0?
The 25 A. The 880's, the 10-inch definitely on the outside.

12284

Robert O'Connell - Direct

1 canisters for the motors are also on the outside.
that you 2 Q. What was your practice from the eight to ten times
first? 3 visited the DRM0 in terms of which area you would visit
and 4 A. Generally when I got there on an inspection day --
stuff; I 5 understand, I didn't go there just to go and inspect
park in 6 was usually doing something else -- I would get there,
directly 7 the parking lot across from the gate entrance, and go
8 to the outside area. The only opportunity I had to go

was 9 inside -- or the only times I went inside was if there

10 something inside that I wanted to look at.

when you 11 Q. Were there occasions that you attended the DRMO

12 didn't sign in at all?

13 A. Yeah, that's correct.

14 Q. And why was that?

15 A. Because I never went into the inside.

outside 16 Q. So is it your testimony that if you go into the

17 area, there would be no record of your being there?

18 A. That's correct.

19 Q. Do you recall this specific sale date?

date. Being 20 A. I have a lot of difficulty recalling the exact

date. I 21 able to look at the sign-in sheet helped me recall the

A lot 22 have very vivid memories of certain parts of that sale.

times and 23 of that day is foggy to me at best as far as exact

overall day. 24 incidents. I have a kind of a recollection of the

25 Q. It was a long time ago?

12285

Robert O'Connell - Direct

1 A. Yeah.

2 Q. Tell me a little bit about your practice in terms
of
3 looking at items in the outside area, in terms of what
aisles
4 you would go down, what you would look at.

5 A. Well, in the outside area, they have aisles laid
back and
6 forth. They have lot numbers laid out on those aisles.
My
7 general -- if I was going, for example, to look at
tentage, I
8 would walk down the aisle till I saw a tent that I
wanted to
9 look at. I would quickly open it up, look through it.
If I
10 was -- if I saw something that really struck my eye, a
tent
11 that look good for example, I might spend some other
time,
12 unfolding the cover, looking at the center-pole areas
of the
13 tent that are most likely to rip and be the faulty area
of the
14 tent.

15 Q. Were you pretty meticulous in inspecting the things
that
16 you were interested in buying?

17 A. Not overall. No. It was pretty quick.

18 Q. Are there certain aisles that are for sale on a
particular
19 sale and other aisles that are not for sale on a

particular

20 sale?
21 A. My understanding -- and this is my understanding
before I
22 talked to anyone up here -- was that if an item was for
sale,
23 it had a lot number on it. The aisles that I went down
24 generally had lot numbers. However, it was not
unusual, like
25 when I go back to look at if they have military
vehicles on a

12286

Robert O'Connell - Direct

1 lot of the sales, to walk past the other lots; if there
was
2 something that caught my eye, go over and look at it.
3 Q. Have you in your eight to ten times visiting the
DRMO gone
4 down aisles quite frequently where you were looking at
items
5 and they weren't for sale that particular day?
6 A. That's correct. Items that did not have lot
numbers on
7 them, yeah. Because you knew that was coming up on a
sale.
8 Q. And was that of interest to you to see what was
coming up
9 on a future sale?
10 A. Lot of times, yes.

11 Q. And how many of the eight to ten times that you've
been to
12 the DRMO did you go and look at items that were coming
up on
13 future sales?

14 A. I would . . . to be very honest, I would say
probably every
15 time, because it was my routine or my habit to always
go back
16 and look and see what they had in the military
vehicles; and
17 usually as I came back from that area, I would walk
down -- I
18 generally passed the lot-number items on my way out,
came past
19 the other things just to see what was there.

20 Q. And of those eight to ten times that you've done
that, how
21 many times did somebody confront you and tell you you
weren't
22 in the right area?

23 A. Are we talking about inspection days?

24 Q. Yes, sir.

25 A. Never.

12287

Robert O'Connell - Direct

1 Q. You don't work for the DRMO, do you?

2 A. No.

us
3 Q. You're not going to get in trouble -- if you tell
4 truthfully that the regulations aren't enforced?

5 A. I hope not.

into the
6 Q. Do you know if there is a -- have you ever gone
7 bidding office?

the
8 A. That -- the bidding office is -- what I'm calling

that you
9 bidding office is the first door with the little ramp
10 go up to the door. I've been in there once.

or
11 Q. Do you have any recollection whether they sell soda
12 candy in there?

13 A. No, I don't, I'm sorry.

14 MR. NEUREITER: A moment, your Honor.

15 THE COURT: Yes.

16 MR. NEUREITER: Pass the witness, your Honor.

17 THE COURT: All right. Mr. Goelman.

18 MR. GOELMAN: A moment, your Honor?

19 THE COURT: You may.

20 CROSS-EXAMINATION

21 BY MR. GOELMAN:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. You done drinking?

25 A. Yeah.

12288

Robert O'Connell - Cross

1 Q. You've been out at the DRMO eight to ten times,
sir?

2 A. That would be correct.

3 Q. And fair to say that you spend average about 45
minutes

4 inside the DRMO when you go?

5 A. On an average trip. If there wasn't much to look
at that I

6 saw as something that I wanted to look at or spend some
time

7 with, that would be fair, yes.

8 Q. I'm not talking about any particular trip. Just on
the

9 average, overall, is 45 minutes fair?

10 A. That was my estimate earlier. In rehashing, if you
will,

11 going to the DRMO, I don't know how I would get an
average,

12 'cause there were times that I would walk through
everything in

13 there in 30 minutes, 45 minutes, and there were other
times

14 that I spent more time looking through stuff.

15 Q. Is it fair to say that your average amount of time
that you

16 spent outside was less than the average amount of time

that you

17 spent inside?

18 A. No, that would not be.

19 Q. You wouldn't characterize the average amount of
time that

20 you spent inside as less than 45 minutes?

21 A. Are we talking about inside?

22 Q. No, outside.

23 A. I would say -- I don't know how to average that.
It would

24 depend on what was there.

25 Q. Okay. Do you recall in October, 1996, having a
telephone

12289

Robert O'Connell - Cross

Nichols' 1 conversation with John W. Hough, investigator for Mr.
2 team?

3 A. After having discussed that call, yes, I remember
having 4 the call. I don't remember specifically a lot of the
5 particulars of that call.

6 MR. GOELMAN: Okay.

7 May I approach, your Honor?

8 THE COURT: Yes.

9 BY MR. GOELMAN:

10 Q. I'm showing you the second page of the memorandum
from that
11 particular interview. Could you just read that and see
if that
12 refreshes your recollection that you told the
investigator for
13 the defense that your average -- the average amount of
time you
14 spent outside is less than 45 minutes?

15 A. Yes. It says, "O'Connell estimated" --

16 THE COURT: Don't read it out loud.

17 THE WITNESS: Oh, excuse me.

18 That's in effect what that says.

19 MR. GOELMAN: Okay, thank you.

20 May I approach --

21 THE COURT: I think you're being asked what
you
22 remember.

23 THE WITNESS: In the phone call, I believe I
tried to
24 explain to the -- Mr. Hough? Is that the name? -- my
-- I'm
25 going to say "routine," for lack of a better word --

12290

Robert O'Connell - Cross

1 THE COURT: Okay.

2 THE WITNESS: -- at the DRMO. That there were
times

3 that I would come in, spend 30 minutes, walk through.
There
4 wasn't an awful lot I was interested in. I walked back
to see
5 what was in the military vehicle section, and leave.
And those
6 times, 30, 45 minutes.

7 I'm not sure that that isn't where that came
from. If
8 there was 10-inch that I wanted to look at, engines, I
wanted
9 to look at the little numbers, see where they were
rebuilt, it
10 took longer.

11 BY MR. GOELMAN:

12 Q. Mr. O'Connell, my question is only whether you
remember
13 telling the investigator that.

14 A. Specifically, no. I'm sorry, I see this, and I
just don't
15 remember the -- I don't remember much about the phone
call.

16 MR. GOELMAN: Okay. That's okay.

17 May I retrieve the document, your Honor?

18 THE COURT: Yes.

19 MR. GOELMAN: Thanks.

20 BY MR. GOELMAN:

21 Q. In any case, Mr. O'Connell, after reviewing the
sign-in

22 log, you do recall being at the DRMO on April 18, 1995?

23 A. That is correct.
24 Q. And that was a viewing day?
25 A. That is correct.

12291

Robert O'Connell - Cross

1 Q. And you viewed items inside and outside on that
day?

2 A. That is correct.

3 Q. And you have no recollection of seeing Terry
Nichols at the

4 DRMO on that day?

5 A. No, sir. I don't remember seeing virtually
anybody. I was

6 focused on what I was doing and really wasn't paying
attention

7 to what was going on around me.

8 Q. After the bombing in Oklahoma City, did you see
some

9 television coverage?

10 A. Yeah, I did.

11 Q. And in connection with that television coverage,
did you

12 ever see a picture of Mr. Nichols on TV?

13 A. Yes, I have.

14 Q. No flash of recognition went off in your mind when
you saw

15 that picture, did it, Mr. O'Connell?

16 A. No, sir.

17 Q. And over the past several days, you've been in
contact --

18 not necessarily spoken contact, but you've seen other
witnesses

19 subpoenaed by the defense; isn't that right?

20 A. Oh, yes, yes.

21 Q. And when you saw a couple of them, you did get the
feeling

22 that you'd seen them before --

23 MR. NEUREITER: Objection, your Honor.

24 THE COURT: Sustained.

25 BY MR. GOELMAN:

12292

Robert O'Connell - Cross

1 Q. Mr. O'Connell, you don't have any independent
recollection,

2 aside from the log of April 18, 1995, do you, sir?

3 A. I have a difficult time with the date. The log is
what

4 told me that I was into the inside. I have some very
vivid

5 memories of the inside. I have some -- I'm going to
say

6 "sketchy" memories of the outside, and I basically have
had to

7 try and re-create the time frame, because there isn't a
lot

8 else that stood out from that date for me.

9 Q. Okay. So there are portions of your visit that you
10 remember more clearly than others; is that right?

11 A. That's right.

12 Q. And is one of those portions that you remember --
or one of

13 the aspects of the visit that your wife was with you?

14 A. Yes, sir.

15 Q. And you looked at dressers?

16 A. Yes, sir.

17 Q. And you remember that pretty vividly?

18 A. Yeah.

19 Q. The dressers are located on the inside, sir?

20 A. Yes, sir.

21 Q. And you were examining them pretty closely; is that
fair to

22 say?

23 A. That would be a fair assessment, yes.

24 Q. Wife was pointing out every nick and scratch on the
25 dressers?

12293

Robert O'Connell - Cross

1 A. That's correct.

2 Q. And eventually you made a bid on at least one or
more of

3 those dressers?

4 A. We bid on two of them; that's right.

5 Q. And you also looked at some electronic equipment
inside; is

6 that right?

7 A. That's right.

8 Q. What kind of electronic equipment was that?

9 A. What -- my recollection, there was a number of
pieces in a

10 box, and the box was large. It was about the size,
maybe a

11 little bigger than this stand. And approximately this
high.

12 And there was -- as I recall, an oscilloscope, a signal
13 generator, a power supply, and it seems like there was
some

14 other items that I had to move to look through those.
That's

15 pretty much -- my vivid memory, my most vivid memory of
being

16 in there was of digging through this box, trying to see
17 specifically what was in there.

18 Q. How long would you estimate you spent digging
through that

19 one box?

20 A. I would say 20, 25 minutes.

21 Q. And that box alone?

22 A. That's correct.

23 MR. GOELMAN: One moment?

24 THE COURT: Yes.

25 MR. GOELMAN: May I approach, your Honor?

12294

Robert O'Connell - Cross

1 THE COURT: No. You've already done an
approach here.

2 MR. GOELMAN: Okay.

3 BY MR. GOELMAN:

4 Q. I'm displaying on the ELM0 what's been already
admitted as

5 the last page of Government 1956.

