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12385

Western
Oklahoma
JAMIE
U.S.
Denver,
REID
Lincoln
for

1 APPEARANCES
2 PATRICK RYAN, United States Attorney for the
3 District of Oklahoma, 210 West Park Avenue, Suite 400,
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,
6 ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the
7 Attorney General, 1961 Stout Street, Suite 1200,
8 Colorado, 80294, appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,
10 NEUREITER, and JANE TIGAR, Attorneys at Law, 1120
11 Street, Suite 1308, Denver, Colorado, 80203, appearing

12 Defendant Nichols.

13 * * * * *

14 PROCEEDINGS

15 (In open court at 8:45 a.m.)

16 THE COURT: Please be seated.

17 Good morning.

18 ALL: Good morning.

19 THE COURT: Are you ready to proceed? Good.

20 (Jury in at 8:46 a.m.)

21 THE COURT: Members of the jury, good morning.

22 JURORS: Good morning.

23 THE COURT: Ready to resume. Call for the
next

24 witness.

25 MR. WOODS: Yes, your Honor, James Sargent.

12386

1 Mr. Neureiter will question. Thank you.

2 THE COURTROOM DEPUTY: Would you raise your
right

3 hand, please.

4 (James Sargent affirmed.)

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

6 Would you state your full name for the record
and

7 spell your last name.

Sargent, 8 THE WITNESS: James Larry Sargent. Spelling

9 S-A-R-G-E-N-T.

10 THE COURTROOM DEPUTY: Thank you.

11 DIRECT EXAMINATION

12 BY MR. NEUREITER:

13 Q. Good morning, Mr. Sargent.

14 A. Good morning, sir.

15 Q. How are you today?

16 A. Pretty good.

17 Q. Where are you from, Mr. Sargent?

18 A. Herington, Kansas.

19 Q. And what do you do for a living?

20 A. I'm medically retired from the military.

21 Q. You were in the military?

22 A. I spent approximately 16 years on active duty, yes,
sir.

23 Q. And what rank were you when you retired?

24 A. E7.

25 Q. So you were Sergeant Sargent?

12387

James Sargent - Direct

1 A. Sergeant first-class, yes.

2 Q. You live in Herington now?

3 A. Yes, sir.

4 Q. Where did you live in April time period, 1995?

5 A. Same place I'm residing now, 405 North Deet Street,
6 Herington, Kansas.

Riley
7 Q. And did you have occasion in 1995 to drive to Fort
8 from Herington, Kansas?

9 A. Yes, sir. That was my last day of active duty --

10 Q. No, just a yes.

11 A. Yes, sir.

12 Q. I want to show you an exhibit that has not yet been
13 admitted into evidence, I don't believe, D1762. And
you can
14 look down on that screen in front of you.

15 Is that -- have you seen this before?

16 A. I've not seen this sketch, but I know what it is.

17 Q. You know what it is. Does that fairly and
accurately
18 represent the area around Junction City, Herington, and
Fort
19 Riley in Kansas?

20 A. Yes, it does.

21 MR. NEUREITER: Move admission.

22 MR. GOELMAN: No objection.

23 THE COURT: D1762 is received.

24 BY MR. NEUREITER:

25 Q. Now, you lived in Herington at the time?

12388

James Sargent – Direct

1 A. Yes, sir.

2 Q. Is that indicated by this pen here?

3 A. Yes, sir.

Fort

4 Q. And you had occasion in April, 1995, to drive to

5 Riley?

6 A. Yes, sir.

City?

7 Q. That's up here, a little bit north of Junction

8 A. Yes, sir.

Herington

9 Q. And what road would you take when you drove from

10 to Fort Riley?

off 70

11 A. 77 north to the intersection of 70, and I'd go east

12 to the Fort Riley entrance.

located on

13 Q. Is there a recreation area, state or county,

14 that route?

15 A. Yes, sir.

16 Q. And what is that?

17 A. That's Geary State Lake, Fishing Lake.

fishing

18 Q. And have you had occasion to visit Geary County

19 lake?

20 A. Yes, sir.

21 Q. Do you like to fish?

22 A. Love to, sir.

23 Q. Do you go down there a lot?

24 A. I go there a few times. It's not my favorite.

25 Q. Okay. Now, you mentioned before that you're
retired from

12389

James Sargent - Direct

1 the military?

2 A. Yes, sir.

3 Q. On what date did you retire?

4 A. My retirement date, last day of -- the retirement
date was

5 April 11. I didn't have to go back in then.

6 Q. When was your last day of work?

7 A. April the 10th.

8 Q. Was that a full day, or a half day?

9 A. That was a half day, sir.

10 Q. How do you know that your last day of work was
April the

11 10th, 1995?

12 A. Because I have orders retiring me on that date.

13 Q. Did someone ask you this morning to reach into your

wallet

14 and pull out a card?

15 A. Yes, sir.

16 Q. Okay. I'm going to put on the machine something
that has

17 not yet been admitted, but it's marked for
identification as

18 D1798. I'm going to zoom in a little bit. Do you
recognize

19 that?

20 A. Yes, sir.

21 Q. Is that a fair and accurate depiction of the card
that's

22 currently in your wallet?

23 A. Yes, sir, it is.

24 MR. NEUREITER: Move its admission, your
Honor.

25 MR. GOELMAN: No objection.

12390

James Sargent - Direct

1 THE COURT: Received. What's the number?

2 MR. NEUREITER: D1798.

3 THE COURT: Received.

4 BY MR. NEUREITER:

5 Q. And what is that document that is now published to
the

6 jury?

7 A. That is my military retiree ID card.

8 Q. And is there a date indicated on that ID card?

9 A. Yes, sir. Date of issue, 1995, April 11.

10 Q. And what does that mean, if your date of issue is
April 11?

11 A. That means that is the actual date that my
retirement

12 actually started.

13 Q. Okay. And that means your last day of work would
have been

14 what day?

15 A. The 10th, sir.

16 Q. The day before the 11th?

17 A. Yes, sir.

18 Q. Tell me about your last day of work -- or tell the
jury

19 about your last day of work.

20 A. My last day of work was an out-processing day from
the

21 military. And that was just getting SGLI and other
things in

22 order to make the transition into retirement. We
finished up

23 about 11:30 that day, and I had the rest of the day
off.

24 Q. Did you have plans for the rest of the day?

25 A. Yes, sir.

12391

James Sargent - Direct

1 Q. What were your plans?

2 A. Go fishing.

Riley on 3 Q. Okay. Did you take something with you from Fort
4 your way to go fishing?

5 A. Yes, sir. I did.

6 Q. What did you take?

stopped by 7 A. I -- after I left the out-processing station, I

took a 8 and had dinner at the cafeteria at the hospital, and I
9 pear with me.

pear 10 Q. Took a pear. And were you planning on eating that
11 where you were going fishing?

12 A. Yes, sir, and I did.

admitted 13 Q. I'm going to put on an exhibit that's previously
14 as Government 1982B ask you if you recognize that?

15 A. Yes, sir, I do.

16 Q. What is that?

Lake. 17 A. That is a aerial photograph of Geary State Fishing

Fishing 18 Q. And what's the road that runs along Geary State

19 Lake there?

20 A. Highway 77.

21 Q. All right. Is that where you went fishing that
day?

22 A. Yes, sir.

23 Q. Tell us what you did on that day when you went
fishing,

24 April 10, 1995.

25 A. Okay. Just north of the lake, there is a little
dirt road.

12392

James Sargent - Direct

1 I went to the dam to fish a little bit to start with.

2 Q. Is that dam depicted on this?

3 A. Yes, sir, it is. It's right at the northwestern
corner.

4 Q. Is the pen indicating the dam?

5 A. Yes, sir.

6 Q. All right. And did you fish there for a little
bit?

7 A. I fished there for about an hour and decided to
give it up

8 because it was costing me too much money on the rigs I
was

9 losing.

10 Q. And where did you go then?

11 A. I went back to 77, headed south and went into the
main

12 entrance of the fishing area. I went down --

back to 13 Q. Okay. Hold on. Let's do that slowly. So you went
14 77?
15 A. Uh-huh.
down 77. 16 Q. And tell me where the main entrance, if I'm moving
17 A. You're at it now.
18 Q. Okay. And then you went into the lake area?
19 A. Yes, sir.
20 Q. Okay.
21 A. And headed back north.
north along 22 Q. And you headed back north. We're heading back
23 this road. And where did you go? Stop me when --
24 A. I went across the culvert right there, and I
stopped right
25 where you're at now in that parking area.

12393

James Sargent - Direct

1 Q. I'll leave the pen, if I can, right there. Okay.
2 And is there a jetty near in that parking
area?
3 A. Yes, there is a jetty.
4 Q. Where were you fishing from on that day?
5 A. From the jetty.
jetty? 6 Q. What did you see as you were fishing there from the

7 A. As I looked across from the jetty toward the end of
the
8 road that goes into the middle of the lake, I saw a
Ryder truck
9 parked there.

10 Q. Could you describe the Ryder truck?

11 A. It was a medium-sized truck. Didn't have the
overhang over
12 the cab.

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

14 A. Truck.

15 Q. Were there any other vehicles around that Ryder
truck?

16 A. Not at that time, no, sir.

17 Q. Not initially?

18 A. No, sir.

19 Q. Were there ever that afternoon -- by the way, what
time was
20 that, to the best of your recollection?

21 A. 11:30, 12:30. Probably about 2, 2:30.

22 Q. And over the course of that afternoon, how long did
you
23 stay fishing on that jetty?

24 A. Till it got almost dark that evening. It was about
6 or
25 later, or it was sometime in that area.

James Sargent - Direct

1 Q. Okay. Did you -- were there ever any vehicles
around that

2 Ryder truck that day?

3 A. I saw two vehicles go up toward the Ryder truck.

4 Q. Describe those two vehicles.

5 A. The first one was a pickup truck that was color
either, you

6 know -- it was -- like a primer. Didn't have a glossy
finish

7 on it. It was just a dull-primer look.

8 Q. Would that be a red or a maroon?

9 A. It was basically a red primer.

10 Q. And what was the other vehicle you saw come up --

11 A. About a half hour later, there was a white vehicle
came up

12 to it, a car.

13 Q. Was it a sedan or a station wagon?

14 A. It was just a white car.

15 Q. And were they parked next to the Ryder truck?

16 A. I saw them going toward the Ryder truck. I did not
take

17 notice of where they parked or of anyone there.

18 Q. So you saw no individuals around the truck over the
course

19 of that afternoon?

20 A. No, sir.

21 Q. I'm going to put up what has been previously

admitted as

22 D137, which is a brochure.

23 THE COURTROOM DEPUTY: D137, no.

24 MR. NEUREITER: I'm sorry, dyslexia is kicking
in.

25 D1737.

12395

James Sargent – Direct

1 BY MR. NEUREITER:

2 Q. And there are three -- four trucks depicted there.
Could

3 you tell the jury which of those four, to the best of
your

4 recollection, you saw at Geary Lake on that day.

5 A. To the best of my recollection, it was the third
vehicle

6 down, or the second one up.

7 Q. All right. And if we zoom in, is that the one
labeled

8 "three bedrooms"?

9 A. Yes, sir.

10 Q. Now, the day after that day, April the 10th, did
you have

11 occasion to drive from Herington to Fort Riley?

12 A. Yes, sir, I did.

13 Q. What time did you do that?

14 A. My wife and I had to go -- about 7, 7:30 in the

morning.

15 Q. And as you drove -- did you pass Geary Lake on your
way in?

16 A. Yes.

17 Q. Were you driving I -- U.S. 77?

18 A. Yes, sir.

19 Q. Did you have occasion to look down at the lake that
20 morning?

21 A. Yes, sir.

22 Q. And what did you see?

23 A. I saw, just for a few seconds, the truck.

24 Q. And did you return home later that night?

25 A. Yes, sir.

12396

James Sargent - Direct

1 Q. By the same route?

2 A. Yes, sir.

3 Q. Did you see the vehicle again?

4 A. No, sir. You can't see back that way when you're
driving

5 south on that highway.

6 Q. What kind of vehicle were you driving, by the way?

7 A. I was driving a Ranger, '94 Ranger XLT pickup.

8 Q. The day after that, the 12th, did you have occasion
to

9 drive to Fort Riley?

10 A. Yes, sir.

11 Q. Tell us about that.

12 A. I -- same route. I had to go back to Fort Riley to
check

13 into a school, a transition school from military to
civilian

14 life dealing with resumes, job search, stuff like that.
And as

15 I drove by the lake -- every time I passed the lake,
always

16 look down to see if anybody's fishing.

17 Q. Uh-huh.

18 A. And the truck was still there, yes.

19 Q. That was the third day?

20 A. Yes, sir.

21 Q. Okay. Now, do you have some recollection on the
fourth

22 day?

23 A. Fourth day, I went back, same route, to have dinner
with my

24 wife later in the morning, probably about 11, 11:30. I
don't

25 recall whether the truck was there. I think it was; I
just --

12397

James Sargent - Direct

1 I can't swear to it.

you to. 2 Q. Okay. Well, you're under oath now, so we won't ask

3 A. Yeah.

the 12th 4 Q. But are you certain on the 10th and the 11th and

State 5 of April, 1995, there was a Ryder truck parked at Geary

6 Fishing Lake?

7 A. Yes, sir.

this 8 Q. Now, Mr. Sargent, I don't mean to embarrass you by

9 question, but have you been known to take a drink?

10 A. Yes, sir.

11 Q. You don't deny that, do you?

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

affected your 13 Q. Has your drinking in any way, shape, or form

14 memory of the events of April, 1995?

15 A. No, sir.

16 Q. And how do you know that?

later, you 17 A. Well, because after it all happened, two weeks

realized 18 know, when the investigation was going on, you know, I

19 that I had seen the truck there and what had happened.

20 Q. So that was two weeks after the event?

21 A. Yes, sir.

with 22 Q. Did you come in contact two weeks after the event

23 agents from the Federal Bureau of Investigation?

24 A. Yes, sir.

25 Q. Tell us about how that happened.

12398

James Sargent - Direct

my 1 A. After it had come out of what was going on, I told

2 wife -- well, I had tried to go fishing.

mean 3 Q. Excuse me. When you say "what was going on," you

4 after the bombing?

weeks 5 A. Yes, sir. I had stopped back by the lake a couple

off with 6 later to fish, and I couldn't get in. It was cordoned

7 agents and policemen and people like that down there.

8 Q. Uh-huh.

on me, 9 A. And I just turned around and left. And it dawned

relevant 10 you know, these guys -- what I had seen there could be

11 to the Oklahoma bombing.

12 Q. Okay. Did you tell anybody about it?

13 A. I told my wife.

14 Q. And to your knowledge, did she do anything?

couple days 15 A. Well, she was stopped I think the next day or a

16 later by a roadblock with agents asking if she had seen
17 anything, and she said, "No, but my husband did,
because he had
18 been fishing that lake the week he retired."

19 Q. And then did the FBI contact you?

20 A. Yes, sir. The ATF did.

21 Q. And did the story -- not the story -- Did what
you've told

22 the jury today -- is that consistent with what you told
the ATF

23 one or two years ago?

24 A. This is consistent, yes, sir.

25 MR. NEUREITER: Okay. One moment.

12399

James Sargent - Direct

1 Pass the witness, your Honor.

2 THE COURT: All right. Mr. Goelman.

3 CROSS-EXAMINATION

4 BY MR. GOELMAN:

5 Q. Good morning, Mr. Sargent.

6 A. Good morning, sir.

7 Q. Is it fair to say that April 10, 1995, was a pretty
big day

8 in your life?

9 A. Probably one of the biggest in my life, yes, sir.

10 Q. Leaving active duty?
11 A. Yes, sir.
12 Q. Resume life as a civilian?
13 A. Yes, sir.
14 Q. And you're sure as you sit there today, are you
not, that
15 April 10 is the day that you went down to Geary Lake
and
16 fished?
17 A. Yes, sir, I am sure.
18 Q. And you got there close to -- between 2 and 2:30;
is that
19 right?
20 A. Say again?
21 Q. You got to Geary Lake, or at least to the part
where you
22 can see the Ryder truck, at 2 to 2:30 in the afternoon?
23 A. 2 to 2:30, somewhere in that time frame, sir.
24 Q. You described two other vehicles that you saw that
day,
25 Mr. Sargent. One of them was a pickup truck; is that
right?

12400

James Sargent - Cross

1 A. Yes.
2 Q. Is it fair to characterize that pickup truck as
being of a

3 rust-red color?

4 A. Yes, sir.

5 Q. And the other vehicle was a big, white car; is that
right?

6 A. It was -- to the best of my recollection, it was a
large,

7 white car, yes, sir.

8 Q. And you told defense counsel that you hadn't seen
any

9 people around those vehicles; is that right?

10 A. No, sir.

11 Q. But you did see some other people around you,
didn't you,

12 sir?

13 A. Yes, sir.

14 Q. Would you tell us about that.

15 A. While I was fishing there -- well, when I first
showed up

16 on the jetty, there was a gentleman there fishing, a
black guy

17 from Junction City, fishing, and we got started talking
and

18 just having a good time fishing. And later on there
was

19 another guy come in, middle-aged, white guy, I think.

20 Middle-aged. And he was fishing. And then later on,
there was

21 two other guys come in with a paddle boat and put it in
the

22 lake and was paddling around fishing off of that.

23 MR. GOELMAN: One moment, sir.

24 Your Honor, may I show the witness what's been
already
25 received in evidence at 1982B?

12401

James Sargent – Cross

1 THE COURT: Yes.

2 BY MR. GOELMAN:

3 Q. Mr. Sargent, can you see that picture down there,
that
4 screen there?

5 A. Yes, sir, I can.

6 Q. Do you see a light pen up there, sir?

7 A. See a what?

8 Q. Up on the desk, there should be a pen attached to a
cord.

9 A. Yes.

10 Q. Could you, drawing right on the screen itself --
you got to
11 go below the little, glass window. Could you mark
where you

12 saw the Ryder truck on April 10?

13 A. I'm too high on it. Right there.

14 Q. And where were you fishing, sir?

15 On that jetty right there?

16 A. Yes, sir.

having 17 Q. And where was this black gentleman that you were
18 conversation with?
19 A. He was at the end of the jetty, sir.
saw the 20 Q. Do you have any reason to know whether or not he
21 Ryder truck?
But we 22 A. He did see it, because we both commented about it.
23 didn't think much about it at the time.
white 24 Q. And when this other gentleman, the middle-aged,
that -- 25 gentleman, arrived, where did he -- where was he at

12402

James Sargent - Cross

1 where was he at Geary Lake, and what was he doing?
between 2 A. Same place. He was at the beginning of the jetty,
3 the beginning and the middle of the jetty fishing.
paddle boat? 4 Q. Did he arrive before, or after the men in the
5 A. Before.
6 Q. And when did the men in the paddle boat arrive?
7 A. I think it was about 4:30, somewhere around there.
the other 8 Q. And do you recall any conversation between any of
9 people there when the two men in the paddle boat came?

aged, 10 A. There was some joking going on between the middle-

11 white man and the two guys in the paddle boat.

12 Q. What kind of joking, sir?

13 A. Like they knew each other and they knew that the
guy -- the

14 middle-aged gentleman knew that these two were in the
military,

15 and he was joking about them taking -- leaving work
early and

16 going fishing.

17 Q. When you say "paddle boat," can you describe what
you mean?

18 A. It's just a piece of plastic, looks like a -- I
guess a

19 bathtub is about the best way to describe it. But it's
only

20 about that deep, and there's a paddle in there, you
know, like

21 a bicycle wheel that you paddle with. It's got fins
underneath

22 of it.

23 Q. How many people does it seat?

24 A. Two.

25 Q. And they both have paddles?

12403

James Sargent - Cross

1 A. Just the one.

2 Q. Just the one. Did you see whether or not the
paddle boat

3 actually went into Geary Lake on that day?

4 A. Yes, it did.

5 Q. Did you see which direction it headed?

6 A. It headed back north.

7 Q. Could you go back to that screen and again place an
X where
8 you saw the Ryder truck.

9 And where did the paddle boat set in the lake?

10 A. Just north of the jetty.

11 Q. And then where did it go after that?

12 So right by the little peninsula where the
Ryder truck
13 was?

14 A. Yes, sir.

15 Q. And to your knowledge, had the Ryder truck moved
between
16 the time that the men in the paddle boat rowed by it?

17 A. No, sir.

18 Q. It was still there?

19 A. I don't think it had ever moved.

20 Q. Now, you saw a Ryder truck also around 7, 7:30 the
21 following day?

22 A. Yes, sir.

23 Q. And that would be Tuesday, April 11?

24 A. Yes, sir.

25 Q. And then the following day?

12404

James Sargent – Cross

1 A. Yes, sir.

2 Q. That would be Wednesday, April 12?

3 A. Yes, sir.

Thursday,
4 Q. And you're not sure, but you think you saw it on

5 April 13?

6 A. Yes, sir.

7 Q. About what time would that have been?

8 A. On Thursday?

9 Q. Yes, sir.

up to
10 A. It would have been about 11:00, 'cause I was going

11 have lunch with my wife.

into the
12 Q. And on these days, sir, did you actually go down

13 lake?

14 A. No, sir.

15 Q. You were driving by?

16 A. Yes, sir.

17 Q. About how fast were you going?

18 A. Speed limit at that time was 55 miles an hour, and

I

19 usually set my cruise about 2 miles an hour over.
20 Q. And do you recall about how long your opportunity
to see
21 down to that part of the lake was?
22 A. The window of time period is probably 2 seconds
that you
23 can visualize anything going up that road.
24 Q. I'm sorry, how long?
25 A. 2 seconds.

12405

James Sargent – Cross

1 Q. 2 seconds? You were describing on direct
examination that
2 there's a difference in your opportunity to view
between when
3 you're going north, when the lake's on your left, and
when
4 you're going south and the lake's on your right?
5 A. Yes, sir.
6 Q. Can you see anything in that area when you're going
south?
7 A. You can see part of the southern part of the lake,
but you
8 can't get a good visualization of the central part of
the lake
9 or the northern part.
10 Q. Okay. And I understand you didn't have as much
time to see

as you 11 it on those subsequent days after April 10; but as near

12 could tell, was the truck in the same place?

13 A. Yes, sir.

14 Q. And was the truck in the same position?

15 A. Yes, sir.

16 Q. And what was that position?

toward 17 A. The position was the cab of the truck was pointed

Highway 77. 18 the lake, and the back side of it was towards 77 --

pointed 19 Q. So the back of the truck was at the lake and it was

20 toward the highway?

21 A. Yes, sir.

of 22 Q. And as near as you could tell, was it the same type

23 truck?

24 A. Yes, sir.

days, or 25 Q. You never saw an overhang on any of the subsequent

12406

James Sargent - Cross

1 anything like that?

2 A. No, sir.

April 10 3 Q. And those days, whether it's April 10, 11, 12 or

Ryder 4 to 13, are those the only days that you've ever seen a
5 truck down at Geary Lake?

6 A. Those were the only days, sir.

7 Q. Now, you mentioned that after you got out of the
military,

8 sir, you enrolled in a transition class; is that right?

9 A. Yes, sir.

10 Q. Kind of to help you and other veterans to readjust
to

11 civilian life?

12 A. Yes, sir.

13 Q. Were you at that transition class on the morning of
14 April 19, 1995?

15 A. Yes, sir, I sure was.

16 Q. And did you hear about the bombing on that morning?

17 A. Yes, sir.

18 Q. Did you actually leave that class and go home to
watch

19 coverage of the bombing?

20 A. I sure did, sir.

21 Q. And the coverage that you saw affected you very
deeply,

22 didn't it, sir?

23 I'm sorry, you have to answer audibly.

24 A. Yes, sir.

25 Q. And you had cable television at that time, didn't
you, sir?

12407

James Sargent - Cross

1 A. Yes, sir.

2 Q. You had CNN?

3 A. Yes, sir.

4 Q. And over the next month until the -- what was left
of the

5 Murrah Building was imploded, you pretty much watched
coverage

6 of the bombing and investigation consistently, didn't
you?

7 A. Yes, sir.

8 Q. A lot more TV than you usually watch?

9 A. Quite a bit, sir.

10 Q. For the first time, you weren't working every day;
isn't

11 that right?

12 A. Yes, sir.

13 Q. And fair to say that you wanted to help
investigators in

14 any way you could, sir?

15 A. I wanted them to make sure that they knew what I
knew.

16 Yes, sir.

17 Q. Isn't it fair to say that you wanted to give them
any help

18 you could provide?

19 A. Yes, sir.

20 Q. And you actually took steps to investigate on your
own,

21 didn't you, sir?

22 A. Well, yes, sir, I did.

23 Q. Okay. Can you tell us about those steps, please.

24 A. I had access to the computer at Fort Riley military
year in
25 hospital. Irwin Army Hospital. I had worked my last

12408

James Sargent - Cross

1 the ENT clinic while I was on medical hold waiting to
be

2 discharged. And after Mr. Nichols surrendered . . . I
went

3 back to the ENT clinic where I had a friend, Alberto
Perez --

4 he was the NCOIC of the office -- and asked him if he
could

5 punch on the computer and find -- try to find out where
Timothy

6 McVeigh had lived while he was in the area.

7 Q. And did he do that for you?

8 A. Yes, sir, he did.

9 Q. And did he tell you where Timothy McVeigh lived?

10 A. Yes, sir.

11 Q. And after that, did you actually physically drive
to that

12 house just to see what it looked like?

13 A. I drove by it, yes, sir.

14 MR. NEUREITER: Objection, irrelevant, sir.

15 THE COURT: What's the relevance?

16 MR. GOELMAN: Just to explore the witness's
17 involvement in following the interest and coverage
after the
18 bombing.

19 THE COURT: What's the relevance of that?

20 MR. GOELMAN: To show the impact of any kind
of
21 information that got to him through other means.

22 THE COURT: Objection sustained.

23 BY MR. GOELMAN:

24 Q. Now, you talked to the FBI on May 4, 1995; is that
right?

25 Or I'm sorry, ATF, you indicated.

12409

James Sargent – Cross

1 A. I don't remember the date, sir. But the ATF agents
were
2 the first people I talked to.

3 Q. And does that sound like a fair date?

4 A. Yes, sir.

5 Q. Sometime the beginning of May?

6 A. Yes, sir.

7 Q. And that was after you -- after the occasion that
you were
8 telling the jury about where you actually drove down to
Geary
9 Lake and weren't able to get in; is that right?

10 A. Yes, sir.

11 Q. And after driving down there, you heard on the
radio on the
12 way back that investigators suspected that the bomb had
been
13 mixed at Geary Lake; isn't that right?

14 A. Yes, sir.

15 Q. And that there had been a Ryder truck there?

16 A. Yes, sir.

17 Q. And when you talked to the ATF, again you wanted to
help,
18 so you gave them all the information you had, didn't
you, sir?

19 A. Yes, sir, I did.

20 Q. You told them, in fact, about a number of different
things,
21 didn't you, sir, in addition to the Geary Lake
sighting?

22 A. Not a number, I don't think. Just what I knew,
sir.

23 Q. Right. Did you tell them about seeing Tim McVeigh
in a bar
24 the previous fall?

25 MR. NEUREITER: Objection to the relevance,
your

12410

James Sargent – Cross

1 Honor.

2 THE COURT: Again, what's the relevance?

3 MR. GOELMAN: Your Honor, simply that the
witness was

4 invested in the investigation and gave other -- took

5 independent steps to investigate.