6 You see your name on there, Mr. O'Connell?

7 A. Yes, sir.

8 Q. What time does the sign-in indicate?

9 A. The sign-in -- I believe it's 1434.

10 Q. Okay.

11 A. That's not as close as his, but I think that's what
it is.

12 Q. How long would you estimate you spent inside the
DRM0 on

13 April 18, 1995?

14 A. As best as I can remember -- and we basically had
to

15 reconstruct a lot of this time -- I know that I spent
20 to 25

16 minutes in that one box. My wife and I looked at
approximately

guess 17 six or seven dressers. One of the dressers were -- I
But I 18 kind of nicer. And we spent more time looking at them.
Maybe a 19 would estimate approximately 10 minutes per dresser.
20 little longer on the two bedrooms.
spent -- 21 Q. So what's the sum total of the amount of time you
an hour 22 A. Well, if you use six dressers and 25 minutes, about
time 23 and 25 minutes, hour and 30 minutes, sometime in that
24 frame.
that 25 Q. And that entire time was after you signed in; is

12295

Robert O'Connell - Cross

1 correct?
2 A. That's correct.
see 3 Q. Now, before coming to court, you've had a chance to
4 that log; isn't that right?
5 A. I'm sorry. The sign-in log?
log? 6 Q. You've had a chance to see your name on the sign-in
7 A. Yes.
8 Q. And you told defense counsel the same thing that

you've

9 told this jury: that you spent an hour and a half
inside the

10 warehouse?

11 A. I believe I told them exactly the same thing.

12 Q. Did the defense counsel tell you that you were
wrong about

13 that, sir?

14 A. No.

15 Q. Did they tell you that you couldn't have been there
for an

16 hour and a half?

17 MR. NEUREITER: Objection, your Honor.

18 THE COURT: Sustained.

19 BY MR. GOELMAN:

20 Q. Before coming to Denver, sir, were you aware of
what time

21 the DRMO closed on viewing days?

22 A. No, I really wasn't.

23 Q. And did you come to find out that fact in Denver?

24 A. I have heard a figure of 3:00. I am relatively
sure that

25 figure's not accurate. I do not know. I honestly
don't. I've

12296

Robert O'Connell - Cross

1 heard that figure passed around. I do not know whether

it's

2 accurate or not.

3 Q. And who did you hear that figure from?

4 MR. NEUREITER: Objection, your Honor.

5 THE COURT: Sustained.

6 BY MR. GOELMAN:

7 Q. Mr. O'Connell, you've indicated that there's some
portions

8 of your memory that are more vivid than other portions;
is that

9 right?

10 A. That's right.

11 Q. And one of the things that you're more sure about
is that

12 this is one of the only times you've ever signed in to
the

13 DRMO; is that right?

14 A. That is correct.

15 Q. And you remember the layout of the sign-in table
when you

16 walked in, sir?

17 A. Pretty much, yes.

18 Q. Could you describe that, please?

19 A. When you walk in the door, to the right, there was
like

20 a -- they're not as big as these tables, but a table
and then

21 some other tables that go diagonally. And I couldn't
remember

22 whether there were two or three. But it kind of
cordons off

23 that area, if you will.

24 Q. Okay. Hold on one moment.

25 I'm showing you what's already in evidence as

12297

Robert O'Connell - Cross

1 Government Exhibit 1961.

2 A. That's a big picture here.

3 Q. Could you pick up -- can you pick up the light pen
there on

4 your left -- or right in front of you and just go
underneath

5 the window, touch it directly to the screen, and circle
the

6 door where you signed in on April 18, 1995.

7 A. We -- you and I have discussed this. And this
picture to

8 me is difficult to -- but I believe it is this one
right here.

9 Gosh, I'm not very good with that light pen,
am I?

10 Right there, that door.

11 Q. You believe it's that one?

12 A. That's correct.

13 Q. You're not sure, though?

14 A. I'm not absolutely sure. I am probably 85 percent
sure. I

and then 15 know that I walked from this gate past this ramp area,

16 we came to the door and went in.

was 17 Q. Have you -- are you a hundred percent sure that it

it? 18 either that door, or the door directly to the left of

19 A. That's correct.

all the 20 Q. And you're equally certain that it wasn't the door

21 way down on the right; is that right?

22 A. Oh, God, no.

23 Q. Positive about that?

24 A. No, I don't believe we walked that far.

anything else 25 Q. And you're as sure about that as you are of

12298

Robert O'Connell - Cross

1 that you've testified here today?

2 MR. NEUREITER: Objection.

3 THE COURT: Sustained.

Honor. 4 MR. GOELMAN: I have nothing further, your

5 THE COURT: Any redirect?

6 MR. NEUREITER: No redirect, your Honor.

7 THE COURT: Witness excused?

8 MR. NEUREITER: Yes, your Honor.

9 THE COURT: You may step down, you're excused.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: Members of the jury, we're going
to take a
Please
12 recess at this point, our usual afternoon rest stop.
13 continue to follow the cautions as given at all
recesses of
14 avoiding discussions of any aspects of the case with
anybody,
15 keeping open minds, and avoiding anything outside the
evidence.
16 You're excused, 20 minutes.
17 (Jury out at 3:17 p.m.)
18 THE COURT: Mr. Tigar.
19 MR. TIGAR: No, I was just standing, your
Honor, to
20 ask your Honor if we could take the break.
21 THE COURT: Oh.
22 MR. TIGAR: And the Rocky Mountain News not to
the
23 contrary, I was going to let your Honor decide that
question.
24 THE COURT: I don't know your reference to the
Rocky
25 Mountain News.

in the
it.

1 MR. TIGAR: There was a cartoon, your Honor,
2 Rocky Mountain News; and I deny all responsibility for

3 THE COURT: Court's in recess.

4 (Recess at 3:18 p.m.)

5 (Reconvened at 3:35 p.m.)

6 THE COURT: Please be seated.

7 (Jury in at 3:35 p.m.)

8 THE COURT: Next witness, please.

9 MR. WOODS: Yes, your Honor. Walt Fuller.

right

10 THE COURTROOM DEPUTY: Would you raise your
11 hand, please.

12 (Walter Fuller affirmed.)

please.

13 THE COURTROOM DEPUTY: Would you have a seat,

and

14 Would you state your full name for the record
15 spell your last name.

16 THE WITNESS: Walter P. Fuller, F-U-L-L-E-R.

17 THE COURTROOM DEPUTY: Thank you.

18 DIRECT EXAMINATION

19 BY MR. THURSCHELL:

20 Q. Good afternoon, Mr. Fuller.

21 A. Good afternoon.

22 Q. Mr. Fuller, where do you live?

23 A. I live in Salina, Kansas.
24 Q. And are you working there?
25 A. Yes, I am.

12300

Walter Fuller – Direct

1 Q. What do you do for work?
2 A. I beg your pardon?
3 Q. What do you do for work?
4 A. I am an aluminum wire welder employee for the Power
Ed.
5 company.
6 Q. You're a welder?
7 A. Yes.
8 Q. Now, you have never met Terry Nichols before, have
you?
9 A. No.
10 Q. I want to direct your attention to March, 1995.
Where were
11 you working then?
12 A. In March of 1995?
13 Q. Yes.
14 A. I was working for the Power Ed. and doing a little
15 subcontracting.
16 Q. When you say "subcontracting," what are you
referring to?

17 A. Oh, miscellaneous welding, repairing things.
18 Q. Was the fabricating or manufacturing of trailers
part of
19 your business?
20 A. Repair and manufacturing, yes, of trailers for
people who
21 may want one.
22 Q. What kind of trailers did you make in that time
period?
23 A. Mainly a small, two-wheel trailer used in lawn
care.
24 Q. Lawn care?
25 A. Lawn care.

12301

Walter Fuller - Direct

1 Q. Any other purposes that you remember?
2 A. Not offhand.
3 Q. Okay. I want to show you what's been marked as
Defendant's
4 Exhibit D603 and D603A, which I'm now going to show to
5 Government counsel.
6 Mr. Fuller, would you take a moment and page
through
7 the -- I believe there are eight pages of D603 first.
That's
8 the larger one.
9 Do you recognize that, sir?

10 A. Yes.

11 Q. Now, is that your handwriting on it?

12 A. Yes, it is.

13 Q. Did you notice your name on it?

14 A. Yes.

15 MR. THURSCHELL: Okay. Your Honor, we would
move the
16 admission of D603.

17 MR. ORENSTEIN: No objection.

18 THE COURT: All right. It's received.

19 BY MR. THURSCHELL:

20 Q. Now, Mr. Fuller, would you take a look at 603A.
Tell me if
21 you recognize that.

22 A. Yes, I do.

23 Q. Okay. Is it fair to characterize that as an
accurate,
24 reduced version of 603?

25 A. Yes, it is.

12302

Walter Fuller - Direct

1 MR. THURSCHELL: Your Honor, we would move
the
2 admission of 603A for demonstrative purposes only for
use on
3 the ELMO. It's inconvenient --

4 THE COURT: I see.

5 MR. ORENSTEIN: No objection.

6 THE COURT: You may use it for that purpose,
yes.

7 MR. THURSCHELL: If I may approach?

8 THE COURT: Yes.

9 BY MR. THURSCHELL:

10 Q. Before I show you this, Mr. Fuller, can you tell me
what
11 prompted you to produce this document.

12 A. Well, on or about March -- the middle of March,
between

13 March, say, 15 and 17 of 1995, I got a phone call; and
the

14 person on the other end said he was Terry Nichols.

15 Q. All right. Go ahead. Go on.

16 A. Oh, anyway, he said he heard that I had built
trailers; and

17 I asked him, you know, how he got my name; and he heard
I had
18 trailers.

19 And so we began talking, and he was interested
in a

20 two-wheel trailer to haul six canoes, approximately.

21 Q. Have you built canoe trailers before?

22 A. I have built one for an organization that took
wayward boys

23 out to streams and taught them canoeing and camping
out.

24 Q. So the design of a canoe trailer was something that

you

25 were familiar with at the time?

12303

Walter Fuller - Direct

1 A. Yes, I was, sir.

2 MR. THURSCHELL: Okay. Now I'd like to
publish 603A,

3 which is in two pages. And I want to show the first
page

4 first.

5 BY MR. THURSCHELL:

6 Q. Could you tell the jury, Mr. Fuller, what this is,
what

7 they're looking at.

8 A. Well, you're looking at a canoe trailer that has a
9 canoe-trailer device at the top --

10 Q. Before that, just what is this document generally,
not so

11 much what it depicts.

12 A. Oh, it's just a shop sketch that I made.

13 Q. Was this made in response to the phone call you
just

14 mentioned?

15 A. Yes, it was.

16 Q. Now, I want to zoom into -- on this page, and very
briefly

17 could you just describe the function of the various

parts that

18 the jurors are looking at now?

19 A. Well, the tower you see, the upright piece with the
six

20 different bars at a slant, were the superstructure to
hold the

21 canoes. Normally they were strapped on those bars,
three on

22 each side, upside down, so they could be towed down the
road.

23 You're also looking at a front view showing
the little

24 2-inch-ball coupler and the jack and, of course, the
two tires

25 that conform to the design.

12304

Walter Fuller - Direct

1 Q. Okay. Zoom out again.

2 And the other sketches on this same page are
other

3 views of the same trailer design?

4 A. Yes, it is. You have a side view, and then you
have a rear

5 view showing the spare tire.

6 Q. Now, I want to show you the second page of 603A,
which --

7 is this -- was the original version of this document --
was in

8 more than one page, Mr. Fuller, if you recall?

9 A. No. It was the page -- the page before and this
page, just

10 two pages.

11 Q. Okay. So the first page was the left-hand side of
the

12 original document, a copy of that, and this is the
right-hand

13 side?

14 A. Yes.

15 Q. I want to zoom in on the upper left corner of this
second

16 page of 603A, D603A. And could you tell the jury what
3-21-95

17 is there.

18 A. It was the date I did the drawing at home, March
21, 1995,

19 just a shop sketch for a canoe trailer.

20 Q. And below that to the right there is a name and
address?

21 A. "Rough shop sketch for Terry Nichols, 109 South 2nd
Street,

22 Herington, Kansas, ZIP Code 67449."

23 Q. And sliding it up a bit -- and are we now looking
at your

24 name and address at the bottom of that page?

25 A. That's right.

12305

Walter Fuller - Direct

1 Q. Now, Mr. Fuller, after you sketched these sketches,
2 designs, what did you do with this document?

3 A. Well, after I had sketched the -- I put it in my
file
4 waiting possibly for a reply from the person that said
he was
5 Terry Nichols.

6 Q. All right. Did you -- he had told you that he
would get
7 back to you if he wanted the final design?

8 A. Yes, I believe so.

9 Q. Okay. Did you ever hear from him again?

10 A. Yes, I did. Seemed like it was at least a month or
so that
11 I either felt -- it was a phone call or I think it was
a letter
12 that he wrote me that he had not had an opportunity to
get a
13 canoe dealership or franchise and that he would not be
needing
14 a two-wheel canoe trailer, delivery trailer, but he
appreciated
15 my efforts and my technical skills as to putting down
ideas.

16 Q. Do you have a copy of that letter?

17 A. No, I do not. I had -- it wasn't necessary to keep
it, I
18 felt, so I went ahead and pitched it.

19 Q. Okay. And have you had any contact in any form
with

20 Mr. Nichols since that time?

21 A. No, I have not.

No 22 MR. THURSCHELL: Thank you very much, sir.

23 further questions.

24 MR. ORENSTEIN: No questions, your Honor.

25 THE COURT: Okay.

12306

1 MR. THURSCHELL: Witness is excused.

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

3 THE WITNESS: Thank you.

4 THE COURT: Next, please.

5 MR. WOODS: Wendy Menke.

right 6 THE COURTROOM DEPUTY: Would you raise your

7 hand, please.

8 (Wendy Menke affirmed.)

please. 9 THE COURTROOM DEPUTY: Would you have a seat,

and 10 Would you state your full name for the record

11 spell your last name.

12 THE WITNESS: Wendy Menke, M-E-N-K-E.

13 THE COURTROOM DEPUTY: Thank you.

14 DIRECT EXAMINATION

15 BY MR. WOODS:

16 Q. Good afternoon, Ms. Menke. Will you tell the jury
where
17 you live.

18 A. I live in Beatrice, Nebraska.

19 Q. And what is your occupation?

20 A. Right now, I'm a secretary for a CPA.

21 Q. And in April, '95, what was your occupation?

22 A. I worked in the front office of a daily newspaper
in
23 Beatrice.

24 Q. And what was the name of the daily newspaper?

25 A. Beatrice Daily Sun.

12307

Wendy Menke - Direct

1 Q. Was there a smaller newspaper that was associated
with the
2 Daily Sun?

3 A. Yes, there was.

4 Q. And what was the name of that?

5 A. The Plug Nickel.

6 Q. And would you give the jury an idea of what the
Plug Nickel
7 was?

8 A. The Plug Nickel was a free shopper that came out

weekly,

Kansas 9 and it was distributed in the Kansas area, northeast

10 area.

11 Q. The office is in Nebraska?

12 A. The office is in Nebraska.

Kansas? 13 Q. And the distribution was solely in one portion of

14 Is that correct?

mainly 15 A. It went down as far south as around Junction City,

16 northeast Kansas, a portion of southeast Nebraska.

mean? 17 Q. Okay. And by a shopper's newspaper, what do you

means that 18 A. Shopper newspaper. It was a free shopper, which

like a 19 the distribution or the circulation wasn't as high as

just 20 newspaper. And it was a free shopper, which means they

pick one 21 put them out at distribution points and anybody could

22 up.

newspaper? What 23 Q. All right. What would be included in this

24 type of articles?

25 A. There would be classified advertising, with display

Wendy Menke – Direct

1 advertising.

2 Q. And how would a person put an advertisement in the
3 newspaper, in the Plug Nickel?

4 A. A person could call in to the Plug Nickel phone
line and
5 place an ad. They could also send in the information
and a
6 payment for their ad into that office.

7 Q. In the newspaper itself, is there a section that
discloses
8 what the price is and how you mail in orders, mail in
your
9 payment so that you can place an ad in the newspaper?

10 A. Yes. Every week they would have an ad that lists
the name
11 of the Plug Nickel, along with advertising rates and
different
12 distribution sites that you could pick up a Plug
Nickel.

13 Q. And have you reviewed those records at our request
14 recently?

15 A. Yes.

16 Q. Would you -- there is an envelope in front of you;
and if
17 you would open that up. And in order -- there should
be an
18 exhibit in order on top which is your daily cash
receipts. Is
19 that correct?

20 A. That's correct.

21 Q. Okay. Now, is that a business record that was
compiled in

22 the course of business when you were there at the
newspaper?

23 A. Yes, it was.

24 Q. Now, did the Government come and ask for certain
records

25 from the newspaper?

12309

Wendy Menke - Direct

1 A. Yes, they did.

2 Q. After the bombing?

3 A. Yes, they did.

4 Q. And was this one of the records that was provided
to the

5 Government?

6 A. Yes, it was.

7 Q. Do you recall approximately when that was after the
8 bombing?

9 A. Not exactly. I believe it was -- no, I don't. I
don't

10 know exactly when it was.

11 Q. Do you recall the bombing being in April of '95?

12 A. Yes, I do.

13 Q. All right. And can you give any idea about when
the

14 Government came and asked for your records?
15 A. I believe it was in the fall of that year, in
October,
16 early November approximately.
17 Q. Were there some advertisements in the Plug Nickel
that had
18 been placed by Terry Nichols, to your knowledge?
19 A. Yes, there was.
20 Q. Now, did you ever meet Terry Nichols in person?
21 A. No, I did not.
22 Q. You mentioned to the jury that there are two ways
of
23 placing the ad. Somebody could come in in person or
could mail
24 in the payment and the draft of the ad; is that
correct?
25 A. That's correct.

12310

Wendy Menke - Direct

1 Q. Now, in your daily cash receipts that's in front of
you,
2 that's a record kept in the normal course of business;
is that
3 correct?
4 A. Yes, it is.
5 MR. WOODS: Your Honor, we would offer into
evidence

6 1102, which is the -- I'm sorry. It's 1101, daily cash
7 receipts.

8 THE WITNESS: Oh, yes, uh-huh.

9 MR. ORENSTEIN: No objection.

10 THE COURT: All right. D1101 received.

11 BY MR. WOODS:

12 Q. And is 1102 a receipt listing for the previous day
of

13 April 17, '95?

14 A. Yes, it is.

15 MR. WOODS: We would offer 1102 also, your
Honor.

16 MR. ORENSTEIN: No objection.

17 THE COURT: D1102 received.

18 MR. WOODS: To complete the record, we would
offer

19 into evidence Defense Exhibit 1761.

20 BY MR. WOODS:

21 Q. Would you look at 1761, there, Ms. Menke.

22 A. Uh-huh.

23 Q. This is a record that you provided to the
Government or

24 that your office provided to the Government?

25 A. Yes. We provided this to the Government.

1 Q. And were those the copies of payments that had been
2 received by the Plug Nickel for advertisements in
April?

3 A. Yes, they are.

4 MR. WOODS: And we would offer that into
evidence,
5 your Honor, 1761.

6 MR. ORENSTEIN: No objection.

7 THE COURT: All right. Received. D1761.

8 BY MR. WOODS:

9 Q. And then the last two items, Ms. Menke: If you
would look
10 at Exhibit 1098, which should be a Xerox copy of one of
the
11 pages.

12 A. Uh-huh.

13 Q. That is a page out of the Plug Nickel that you
recognize?

14 A. Yes, it is.

15 Q. And then the last exhibit, which is 1760, which is
a Xerox
16 copy of pretty much a whole magazine -- whole
newspaper, a
17 weekly edition. Is that correct?

18 A. That's correct.

19 Q. And do you recognize that as the Plug Nickel?

20 A. That's correct.

21 Q. And what date is that week printed for?

April 26 22 A. This is the copy of the front page of the week of
23 through May 2, 1995.
for, if 24 Q. And the prior exhibit, 1098: What week was that
25 you can tell by looking?

12312

Wendy Menke - Direct

April 19 1 A. That was a page out of the issue of the week of
2 through April 25, 1995.

Honor, 3 MR. WOODS: We would offer into evidence, your
4 1098 and 1760.

5 MR. ORENSTEIN: No objection to 1098.
6 May I inquire if 1760 is just for the page of
the ad, 7 or the entire --

8 MR. WOODS: The ads are on two separate pages.

9 MR. ORENSTEIN: No objection.

10 THE COURT: But the pertinent part of the
paper.

11 MR. WOODS: Just the two pages, your Honor.

12 MR. ORENSTEIN: For those purposes, no
objection, your

13 Honor.

14 THE COURT: D1098 and D1760 received.

15 BY MR. WOODS:

16 Q. Looking at 1101, Ms. Menke, do your records reflect
a

17 payment from a Mr. Terry Nichols?

18 A. Yes, they do.

19 Q. And how much was the payment for?

20 A. The payment was for \$27.20.

21 Q. Now, did you -- can you tell from that amount of
payment

22 how many ads were purchased and for what period of
time?

23 A. Actually, from that amount, I cannot tell exactly
because a

24 Plug Nickel advertisement is very low in price, so --

25 Q. What is the price for, say, a 1-inch ad to run a
week?

12313

Wendy Menke - Direct

1 A. A 1-inch-display classified ad would be
approximately \$4 to

2 \$4.50 for one week.

3 Q. Okay. And on 1102, does that also reflect your
cash

4 receipts showing that payment?

5 A. Yes, it does.

6 Q. And then 1761 is a copy of the actual money order?

7 A. Yes, it is.

8 Q. And who is the money order made payable to?

9 A. The Plug Nickel.

10 Q. And who was the payer?

11 A. The payer was Terry Nichols.

12 Q. And is an address listed?

13 A. Yes, there is.

14 Q. And what address is listed?

15 A. It is 109 South 2nd, Herington, Kansas.

16 Q. Okay. And the amount of the money order?

17 A. Is \$27.20.

18 Q. Now, on 1098, the copy of the one page, you see an
ad there

19 for a fuel meter?

20 A. Yes, I do.

21 Q. And how does that ad read?

22 A. It reads, "Fuel meter, LC meter with register 2-
inch

23 capacity, 10-100 GPM flow rate, can meter any type of
fuel.

24 New, \$1,800. Will sell for \$900 OBO, (913) 258-3400."

25 Q. Okay. What does "OBO" mean?

12314

Wendy Menke - Direct

1 A. "Or best offer."

2 Q. And the phone number is (913) 258-3400?

3 A. Yes, it is.

4 Q. Now, do you see an ad below that a couple of ads
down with

5 the same phone number advertising nails?

6 A. Yes, I do.

7 Q. And would you read that for the jury, please.

8 A. "Nails, 5-inch, common 40 D-size nails in 50-pound
boxes,

9 retail \$1 per pound, will sell 60 cents per pound.
Have over

10 2,000 pounds. Can deliver large quantities. (913)
258-3400."

11 Q. That's the same phone number that's listed above?

12 A. Yes, it is.

13 Q. And then if you would go to the next exhibit, 1760.
And is

14 that the Plug Nickel for the subsequent week of April
26

15 through May 2, '95?

16 A. Yes, it is.

17 Q. And would you go to page 6. Do you see an ad on
that page

18 for the fuel meter again?

19 A. Yes, I do.

20 Q. And is it the same wording that you had in the
previous

21 week?

22 A. Yes, it is.

23 Q. Do you also see an ad there for nails?

24 A. Yes, I do.

the 25 Q. Is it the same phone number for both of those as

12315

Wendy Menke - Direct

1 previous week?

2 A. Yes, it is.

the 3 Q. Would you go to page 8. Do you see an ad there on

4 right column for hand tools?

5 A. Yes, I do.

6 Q. Is there a phone number at the bottom of that ad?

7 A. Yes, there is.

8 Q. What's the phone number?

9 A. (913) 258-3400.

10 Q. And would you read that ad for hand tools?

spade/ 11 A. "Hand tools for sale. Many new to used. D-handle

blade 12 shovels, 36-inch and 18-inch crosscut handsaws, single-

handles, 40D 13 axes, mattocks, and C crow bars, D-handle shovel

(913) 14 5-inch common nails in 50-pound boxes, and sandbags.

15 258-3400."

another ad 16 Q. And further down on that column, do you see a --

17 for sandbags?

18 A. Yes, I do.

19 Q. Is there the same phone number listed there?

20 A. Yes, there is.

21 Q. Would you read the sandbags ad.

22 A. "Sandbags, new and used, poly OD green and brown
burlap,

23 great for berming, driveways, temperature walls,
stopping soil

24 erosion, etc. (913) 258-3400."

25 Q. Okay. And again, what week was those three ads
running?

12316

Wendy Menke - Direct

1 A. They were --

2 Q. Should be on the front there.

3 A. April 26 through May 2, 1995.

4 Q. Now, would a payment of 27.20 cover those ads for
the

5 two-week period there that we have found in the
newspaper?

6 A. Yes, it probably could.

7 MR. WOODS: Okay. Thank you, Ms. Menke. I
appreciate

8 it.