6 THE COURT: Objection sustained.

7 BY MR. GOELMAN:

8 Q. Now, you -- when you talked to the ATF on that
occasion,

9 you knew about the crime that they were investigating;
isn't

10 that right?

11 A. Yes, sir.

12 Q. And you knew how important it was?

13 A. Yes, sir.

14 Q. And you wanted to provide them with every
opportunity to

15 find the people involved; isn't that right?

16 A. Yes, sir.

17 Q. So you told them, did you not, sir, everything you
knew

18 about the Ryder truck being at Geary Lake?

19 A. Yes, sir, I did.

20 Q. Told them about the other cars that you'd seen?

21 A. Yes, sir.

22 Q. Told them about the Ryder truck itself, of course?

23 A. Yes, sir.

24 Q. Yes. And you didn't tell them -- you told them
about that

25 one black gentleman you had a conversation with; isn't
that

12411

James Sargent - Cross

1 right?

2 A. Yes, sir, I did.

3 Q. You did not tell them at that time about the two
men in the

4 paddle boat, did you, sir?

5 A. I don't recall whether I told them then or later.

6 Q. And you did not tell them at the time about the
other

7 middle-aged man who you had a conversation with on that
date?

8 A. No, sir.

9 Q. But your current memory, sir, is that those other
three

10 people were there --

11 A. Yes, sir, they were.

12 Q. -- on April 10, 1995?

13 MR. GOELMAN: May I have a moment, your Honor?

14 THE COURT: Yes.

15 MR. GOELMAN: That's all I have, your Honor.

16 THE COURT: All right.

17 MR. GOELMAN: Thank you, Mr. Sargent.

18 THE COURT: Any redirect?

19 MR. NEUREITER: No redirect, your Honor.

20 Thank you, Mr. Sargent.

21 THE COURT: I take it he's excused.

22 MR. NEUREITER: Yes, your Honor.

23 MR. GOELMAN: Yes, sir.

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

25 MR. WOODS: Yes, your Honor. Ron Karchefski.

12412

1 THE COURTROOM DEPUTY: Raise your right hand,
please.

2 (Ronald Karchefski affirmed.)

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

4 Would you state your full name for the record
and

5 spell your last name.

6 THE WITNESS: Ronald Karchefski, K-A-R-C-H-E-
F-S-K-I.

7 THE COURTROOM DEPUTY: Thank you.

8 DIRECT EXAMINATION

9 BY MR. TIGAR:

10 Q. Good morning, Mr. Karchefski.

11 A. Good morning.

12 Q. Will you tell the jury, please, what work you do.

13 A. I'm a deputy sheriff in Garland County, Arkansas.

14 Q. Where is Garland County, Arkansas?

15 A. It's where Hot Springs National Park is located.

16 Q. How long have you been in law enforcement?

17 A. In law enforcement altogether since 1961.

18 Q. Will you tell the jury, please, briefly what your
career in

19 law enforcement has been since 1961.

20 A. I served 25 years with the Detroit Police
Department in

21 various positions. I retired from there in 1986 as a
22 lieutenant.

23 Q. And then in 1986?

24 A. Moved to Arkansas. In 1990, I was hired by the
Garland

25 County Sheriff's Department, and I'm still currently
employed

12413

Ronald Karchefski - Direct

1 there.

1994;

2 Q. So you were employed there on the 5th of November,
3 right?

4 A. That's correct.

armed

5 Q. Well, on the 5th of November, 1994, did you get an
6 robbery call?

7 A. Yes, sir, I did.

8 Q. About what time did you get that, sir?

9 A. It was approximately 11:30. I don't know the exact
time.

10 Q. And how did that call come to you?

11 A. On a police radio.

12 Q. Were you on duty that day?

13 A. Yes, sir.

14 Q. Were you in uniform?

15 A. Yes, sir.

16 Q. And where were you -- where was your police
automobile at

17 the time that you got the call?

18 A. I don't know, sir. We have over 750 square miles
that we

19 patrol, and I don't know exactly where.

20 Q. Somewhere. About how long did it take you -- where
did you

21 go as a result of the call?

22 A. To 64 -- 6435 Albert Pike.

23 Q. And do you now understand that to be the residence

of Roger

24 Moore?

25 A. That is Mr. Moore's residence -- or was at that
time.

12414

Ronald Karchefski - Direct

1 Q. Okay. How long -- okay. How long did it take you
to get

2 from the place you were when you got the call to Mr.
Moore's

3 house?

4 A. I would say it was approximately 10 minutes.

5 Q. Wasn't an hour and a half?

6 A. No, sir.

7 Q. Was Mr. Moore there when you got there?

8 A. He was not at his house, no, sir.

9 Q. Where did you locate him?

10 A. I located him next door at the Powells'.

11 Q. And do you know the Powell family?

12 A. No, sir.

13 Q. You hadn't met them before that day?

14 A. No, sir.

15 Q. So can you estimate about what time you got to the
Powell

16 house there?

17 A. Oh, might have been about quarter to, 10 to the

hour, till

18 12.

19 Q. Who was there at the house when you arrived?

20 A. Mr. Powell was there, Mr. Moore was there, and Mrs.
Powell.

21 Q. Now, where was Mr. Moore when you got there?

22 A. I believe he was in the house. The first person I
seen was

23 Mr. Powell.

24 Q. And did there come a time when Mr. Moore got a
telephone

25 call?

12415

Ronald Karchefski - Direct

1 A. Yes, sir.

2 Q. Tell us how that happened, what you remember about
it.

3 A. Well, Mrs. Powell walked out of the back door and
handed

4 Mr. Moore a telephone and said there was a call for
him.

5 Q. Now, did Mr. Moore talk to that person?

6 A. Yes, he did.

7 Q. Did there come a time when he handed you the phone?

8 A. Yes, he did.

9 Q. Now, did he say anything to you when he handed you
the

10 phone?

11 A. If he did, I don't recall his exact words, but it
was

12 something like, "Here, talk to him."

13 Q. And did you talk to that person?

14 A. Yes, I did.

15 Q. Did he explain to you how someone would know to
call him at

16 the Powell house?

17 A. No, sir, he did not.

18 Q. And you talked to that person; correct?

19 A. Yes, sir.

20 Q. All right. And did you then inform somebody else
about the

21 fact you'd talked to that person?

22 A. Yes, sir, I wrote his name and a phone number down,
and I

23 later gave that name and phone number, piece of paper I
had

24 wrote it down on, to Captain Sanders from our
investigations

25 division.

12416

Ronald Karchefski - Direct

1 Q. And did you interview Mr. Moore there at the Powell
house

2 or -- at that time?

3 A. I didn't interview him there. I talked to him
briefly, and
4 then I took him down to his house which was the scene
of the
5 crime.
6 Q. Now, who went with you to his house?
7 A. Just me and him.
8 Q. Did --
9 A. Just the two of us.
10 Q. Did there come a time when any of the members of
the Powell
11 family were over there at Mr. Moore's house that you
could
12 observe?
13 A. Not while I was there. Not that I recall.
14 Q. Did you ask Mr. Moore whether he lived with
someone?
15 A. Yes, I did.
16 Q. And what did he say about that?
17 A. He informed me he had a live-in girlfriend.
18 Q. And did he say her name?
19 A. If he did, I don't recall it.
20 Q. Did you ask him where that person was?
21 A. Yes, I did.
22 Q. What did he say?
23 A. Somewhere in Louisiana.
24 Q. Did you ask him for details about where that person
was?

25 A. Yes, I did.

12417

Ronald Karchefski - Direct

1 Q. What did he say?

2 A. He was unable to furnish any details as to where
she was in

3 Louisiana.

4 Q. Said he didn't know?

5 A. That's correct.

6 Q. Now, he did -- you did interview him; correct?

7 A. Yes, sir.

8 Q. And he did tell you that he'd been -- he gave you a
9 description of the person he said had robbed him;
correct?

10 A. Yes, sir.

11 Q. All right. And you -- when you made your report,
you put

12 in -- you put in the details that he provided; correct?

13 A. As best I could, yes, sir.

14 Q. Now, did there come a time when another officer
arrived?

15 A. Two of them.

16 Q. Who were they?

17 A. That would have been Sergeant Shelby Terry and
Captain

18 Sanders.

charge at 19 Q. Now, in terms of the investigation, who was in

20 the point where Sergeant Terry arrived?

point. 21 A. Well, it would have been Sergeant Terry at that

he take 22 Q. All right. And when Captain Sanders arrived, did

23 charge of the investigation?

sorry, 24 A. No, sir, he just assisted Sergeant Sanders -- I'm

25 Sergeant Terry.

12418

Ronald Karchefski - Direct

1 Q. Sergeant Terry. Were you present at the time that

2 Mr. Moore's van was located?

3 A. No, sir, I was not.

4 Q. You did not participate in the search of that?

and I was 5 A. I searched for the van, but I did not locate it;

6 not present when it was located.

no 7 MR. TIGAR: Thank you very much, sir. I have

8 further questions.

9 THE COURT: Ms. Wilkinson.

10 MS. WILKINSON: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MS. WILKINSON:

13 Q. Good morning, Mr. Karchefski.

14 A. Good morning.

15 Q. How are you this morning?

16 A. Just fine.

17 Q. Good. You told us you were the first deputy
sheriff to

18 report to the scene of the robbery; is that right?

19 A. That's right.

20 Q. Now, you received a radio call to know where to go;
right?

21 A. That's correct.

22 Q. That's your normal procedure?

23 A. Absolutely.

24 Q. And when you got to Mr. Moore's house, you realized
he

25 wasn't there?

12419

Ronald Karchefski - Cross

1 A. That's correct.

2 Q. And did you call back to the radio dispatcher?

3 A. I called my dispatcher. She informed me that he
had called

4 from the Powells' house next door. I went to the
Powells'

5 house, and that's where I located him.

6 Q. And he was there just like your dispatcher told you

he

7 would be; right?

8 A. Yes.

9 Q. And you talked to him about the robbery at that
time?

10 A. Just briefly at that point.

11 Q. And when you took him up to his house, did he let
you go

12 into the house and inspect it?

13 A. Yes, he did.

14 Q. And did you see his bedroom?

15 A. Yes, I did.

16 Q. And did you see that the bed was overturned or that
the

17 linens were in disarray?

18 A. That's correct.

19 Q. And did you see other signs of a robbery in the
bedroom?

20 A. Not necessarily of a robbery, but I seen where the
room was

21 in disarray.

22 Q. Okay. And did you take a preliminary statement
from

23 Mr. Moore?

24 A. Yes, I did.

25 Q. Now, you have told defense counsel that you weren't

Ronald Karchefski - Cross

1 actually in charge of the investigation; correct?

2 A. That's correct.

3 Q. And when Mr. Terry arrived, you turned it over to
him; is

4 that right?

5 A. That's correct.

6 Q. And you wrote up a preliminary report?

7 A. Yes, ma'am.

8 Q. And in that, did you include what Mr. Moore had
told you?

9 A. Yes.

10 Q. Did you include every detail of what Mr. Moore had
told

11 you?

12 A. Not every detail, no. It's a synopsis.

13 Q. And he told you that someone had pointed a shotgun
at him;

14 is that correct?

15 A. That's correct.

16 Q. And that the person was wearing a ski mask?

17 A. That's correct.

18 Q. And he told you that he was tied up?

19 A. That's correct.

20 Q. With plastic ties?

21 A. Yes.

22 Q. And duct tape?

23 A. Yes.

24 Q. And he told you that he was robbed; correct?

25 A. Yes.

12421

Ronald Karchefski - Cross

1 Q. And guns were taken from his house?

2 A. Yes.

3 Q. And valuables?

4 A. Yes.

5 Q. And he told you that as soon as you arrived on the
scene or

6 as soon as you took him to his house; correct?

7 A. Within minutes, yes.

8 Q. Now, you told us about a phone call that he
received and

9 that you then talked to that same person; is that
right?

10 A. That's right.

11 Q. And you recall writing down that person's name and
number?

12 A. Yes, I did.

13 Q. And turning it over to put it in the file?

14 A. I turned it over to Captain Sanders, personally. I
handed

15 it to him after he arrived at the scene.

16 Q. Now, you never called that person back, have you?

17 A. I did not, no.

18 Q. And you've searched the file, haven't you?

19 A. No, I haven't.

20 Q. You asked someone to search the file?

21 A. I asked if it was in there, and they told me no.

22 Q. And no one's ever seen that piece of paper;
correct?

23 A. To my knowledge, they haven't.

24 MS. WILKINSON: No further questions.

25 THE COURT: Any follow-up?

12422

1 MR. TIGAR: No further questions, your Honor.

2 THE COURT: May he be excused?

3 MS. WILKINSON: Yes, your Honor.

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

5 Next, please.

6 MR. TIGAR: Call Verta Powell.

7 THE COURT: All right.

8 THE COURTROOM DEPUTY: Would you raise your
right

9 hand, please.

10 (Verta Powell affirmed.)

11 THE COURTROOM DEPUTY: Would you have a seat,

please.

and 12 Would you state your full name for the record

13 spell your last name.

14 THE WITNESS: Verta Mae Powell, P-O-W-E-L-L.

15 THE COURTROOM DEPUTY: Thank you.

16 DIRECT EXAMINATION

17 BY MR. TIGAR:

18 Q. Good morning, Miss Powell.

19 A. Hello.

20 Q. Will you tell the jury, please, where you're from.

21 A. I am from Royal, Arkansas.

22 Q. What is your address in -- I'm sorry, the name?

23 A. Royal.

24 Q. Royal?

25 A. Uh-huh. 6447 Albert Pike.

12423

Verta Powell - Direct

1 Q. And do you have a neighbor?

2 A. Yes, sir, I do.

3 Q. All right. What is the name of your neighbor, the
person

4 that lives next door?

5 A. Roger Moore.

6 Q. How long have you known Roger Moore?

7 A. I'm not sure about the years.

8 Q. All right. Has it been several years --

9 A. Yes, it has.

10 Q. -- since he moved in next door?

11 A. Yes.

12 Q. To your observation, does he live by himself?

13 A. No, sir.

14 Q. Who lives with him?

15 A. A friend and a wife.

16 Q. All right. And what's the friend's name?

17 A. Karen Anderson.

18 Q. And what is the wife's name?

19 A. Carol Moore.

20 Q. Now, during how much of the year is Carol Moore
there?

21 A. Not very often. Just kind of off and on.

22 Q. Now, what's your husband's name?

23 A. Martin Walton Powell.

24 Q. Goes by Walt?

25 A. Goes by Walt.

12424

Verta Powell - Direct

1 Q. And do you have a son named Lance?

2 A. Yes, sir, I do.

1994. Do 3 Q. Now, I'm going to ask you about November the 5th,
4 you remember that day?
5 A. Yes, sir.

in the 6 Q. Well, on that day, did you see Roger Moore sometime
7 morning?
8 A. Yes, sir, I did.

9 Q. Where did you see him?
10 A. At my back door.

11 Q. Now, to get a picture of where the Powells live,
what does
12 your house look like? What kind of a house is it?
13 A. It's a three-bedroom house with a garage to the
right side,
14 enclosed garage to the right side.

15 Q. Now, back in 1994, did you have a mobile home also
on your
16 property?
17 A. Yes, sir, I did.

18 Q. Who lived in your mobile home back there in 1994?
19 A. My son Lance.

20 Q. Didn't he live by himself at that time?
21 A. No, sir, his wife was with him at that time.

his wife,
22 Q. Okay. And did they have any children, Lance and
23 as of 1994?
24 A. I'm trying to figure out how old my grandson is.

He's

25 five. Yes, sir, they did.

12425

Verta Powell - Direct

1 Q. Okay.

2 A. I'm sorry.

3 Q. How old is your grandbaby now?

4 A. He's five.

5 Q. Five. Okay. So 1994, he would have been what?

6 A. Two.

7 Q. About two. All right. Whatever. Okay.

8 A. I had to figure that out.

9 Q. Were you alone in the house when you saw Mr. Moore
there in
10 the morning?

11 A. Yes, sir, I was.

12 Q. And tell the jury, do you remember about what time
that
13 was?

14 A. It was about midmorning, probably between 10 and
11,
15 something like that.

16 Q. Okay. And did he come to the front door, or the
back door?

17 A. Actually to the garage door, which is a side door.

18 Q. Okay. Now, is that a door you have to go in

through where

work? 19 the cars are and get to the house, or how does that

20 A. Yes, sir.

21 Q. And did he knock?

22 A. He rang the doorbell.

23 Q. Rang the doorbell. And you answered it?

24 A. Yes, sir, I did.

25 Q. And then what happened?

12426

Verta Powell - Direct

me, 1 A. He stated that he had been robbed. He rushed past

at that 2 walked past me on up into my house. When he passed me

that he 3 point, there was a gun at his back, stuck in the pants

4 had on, the waistline.

pants? 5 Q. What kind of a gun was stuck in the belt of his

6 A. Some type of pistol.

shooter 7 Q. Okay. Now, did it look like one of those six-

sort of a 8 pistols, or did it look like one with a more square

9 butt; do you remember?

know much 10 A. I want to state more of a square type. I don't

11 about guns, but . . .

12 Q. Okay. Now, did -- what did he say next?

13 A. Basically that he had been robbed; that he asked if
Walton
14 was at home, and I told him no. He asked if he could
use the
15 phone.

16 Q. Now, did he say how many people had robbed him, or
did he
17 say anything about that subject?

18 A. When he was on the phone to someone at that point,
he made
19 the remark that he didn't know how many they were,
something to
20 that effect.

21 Q. Okay. Now, did he ask you to do something?

22 A. He wanted to talk to Walton, and he asked if I
would go get
23 him.

24 Q. Now, did you immediately go and get Walt?

25 A. Yes, sir.

12427

Verta Powell - Direct

1 Q. All right. Did somebody else arrive before you
left to go
2 get Walt?

3 A. Yes, sir. I called my son Lance and asked if he

would come

and got 4 over and stay in the house with Mr. Moore while I went

5 my husband.

mobile 6 Q. Now, about how long was it -- was Lance over in the

7 home?

8 A. Yes, sir, he was.

9 Q. About how long did it take for Lance to get there?

Maybe 10 10 A. I don't really remember. It was not very long.

11 or 15 minutes.

come? 12 Q. Now, how did you get hold of Lance to ask him to

13 Call him up, or --

14 A. Yes, sir, I called him.

the house 15 Q. Now, during the time that you were alone there in

16 with Mr. Moore, what did you see him do?

17 A. He made a couple of phone calls.

calls, or 18 Q. And could you observe whether they were local

19 long distance calls? I mean --

But as 20 A. He took something out of his pocket, maybe a card.

it was 21 far as knowing, you know, where he called, or whether

22 long distance, I do not know.

house; 23 Q. Now, then there came a time when you left the

24 correct?

25 A. Yes, sir.

12428

Verta Powell - Direct

1 Q. Now, when Mr. Moore was talking on the phone, was
he

2 talking in a voice like . . . well, not as loud as I am
right

3 now, but how would you describe his voice, what was he
doing?

4 A. He talked rather low. I could not understand
everything

5 that he said.

6 Q. How close were you to him?

7 A. Just a few feet. We were in the same room. Maybe
4 feet

8 away, something like that.

9 Q. Now, so there came a time when you went to get
Walt; right?

10 A. Yes, sir.

11 Q. Where was Mr. Powell?

12 A. He was at our church, working.

13 Q. And about how long did it take from the time that
Lance got

14 there for you to get Mr. Powell and bring him back?

15 A. Maybe 20 minutes. The drive is fairly short. It's
very

16 close to the house. So it probably took me about 5
minutes to
17 drive and then a few minutes for him to get, you know,
things
18 together and get in his truck and then come back. So
I'm just
19 guessing, you know, maybe 20 minutes.
20 Q. Did he come back in his truck and you come back in
the
21 other car?
22 A. Yes, sir.
23 Q. Came back separately?
24 Now, when Mr. Powell got there, what did he
do?
25 A. He came in and talked to Mr. Moore. As far as a
lot of the

12429

Verta Powell - Direct

1 conversation, I really don't remember other than he
asked him
2 if he had called the sheriff.
3 Q. Did Mr. Powell ask Mr. Moore if he had called the
sheriff?
4 A. Yes.
5 Q. And what did Mr. Moore say?
6 A. He had not at that time.
7 Q. Did you then observe Mr. Moore call the sheriff?
8 A. Yes, sir.

to
the

9 Q. What did Mr. Powell -- did Mr. Powell say anything
10 Mr. Moore after Mr. Moore said that he had not called
11 sheriff, that you remember?

12 A. No, sir, I really don't.

later?

13 Q. Okay. And then did a sheriff's officer arrive

14 A. Yes, sir.

15 Q. Do you remember his name?

16 A. No, sir, I do not.

17 Q. Do you remember seeing him in the witness room this
18 morning, the sheriff's deputy who arrived?

19 A. No, sir.

Lance left

20 Q. Now, did there come a time when Mr. Powell and

21 the house?

22 A. Yes, sir, they did.

23 Q. How did that happen? What happened then?

see what

24 A. Mr. Moore wanted them to go over to the house to

time and

25 had happened. As far as I remember, they left at that

12430

Verta Powell - Direct

1 walked over there.

2 Q. That would be the three of them together?

3 A. Yes, sir.

4 Q. Now, after -- the night before -- or excuse me,
that
5 morning, what time had you gotten up?

6 A. It was probably about 6:30.

7 Q. And from 6:30 to the time that Mr. Moore showed up,
where
8 had you been?

9 A. I was in the house the entire time.

10 Q. Did you hear any gunfire?

11 A. No, sir, I did not.

12 Q. All right. From the time that -- I just want to
make sure.
13 From the time you got up in the morning to the time
that

14 Mr. Moore arrived, did you hear any gunfire?

15 A. No, sir, I did not.

16 Q. Now, have you heard gunfire -- had you before that
day
17 heard gunfire from the direction of Mr. Moore's house?

18 MS. WILKINSON: Objection, relevance.

19 THE COURT: What's the relevance?

20 MR. TIGAR: Whether or not it can be heard,
your
21 Honor.

22 THE COURT: All right. For that purpose.

23 MR. TIGAR: Yes, your Honor.

24 THE COURT: I'll permit it.

25 THE WITNESS: Yes, you can hear the gunfire.

12431

Verta Powell - Direct

1 BY MR. TIGAR:

2 Q. And after the robbery, did you ever have occasion
to see
3 your son Lance having some distress as a result of a
tear-gas
4 round?

5 MS. WILKINSON: Objection. Relevance.

6 THE COURT: Sustained.

7 MR. TIGAR: Thank you very much, Miss Powell.
No
8 further questions.

9 THE COURT: Miss Wilkinson.

10 MS. WILKINSON: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MS. WILKINSON:

13 Q. Good morning, Miss Powell.

14 A. Good morning.

15 Q. How are you?

16 A. I'm fine.

17 Q. You're a little nervous this morning?

18 A. Very nervous.

you. 19 Q. It's almost over. I just have a few questions for

you? 20 You have talked to the Government in the past, haven't

21 A. Yes, sir, I have -- yes, ma'am.

22 Q. I won't take that personally.

23 A. Okay.

you've 24 Q. And when you've talked before, you've said that

son; isn't 25 talked about the robbery with your husband and your

12432

Verta Powell - Cross

1 that right?

2 A. That's correct.

3 Q. You've discussed what happened that day?

4 A. Yes, we did.

5 Q. Trying to figure out what you all remember; right?

6 A. Yes.

7 Q. And you've read articles about it?

8 A. That's correct.

9 Q. And you've watched some TV about it; correct?

10 A. Yes, ma'am, we have.

know, 11 Q. So it's hard for you to remember exactly what you

that 12 yourself, and what you've talked to others about; is

13 right?

14 A. On some of it, yes.

15 Q. Now, you do remember that Mr. Moore came to your
door and

16 told you that he had been robbed; correct?

17 A. That's right.

18 Q. You don't have any doubt about that?

19 A. He told me he had been robbed.

20 Q. And you saw him use the telephone and make several
phone

21 calls?

22 A. Yes.

23 Q. You don't know who he talked with at that time?

24 A. No, ma'am, I do not.

25 Q. And you do know that the sheriff's office --
sheriff's

12433

Verta Powell - Cross

1 officer, excuse me, arrived at your home on the morning
of

2 November 5, 1994?

3 A. Yes.

4 Q. Now, you don't recall exactly what time it was when
5 Mr. Moore got to your house, do you?

6 A. I only remember it being midmorning because it was
the time

7 that my husband went down to the church to work, and
that was
8 the time of morning that he had left, and he had not
been gone
9 very long.

10 Q. You can't pinpoint what time the sheriff's officer
arrived,
11 can you?

12 A. No, ma'am, I cannot.

13 Q. And you don't know what Mr. Moore did when you were
gone
14 picking up your husband, Mr. Powell; right?

15 A. No, ma'am, I do not.

16 MS. WILKINSON: Thank you very much.

17 MR. TIGAR: No redirect.

18 THE COURT: All right.

19 MR. TIGAR: Thank you very much.

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

21 THE WITNESS: Thank you, sir.

22 THE COURT: Next, please.

23 MR. TIGAR: Call Lance Powell.

24 THE COURT: All right.

25 THE COURTROOM DEPUTY: Would you raise your
right

1 hand, please.

2 (Lance Powell affirmed.)

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

4 Would you state your full name for the record
and

5 spell your last name.

6 THE WITNESS: Lance Darren Powell, P-O-W-E-L-L-
L.

7 THE COURTROOM DEPUTY: Thank you.

8 DIRECT EXAMINATION

9 BY MR. TIGAR:

10 Q. Good morning, Mr. Powell.

11 A. Good morning.

12 Q. Will you tell the jury, please, what you do for
work.

13 A. I'm parts manager for a motorcycle shop.

14 Q. And where is that motorcycle shop located?

15 A. Hot Springs, Arkansas.

16 Q. How long have you been doing that kind of work,
sir?

17 A. About eight years.

18 Q. Were you employed there in November, 1994?

19 A. No, I was the parts manager for a marina.

20 Q. On. Now, in -- what's your father's name?

21 A. Walton.

22 Q. And your mom?

23 A. Verta. Goes by "Pudge."

24 Q. Excuse me. Do you live on the property that they
own there

25 in Royal, Arkansas?

12435

Lance Powell - Direct

1 A. I did in '94.

2 Q. Okay. And where did -- can you describe for the
jury where

3 you lived and where they lived on the Powell place
there in

4 Arkansas?

5 A. They live on 20 acres, and I'm probably -- I lived
about a

6 hundred yards away from them.

7 Q. Now, was that in a mobile home --

8 A. Yes.

9 Q. -- they had on the property?

10 Well, let's talk about November the 5th, 1994,
sir.

11 Do you remember that day?

12 A. Yes, sir.

13 Q. Did -- where were you that morning?

14 A. I was at my house.

15 Q. Did you get a telephone call?

16 A. Yes.

- 17 Q. From whom?
- 18 A. My mother.
- 19 Q. What did she say -- ask you to do?
- 20 A. She asked me to come over to the house.
- 21 Q. Did you do that?
- 22 A. Yes, sir.
- 23 Q. When you got over to the house, who was there?
- 24 A. Roger Moore.
- 25 Q. Had you met Mr. Moore before?

12436

Lance Powell - Direct

- 1 A. Yes, sir.
- 2 Q. And then did your mom stay there, or did she go
somewhere?
- 3 A. She left to go get my dad.
- 4 Q. Now, when you got there, was Mr. Moore doing
anything?
- 5 A. He was about to make a telephone call.
- 6 Q. Okay. Now, did he make a telephone call?
- 7 A. Yes.
- 8 Q. Now, did you see how many telephone calls he made?
- 9 A. At that point, just one that I know of.
- 10 Q. Now -- and was that during the time that your
mother was
- 11 gone?