9 Pass the witness, your Honor.

10 THE COURT: All right.

11

CROSS-EXAMINATION

12 BY MR. ORENSTEIN:

13 Q. Good afternoon, Ms. Menke.

14 A. Hi.

15 Q. My name is Jamie Orenstein.

16 Ma'am, the ads that you've just been reading
to the

17 jury that Mr. Nichols sent in payment for: The
earliest of

18 those ads was to run April 19 and the following weeks;
correct?

19 A. That's correct.

20 Q. And it was paid for with a money order, and that's
Defense

21 Exhibit D1761. Correct?

22 A. That's correct.

23 Q. Let me just put it up on the display here, the
ELMO.

24 That's the -- a copy obviously -- color has
been

25 reversed, but it's a copy of the payment that you
received?

12317

Wendy Menke - Cross

1 A. That's correct.

2 Q. Now --

3 MR. ORENSTEIN: I'm sorry. Could we have it

up on

4 the --

5 THE COURTROOM DEPUTY: What is the exhibit
number?

6 MR. ORENSTEIN: I'm sorry. 1761. Defense
Exhibit

7 1761.

8 I apologize, your Honor.

9 Thank you.

10 BY MR. ORENSTEIN:

11 Q. Now that we can all see it, that's a copy of the
payment

12 that Mr. Nichols sent to your company for the ads.
Correct?

13 A. That's correct.

14 Q. Now, your records show that it was received on the
17th of

15 April?

16 A. That's correct.

17 Q. Do you see on the display here the date of this
money

18 order? And perhaps I can zoom in to where it says
year, month,

19 day. Do you see that, where I'm pointing right now?

20 A. Yes, uh-huh.

21 Q. And that says '95 is the year, 04 the month, and 14
the

22 day.

23 A. Correct.

24 Q. April 14, 1995?

25 A. Right.

12318

Wendy Menke - Cross

1 Q. But now this transaction was done entirely by mail;
2 correct?

3 A. I believe so.

4 Q. You don't have any personal knowledge?

5 A. I don't have any personal knowledge of that. I
assume it

6 was by mail.

7 Q. So you have no way of knowing what time of day this
money

8 order was purchased?

9 A. No.

10 Q. Or where or who Mr. Nichols was with, if anybody,
at the

11 time of his purchase?

12 A. No.

13 MR. ORENSTEIN: Thank you, ma'am. Nothing
further.

14 MR. WOODS: Thank you. She may be excused.

15 Thanks for coming.

16 THE COURT: I take it that's agreed?

17 MR. ORENSTEIN: Yes, sir.

18 THE COURT: You may step down. You're

excused.

19 THE WITNESS: Thank you.

20 MR. WOODS: Dennis Crawford, your Honor.

21 THE COURT: Thank you.

22 THE COURTROOM DEPUTY: Raise your right hand.

23 (Dennis Crawford affirmed.)

24 THE COURTROOM DEPUTY: Would you have a seat,
please.

25 Would you state your full name for the record
and

12319

1 spell your last name.

2 THE WITNESS: Dennis Crawford, C-R-A-W-F-O-R-
D.

3 THE COURTROOM DEPUTY: Thank you.

4 DIRECT EXAMINATION

5 BY MR. NEUREITER:

6 Q. Mr. Crawford, how are you doing?

7 A. I'm fine.

8 Q. Where are you from, Mr. Crawford?

9 A. Orlando, Florida.

10 Q. And what do you do for work?

11 A. I work for a satellite communications company.

12 Q. Are you presently out of work?

13 A. Workmen's comp.

14 Q. Is that because of your injury?

15 A. Yes.

working
16 Q. What other things have you done in the past besides
17 for a satellite communications company?

18 A. I presently hold an FFL.

19 Q. What is an FFL?

20 A. Federal Firearms License.

21 Q. And do you go to gun shows?

22 A. Yes, I do.

23 Q. What do you do at gun shows?

reloading
24 A. I display my goods, take orders, sell items, sell
25 supplies.

12320

Dennis Crawford – Direct

the last
1 Q. How many gun shows would you say you've been to in
2 five years?

3 A. 100, 150.

4 Q. Do you regularly go to gun shows now?

5 A. Yes, I do.

6 Q. How often do you go to gun shows?

me to go
7 A. I attend them whenever there are a local show for

8 to, which would be about once a month.

9 Q. Is that the nature of the gun-show business that
you would

10 attend them, drive around and attend them on a regular
basis?

11 A. Yes.

12 Q. Let's go back to the 1995 time period. Where were
you

13 living at that time?

14 A. I was living in Cincinnati, Ohio. Take it back.

15 Mansfield, Ohio.

16 Q. Okay. And to take you back to the February, 1995
time

17 period, did you attend a gun show in Des Moines, Iowa?

18 A. Yes, I did.

19 Q. Do you remember the date of that gun show?

20 A. February 17, 18, and 19.

21 Q. How can you remember the date of that particular
gun show?

22 A. I keep calendars of all the shows I go to for tax
purposes.

23 Q. Are gun shows scheduled on regular weekends over
the course

24 of the year, particular gun shows in particular
locations?

25 A. Yes, they are.

Dennis Crawford – Direct

1 Q. What kinds of materials did you have for sale at
that
2 particular gun show?

3 A. I had reloading equipment, brass bullets, primers,
powder,
4 walnut media.

5 Q. Are those the typical things that you sell at gun
shows?

6 A. Yes.

7 Q. Do you see Terry Nichols here?

8 A. Yes, I do.

9 Q. Have you seen Terry Nichols before?

10 A. Yes, I have.

11 Q. When did you see Terry Nichols before?

12 A. I've seen -- in February at the Iowa gun show.

13 Q. Describe that for us, please, how you met Mr.
Nichols at
14 that gun show.

15 A. Okay. On the date that we were setting up, which
was the

16 17th, a Friday, we were -- the people that was in the
one

17 corridor at the gun show there -- we were setting up,
and we

18 were disappointed with our location.

19 Q. Why was the location disappointing to you?

20 A. It was in a bad location for traffic, which at a
gun show

21 you rely on traffic to go past your tables to see your
goods.

22 Q. And was your -- how was your location
disappointing?

23 A. It was in a side corridor which the main flow of
traffic

24 would walk past unless they happened to turn their head
and see

25 that there was tables in that corridor.

12322

Dennis Crawford - Direct

1 Q. Did you discuss that with Mr. Nichols?

2 A. Yes, we did.

3 Q. Describe what Mr. Nichols was setting up that day.

4 A. On the day that he arrived and was setting up his
table, he

5 had odds-and-end bivouac equipment which is military
surplus

6 camping gear. He had a few miscellaneous ammo rounds
for sale.

7 I believe he had a couple coins for sale. .30 caliber
carbine

8 rifle for sale. Typical nonchalant (sic) equipment
that one

9 would see at a gun show.

10 Q. Did he have sleeping bags?

11 A. Yes, he did.

12 Q. Did he have foam pads?

13 A. Yes, he did.

14 Q. Did he have canteens?

15 A. Yes, he did.

16 Q. Was this all typical military surplus material?

17 A. Yes, it is.

18 Q. And did you have conversations with Mr. Nichols
over the

19 course of that weekend?

20 A. Yes, we did.

21 Q. Was there anything unusual about those
conversations that

22 you had with Mr. Nichols over the course of the
weekend?

23 A. None whatsoever.

24 Q. I'm sorry?

25 A. None whatsoever.

12323

Dennis Crawford – Direct

1 Q. Would he watch your table?

2 A. Yes, he would.

3 Q. And would you watch his?

4 A. Yes, I would.

5 Q. Explain why that happens at gun shows.

6 A. Well, at certain times, since you're there at the
table by

7 yourself, unless you have a helper with you, there is

times

8 that nature calls or you get hungry. Therefore, one
would take

9 a break if it wasn't crowded, the tables weren't busy.
It's

10 customary for the person next to you to watch your
table while

11 you take and go to the rest room or go to the
cafeteria,

12 depending on whether or not they were serving food, and
then

13 vice versa, they'd come back, you would go. So it's
very

14 customary for the person next to you to watch your
table.

15 Q. And Mr. Nichols did that weekend?

16 A. Yes, he did.

17 Q. Was there a -- this was a bad location for you;
correct?

18 A. Yes.

19 Q. Was there a bad -- was there an empty table along
that

20 corridor?

21 A. Yes, there was.

22 Q. Could you describe that issue and how it was
resolved?

23 A. Yes, I can. Anytime at a gun show -- the person
with

24 experience in a gun show, if you have an empty table,
what you

25 want to do is when the doors open is quickly fill that
table.

12324

Dennis Crawford - Direct

1 The belief is that empty table will discourage
customers from
2 coming down that row, especially if they see too many.
So when
3 the door is opened on that day, we had one empty table.
I
4 asked Mr. Nichols if he needed it; and at that time he
stated
5 he didn't really have enough stuff to fill that table,
so I
6 spread my equipment on out to fill that table.

7 Q. Do they sell literature at gun shows?

8 A. Yes, they do.

9 Q. What kinds of literature do they sell at gun shows?

10 A. They sell manuals on reloading. They sell army
surplus
11 manuals. They sell manuals on survival. They sell
manuals
12 on -- from the manufacturers of firearms.

13 Q. Do they sell manuals on explosives?

14 A. Yes, they do.

15 Q. Do they sell manuals on improvised explosive
devices?

16 A. Yes, they do.

17 Q. Do they sell manuals on military explosive
techniques?

18 A. Yes, they do.

19 Q. Did you sell that kind of literature?

20 A. Yes, I have.

21 Q. Why did you sell that kind of literature?

22 A. Profit margin.

23 Q. Explain that to the jury, please.

24 A. You can take and get a discount when you buy your
books.

25 You buy 12 books or more, it may only cost you \$2 to
\$2.50 a

12325

Dennis Crawford – Direct

1 book. They sell between 5 and \$6 apiece on the table.
It's a

2 high-profit, fast-moving item.

3 Q. When you say high-moving (sic), fast-moving item,
what do

4 you mean by that?

5 A. People come in, they buy them for gags, for gifts.
They

6 buy them for all various reasons. They move quickly,
and

7 they're a sought-after book mainly because they're an
actual

8 military-issue book that's been civilianized.

9 Q. Have you ever built an improvised explosive device
using

10 the manuals that you sold?

11 A. No, I haven't.

12 Q. And -- but you maintained and sold those because
they

13 were -- there was a market for those at gun shows?

14 A. Yes.

15 MR. NEUREITER: One moment, your Honor?

16 THE COURT: Yes.

17 MR. NEUREITER: Pass the witness.

18 THE COURT: All right. Mr. Orenstein.

19 CROSS-EXAMINATION

20 BY MR. ORENSTEIN:

21 Q. Good afternoon, sir. My name is Jamie Orenstein.

22 We've never met before; is that correct?

23 A. Not to my recollection.

24 Q. Now, sir, you've been telling us about meeting Mr.
Nichols

25 at the gun show in Des Moines. That was the Adventure
Land

12326

Dennis Crawford - Cross

1 show; correct?

2 A. Yes.

3 Q. And that was in February of 1995?

4 A. Yes.

5 Q. February 17 to 19?

6 A. Yes.

7 Q. When did you find out that the man's name was Mr.
Nichols?

8 A. I found out after the promoter called me and asked
me if I

9 remembered the table next to me and what the name was
of that

10 person, and then he started asking me by a
questionnaire of

11 what names rang a bell.

12 And then when the federal agents came to my
house and

13 started asking me the same type questions.

14 Q. Okay. At the show, he didn't tell you his name,
did he?

15 A. No, he didn't. We just introduced each other real
quickly.

16 It's -- walk in, hi, how are you doing, I'm so-and-so.
If he

17 did introduce himself to me -- I'm lousy at catching
names at

18 the first time. I usually have to ask two or three
times, but

19 the opportunity didn't come up to say, hey, what did
you say

20 your name was.

21 Q. Well, it's true, isn't it, that Mr. Nichols was at
that

22 show registered under the name of Joe Rivers?