12 A. Yes.

13 Q. You remember about how long your mom was gone?

14 A. Approximately 10 minutes.

15 Q. And when she came back, was she by herself, or was somebody

16 with her?

17 A. My dad was with her.

18 Q. Now, when Mr. Moore was talking on the phone, could you

19 hear everything he was saying?

20 A. Not everything. A few things, yes, sir.

21 Q. Pardon me?

22 A. A few things, yes, sir.

23 Q. And what could you hear that he was saying?

24 A. I just heard him say that they got it all.

25 Q. They got it all. All right.

12437

Lance Powell - Direct

1 Did you ask him whether he had called the sheriff?

2 A. Yes, sir.

3 Q. Was that before, or after he made this phone call where he

4 said, "They got it all"?

5 A. It was after.

6 Q. Pardon?

7 A. It was after.

8 Q. What did he say?

9 A. He said no.

10 Q. Did he say anything about -- did he give any
explanation as

11 to why he didn't want to call the sheriff?

12 A. He claimed that they wouldn't help him, they
wouldn't be

13 able to help him; that they wouldn't be able to get
there in

14 time.

15 Q. Okay. Now, after your dad got there, did your dad
and

16 Mr. Moore have a conversation?

17 A. Yes, sir.

18 Q. And can you remember what your dad said to Mr.
Moore and

19 what Mr. Moore said to your dad?

20 MS. WILKINSON: Objection, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: My dad also asked him if he had
called

23 the police.

24 BY MR. TIGAR:

25 Q. And what did Mr. Moore say?

Lance Powell – Direct

1 A. He said no.

2 Q. What did your dad say, if anything?

3 A. I don't recall.

4 Q. Okay. Did you hear Mr. Moore make a telephone call
to the

5 law enforcement then?

6 A. He did make a call then, yes, sir.

7 Q. Now, did . . . did you and the -- Mr. Moore and
your dad

8 leave your house -- or your parents' house there and go
9 someplace?

10 A. Yes, sir, we went over to Mr. Moore's house.

11 Q. And did Mr. Moore show you some of the things in
the inside

12 of his house?

13 A. Yes, sir.

14 Q. Okay. Did he say something about why he thought
the

15 robbery had occurred?

16 A. He claimed that it could have been the government
because

17 they do things like that to keep people in check or
intact.

18 Q. I'm sorry, he said it could have been the
government

19 because what?

20 A. They do things like that to keep people in check or
intact.

21 Q. Okay. Now, did Mr. Moore show you anything on the
outside
22 of his house?
23 A. He showed us where his telephone line had been cut.
24 Q. Now, please tell the jury just how that happened.
Did you
25 walk over to Mr. Moore's house from your house, or did
you go

12439

Lance Powell - Direct

1 in some kind of a car or truck?
2 A. No, we just walked over.
3 Q. Now, the three of you walking along together;
right?
4 A. Yes.
5 Q. And just describe for the jury how it was that Mr.
Moore
6 showed you where the phone lines had been cut.
7 A. He had first brought us into the house and then
brought us
8 back out of the house and took us around back to the
back, and
9 he showed us where the line had been cut.
10 MR. TIGAR: Excuse me just a minute.
11 BY MR. TIGAR:
12 Q. I want to show you what has been received in
evidence -- we

the
more so
And there

13 have -- I'm sorry, sir. You know, I forgot to say what
14 book says. Could you keep your voice up just a little
15 that everybody within this area can hear every word.
16 is a microphone if you want to lean into it.

17 A. Okay.

18 Q. Thank you sir. Are you a little nervous?

19 A. Just a fudge.

longer.

20 Q. Well, I'm sorry. It's not going to be too much

21 This has been what's received in evidence as
22 Government's Exhibit 1740A. Is that Mr. Moore's house?

23 A. Yes, sir.

has
evidence,

24 Q. And looking here at Government Exhibit 1740E, which
25 also been -- yes -- which has also been received in

12440

Lance Powell - Direct

see on

1 can you point out on there -- there's a pen -- Can you

2 there where the phone line comes in?

3 A. Where it comes into the house?

4 Q. Yes, sir.

5 A. It's just --

high
mark
the place
the

6 Q. Now, there's a pen connected to a wire there. It's
7 tech. If you go underneath the glass, you can make a
8 directly on the screen, if you would, and just circle
9 where the phone line comes into the house. Just touch
10 screen and make a circle.

11 A. It comes in right here.

12 Q. Right there. And where was the line cut?

13 A. It was right in this area.

14 MR. TIGAR: Okay.

15 Okay, sir. Thank you. Thank you very much,
16 have no further questions.

17 THE COURT: Miss Wilkinson.

18 CROSS-EXAMINATION

19 BY MS. WILKINSON:

20 questions for
21 you.

22 When you got to the house after your mother
23 called,
24 you saw Mr. Moore that morning; correct?

25 A. Yes, ma'am.

26 Q. Do you recall what time of the morning it was when
27 you got

1 there?

2 A. No, ma'am, I don't really know.

3 Q. You weren't taking notes at the time; right?

4 A. No.

5 Q. But Mr. Moore was there?

6 A. Yes, ma'am.

7 Q. He told you he had been robbed?

8 A. Yes.

9 Q. Did he tell you any of the details of the robbery
at that

10 time?

11 A. Not then.

12 Q. Did he later tell you?

13 A. Yes, at his house.

14 Q. Okay. And you saw some duct tape in his living
room; isn't

15 that right?

16 A. Yes.

17 Q. And you saw it -- did you go into his bedroom?

18 A. Yes.

19 Q. And did you see drawers opened?

20 A. Yes.

21 Q. And the bed in disarray? Or if you want to use
different

22 words to describe that.

23 A. I'd never been into his house before, so I really
don't
24 have a point of reference for that.

25 Q. Okay. And when you went up there, did you help
your dad

12442

Lance Powell – Cross

1 put the wires back together for Mr. Moore?

2 A. No.

3 Q. Your dad did that by himself?

4 A. Yes.

5 Q. And you were not there or you weren't present when
6 Mr. Moore was being interviewed by the sheriff's
office, were
7 you?

8 A. No.

9 Q. So you don't know the details that he told the
sheriff's
10 office; is that right?

11 A. No.

12 MS. WILKINSON: I have no other questions.
Thank you.

13 MR. TIGAR: No redirect. Thank you.

14 Thank you very much, Mr. Powell.

15 THE COURT: You may step down. You're excused
now.

16 MR. TIGAR: Jan Dies.

17 THE COURT: Thank you.

18 THE COURTROOM DEPUTY: Would you raise your
right
19 hand, please.

20 (Jan Dies affirmed.)

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

22 Would you state your full name for the record
and
23 spell your last name.

24 THE WITNESS: Jan Dies, D-I-E-S.

25 THE COURTROOM DEPUTY: Thank you.

12443

1 MR. TIGAR: Excuse me, your Honor.

2 THE COURT: Okay.

3 DIRECT EXAMINATION

4 BY MR. TIGAR:

5 Q. Good morning, Miss Dies.

6 A. Good morning.

7 Q. Will you tell the jury, please, what you do for a
living.

8 A. I'm an insurance agency, own an insurance agency.

9 Q. And what is the name of your insurance agency?

10 A. Jan Dies Insurance Agency.

11 Q. Where is it?

12 A. Hot Springs, Arkansas.

you

13 Q. Now, do you write for a particular company, or do

14 handle a number of different insurance companies?

15 A. I have several companies.

16 Q. And is Farmers Insurance one of companies that you

17 represent?

18 A. Yes, it is.

19 Q. Do you know a man named Roger Moore?

20 A. Yes.

21 Q. How did you meet Mr. Moore?

homeowner's

22 A. Mr. Moore came in my office, and I wrote his

23 insurance.

remember

24 Q. Can you remember, please, when that -- or can you

25 when that was?

12444

Jan Dies - Direct

1 A. August the 18th of about '92, I think.

can

2 Q. Let me see if I can find an exhibit here, and we

3 establish the date.

4 MR. TIGAR: Excuse me, your Honor. I'm

looking for an

5 exhibit here.

6 THE COURT: All right.

7 MR. TIGAR: Thank you.

8 BY MR. TIGAR:

9 Q. Miss Dies, showing you what has been marked as
Defendant's

10 D1768 for identification, can you tell us what that is?

11 A. That's a copy of the application. Uh-huh.

12 Q. Now, who did the writing on this?

13 A. I did.

14 Q. And was Mr. Moore present when you did?

15 A. Yes.

16 Q. He provided this information?

17 A. Uh-huh.

18 Q. Is this a record that you make in the or -- regular
course

19 of your insurance business?

20 A. Yes. At that time it is.

21 Q. At that time?

22 A. Uh-huh.

23 Q. Okay. And was it a part of your business to make
and keep

24 records like this?

25 A. Yes.

Jan Dies - Direct

1 MR. TIGAR: We offer it, your Honor.

2 MR. ORENSTEIN: Object to relevance.

3 THE COURT: Overruled. D1768 is received.

4 BY MR. TIGAR:

5 Q. Now, I'm going to put this up on the display here
and ask

6 you, Miss Dies, if you'd take a look at it. This says,
"Roger

7 E. Moore"; correct?

8 A. Yes.

9 Q. P.O. Box 2406, Hot Springs, Arkansas; correct?

10 A. Correct.

11 Q. And is -- that's his mailing address that he gave
you?

12 A. That is correct.

13 Q. All right. Then you have a check "other than above
if no

14 street number used"; right?

15 A. Correct.

16 Q. And there's 6435. And what is that?

17 A. That's the property address.

18 Q. Would you call that the insured premises?

19 A. Yes.

20 Q. Now, you say here, "new purchase," just -- well,
can you

21 read what that says, please.

fire
22 A. It was a new purchase. He just bought it. The
23 receipt is attached, and it was a neat and clean home.
24 Q. Okay. Now, how -- what is a fire receipt?
25 A. Mr. Moore's home is outside the city limits of Hot
Springs,

12446

Jan Dies - Direct

it's on
21 Arkansas. Hot Springs will not respond to that home if
22 fire. So he has to join a volunteer fire department
23 that will
24 respond.

he'd
25 Q. Oh. And you wanted him to have a receipt that said
1 done that; right?

2 A. Yes. Yes.

Now, had
3 Q. Okay. And then it says, "neat and clean home."
4 you inspected the home?

5 A. We inspect all of our homes.

6 Q. And this was based on your observation; correct?

7 A. Yes.

in
8 Q. All right. Now, showing you what has been received
9 evidence as Government's 1740A, Miss Dies, it's on your
10 screen.

14 Is that Mr. Moore's home?
15 A. I remember it had a three-car carport, and it was a
white
16 house, one level.
17 Q. Going back to this form, we see now towards the
bottom
18 there are some numbers here. And can you -- and I'll
move
19 over -- can you tell the jury what those numbers mean?
20 A. The dwelling is the amount of coverage on the home.
21 Q. Now, who determines what that number is going to
be?
22 A. Mr. Moore and I do.
23 Q. All right. And how -- in your business how do you
arrive
24 at this figure?
25 A. When the prospect comes in, I ask him -- he says
he's

12447

Jan Dies - Direct

1 interested in a homeowner's. I say: What do you want
to
2 insure your home for? And he may mention an amount,
and then I
3 ask the square footage. And we have a little formula
to see if
4 what he wants fits in our guidelines.
5 Q. And in this -- do you remember at this time whether
you

6 looked at the square footage?

7 A. We always have to look at square footage.

8 Q. Okay. Is there going to be anything on this form
that

9 tells us the square footage?

10 A. Yes.

11 Q. All right. Will that be on the next page, then?

12 A. Yes.

13 Q. All right. We'll come to that.

14 Does that And then the next is "separate structures."

15 mean just what it says? That is, if he's got a -- what
would

16 that be?

17 A. A separate garage.

18 Q. Okay. Or a little barn or storage?

19 A. Storage, metal storage building.

20 Q. Then it says, "personal property, \$60,000." You
see that?

21 A. Yes.

22 Q. Now, what does -- how is that figure arrived at?

23 A. Homeowner's policy is broken down by percentages.
Just

24 because he has 60,000, that didn't mean he necessarily
has

25 60,000. It's just a percentage.

Jan Dies - Direct

1 Q. Oh. So -- is that driven by the 80,000?

2 A. Yes.

3 Q. So if I come in and if I were to say my house is
worth a

4 hundred thousand dollars and you and I were to agree on
that,

5 then what would this number be?

6 A. 75 -- contents is 75,000.

7 Q. So it's three-quarters of it?

8 A. 75 percent.

9 Q. Now, and then I can see "loss of use" is \$40,000?

10 A. Uh-huh.

11 Q. What does that insure? What peril is that?

12 A. Loss of use will cover under your homeowner's. If
your

13 home burns and you have to live in a hotel and have
extra

14 expenses, this policy would pay up to 40 percent to
cover your

15 additional expenses you would have while we went back
in and

16 fixed your home for you to move back into.

17 Q. And then over here we see that your premium was
going to be

18 what?

19 A. 334 a year.

20 Q. Over here on this side, you gave him some

discounts; right?

21 A. Yes.

22 Q. Non-smoker, and then it says, "home security."
What kind

23 of a discount is that?

24 A. That's a deadbolt lock, fire extinguisher, and --
there's

25 another safety precaution. I don't recall. Deadbolts,
fire

12449

Jan Dies - Direct

1 extinguisher. Smoke alarms.

2 Q. Smoke alarm.

3 Now, looking at page -- let me zoom out. Am I
now

4 showing you the second page. Okay.

5 Let's go on. And what did Mr. Moore say about
his

6 marital status? Can you see that, or do you want me to
bring

7 it up?

8 A. No, I can see it. I don't remember. It was in his
name

9 only, and I don't recall if he said single or divorced.