23 MR. NEUREITER: Objection. Lack of
foundation.

24 THE COURT: You'll have to see if he knows.

25 BY MR. ORENSTEIN:

12327

Dennis Crawford – Cross

1 Q. Do you know, sir?

2 A. At this time, I do.

3 Q. Okay. And was he registered as Joe Rivers?

4 MR. NEUREITER: Objection, your Honor. Source
of his
5 knowledge.

6 THE COURT: We need the source of it.

7 BY MR. ORENSTEIN:

8 Q. What is the source of your knowledge?

9 A. The source of my knowledge is the seating
arrangement or
10 the table arrangement at that show.

11 Q. And you've seen a business record from that show of
the
12 seating plan; correct?

13 MR. NEUREITER: Objection, your Honor, if he's
talking
14 about a document that is not in evidence.

15 THE COURT: Yes. He's relying on a seating
chart
16 that's hearsay.

17 MR. ORENSTEIN: Very well.

18 BY MR. ORENSTEIN:

19 Q. Now, you told us that you and Mr. Nichols were in a
bad
20 location at the show; is that correct?

21 A. Yes, I have.

22 Q. And you discussed that with him?

23 A. Yes.

24 Q. Was the reason that Mr. Nichols had a bad location
that he
25 was a walk-in, he hadn't registered in advance?

12328

Dennis Crawford - Cross

1 A. I couldn't answer that. I don't know how his
registration
2 went.

3 Q. But you do know that when there was a second table
4 available, he didn't have enough items to expand to
that second
5 table?

6 A. That's correct.

7 Q. Now, while you were there at the show with Mr.
Nichols, did

8 he have -- he had a normal amount of customers; is that
9 correct?

10 A. Same traffic flow that went by his table went by my
table.

11 Q. Did he have any visitors who stayed with him for an
12 extended period?
13 A. He had one person that showed up that greeted him,
that
14 shook hands, sat down, and read a catalogue.
15 Q. Do you know who that was?
16 A. No, I don't.
17 Q. Was this a customer, or someone he appeared to
know?
18 A. Yes.
19 Q. Which one? Somebody he appeared to know, or a
customer?
20 A. Oh, the person who walked up that greeted him when
they
21 shook hands -- the conversation appeared that they knew
each
22 other and sat down and read a catalogue together.
23 Q. About how long were they together?
24 A. Maybe a half hour.
25 Q. Now, the last time you saw Mr. Nichols was February
19,

12329

Dennis Crawford - Cross

1 1995; correct?
2 A. In person, yes.
3 Q. And you've never seen him in person -- you've never
been

4 with him from that day until today; correct?

5 A. Correct.

Honor? 6 MR. ORENSTEIN: May I have a moment, your

7 THE COURT: Yes.

8 BY MR. ORENSTEIN:

9 Q. Oh, there was one other thing: Was Mr. Nichols
selling

10 ammonium nitrate?

11 A. No.

12 MR. ORENSTEIN: Nothing further. Thank you.

13 THE COURT: Any redirect?

14 MR. NEUREITER: No, your Honor. The witness
is

15 excused.

16 We thank you, sir.

You are 17 THE COURT: All right. You may step down.

18 excused.

19 Be careful.

20 All right. Next, please.

21 MR. WOODS: Yes, your Honor. James Shirley.

22 THE COURTROOM DEPUTY: Would you raise your
right

23 hand, please.

24 (James Shirley affirmed.)

25 THE COURTROOM DEPUTY: Would you have a seat,
please.

like a 20 A. Normally go to them to either buy or sell or trade
21 rifle or a pistol or something.
when 22 Q. And do you recall if you had that kind of intention
23 you went to the Manhattan, Kansas, gun show?
24 A. Yes.
25 Q. And what was your intention?

12331

James Shirley - Direct

that I 1 A. I think I had one or two pistols with me that day
2 wanted to sell.
gun? 3 Q. Okay. How did you go about trying to sell your
various 4 A. You go inside the gun show and walk around to the
buying. 5 vendors inside and see if they'd be interested in
6 Q. Okay. And did you find one who was interested?
7 A. Yes.
8 Q. Did you sell your gun?
9 A. Yes.
10 Q. And do you know who you sold your gun to?
11 A. Terry Nichols.
12 Q. Was he a vendor at that gun show?
13 A. Yes.

14 Q. Did he have a table?

15 A. Yes.

16 Q. All right. Do you recall what he was selling?

17 A. He had various, if I recall right, rifles and
shotguns and

18 maybe some pistols on his table and, I think, probably
some

19 ammunition.

20 Q. Do you recall any army surplus?

21 A. No.

22 Q. Did you have any conversation with Mr. Nichols?

23 A. Just usual small talk.

24 Q. All right. Do you recall any of the substance of
that

25 conversation?

12332

James Shirley - Direct

1 A. Such as? I don't --

2 Q. Well, if I were to refresh your memory by asking if
you

3 recall discussing MREs with him, would that --

4 A. Oh, okay.

5 Q. Does that refresh your memory?

6 A. Yeah. He bought one of my pistols, and I think he
was

7 interested in the other one; and I think I remember him

saying

8 that he needed to save some money back to buy some
MREs.

9 Q. Now, what are MREs?

10 A. That stands for "meals ready to eat." It's
military food

11 that they eat out in the field, I think.

12 Q. Did you dicker over the price of your gun?

13 A. Oh, yeah.

14 Q. Anything unusual about that?

15 A. No.

16 Q. What was the final price, if you recall?

17 A. I believe I sold him the pistol for between 6- and
\$700.

18 Q. Anything else involved in the exchange?

19 A. I sold some clips along with it and a pistol case
to put it

20 in.

21 Q. Did you and he exchange any receipts?

22 A. No.

23 Q. Did you fill out any forms?

24 A. No.

25 Q. Anything out of the ordinary about that?

12333

James Shirley - Direct

1 A. No.

2 Q. Sir, are you a gun collector?

3 A. Small-time.

4 Q. Small-time. Do you attend gun shows regularly?

5 A. Yeah, pretty much.

6 Q. Is that the -- in the general area around Salina?

7 A. Yes.

8 Q. Did you formerly live in Texas?

9 A. Yes.

10 Q. Did you attend gun shows there?

11 A. Yes.

12 Q. Is literature commonly available at gun shows, to
your
13 knowledge?

14 A. Yes.

15 Q. All right. What kinds of literature?

16 A. Oh, you can see literature about various things.

17 Q. Well, let me ask more specifically: Have you ever
seen The
18 Turner Diaries for sale?

19 A. Yes.

20 Q. Is that a rare phenomenon?

21 A. Not really.

22 Q. Okay.

23 A. I've seen it, you know, for sale at several gun
shows.

24 Q. Have you ever seen items related to the Waco
incident for

25 sale at gun shows?

12334

James Shirley – Direct

1 A. Yes.

2 Q. Is that uncommon?

3 A. No.

4 Q. What kinds of items have you seen for sale?

5 A. Oh, there has been slogans, you know, put on like
hats and
6 T-shirts and bumper stickers and pins.

7 MR. THURSCHELL: One moment, your Honor.

8 THE COURT: Yes.

9 MR. THURSCHELL: I think that's all. Thank
you, sir.

10 THE WITNESS: That's it?

11 MR. THURSCHELL: There may be -- others may
have
12 questions.

13 THE COURT: Other counsel have a chance to ask
you

14 some questions.

15 THE WITNESS: Okay.

16 THE COURT: That's the procedure.

17 Nobody is laughing at you.

18 THE WITNESS: That's all right.

19 MR. ORENSTEIN: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. ORENSTEIN:

22 Q. Soon, sir, but not quite yet.

23 A. You've got to give me credit for trying.

Jamie 24 Q. I do just have a few questions. Sir, my name is

25 Orenstein. We haven't met before; is that correct?

12335

James Shirley - Cross

1 A. I think I talked to you on the phone one time.

were 2 Q. Right. And we spoke briefly, and you told us you

3 coming up here?

4 A. Yes.

Nichols. 5 Q. Okay. Now, you told us that you sold a gun to Mr.

6 A. Yes.

7 Q. Is that right?

8 A. Yes.

9 Q. At the time, did you know what his name was?

10 A. No.

11 Q. He didn't tell you?

12 A. I don't think so.

13 Q. And someone later told you what his name was?

14 A. No.

15 Q. How did you learn his name?

16 A. I think probably from the television, after he was
picked
17 up in Herington.

18 Q. All right. So you recognized the photograph?

19 A. Yes. And I kind of put -- put it together like --
I
20 believe that's the guy that I sold the gun to, you
know, at a
21 gun show.

22 Q. When you saw him at the gun show -- now, this was
in
23 Manhattan, Kansas; correct?

24 A. Yes.

25 Q. And that's at the old armory there?

12336

James Shirley - Cross

1 A. I believe that's where it was taking place, at the
armory.

2 Q. And it was in sort of two rooms, and there is one
off to
3 the side a little bit? Do you recall that?

4 A. I hadn't really thought about it, but I believe
you're

5 right. I believe it was kind of like in -- kind of two
6 different rooms.

today, 7 Q. Have you been shown, in preparation for coming here

8 a floor plan of that show?

9 A. No.

used when 10 Q. Okay. And you don't know what name Mr. Nichols

11 he registered for that show, do you?

12 A. No. Absolutely not.

13 Q. All right. Now, you told us that you noticed that
14 Mr. Nichols had a number of guns at the table; correct?

15 A. Yes.

16 Q. A number of long guns?

17 A. I believe there were long guns there.

18 Q. And also pistols; correct?

may not 19 A. I remember the long guns for sure, but there may or
20 have been pistols there.

to 21 Q. Now, you've been to a number of gun shows from time

22 time; correct?

23 A. Yes.

business 24 Q. Often you've seen, I'm sure, that dealers have

their 25 cards or names of their business or something about

12337

James Shirley - Cross

that 1 product, you know, advertising there on the table. Is

2 right?

3 A. Yes.

4 Q. Did Mr. Nichols have any kind of sign, any
indication that

5 you saw?

6 A. I'm not sure. I don't really recall any.

7 Q. Was there any sign that you saw about what he was
selling

8 and what kind of paperwork would be involved?

9 A. No.

10 Q. Now, this was in March of 1995; correct?

11 A. Yes.

12 Q. And it ended -- what was it? March 18 was the last
day of

13 the show?

14 A. May -- I guess.

15 Q. You don't recall the specific date?

16 A. No, I don't recall the specific day, no.

17 Q. But you know it was March of 1995.

18 A. Yeah.

19 Q. And that was the one and only time you've ever seen

20 Mr. Nichols?

21 A. That, yes.

22 Q. And from that day to this, you have no idea where
he was or

23 what he was doing.

24 A. No.

25 MR. ORENSTEIN: Thank you. Nothing further.

12338

The 1 MR. THURSCHELL: Nothing further, your Honor.

2 witness is excused.

3 THE COURT: All right. Now you're excused.

4 THE WITNESS: Thank you.

5 THE COURT: Next, please.

6 MR. WOODS: Yes, your Honor. James Sargent.

7 MR. MACKEY: Your Honor, may we approach?

8 THE COURT: Yes.

9 You can stand and stretch, if you want.

10 (At the bench:)

11 (Bench Conference 104B2 is not herein transcribed
by court

12 order. It is transcribed as a separate sealed
transcript.)

13

14

15

16

17

18
19
20
21
22
23
24
25

12343

1 (In open court:)

2 THE COURT: We're changing on the order of
witnesses.

3 That's what the discussion was about.

4 What it means is we're running ahead of
schedule.

5 THE COURTROOM DEPUTY: Would you raise your
right

6 hand, please.

7 (Martin Powell affirmed.)

8 THE COURTROOM DEPUTY: Would you have a seat,
please.

9 Would you state your full name for the record
and

10 spell your last name.

11 THE WITNESS: Martin Walton Powell, P-O-W-E-L-
L.

12 THE COURTROOM DEPUTY: Thank you.

13 DIRECT EXAMINATION

14 BY MR. TIGAR:

15 Q. Good afternoon, Mr. Powell.

16 A. How do you do, sir.

17 Q. Do you go by "Walt" Powell?

18 A. Walt, yes, sir.

19 Q. Would you tell the jury, please, where you live.

20 A. I live at 6447 Albert Pike Road, Royal, Arkansas.

21 Q. And do you have a neighbor named Roger Moore?

22 A. Yes, I do.

23 Q. How long have you known Roger Moore?

24 A. Approximately five years.

25 Q. Now, sir, would you tell the jury, please, what do
you do

12344

Martin Powell - Direct

1 for a living?