10 Q. Okay. But you checked "single"; is that correct?

11 A. Yes. Yes.

12 Q. And you do recall he said either single or
divorced; right?

13 A. Uh-huh. Yes.

I'm 14 Q. Now, then it says -- can you read this writing that

15 trying to make out here?

16 A. I think it says, "Does applicant live alone?"

17 Q. And then what did he tell you?

18 A. Yes.

19 Q. He said he lived alone.

right? 20 Now, he then said -- it says, "occupation";

21 A. Uh-huh. Uh-huh.

says, 22 Q. And it says -- the word's crossed out, and then it

23 "retired." How did you get that information?

and I 24 A. When he started out occupation, he said "self" --

scratched out 25 wrote "self", and he said, "no, retired." So I

12450

Jan Dies - Direct

1 "self" and wrote "retired."

in the 2 Q. Now, then there's another loss. It says, "losses

lightning strike 3 past three years." And he told you about some

4 in other house; correct?

5 A. Correct.

6 Q. Now, over here on the "residence," we see the
square feet,
7 and that's 1724?
8 A. Correct.
9 Q. And then "attached garage" is 200 plus a triple-car
10 carport. Is that what that means?
11 A. Correct.
12 Q. Now, then, we get down to Question 36, "current
market
13 value of home." Right? And what is -- and that's the
figure
14 that you discussed with him?
15 A. Yes.
16 Q. And he -- now, then, it says, "approximate value of
all
17 furniture and personal property." How did -- is that
18 information he provides to you, or is that the same as
the
19 other -- that is to say, determined by the 80,000?
20 A. That's determined by the 80,000.
21 Q. Then it says, "approximate value of target items,
jewelry,
22 guns, etc."
23 A. Uh-huh.
24 Q. Let's zoom in so we can try to -- there.
"Approximate
25 value of target items, jewelry, guns, etc." How did
the figure

12451

Jan Dies - Direct

1 that's in the blank next to that be -- was that arrived
at?

2 A. Okay. When we write a homeowner's, we say if you
have any

3 luxury items, they need to be scheduled, any gun
collections or

4 furs, diamonds, minks, anything like that. And he said
no, so

5 there's nothing. So I put in the thousand dollars.

6 Q. Okay. Because you asked him about that; right?

7 A. That is our procedure, yes.

8 Q. Now, can you tell the jury a little bit about how
the --

9 how a homeowner's policy works for contents; that is,
I've

10 got -- he's got contents insurance now of \$60,000 in
the first

11 policy year. Correct?

12 A. Yes.

13 Q. Now, if he has -- are there certain items that
would not be

14 covered by that 60,000?

15 A. Yes.

16 Q. And what would those items be?

17 A. For example, luxury items, diamond rings.
Everything has

18 got to be scheduled that's not considered just average

things.

19 If you have a \$10,000 mink coat, you've got to have
that on a
20 floater. Gun collection, fine arts, jewelry, stamp
21 collections. That has got to be scheduled. And your
22 appraisal.

23 Q. Then that was going to be my next question. If Mr.
Moore
24 had been interested in purchasing a -- we call it a
"floater
25 policy"?

12452

Jan Dies - Direct

1 A. Yes. So that would be additional coverage, yes.
2 Q. Then what would he have had to do -- Suppose Mr.
Moore had
3 come and said: I have 70 guns in my house and they're
worth,
4 you know, many thousands of dollars. What would he
have had to
5 do to get the coverage for those guns?
6 A. He would have to bring me an appraisal from a -- a
gun
7 appraisal with serial numbers and the value, and that
is
8 attached to the policy. Each gun is listed separately.
9 Q. Now -- and in -- can you remember back in 1992
about how

10 much a thousand it would have cost to insure these
scheduled

11 items, in your neighborhood?

12 A. It's about \$8 a thousand.

13 Q. \$8 a thousand. Now, is that \$8 a thousand -- is
going to

14 be more or less depending on the neighborhood; that is,
the

15 part of the country?

16 A. In Arkansas, that is what the rate is. For our
company.

17 Q. I understand. If I lived in New York City, would I
expect

18 to pay more?

19 A. Probably, yes.

20 Q. Okay. And with no disrespect meant to any part of
the

21 country, but how does your company set that amount per
thousand

22 that they're going to charge you to insure your things?

23 A. Well, I'm not an analyst on that, but I would
suppose that

24 it's based on our claims and our exposure. We're just
a small

25 state, and we don't have a great deal of exposure for
guns.

12453

Jan Dies - Direct

1 Q. Now, putting that back up, what's been received as

2 Defendant's D1768, then you talk about "location
supplement"

3 and "secondary heating," and so on; correct?

4 A. Correct.

5 Q. All right. Now, in the -- this policy year went
from when

6 to when; do you remember?

7 A. It's an annual policy. Written August the 18th,
'92, it

8 renews August the 18th, '93, and thereafter.

9 Q. Okay. Now, is there an escalator that's built into
the

10 renewal of this policy?

11 A. Yes, there is.

12 Q. And how does the escalator system work?

13 A. Homeowner's usually has an acceleration clause.
Because

14 when you buy your home, you may pay 80 for it, but in a
few

15 years that value has increased, and the policy
automatically

16 increases on renewal, based on the square footage, and
they

17 look at homes in that area with the ZIP Codes.

18 Q. Now, in November of 1994, did Mr. Moore still have
19 insurance with your company based on this initial
application

20 that he had made and the policy that you all issued?

21 A. Yes, he did.

was his 22 Q. And what was his homeowner amount -- that is, what
23 home insured for, if you remember, at that time?
24 A. I do not remember.
insured for 25 Q. Okay. Do you remember what the contents were

12454

Jan Dies - Direct

1 at that time?
do not 2 A. It would have been 75 percent of the renewal, but I
3 remember.
4 Q. All right.
5 See if I can find a . . .
you if 6 I'm going to show you now a document and ask
7 that -- if it refreshes your recollection.
8 MR. ORENSTEIN: Excuse me, your Honor. May I
inquire 9 which document --
10 MR. TIGAR: Oh, I'm sorry. Show that to
counsel.
11 BY MR. TIGAR:
12 Q. I recognize that's not your -- this is not your
document.
13 But I just wonder if looking at it refreshes your
recollection.
14 A. 84,000, 63 --

15 THE COURT: No, don't read off it.

16 BY MR. TIGAR:

17 Q. Oh, okay. Don't read it. Having looked at it,
does that

18 refresh your recollection as to what it had escalated
to?

19 A. No.

20 Q. Okay. All right.

21 Now, did there come a time in 1994 when you
heard

22 about a claim that Mr. Moore was going to make on this
policy

23 that you had issued?

24 A. Yes.

25 Q. And when did you hear that, if you can remember?

12455

Jan Dies - Direct

1 A. November the 5th.

2 Q. How did you hear about it?

3 A. He came into my office.

4 Q. Now, were you the first person that he spoke to in
the

5 office?

6 A. I believe he came in and spoke with the other agent
in my

7 office and was talking, and I walked up and took over
the

8 claim.

9 Q. And who was the other agent in your office at that
time?

10 A. Dana Priddy.

11 Q. Who is Dana Priddy?

12 A. My daughter.

13 Q. And how long had Miss Priddy, your daughter, been
working

14 with you in the agency at that time?

15 A. Probably a year and a half at that time.

16 Q. Now, to go back a little ways, in order to have an
17 insurance agency, as do you there, in Hot Springs, what
sorts

18 of licensing and procedures do you have to go through?

19 A. We have to be examined by the State of Arkansas and
pass a

20 written exam. And then she has to have continuing
education

21 credits.

22 Q. I'm sorry. She?

23 A. Dana has to have continuing education in Arkansas.
I'm --

24 Q. Now, what kind of license do you hold; that is, to
have the

25 agency?

12456

Jan Dies - Direct

1 A. Property, casualty, life, and health.

through? 2 Q. What kind of licensing requirement has she gone

3 A. The same.

he say? 4 Q. Now, when Mr. Moore came in, will you -- what did

wanted 5 A. He was talking: He had had an armed robbery and he

6 to file a claim.

7 Q. Did he describe to you what had happened?

8 A. Yes.

9 Q. What did he say had happened?

in 10 A. He said he was outside and he was jumped by someone

home, 11 camouflage. They held a gun on him, took him into the

cash, 12 tied him up with duct tape, and robbed him of \$8700 in

13 multiple guns, gold, silver, and precious stones.

police 14 Q. Now, did he tell you that he had been tied up with

15 ties or wire ties?

16 A. He said duct tape.

17 Q. Did he ever mention police ties or wire ties?

18 A. Not to -- not that I remember.

19 Q. Now, how long did that first meeting last?

minutes. 20 A. He was probably in the office maybe 10 or 15

21 Q. And did you talk to him about the extent of his

coverage?

22 A. Yes.

23 Q. What did you say to him about his coverage?

24 A. He had a list of guns with him. And I looked at that. And

25 I said, "Mr. Moore, these guns are not going to be covered on

12457

Jan Dies - Direct

1 your homeowner's. Guns like this would have to be scheduled."

2 I said, "Why didn't you tell me you had guns like this?"

3 And he said, "Well, I didn't want anyone to know it."

4 Q. Now, did he say anything else during that time that you can

5 remember about what had happened or about his insurance?

6 A. No.

7 Q. Now, was -- did -- well, did there come a time when he came

8 to see you again?

9 A. Yes.

10 Q. And about how long was that after that first time?

11 A. You're talking about the theft?

12 Q. Yes, about the theft.

13 A. It was a few months, seems like.

14 Q. All right. Now, in between that time, had he
called your

15 agency?

16 A. Yes.

17 Q. Now, when he called your agency, did he speak first
to you?

18 A. No.

19 Q. All right. Did your daughter tell you that he had
called?

20 A. Yes.

21 Q. When she told you, was she upset?

22 A. Yes.

23 Q. And had -- and did you understand from her that he
was on

24 the phone at that time wanting to talk to you?

25 MR. ORENSTEIN: Objection to hearsay.

12458

Jan Dies - Direct

1 THE COURT: Overruled. It's for the -- simply
asking

2 her whether this was --

3 MR. TIGAR: I'm trying to establish a
foundation, your

4 Honor, for --

5 THE COURT: Well, yeah. All right.
Overruled.

6 THE WITNESS: Would you repeat the question.

7 BY MR. TIGAR:

8 Q. Yes. Did you understand that he was on the phone
at that
9 time? He was on the phone?

10 A. He was not on the phone when I got back to the
office. But
11 she told me he called.

12 Q. And did she say when he had called?

13 MR. ORENSTEIN: Objection to hearsay.

14 THE COURT: Sustained.

15 BY MR. TIGAR:

16 Q. All right. When you got back to the office, was
your
17 daughter upset?

18 A. Yes.

19 THE COURT: I don't know where we are in time
now.

20 BY MR. TIGAR:

21 Q. All right. Can you tell us about what time that
this

22 telephone -- that this event occurred that your
daughter -- you

23 got back to the office, your daughter was upset?

24 A. It's after the claim, maybe a month. I'm not sure
of the

25 time.

Jan Dies – Direct

1 Q. And you got back to the office; right?

2 A. Yes.

3 Q. And could you describe your daughter's manner?

4 A. Very nervous. Frightened. Begging me to please
call him

5 immediately.

6 MR. ORENSTEIN: Objection to hearsay, your
Honor.

7 THE COURT: Overruled as to that.

8 BY MR. TIGAR:

9 Q. And what did your daughter say Mr. Moore had said?

10 MR. ORENSTEIN: Objection.

11 THE COURT: Sustained.

12 BY MR. TIGAR:

13 Q. Did you call Mr. Moore that day?

14 A. Yes.

15 Q. And did you discuss his claim with him?

16 A. Yes.

17 Q. What did he say?

18 A. He was aggravated because he was not being
contacted the

19 way he felt like he should be. He was aggravated
because he

20 felt like people were not working on his case. He was
just

21 totally aggravated.

the 22 Q. Now, after he made his initial claim, did you refer

23 claim to your regular claim-processing procedure?

24 A. Yes.

robbery and 25 Q. Now, in addition to the time shortly after the

12460

Jan Dies - Direct

have any 1 this event when you came back to the office, did you

2 other discussion with Mr. Moore about the robbery?

3 A. Yes.

4 Q. And did he describe who he thought had done it?

5 A. Yes.

6 Q. Would you tell the jury what he said about that.

feds did 7 A. When he came in and filed the claim, he said, "The

8 it." He kept over and over about "the feds did it."

"The feds 9 Q. Okay. Now, which meeting was it where he said,

10 did it"?

11 A. That's when he turned in the claim in November.

occasion? 12 Q. Now, at that -- did he show you something on that

spoke with 13 A. When he was sitting in my office, after he had

later. 14 Dana, that was -- that was not the same day, but it was

15 I was frightened of him.

16 Q. Well, without regard to how you felt about it, but
did he

17 show you something?

18 A. Yes. He showed me a badge.

19 Q. And what did the badge look like?

20 A. It looked very official. It was in a black case.
A flip,

21 looked like a billfold-type thing.

22 Q. And did this billfold -- did it appear to have
currency or

23 credit cards in it in addition to this badge?

24 A. All I remember was that big badge.

25 Q. And what did he say when he showed you this badge?

12461

Jan Dies - Direct

1 A. "Don't tell anyone I showed you this."

2 Q. Now, did you ever -- did Mr. Moore, in your
presence, ever

3 discuss explosives?

4 A. Yes.

5 Q. What did Mr. Moore say about explosives?

6 MR. ORENSTEIN: Objection. Relevance.

7 THE COURT: Well, we need some time and
foundation.

8 MR. TIGAR: Yes, thank you. Thank you, your

Honor.