2 A. I'm a retired firefighter from Hot Springs Fire
Department,

3 and currently I supervise the carpentry shop at the Hot
Springs

4 Rehabilitation Center.

5 Q. Do you also do volunteer work at your church?

6 A. Yes, sir.

7 Q. What kind of volunteer work do you do?

8 A. Carpentry work.

9 Q. Now, do you -- can you remember -- when is the
first time

10 you can remember meeting Mr. Moore?

11 A. I don't recall the exact date. He wanted to buy
our place,

12 and he asked us if we were interested in selling it.
And I --

13 I don't recall.

14 Q. Was anybody with him when you met him?

15 A. Karen Anderson.

16 Q. And how did he introduce Ms. Anderson?

17 MS. WILKINSON: Objection, your Honor. I
believe this

18 is supposed to go to the testimony of Mr. Moore.

19 THE COURT: What?

20 MS. WILKINSON: Go to the impeachment of the
testimony

21 of Mr. Moore, not to all the facts about Mr. Moore.

22 THE COURT: The objection is overruled.

23 BY MR. TIGAR:

24 Q. How did he introduce Ms. Anderson?

25 A. Karen.

1 Q. Did he say -- did he indicate that they had any
particular

2 relationship?

3 A. No, sir.

4 Q. Okay. Did you ever meet someone identified as
Carol Moore?

5 A. At sometime later, I did.

6 Q. Do you remember how you were introduced to Carol
Moore?

7 A. As Roger's sister.

8 Q. Now, I want to direct your attention to the 5th of
November

9 of 1994, a Saturday. Do you remember that day?

10 A. Yes, sir.

11 Q. All right. Now, I want to introduce a couple of --
ask you

12 about a couple of other people. What is your wife's
name, sir?

13 A. Verta.

14 Q. And does she have a nickname?

15 A. Pudge.

16 Q. Can I call her that to her face?

17 A. Yes, sir.

18 Q. All right. And do you have a son?

19 A. Yes, I do.

20 Q. And what -- do you have more than one son?

21 A. I have two sons.

22 Q. And what are their names, sir?

23 A. Lance and Kirk.

24 Q. Now, on the 5th of November, 1994, what were you
doing that

25 day?

12346

Martin Powell - Direct

Baptist 1 A. I was working on a new sanctuary at the Royal

2 Church.

3 Q. Did there come a time when Ms. Moore came over and
got you?

4 A. Not Mrs. Moore.

5 Q. Thank you, sir. Did there come a time --

6 A. My wife.

7 Q. -- when Ms. Powell came over and got you?

8 A. Yes, sir.

9 Q. About what time was that, sir?

10 A. I don't recall. It's some -- sometime around
midmorning.

11 Q. Now -- and as a result of that conversation, did
you go

12 back to your house?

13 A. Yes, sir, I did.

14 Q. Who was at your house when you got there?

15 A. My oldest son, Lance, and Roger Moore.

16 Q. And what was Mr. Moore doing when you first saw him

back at

17 the house?

18 A. I walked in the back door and asked him what had
happened.

19 He was standing -- standing up at that particular time.

20 Q. And what did he say to you, if you can recall?

21 A. He informed me that he had been robbed, and I asked
him if

22 he had called the police. And he informed me that he
had not.

23 He specifically said no.

24 Q. And what did you see him do then?

25 A. I informed him that he should contact the police.
And I

12347

Martin Powell - Direct

1 think -- I don't remember the sequence of events that
happened,

2 but he -- he told me about the robber, what he was
wearing and

3 type of weapon he used; and then he called the police,
called

4 the sheriff's department.

5 Q. Now, did there -- did there come a time when the
sheriffs

6 arrived?

7 A. Yes, sir.

8 Q. Who arrived first, if you remember, from the

sheriff's

9 office?

10 A. Some deputy. I don't know his name.

11 Q. Now, did -- did there come a time later when you
and

12 Mr. Moore went over to Mr. Moore's house?

13 A. Yes.

14 Q. Tell us about that. What did you do?

15 A. He -- he wanted me to go to his house with him, and
I

16 informed him I would; and he -- Of course, he had
already told

17 me that his phone lines had been cut. And I told him I
would

18 come over and reconnect his phone lines for him.

19 He said he needed to use his phone.

20 Q. Now, did you -- can you tell us what you can
remember

21 happening? You left your house and walked over to his
house?

22 What's the next thing that happened?

23 A. I walked in the kitchen of his house, and the
deputy was

24 sitting at the kitchen table.

25 Q. Now --

12348

Martin Powell - Direct

believed 1 A. And the deputy looked at me and asked me if I

2 this. And I told him at this point --

3 MS. WILKINSON: Objection, your Honor.

4 THE COURT: Sustained.

5 BY MR. TIGAR:

6 Q. Sir, did there come a time --

entire 7 MS. WILKINSON: Your Honor, can we have that

was 8 comment stricken from the record? I don't believe it

9 responsive.

will 10 THE COURT: Yes. It's stricken. The jury

11 disregard the conversation with the deputy.

12 MR. TIGAR: With the deputy, yes, sir.

13 BY MR. TIGAR:

I'm 14 Q. Just what you can remember doing, sir: That's all

15 asking.

through 16 A. I stood in the kitchen until the investigators got

completed 17 with their work; and after being told that they had

left. 18 their investigation, I reconnected his phone lines and

reconnect the 19 Q. Do you remember how you knew where to go to

20 phone lines?

21 A. I either asked or he had told me where. I don't

recall.

22 Q. Now, sir, had you ever had occasion before that day
to

23 discuss politics with Mr. Moore?

24 A. Yes.

25 Q. Had he ever given you anything of a political
nature or

12349

Martin Powell - Direct

1 there was a -- some political matter?

2 A. Videotape.

3 Q. What was the videotape that he gave you, sir?

4 A. One was -- pertained to antigovernment.

5 Q. And what was it about, sir?

6 A. I don't recall. I watched a short 5 minutes of it
and

7 returned it.

8 Q. Did it have to do with Waco?

9 A. No. He gave me a -- another tape that had to do
with Waco.

10 Q. And what was the theme of that one, if you
remember?

11 A. Mainly the burning of the place, as I recall.

12 Q. Now, did you also ever talk to Mr. Moore about
NATO?

13 A. He had discussed that with me, yes.

14 Q. And what did he tell you about NATO?

centers 15 A. He said that the government was building detention
of a 16 for rebels because there was supposed to be some type
and 17 takeover, and he talked about Russian tanks being here
18 black helicopters.

NATO 19 Q. Did he ever say -- talk about whether NATO -- what
20 troops might do to American citizens?

troops 21 A. He said that -- that the reason they're using NATO
people. 22 is because our own military troops won't fire on their

no 23 MR. TIGAR: Thank you very much, sir. I have
24 further questions.

25 THE COURT: Ms. Wilkinson.

12350

1 MS. WILKINSON: Thank you.

2 CROSS-EXAMINATION

3 BY MS. WILKINSON:

4 Q. Good afternoon, Mr. Powell.

5 A. Hello.

6 Q. We've talked before, haven't we?

7 A. Yes.

8 Q. You've been very cooperative with the Government?

9 A. I hope so.

10 Q. Always told us what you knew; right?

11 A. Correct.

12 Q. That's what you're here to do today?

13 A. Yes, ma'am.

14 Q. Now, when you met up with Mr. Moore on November 5,
1994, he

15 told you that he had been robbed, didn't he?

16 A. Yes.

17 Q. He told you the fellow had a shotgun?

18 A. Yes.

19 Q. Told you there was a garrote wire hanging from the
shotgun?

20 A. I don't recall that.

21 Q. Okay. Do you recall him telling you that the man
was

22 wearing a ski mask?

23 A. Yes.

24 Q. And wearing camouflage clothing?

25 A. Yes.

12351

Martin Powell – Cross

1 Q. At some point did he show you where the man was
standing

2 when he had been robbed?

3 A. Yes.

4 Q. Do you recall where that was?

5 A. The corner of his house.

6 Q. Right there on the side of his house?

7 A. I believe so.

8 Q. If I showed you a picture, would that help?

9 Do you recall -- you know his door where you
go into

10 the carport. If you're looking into his house and you
go

11 through the carport -- and there is a door right there;
isn't

12 that right?

13 A. Uh-huh.

14 Q. And that lets you into the kitchen?

15 A. Uh-huh.

16 Q. If you're standing back looking at that door, did
he point

17 out that the robber was right on the right, right
around the

18 corner?

19 A. To the right, right around the corner.

20 Q. And he told you that back on November 5, 1994?

21 A. Correct.

22 Q. And he told you that he had been robbed?

23 A. Yes.

24 Q. Did he tell you that guns had been stolen from him?

25 A. Yes.

12352

Martin Powell – Cross

1 Q. And other valuables? Other valuable items in his
house?

2 A. I don't recall that.

3 Q. You don't recall that detail.

4 But he did tell you that guns had been stolen?

5 A. Yes.

6 Q. Now, you did see the sheriffs arrive, did you not?

7 A. Pardon?

8 Q. You saw the sheriffs arrive?

9 A. Yes.

10 Q. The deputy sheriff arrive?

11 A. Yes, ma'am.

12 Q. And do you recall whether the deputy sheriff came
to your

13 house, or went straight to Mr. Moore's house?

14 A. He came to my house.

15 Q. And did you talk to him there?

16 A. The deputy?

17 Q. Yes.

18 A. No, ma'am.

19 Q. Did Mr. Moore talk to him there?

20 A. Yes.

21 Q. And did you go up to Mr. Moore's house after the
deputies

22 arrived, or before they arrived?

23 A. After.

24 Q. So if someone said you went up there before, they'd
be

25 wrong?

12353

Martin Powell - Cross

1 A. That's correct.

2 Q. And you saw the deputies interviewing Mr. Moore?

3 A. No.

4 Q. Did you --

5 A. I saw the investigators doing their work.

6 Q. You saw them walking around Mr. Moore's house?

7 A. That's correct.

8 Q. And did you -- were you able to walk around Mr.
Moore's

9 house?

10 A. No. I stayed right there in the kitchen.

11 Q. You let them do their work?

12 A. You betcha.

13 Q. Now, you didn't contact the sheriff's office to
tell them

14 to come to your house, did you?

15 A. No.

16 Q. And you're not aware whether your wife or your son
did;

17 correct?

18 A. To my knowledge, they didn't.

19 Q. And you did see Mr. Moore make a phone call, didn't
you?

20 A. Yes.

21 Q. And sometime thereafter, the sheriff's office
arrived?

22 A. Yes.

23 Q. And did you understand that they were there to
investigate

24 the robbery of Mr. Moore?

25 A. I assumed they were, yes.

12354

1 MS. WILKINSON: No further questions.

2 MR. TIGAR: No questions.

3 Thank you very much, Mr. Powell.

4 THE COURT: I take it he's excused.

5 MR. TIGAR: Yes. He is excused, your Honor.

6 THE COURT: Mr. Powell, you may step down.
You're

7 excused.

8 Next, please.

9 MR. TIGAR: Call Shelby Terry.
10 THE COURTROOM DEPUTY: Shelby Terry?
11 MR. TIGAR: Yes. Shelby Terry.
12 THE COURTROOM DEPUTY: Would you raise your
right
13 hand, please.

14 (Shelby Terry affirmed.)

15 THE COURTROOM DEPUTY: Would you have a seat,
please,
16 right here.

17 Would you state your full name for the record
and
18 spell your last name.

19 THE WITNESS: Shelby Terry, T-E-R-R-Y.

20 THE COURTROOM DEPUTY: Thank you.

21 DIRECT EXAMINATION

22 BY MR. TIGAR:

23 Q. Good morning -- or good afternoon, Mr. Terry. What
--

24 where do you live, sir?

25 A. Hot Springs, Arkansas.

12355

Shelby Terry - Direct

1 Q. What's your job there?

2 A. I'm a criminal investigator for the Garland County

3 Sheriff's Office.

4 Q. And were you employed as a criminal investigator
for the

5 Garland County Sheriff's Office in November of 1994?

6 A. Yes, I was.

7 Q. Well, tell the jury what is your career in law
enforcement,

8 sir. What -- what's your career in law enforcement?
Where did

9 you start, how did you move through the ranks?

10 A. I've been with the sheriff's office there for 13
years.

11 Q. And what sorts of jobs have you done for the
sheriff's

12 office?

13 A. Started out as a radio operator, went to patrol,
and then

14 went to CID.

15 Q. Now, sir, I notice you have in front of you a
folder. Is

16 that your offense record, your offense folder?

17 A. Yes. It's my criminal case file.

18 Q. And to your knowledge, has that folder been
furnished to

19 the parties in this case?

20 A. Yes.

21 Q. I'm going to ask you, if you can, to answer our
questions

22 today from your own memory of events; but if you need
to

23 consult something to refresh your recollection, just
indicate,
24 if that's all right with the Court, and let us know
that you're
25 doing it. Okay?

12356

Shelby Terry - Direct

1 A. Yes, sir.
2 Q. All right. I want to direct your attention to the
5th of
3 November, 1994. Do you remember what day of the week
that was?
4 A. I believe it was a Saturday.
5 Q. Were you on duty that day?
6 A. No, sir.
7 Q. Did you get a call that day asking you to go do
something?
8 A. Yes, sir.
9 Q. About what time did you get the call?
10 A. Approximately 11:35 a.m.
11 Q. Where were you at that time?
12 A. My residence.
13 Q. Where did you go?
14 A. To Roger Moore's residence in Royal, Arkansas.
15 Q. And had you ever been out there before?
16 A. No, sir.

17 Q. Did you ever -- had you met Mr. Moore before?
18 A. No, sir.
19 Q. And where -- who called you? Was it Mr. Moore, or
was it
20 somebody else?
21 A. Our dispatcher in the sheriff's office.
22 Q. Now, when you got there to Mr. Moore's residence,
who was
23 there?
24 A. One of our patrol deputies and Mr. Moore.
25 Q. Now, in terms of that -- were you informed that a
robbery

12357

Shelby Terry - Direct

1 had taken place?
2 A. Yes, sir.
3 Q. Now, in terms of that crime scene, who was in
charge of the
4 investigation?
5 A. When I arrived, I would be.
6 Q. Now, you say one of your deputies was there. Who
was that?
7 A. Ronald Karchefski.
8 Q. And was Mr. Moore there?
9 A. Yes.
10 Q. And was Nichols there?

11 A. Not that I'm aware of.

12 Q. Now, did you interview Mr. Moore about what he said
had

13 happened to him?

14 A. Yes.

15 Q. Did he tell you that there were at least two
suspects

16 involved in the robbery?

17 A. No, sir.

18 Q. Do you remember being interviewed by Mr. Leeds back
in

19 December of '96?

20 A. Yes.

21 Q. What did Mr. Moore say about how many people had
robbed

22 him?

23 A. He told me that he saw one person. That was the
one that

24 confronted him; and when he was tied up and
blindfolded, he had

25 a suspicion there might have been a second person.

12358

Shelby Terry - Direct

1 Q. So he did -- what did he say about that second
person; that

2 he had a suspicion?

3 A. He had a suspicion or a feeling there might have
been a

4 second person there.

5 Q. And did he say that he had been restrained in a
particular

6 way?

7 A. Yes, sir.

8 Q. How did he say he had been restrained?

9 A. With either wire ties or what we refer to as "flex
cuffs"

10 and then also duct tape.

11 Q. Now, did he show you something that looked like
these flex

12 cuffs?

13 A. Yes.

14 Q. And were they the kind of flex cuff used by police
15 departments?

16 A. No, sir.

17 Q. How did they differ from the kind used by police
18 departments?

19 A. They're smaller, thinner.

20 Q. What would they be more like? If I were going to
go shop

21 for something like that, how would I describe it?

22 A. Wire ties.

23 Q. Like wire ties? And -- like those plastic things
that you

24 can buy at -- a hook to tie batches of cable --

25 A. Yes.

12359

Shelby Terry - Direct

1 Q. -- together -- at a hardware store?

2 Now, after you interviewed Mr. Moore, did you
conduct

3 some further investigation away from his house?

4 A. Yes.

5 Q. And where did you go?

6 A. We started searching the area for his van and
located his

7 van in a wooded area behind his residence.

8 Q. Did you find his van?

9 A. I did not, no, sir.

10 Q. Did there come a time when you went to his van that
had

11 been found?

12 A. Yes, sir.

13 Q. About how long after your first response to the
scene was

14 that?

15 A. Approximately two hours.

16 Q. Did you search the van?

17 A. Yes.

18 Q. Had Mr. Moore provided guidance to you on what to
look for

19 in the van?

20 A. He told me that the serial numbers on the guns
should be
21 inside the van.
22 Q. Did he tell you where inside the van they should
be?
23 A. Yes.
24 Q. What did he tell you?
25 A. On a shelf above a sink or cabinet that was inside
the van.

12360

Shelby Terry - Direct

1 Q. Was this van hooked up -- kind of a camper-type
van?
2 A. Yes.
3 Q. All right. Now, did you look in the place where he
had
4 said they would be?
5 A. Yes.
6 Q. What did you find?
7 A. Money.
8 Q. He had told you there would be money there?
9 A. No, sir.
10 Q. And did you find any serial numbers?
11 A. No, sir.
12 Q. Did you do a more complete search of the van?
13 A. Yes, sir.

in 14 Q. And I'm going to show you now what's been received
15 evidence as Defendant's 1549. Did you find that?
16 A. Yes, sir.
17 Q. Where did you find that?
18 A. It was inside the van.
it: 19 Q. Now, this is -- And did it have all this writing on
is my 20 "Federal agent is my name. Killing women and children
21 game. I'm from the Government. I'm here to help you"?
22 A. Yes.
23 Q. In fact, this is a copy of the original that you
have in 24 your offense folder?
25 A. Yes.

12361

Shelby Terry - Direct

1 Q. Now, where did you find this item?
2 A. It was in the back of the van underneath the bunk
or bed.
3 Q. Did you ever ask Mr. Moore about this item?
4 A. No, sir, I didn't.
5 Q. Now, in the process of interviewing Mr. Moore, did
he give
6 you the names of people that he thought had been
involved here?

7 A. Later on, yes, sir, he started calling me with
names.

8 Q. And when was that, sir?

9 A. Within a couple weeks.

10 Q. Now, did he describe for you what the person he
said had

11 robbed him had said to him?

12 A. Yes, sir.

13 Q. Did he tell you what he had said to that person?

14 A. Yes, sir.

15 Q. What did he say he had said to that person?

16 A. When he was confronted, he asked the subject if he
was a

17 federal agent from the ATF.

18 Q. Did he say whether this person answered?

19 A. No, sir, he didn't.

20 Q. Now, you said he gave you some names. Correct?

21 A. Yes, sir.

22 Q. Was one of the names he gave you Tim McVeigh?

23 A. Yes, sir.

24 Q. And did he tell you where Tim McVeigh could be
contacted?

25 A. He told me that he knew he was from New York. He
was also

12362

Shelby Terry - Direct

1 out of Fort Riley, Kansas, and he was in Desert Storm.

2 Q. Is -- and that's all he told you about him?

3 A. Yes.

4 Q. And did he tell you that Mr. McVeigh had an address
in
5 Kingman, Arizona?

6 A. No, sir.

7 Q. Did you rely on that, what Mr. Moore told you, in
an
8 attempt to locate Timothy McVeigh?

9 A. Yes, sir.

10 MR. TIGAR: Thank you very much, Detective.

11 I have no further questions.

12 THE COURT: Ms. Wilkinson?

13 MS. WILKINSON: Yes.

14 CROSS-EXAMINATION

15 BY MS. WILKINSON:

16 Q. Good afternoon, sir. It's Sergeant Terry.
Correct?

17 A. Correct.

18 Q. You went out to investigate Roger Moore's robbery
on
19 November 5, 1994?

20 A. Yes.

21 Q. And when you got there, Mr. Moore was already at
his house
22 with one of your deputies. Is that right?

23 A. Yes, ma'am.

24 Q. You don't recall seeing any other people there?

25 A. No, ma'am.

12363

Shelby Terry – Cross

1 Q. Did you see Mr. Powell back in the witness room?

2 A. Just now?

3 Q. Yes.

4 A. Yes.

5 Q. Did you see him at Roger Moore's house on November
5, 1994,

6 that morning?

7 A. I don't remember seeing him there.

8 Q. Now, do you recall exactly when you arrived at Mr.
Moore's

9 house?

10 A. Shortly after noon.

11 Q. And you did that in response to a radio call from
your

12 headquarters?

13 A. From a telephone call.

14 Q. And were you informed that someone had called in to
say

15 there had been a robbery at Mr. Moore's house?

16 A. Yes.

17 Q. Mr. Moore told you what happened that day?

18 A. Yes.

19 Q. He told you that there had been a man with a
shotgun

20 outside his house?

21 A. Yes.

22 Q. That attached to the shotgun was a garrote wire?

23 A. Yes.

24 Q. And he told you that the man, the robber who was
carrying

25 that shotgun, was wearing a ski mask?

12364

Shelby Terry – Cross

1 A. That's correct.

2 Q. And he told you that the man was wearing camouflage

3 fatigues?

4 A. Yes.

5 Q. That he had light boots on?

6 A. I'm sorry?

7 Q. Light-colored boots on?

8 A. Yes.

9 Q. And that he was wearing gloves?

10 A. Yes.

11 Q. Mr. Moore also told you back on November 5, 1994,
that he

12 had been duct-taped; is that right?

13 A. Yes.

14 Q. You found that duct tape, didn't you?

15 A. Yes.

16 Q. You took custody of the search -- the shirt Mr. Moore was

17 wearing and the duct tape?

18 A. Yes.

19 Q. You sent it to your laboratory for evaluation?

20 A. Yes.

21 Q. Found no prints on there, did you?

22 A. No, there was no prints.

23 Q. That would be consistent with someone wearing gloves,

24 wouldn't it?

25 A. Yes.

12365

Shelby Terry - Cross

1 Q. And you also found some ties that Mr. Moore told you about;

2 correct?

3 A. Wire ties, yes.

4 Q. You found those in his house?

5 A. Yes.

6 Q. And you seized those?

7 A. Yes.

8 Q. And you took them into custody as part of your
9 investigation?

10 A. Yes.

11 Q. And you've looked at those ties, haven't you?

12 A. Yes.

13 Q. And would they bind somebody if they were wrapped
around
14 their wrists or their ankles?

15 A. Yes.

16 Q. Mr. Moore also told you that day that he had
managed to get

17 a penknife off his table and was able to cut himself
free;

18 isn't that right?

19 A. A knife. He just had a small knife. I'm not sure
if it

20 was a penknife.

21 Q. And it was near him in the living room?

22 A. Yes.

23 Q. And he told you that back on November 5, 1994;
correct?

24 A. Yes.

25 Q. Now, on the day of the robbery, he also told you
that items

12366

Shelby Terry - Cross

1 had been taken from his house; right?

2 A. Yes.

3 Q. Told you guns?

4 A. Yes.

5 Q. Ammunition?

6 A. Yes.

7 Q. Other valuables?

8 A. Yes.

9 Q. And did he provide you with a list of all the items
that

10 were stolen from his house?

11 A. Yes.

12 Q. And did he do that the next working day or try to
do that

13 the next working day after the robbery?

14 A. He gave me a short list that day, and within a
couple days

15 I had a big list.

16 Q. Did he revise that longer list to give you a more
complete

17 list?

18 A. Yes.

19 Q. He provided that to you?

20 A. Yes.

21 Q. And is that based on your experience with robbery
22 victims -- is that consistent that people would update
their

23 list of items stolen?

24 A. Yes.

25 Q. Why is that?

12367

Shelby Terry – Cross

1 A. They notice something else missing they didn't
notice that
2 day.

3 Q. You didn't see anything unusual about that?

4 A. No.

5 Q. Now, after the robbery, did Mr. Moore and Ms.
Anderson
6 contact you?

7 A. Yes.

8 Q. Did they contact you a lot?

9 A. Yes.

10 Q. All the time?

11 A. Yes.

12 Q. A couple times a week?

13 A. Yes.

14 Q. Were they constantly asking you about the status of
the
15 robbery investigation?

16 A. Yes.

17 Q. Did they provide names to you of the people they
thought
18 had visited their home?

19 A. Um --

20 Q. Did they provide names to you of people they
thought could

21 be involved, people who had visited their home?

22 A. Yes.

23 Q. And did they provide the name of Timothy McVeigh on
two

24 different occasions?

25 A. Yes.

12368

Shelby Terry - Cross

1 Q. You wrote that down in your notes, didn't you?

2 A. Yes.

3 Q. Those notes were in the file that you brought
today?

4 A. Yes.

5 Q. And you wrote it down on your own, did you not?

6 A. Yes, ma'am.

7 Q. In other words, you didn't ask Mr. Moore or Ms.
Anderson to

8 spell it?