9 BY MR. TIGAR:

10 Q. When was the conversation in which --

11 A. The same day he showed me the badge.

12 Q. Okay. And about when was this in relation to the robbery?

13 A. Oh, couple of months, maybe.

14 Q. All right. But within that year 1994?

15 A. Yes.

16 Q. And Mr. Moore was still your client at that time?

17 A. Yes.

18 Q. Is that right? What did he say about explosives?

19 MR. ORENSTEIN: Objection, your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: Mr. Moore was telling me about he was

22 doing his own research of trying to find the guns and that he

23 was very agitated and that he was very -- that he was going to

24 put explosives around his house; that if anyone came on his

25 property, that they would blow up.

12462

Jan Dies - Direct

1 MR. TIGAR: May I have a moment, please?

2 THE COURT: Yes.

3 MR. TIGAR: Miss Dies, thank you very much. I
have no
4 further questions.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. ORENSTEIN:

8 Q. Good morning, Mrs. Dies.

9 A. Good morning.

10 Q. We met a couple of nights ago --

11 MR. TIGAR: I'm sorry. Did you want the
exhibit?

12 MR. ORENSTEIN: No.

13 BY MR. ORENSTEIN:

14 Q. We met a couple of nights ago; correct?

15 A. Yes.

16 Q. Thank you very much for meeting with us.

17 Now, Mrs. Dies, you've been in the insurance
business
18 for some time; correct?

19 A. Correct.

20 Q. And you've had experience with people who come in
and claim
21 losses?

22 A. Yes.

23 Q. And you process their claims and you send it on to
an
24 adjuster; correct?

25 A. Correct.

12463

Jan Dies - Cross

1 Q. Now, is it true that when people submit a claim,
often they
2 don't know at the start what they have and that they,
as they
3 go on through the process -- they might revise their
initial
4 estimate as they discover things that have gone
missing?

5 A. Correct.

6 Q. And when Mr. Moore came in in November of 1994 to
report
7 his loss, he had already filed a report with the
police;
8 correct?

9 A. I assume he had. I don't know.

10 Q. You know eventually he did?

11 A. Yes.

12 Q. And that was part of the process of filing the
claim?

13 A. Correct.

14 Q. And you discussed with him the fact that his guns
weren't
15 covered?

16 A. Yes.

Mr. Moore 17 Q. And eventually the claim was paid off; correct?

18 was paid for his claim, not on the guns --

19 A. A partial.

20 Q. -- but for things that had been robbed?

21 A. Some of the things.

22 Q. And he was paid less than \$6,000?

23 A. Yes.

his 24 Q. Did he ever express any anger about the amount of

25 payment?

12464

Jan Dies - Cross

1 A. No.

right 2 Q. Now, you told us that when he came in -- this was

3 after the robbery; correct?

4 A. Which time?

5 Q. The first time, when he first reported the claim?

6 A. Yes, when he reported the claim.

right? 7 Q. First business day after the robbery; is that

8 A. No.

9 Q. That day?

10 A. When he had the robbery?

11 Q. Yes.

Monday. 12 A. He was robbed on Friday. He reported it on a
13 Q. So the first business -- the next business day?
14 A. Yes. Yes.
15 Q. And he came in and he told you that he had been
accosted by
16 a man with a shotgun?
17 A. I don't know if it was a shotgun, but he said --
18 Q. A gun?
19 A. A gun.
20 Q. Outside his house?
21 A. Yes.
22 Q. Wearing camouflage?
23 A. Yes.
24 Q. Do you recall he said that the man was wearing a
mask?
25 A. He did not know who it was, so apparently.

12465

Jan Dies - Cross

1 Q. And he told you about the guns not being covered
that he
2 didn't want people to know what he had?
3 A. Exactly.
4 Q. And he wasn't angry about the amount of his
coverage?
5 A. He was disappointed, but he was not angry.

6 Q. And he didn't fight you on that?

7 A. No.

8 Q. He was angry at one point that you weren't taking
enough
9 care of him?

10 A. He felt -- yes.

11 Q. And that you weren't doing enough to find out who
did this?

12 A. Yes.

13 MR. ORENSTEIN: Thank you, ma'am, nothing
further.

14 THE COURT: Any redirect?

15 MR. TIGAR: Yes.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MR. TIGAR:

19 Q. Counsel has asked you about whether he was upset
with the
20 amount of his payment; right?

21 A. Yes.

22 Q. Let's start: When's the first that Mr. Moore said
he was
23 upset with you?

24 A. He was more upset with my daughter.

25 Q. I see.

Jan Dies - Redirect

But he 1 A. He didn't really express any kind of thing to me.
2 just scared me about his badge and his knowledge about
3 explosives.

have no 4 MR. TIGAR: And -- Thank you very much. I
5 further questions.

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

7 MR. ORENSTEIN: Yes, your Honor.

you're 8 THE COURT: All right. You may step down,
9 excused.

take our 10 We'll take our recess at this time. We'll
11 usual -- take our usual recess at this time, members of
the

12 jury, of the 20 minutes' duration, during which, of
course, all

13 the cautions always given. You get tired of hearing
them, and

14 I sort of get tired of saying them; but they're
important, and

15 it's required of me that I do remind you at all
recesses to

16 keep open minds, avoiding discussion of the case with
other

17 jurors and all other persons, and continuing to wait
until

18 you've heard it all before you in your own minds make
any

And 19 conclusions or decisions about the matter on trial.
20 continue to be careful so that you can limit your
consideration 21 of the issues to the evidence that's actually presented
to you 22 in the courtroom.

23 You're excused now, 20 minutes.

24 (Jury out at 10:20 a.m.)

25 THE COURT: Okay. Recess.

12467

1 MR. MACKEY: May we approach very briefly? I
2 apologize.

3 THE COURT: Give it to me when we come back.

4 MR. MACKEY: Very well.

5 (Recess at 10:20 a.m.)

6 (Reconvened at 10:40 a.m.)

7 THE COURT: Be seated, please.

8 Mr. Mackey, you wanted to approach?

9 (At the bench:)

10 (Bench Conference 105B1 is not herein transcribed
by court

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

12

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12472

1 (In open court:)

2 (Jury in at 10:43 a.m.)

3 THE COURT: Okay. Next witness, please.

4 MR. TIGAR: Dana Priddy.

5 THE COURTROOM DEPUTY: Would you raise your
right

6 hand, please.

7 (Dana Priddy affirmed.)

8 THE COURTROOM DEPUTY: Would you have a seat,

please.

and 9 Would you state your full name for the record

10 spell your last name.

11 THE WITNESS: Dana Lynn Priddy, P-R-I-D-D-Y.

12 THE COURTROOM DEPUTY: Thank you.

13 DIRECT EXAMINATION

14 BY MR. TIGAR:

15 Q. Good morning, Ms. Priddy.

16 A. Good morning.

17 Q. I'm going to ask you if you would please to keep
your voice

18 up so that at least everybody within this enclosed area
can

19 hear you. There is a microphone there so you don't
have to

20 shout.

21 A. Okay.

22 Q. Ms. Priddy, would you tell the jurors, please,
where you

23 live.

24 A. Hot Springs, Arkansas.

25 Q. Are you married?

12473

Dana Priddy - Direct

1 A. Yes.

2 Q. Do you have children?

3 A. Yes.

4 Q. How many children?

5 A. Two beautiful boys.

6 Q. And how old are they?

7 A. I have a five-year-old and a three-month-old.

8 Q. And we'll -- is the three-month-old here with you?

9 A. He's in the witness room.

10 Q. We'll try to get you back there.

11 What do you do for a living?

12 A. I'm a licensed insurance agent, and I'm employed
with the

13 Jan Dies Insurance Agency.

14 Q. Who is Jan Dies?

15 A. That's also my mother.

16 Q. How long have you been in the insurance business?

17 A. For about three-and-a-half years, maybe four.

18 Q. Now, in order to be a licensed insurance agent,
tell the

19 jury what you have to do.

20 A. You have to have a high school education, go to
insurance

21 school, get your accreditation hours and take a test --
three

22 tests.

23 Q. Three tests. And you passed them?

24 A. Yes.

25 Q. Moving to November of 1994, where were you working?

12474

Dana Priddy – Direct

1 A. Jan Dies Insurance.

2 Q. What was your job there?

3 A. To provide customer service and to service the

policies

4 that belonged to Jan, to take claims, take payments,
etc.

5 Q. Now, how many folks work for your mom's -- for the
6 insurance agency, the Jan Dies agency?

7 A. At that time?

8 Q. At that time, yes.

9 A. Just she and I.

10 Q. If I were to go -- Where is it? Hot Springs?

11 A. Uh-huh.

12 Q. If I were to go to Hot Springs, Arkansas, what does
your

13 office look like?

14 A. Well, we have one big room. I'm not sure on square
15 footage, maybe 600 square feet, with a big counter; and
that's

16 our main office. And she has a small office in the
back.

17 Q. Where did you sit at that time?

18 A. I sat at the counter.

19 Q. Now, the counter: Could you tell the jurors about
how high

20 is it?

21 A. About as high as the jury thing here.

22 Q. And was your desk behind the counter so you could
see

23 customers when they came in?

24 A. Yes. It's very long, and it has three desks behind
the

25 counter; and I was at one of them.

12475

Dana Priddy – Direct

1 Q. Now, on the other side for the customers, do they
stand

2 when they talk, or do they sit? What kind of things do
you

3 have there?

4 A. We had two barstools. Sometimes they stand,
sometimes they

5 sit.

6 Q. Do you know a man named Roger Moore?

7 A. Yes.

8 Q. When did you first meet Roger Moore?

9 A. On the day that he filed his insurance claim in
November.

10 Q. All right. Do you remember about when that was?

11 A. I know it was around November 5. I'm not sure if
he filed

it was 12 the claim the day of the robbery or the day after, but

13 within the proximity.

marked as 14 Q. Okay. Now, I'm going to show you what's been

that. 15 Defendant's Exhibit D1769 and ask you if you recognize

16 A. Yes.

you 17 Q. All right. Without telling us what's on it, could

18 tell -- tell us what it is.

19 A. It's a property loss report.

20 Q. Now, is that a record of your agency?

21 A. Yes.

make 22 Q. And is it in the regular business of your agency to

23 records like that?

24 A. Yes.

that's 25 Q. And did you participate in getting the information

12476

Dana Priddy - Direct

1 on there?

2 A. No.

3 Q. All right. Who was -- would have done that?

4 A. Jan.

there

5 Q. All right. And is the information that's placed on

6 relied on in the business of your agency?

7 A. Yes.

8 MR. TIGAR: We offer it, your Honor.

9 MR. ORENSTEIN: May I voir dire?

10 THE COURT: Yes.

11 VOIR DIRE EXAMINATION

12 BY MR. ORENSTEIN:

13 Q. Good morning, Ms. Priddy.

14 A. Good morning.

15 Q. Ma'am, you didn't fill out this form; correct?

16 A. No.

17 Q. Your mother did?

18 A. Yes.

when

19 Q. Now, this is the kind of form that's filled out

20 somebody comes in to file a claim; correct?

21 A. Yes.

22 Q. And you weren't taking the claim, the report?

23 A. Exactly.

24 Q. Your mother was?

25 A. Yes.

12477

Dana Priddy – Voir Dire

to fill 1 Q. She was the one paying attention? It was her job
2 out this form and -- fill it out?
3 A. Yes.
she was 4 Q. And do you know whether she wrote down exactly what
5 told?
6 A. Yes. We always do.
Moore 7 Q. Okay. Do you recall whether -- how long was Mr.
8 there?
9 A. It's been so long ago. 20 minutes. That's a
guess.
10 Q. Okay. In 20 minutes he can say more than about 20
words;
11 correct?
12 A. Yeah.
13 Q. So what's written here is not fully what he said?
14 A. True.
mother? 15 Q. And to find out what he said, we could ask your
16 A. Yes. Or me. I was in the same room.
17 Q. And she was the one who was taking the report and
paying
18 attention?
19 A. Right.
20 MR. ORENSTEIN: We object, your Honor.
21 THE COURT: Received. Continue.

22

DIRECT EXAMINATION CONTINUED

23 BY MR. TIGAR:

24 Q. Thank you, Ms. Priddy.

25 Now, Ms. Priddy, you said a moment ago you
were in the

12478

Dana Priddy - Direct

1 same room when Mr. Moore described what had happened to
him?

2 A. Yes, sir.

3 Q. And he -- he told he had been robbed; correct?

4 A. Yes.

5 Q. Did he say how he had been restrained or tied?

6 A. With duct tape.

7 Q. All right. Did he mention that he had been tied
with wire
8 ties or police cuffs?

9 A. No.

10 Q. And did he say who he thought had robbed him?

11 A. He repeatedly said that he -- that the feds did it.

12 Q. And was this -- the robbery took place -- it says
the loss

13 date on here -- this is D1769 now in evidence. Says
the loss

14 date is 11-5-94. Now, do you remember what day of the
week the

15 5th of November was of 1994?

16 A. No, sir.

17 Q. Well, would it refresh your recollection if I
showed you

18 a --

19 THE COURT: I thought that she'd have a
recollection.

20 Let's just establish by the calendar.

21 MR. TIGAR: Thank you, your Honor.

22 THE COURT: What day is it?

23 MR. TIGAR: The 5th of November, '94? It
would be

24 a --

25 MS. WILKINSON: Saturday.

12479

Dana Priddy - Direct

1 MR. TIGAR: Saturday, your Honor.

2 MR. ORENSTEIN: Saturday, your Honor.

3 THE COURT: All right. So you can take it as
true

4 that it was Saturday.

5 BY MR. TIGAR:

6 Q. And do you remember him coming in shortly after the
loss

7 date that's on here?

8 A. Yes.

9 Q. Okay. Do you remember now, knowing that the 5th

was a

10 Saturday, what day it was that he came in to talk to
you?

11 A. It was fairly recent, so I'm going to assume it was
Monday.

12 Q. Now, you said you were -- where was Mr. Moore --
where was

13 this conversation that Mr. Moore was having with Ms.
Dies in

14 the office? Was it out in that big room?