9 A. No.

10 Q. So if it's spelled M-C-V-E-Y, that was just your
spelling

11 of the name. Correct?

12 A. Yes, ma'am.

13 Q. And at that time back on November 5, 1994, you
didn't know

14 who Mr. McVeigh was; correct?

15 A. No.

16 Q. And you received all this information from Roger
Moore long

17 before the bombing in Oklahoma City; correct?

18 A. Yes.

19 Q. And you investigated this case as a robbery, did
you not?

20 A. Yes.

21 Q. And you've never stopped doing that, have you?

22 A. No.

23 MS. WILKINSON: No further questions.

24 REDIRECT EXAMINATION

25 BY MR. TIGAR:

12369

Shelby Terry - Redirect

1 Q. Deputy, you were asked on cross-examination about
whether

2 you -- it was unusual for people to update their list;
right?

3 Do you remember that?

4 A. Yes.

5 Q. Okay. Were there unusual things? Were there
things about

6 Mr. Moore's behavior that you did find unusual?

7 A. I'm not for sure what you mean, sir.

8 Q. Well, did he tell you when you first got on the
scene who
9 he thought was responsible?

10 A. No.

11 Q. Do you remember telling Mr. Leeds that he told you
when you
12 got on the scene that the ATF was responsible?

13 A. Excuse me. Yes, sir. He did say -- I mean, asked
him
14 about if he was a federal agent. I did not quite
understand

15 what you meant, but --

16 Q. Okay. Well, you tell me: Was this an unusual
conversation
17 to be having with somebody at a robbery scene?

18 A. Well, yes, sir, it was.

19 Q. Would you tell us what happened then. Tell us what
you
20 said and what he said.

21 A. For him saying that he asked me if it was a federal
agent,
22 it was unusual, yes, sir.

23 Q. And did you -- did you become aware that Mr. Moore
had
24 later made accusations about members of your
department?

25 MS. WILKINSON: Objection, your Honor.

Shelby Terry - Redirect

1 THE COURT: Sustained.

2 BY MR. TIGAR:

3 Q. Did you ask Mr. Moore where Ms. Anderson was?

4 A. No, I didn't.

5 Q. Did he tell you where she was?

6 A. I don't believe so.

7 MR. TIGAR: I have no further questions.
Thank you.

8 MS. WILKINSON: Just one more. A couple, I
should
9 say.

10 THE COURT: All right.

11 RECROSS-EXAMINATION

12 BY MS. WILKINSON:

13 Q. You were just asked by Mr. Tigar about an interview
with a

14 man named Mr. Leeds. Do you know who that is?

15 A. That's one of his investigators.

16 Q. And you've cooperated with the defense and told
them what

17 you know about this?

18 A. Yes.

19 Q. Is that right?

20 MS. WILKINSON: No further questions.

21 MR. TIGAR: Thank you.

You're 22 THE COURT: All right. You may step down.

23 excused.

24 MR. TIGAR: Verta Powell, your Honor.

25 THE COURT: All right. Ms. Powell.

12371

1 THE COURTROOM DEPUTY: She's not here.

of 2 THE COURT: Well, I guess we've had a failure
3 communication.

your 4 MR. TIGAR: I'm sorry. Mr. John Brown then,
5 Honor. If we can -- we won't waste the time.

6 THE COURT: Okay. Good.

7 MR. TIGAR: We can resume. Thank you.

right 8 THE COURTROOM DEPUTY: Would you raise your
9 hand, please.

10 (John Brown affirmed.)

please. 11 THE COURTROOM DEPUTY: Would you have a seat,

and 12 Would you state your full name for the record

13 spell your last name.

14 THE WITNESS: John H. Brown, Jr., B-R-O-W-N.

15 THE COURTROOM DEPUTY: Thank you.

16 DIRECT EXAMINATION

17 BY MR. TIGAR:

18 Q. What is your business or occupation, Mr. Brown?

19 A. I'm chief of police of Alexander, Arkansas.

20 Q. And where is Alexander, Arkansas?

21 A. Alexander, Arkansas, borders the west city limits
of Little
22 Rock, Arkansas.

23 Q. How long have you been chief there?

24 A. Two years and three months, sir.

25 Q. Well, going back to the fall of 1994, what was your

12372

John Brown - Direct

1 business at that time?

2 A. Prior to October of '95 -- October, 1995 -- you did
say
3 '94, sir?

4 Q. Yes. So I'm getting into that time frame.

5 A. During that time frame, I was working for attorneys
in a
6 consulting business and private investigation business,
sir.

7 Q. Now, before you did your private investigation
business,
8 had you been in law enforcement?

9 A. Yes, sir. That's correct.

10 Q. What did you do in law enforcement before that?

11 A. Homicide detective, criminal investigator, street
patrol,

12 dispatcher. I worked my way up through the ranks, sir.

13 Q. Did you -- have you ever had a conversation with
Roger

14 Moore?

15 A. Yes, sir.

16 Q. And how did you come to have that conversation with
Roger

17 Moore?

18 A. An acquaintance of mine, an elderly lady, had
contacted me

19 and told me of a neighbor of hers that had been robbed
or

20 burglarized, and she wanted me to visit with him on the
phone.

21 And he was wanting to hire a private investigator. And
that's

22 what led to the conversation.

23 Q. Did he say -- and did you talk to him on the phone?

24 A. Yes, sir, I did.

25 Q. Did he say why he wanted to hire a private
investigator?

12373

John Brown - Direct

1 A. He felt like that as a victim he was not being
treated
2 fairly by the sheriff's department. He said no one was
working
3 on his case. He went so far as to say that he
suspected that
4 maybe someone from the sheriff's office may have been
involved
5 in the burglary or robbery itself.

6 Q. And did you agree to accept the job of working for
7 Mr. Moore, or did you not accept it?

8 A. No, sir. My plate was full, and I explained that
to

9 Mr. Moore. Besides, it was an ongoing criminal
investigation
10 by the Garland County sheriff's office. Therefore, you
know,
11 in a criminal investigation sometimes --

12 Q. Without -- I don't want to get into the detail.

13 A. I understand.

14 Q. I just --

15 A. No, sir. I did not take the case.

16 MR. TIGAR: Thank you. No further questions.

17 THE COURT: Any cross-examination?

18 MS. WILKINSON: No questions, your Honor.

19 THE COURT: All right. I take it he's
excused.

20 MR. TIGAR: Yes, he's excused.

21 THE WITNESS: May I be excused, sir?

22 THE COURT: Yes. You can go back.

23 We'll -- unless you've got a 2-minute witness

--

24 MR. TIGAR: That's as quick as I can do it,
when I did

25 this, your Honor. I can't do any better.

12374

1 THE COURT: We'll recess, then, members of the
jury.

2 One thing that I might mention here because it
came up

3 this afternoon and it's happened earlier in the case
where

4 there was a motion to strike, it's called, and I said
you'll

5 have to disregard something that was said. Please
understand,

6 of course, that the witnesses who come in here are not
lawyers,

7 not skilled in the rules of evidence; and as you've
seen,

8 sometimes they answer something that doesn't match the
9 question, or they volunteer something. And when that
happens,

10 you know, as it does -- as I've said to you before,
trials are

11 human events; we deal with human beings. So when I say
to you

12 that you must disregard it or strike it, that's exactly

what

13 you must do. And you know, that seems at first to be
hard to
14 do: It's something that you heard. But again, when I
say to
15 disregard it, that's exactly what I mean, in the same
fashion
16 as if during the course of the trial you remember
something
17 that you read somewhere before you ever got selected on
the
18 jury.

19 And as we explored with you at great length
during the
20 time that you were being questioned about becoming a
juror in
21 this case, anything that is outside the evidence has to
be set
22 aside and not considered; and that's the same thing
when I
23 caution you or instruct you to disregard something
said.

24 And, of course, as I'll tell you in greater
detail
25 when we do the full instructions, remember always that
the

12375

1 questions are not the evidence. The questions that are
put by

2 lawyers are not the evidence. The answers are the
testimony,
3 and it's the answers. Of course, the answers go with
the
4 questions; but the answers are what you consider as
testimony
5 in the case.

6 And if it should come about, as it sometimes
does,
7 where the question suggests some fact but the answer is
8 different than that, you don't accept some fact stated
in a
9 question as being evidence. It's what the witnesses
say that
10 we rely on.

11 I just thought I'd bring that to your
attention now,
12 again as a part of instructing you about your role in
this
13 case.

14 And, of course, now I'm excusing you until
8:45
15 tomorrow morning; and during this time I again instruct
you, as
16 I must, to keep open minds.

17 We're moving right along, but there is a ways
to go.
18 You'll be hearing a lot more. Wait till you've heard
it all
19 before you even in your own minds come to think of what
you
20 believe has been proved or not proved in the case. And

avoid

21 discussion with all others about the trial, and avoid
anything

22 that may appear in newspapers, magazines, publications
of any

23 type, radio, television, and the whole thing,
remembering you

24 have to decide about this case based on what you hear
and see

25 in this room.

12376

1 You're excused till 8:45 tomorrow morning.

2 I understand the sun has been out today, so
the drive

3 home ought to be better.

4 (Jury out at 5:02 p.m.)

5 THE COURT: Okay.

6 MR. MACKEY: May we approach very briefly?

7 THE COURT: Yes.

8 (At the bench:)

9 (Bench Conference 104B3 is not herein transcribed
by court

10 order. It is transcribed as a separate sealed
transcript.)

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12381

1 (In open court:)
2 THE COURT: All right. Recess.
3 (Recess at 5:05 p.m.)
4 * * * * *
5 INDEX
6 Item
7 WITNESSES
8 Mary Martinez

Page

12213 9 Cross-examination Continued by Mr. Ryan

12217 10 Redirect Examination by Mr. Thurschwell

12221 11 Nancy Kindle

12221 12 Direct Examination by Mr. Neureiter

12228 13 Cross-examination by Mr. Ryan

12235 14 Redirect Examination by Mr. Neureiter

12237 15 Recross-examination by Mr. Ryan

12238 16 Estella Weigel

12238 17 Direct Examination by Mr. Neureiter

12245 18 Cross-examination by Mr. Ryan

12255 19 Rose Mary Zinn

12255 20 Direct Examination by Mr. Neureiter

12260 21 Cross-examination by Mr. Ryan

12262 22 Darrell McCaleb

12262 23 Direct Examination by Mr. Neureiter

12271 24 Cross-examination by Mr. Goelman

25

12382

	1	Robert O'Connell
12277	2	Direct Examination by Mr. Neureiter
12287	3	Cross-examination by Mr. Goelman
	4	Walter Fuller
12299	5	Direct Examination by Mr. Thurschwell
	6	Wendy Menke
12306	7	Direct Examination by Mr. Woods
12316	8	Cross-examination by Mr. Orenstein
	9	Dennis Crawford
12319	10	Direct Examination by Mr. Neureiter
12325	11	Cross-examination by Mr. Orenstein
	12	James Shirley
12330	13	Direct Examination by Mr. Thurschwell
12334	14	Cross-examination by Mr. Orenstein
	15	Martin Powell
12343	16	Direct Examination by Mr. Tigar
12350	17	Cross-examination by Ms. Wilkinson
	18	Shelby Terry

12354 19 Direct Examination by Mr. Tigar

12362 20 Cross-examination by Ms. Wilkinson

12368 21 Redirect Examination by Mr. Tigar

12370 22 Recross-examination by Ms. Wilkinson

23 John Brown

12371 24 Direct Examination by Mr. Tigar

25

12383

		DEFENDANT'S EXHIBITS			
Withdrawn	Exhibit	Offered	Received	Refused	Reserved
	1				
	2				
	3	D1098	12312	12312	
	4	D1101	12310	12310	
	5	D1102	12310	12310	
	6	D172	12268	12268	
	7	D1732		12240	
	8	D1760	12312	12312	
	9	D1761	12310		
	10	D1761	12311	12311	
	11	D603	12301	12301	
	12	D603A	12302	12302	

13

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14

REPORTERS' CERTIFICATE

15 transcript from

We certify that the foregoing is a correct

Dated

16 the record of proceedings in the above-entitled matter.

17 at Denver, Colorado, this 3d day of December, 1997.

18

19

20

Paul Zuckerman

21

22

Kara Spitler

23

24

25