15 A. Yeah. We were in the big room.

16 Q. And where was he sitting or standing?

17 A. She was at the middle desk.

18 Q. Where was Mr. Moore?

19 A. Standing right in front of her.

20 Q. And you could hear what was being said?

21 A. Yes. Everything.

22 Q. Did he describe -- did he say that whoever had
robbed him

23 had had a gun?

24 A. I don't recall that.

25 Q. And he described certain things he said were
missing;

12480

Dana Priddy - Direct

1 correct?

2 A. Yes.

have a 3 Q. And did your -- did you -- he and Ms. Dies then
4 discussion about the extent of his coverage?

5 A. Yes.

6 Q. And what did she tell him about his coverage?

7 MR. ORENSTEIN: Objection.

8 THE COURT: Overruled.

9 BY MR. TIGAR:

10 Q. You can answer.

11 A. He had said that there was lots of guns.

12 And she said, "For you to get full
compensation for

13 the guns, you should have bought a gun floater."

14 Q. All right. And did he say anything about that?

15 A. Yes.

16 Q. What did he say?

a 17 A. He said he didn't -- he knew that he'd have to have

18 floater but he didn't want to tell her because he
didn't want

19 her to know what he had.

meeting 20 Q. Now, after this -- about how long did this first

21 take, ma'am?

22 A. 20 minutes.

23 Q. All right.

24 A. Maybe.

your 25 Q. Now, after you got your property loss report, did

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Dana Priddy – Direct

1 agency go through the procedures to get that claim
handled by 2 the company?

3 A. We turned it in to the claims department.

4 Q. And did you treat it any differently from any other
claim?

5 A. No.

6 Q. Did there come a time when Mr. Moore called you on
the 7 phone about the claim?

8 A. Yes.

9 Q. And you recognized his voice?

10 A. No. He identified himself.

11 Q. Okay. But you had heard his voice in the room;
right?

12 A. Yes. Yes.

13 Q. And what was the tone of his voice on the phone?

14 A. He just wanted to talk to Jan. He was unhappy
about his 15 claim.

16 Q. And was Jan there?

17 A. Yes.

18 Q. What was she doing?

19 A. She was with a client in her office.

20 Q. And did you explain that to Mr. Moore?

21 A. Yes, I did.

22 Q. And would you tell the jury, please, what he said.

23 A. It was about 11:45, and he had called and wanted to
talk to

24 Jan; and there was a client in her office, and her
12:00 was

25 standing in front of me. And I told Mr. Moore that I
would

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Dana Priddy - Direct

1 have her return his call but it would probably be after
1:00.

2 And that's when Mr. Moore got angry.

3 Q. And when he got angry, what did he say?

4 A. Well, he wanted me to interrupt her appointment;
and I said

5 that I wouldn't but I would have her return his call
after 1.

6 Q. And what did he say when you said that?

7 A. And then he said that he was -- he was angry and he
was

8 coming to the office to smear me all over the counter.

9 MR. TIGAR: I have no further questions.

10 THE COURT: Mr. Orenstein.

11 CROSS-EXAMINATION

12 BY MR. ORENSTEIN:

13 Q. Good morning, again.

14 A. Hi.

15 Q. Mr. Moore was mad that you wouldn't put your mother
on the
16 phone right away; correct?

17 A. Yes.

18 Q. Never heard him say he was mad about the amount he
got
19 paid?

20 A. No.

21 Q. And you remember him saying that he was robbed by a
man who
22 had a mask?

23 A. I'm not sure if there was one man or two; but yes,
there
24 was a mask.

25 MR. ORENSTEIN: Thank you, ma'am. Nothing
further.

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1 THE COURT: Excused?

2 MR. TIGAR: Nothing further. Thank you very
much for
3 coming all this way.

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

5 Next, please.

6 MR. TIGAR: Rick Spivey.

7 THE COURTROOM DEPUTY: Would you raise your
right
8 hand, please.

9 (Richard Spivey affirmed.)

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

11 Would you state your full name for the record
and
12 spell your last name.

13 THE WITNESS: Richard Joel Spivey, S-P-I-V-E-
Y.

14 THE COURTROOM DEPUTY: Thank you.

15 DIRECT EXAMINATION

16 BY MR. TIGAR:

17 Q. Good morning, Mr. Spivey.

18 A. Good morning.

19 Q. Will you tell the jury, please, what you do for a
living.

20 A. I'm a claims supervisor in the insurance claims
office in
21 Little Rock, Arkansas.

22 Q. What -- what company is that?

23 A. Farmers Insurance Group.

24 Q. How long have you worked for Farmers Insurance
Group?

25 A. Since April of 1990.

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Richard Spivey - Direct

me -- to 1 Q. Directing your attention, sir, to April -- excuse

2 November of 1994, what was your job with Farmers?

3 A. I was a claims representative.

4 Q. And did you have the responsibility for
investigating a

5 claim by a policyholder named Roger Moore?

6 A. Yes, I did.

7 Q. And what did you do in order to investigate that
claim,

8 sir?

9 A. I was assigned the claim, contacted Mr. Moore, and
10 discussed the loss with him over the telephone. And a
few days

11 later, I actually went out to the residence and met
with him

12 face to face.

13 Q. All right. Do you remember when you were assigned
the

14 claim, sir?

15 A. I believe it was November 7. I might be incorrect
on that,

16 but I believe it was in the first week of November.

17 Q. Did -- sorry. I lost my train of thought there,
sir.

18 When you were assigned the claim, did you call

19 Mr. Moore in an effort to make an appointment?

20 A. Yes, I did.

21 Q. Now, I'm going to show you what has been marked as
22 Defendant's D1124 for identification. And can you tell
me what
23 that is, sir?

24 A. It is a property insurance loss register.

25 Q. And does that bear your signature?

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Richard Spivey – Direct

1 A. Yes, it does.

2 Q. And is that the date of your signature?

3 A. Yes, it is.

4 Q. Now, that is a form that you make in the regular
course of
5 your business at Farmers?

6 A. Yes, it is.

7 Q. And it is -- is it in the regular course of your
business
8 to keep records like this?

9 A. Yes.

10 MR. TIGAR: We offer D1124, your Honor.

11 MR. ORENSTEIN: No objection.

12 THE COURT: Received, D1124.

13 BY MR. TIGAR:

14 Q. I'm going to place this up on the monitor here,
sir.

15 Tell the jury what this -- is this called a
PILR?

16 A. Yes, sir.

17 Q. Well, what is the purpose of this PILR form?

18 A. It is a reporting over a database that insurance
companies

19 can report specific losses to this database that
becomes

20 available for other carriers to be able to inquire
about prior

21 losses on insureds.

22 Q. And where did you get the information that you put
on the

23 form, sir?

24 A. There is a loss report that is printed out at the
time the

25 loss is reported to the claims office, and it lists in
that

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Richard Spivey - Direct

1 instance -- it lists the amount of the limits of the
policy

2 itself; of course, the policy number and the claim
number.

3 Q. Now, you put insured is "Moore, Roger E." Correct?

4 A. Yes.

5 Q. And then second insured, "Moore, Karen." Correct?

6 A. Yes.

7 Q. Do you remember where you got that information?

8 A. It was probably how the policy was set up with the agent.

9 And I'm sure that that's where that information came from.

10 Q. And then going down, we find that the amount of policy on

11 contents is \$63,000. Is that right?

12 A. Yes, sir.

13 Q. Now, you have the figure under "estimated loss" of
14 "\$12,000." Correct?

15 A. Yes, sir.

16 Q. Do you remember where that number came from?

17 A. Evidently, my first conversation over the telephone with

18 Mr. Moore, and he indicated the items that were stolen. I knew

19 that limits -- sub-limits within the policy were going to apply

20 to this, and I assume that I got that number -- it was the best

21 guesstimated figure that I could come up with at that point

22 prior to going out and meeting with Mr. Moore.

23 Q. Okay. And then at the bottom is your signature, "R.

24 Spivey, 11-8-94" -- whoops. "11-8-94." Correct, sir?

25 A. Yes, sir.

12487

Richard Spivey - Direct

1 Q. Now, what is the purpose of this form?

2 A. Again, to report it to that specific company so
they'll

3 have it on database in case someone wants to inquire to

4 Mr. Moore in the future.

5 Q. So if -- in other words, if I had had a loss with
your

6 company, and you would fill out this form; right?

7 A. Yes.

8 Q. And then if I wanted to get insurance with somebody
else,

9 they can call this central database, the other
insurance

10 company, and they'll find what my loss record is. Is
that

11 correct?

12 A. Yes. I believe so.

13 Q. Now, after you prepared this report, you said you
went out

14 and interviewed your insured; correct?

15 A. Yes, sir.

16 Q. And where did you do that?

17 A. At his residence.

18 Q. Do you remember what that residence looked like?

19 A. Yes, I do.

20 Q. Showing you what's been received in evidence as
21 Government's 1740C, does that look like the house where
22 Mr. Moore lived?

23 A. Yes, it does.

24 Q. Now, you explained to Mr. Moore -- what did you
explain to

25 Mr. Moore when you got out there to talk to him?

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Richard Spivey - Direct

1 A. Well, we talked about the loss itself and, of
course, his

2 statement was taken; and then we got involved as far as
the

3 process for replacement of some of the items and the
limits on

4 some of the items that he was making a claim on. We
also

5 discussed that. Basically, the entire situation was
discussed.

6 Q. Okay. And is it your habit to tape-record
interviews?

7 A. Yes, it is.

8 Q. Why do you do that?

9 A. For record.

10 Q. Is that -- is that a practice of yours, or a
requirement of

11 your company? How does that come to be, that

requirement?

12 A. It's a requirement of the company.

13 Q. And were you trained as an investigator in the use
of the

14 tape recorder?

15 A. Yes, I was.

16 Q. And what did your training -- what kind of training
did you

17 get in the use of the recorder?

18 A. From basics of how to introduce yourself, how --
you know,

19 what type of questions to ask and just how to proceed
through

20 the recording itself.

21 Q. Now, when you make a tape recording of an interview
with

22 one of your insureds, do you have a practice of when
you -- the

23 tape runs out and you've got to turn it over or put in
a new

24 tape as to what you say to the person?

25 A. Yes.

12489

Richard Spivey - Direct

1 Q. And what do you say then after you start up the
tape again?

2 A. Just reintroduce myself and make sure that the
question is

was off 3 asked as to whether that person is aware that the tape
that 4 and if he was -- was any conversation made regarding
5 statement while the tape was off.

6 Q. And what is the purpose of your doing that, sir?

nothing 7 A. To make sure that it is aware on the recording that
statement. 8 was talked about that was not recorded on the

some 9 Q. Now, when you were out there that day, did you take
10 pictures?

11 A. Yes, I did.

part of 12 Q. And did you mount those pictures up on a sheet as a
13 your report?

14 A. Yes, I did.

make a 15 Q. And when you were out there that day, did you also
16 list of the items on which the claims were being made?

at the 17 A. I do not recall if I made the list when I was there
office. 18 residence or if I made that when I got back to my

what's been 19 Q. All right. I'm going to show you first, sir,

ask you 20 marked as Defendant's 1799 for identification, sir, and
21 if that is a record that you prepared.

22 A. Yes, it is.

make 23 Q. And is it in the regular course of your business to
24 records like this?
25 A. Yes, it is.

12490

Richard Spivey - Direct

the -- 1 Q. And are the entries on it designed to be used in
2 doing your business?
3 A. Yes, it is.

4 MR. TIGAR: We offer D1799, your Honor.

5 MR. ORENSTEIN: No objection.

6 THE COURT: It's received.

7 BY MR. TIGAR:

look at 8 Q. While I'm here, sir, I'm going to ask you to take a
9 what has been marked as D1206, ask you to leaf through
it. I 10 ask you whether that is a Xerox copy in black and white
of the 11 photos that you took and the photo log that you made
from the 12 photos you took that day?
13 A. Yes, it is.

14 MR. TIGAR: We offer D1206.

15 MR. ORENSTEIN: No objection.

16 THE COURT: Received.

17 What was -- how many of them are there?

18 MR. TIGAR: How many photos?

19 THE COURT: Are there multiple pages?

20 MR. TIGAR: Yes. It is Bates' stamped, your
Honor, up

21 to page 7.

22 THE COURT: Thank you.

23 MR. TIGAR: And it consists of eight pages
because the

24 first numbers are 1, 2, 3, 4 -- I'm sorry, your Honor.
The

25 Bates' stamping is out of order. Let me re-count the
pages and

12491

Richard Spivey - Direct

1 tell your Honor.

2 No, I'm sorry, your Honor. I had two stuck
together.

3 There are eight pages numbered 0 through 7.

4 THE COURT: Thank you.

5 BY MR. TIGAR:

6 Q. Now, sir, starting here with D1799 now in evidence,
is

7 this -- it says "Personal Property Claims Estimate and
Loss

8 Worksheet"; correct?

9 A. Yes, sir.

10 Q. What is the purpose of this kind of a record in
your work,

11 sir?

12 A. It's the form that we use to list the personal
property

13 that the insured is making a claim on.

14 Q. Now, when you went out there, sir, did you -- you
15 understood what the policy limits were; correct?

16 A. Yes.

17 Q. On contents; correct?

18 A. Yes.

19 Q. And was this a contents claim?

20 A. Yes, it was.

21 Q. Was he claiming anything for damage to his house?

22 A. I do not believe so, no.

23 Q. Now, did he have a deductible in on his policy?

24 A. Yes, he did.

25 Q. What was his deductible?

12492

Richard Spivey - Direct

1 A. I believe it was a \$500 deductible.

2 Q. So -- now -- so that if his loss that he -- of
insured

3 property was \$63,500, what would he get?

4 A. After the deductible?

5 Q. Yes.

6 A. It would be a \$63,000 loss.

7 Q. And if it was \$700, he'd get 200; correct?

8 A. Correct.

9 Q. We can do the arithmetic.

10 A. Yes.

11 Q. And did the contents insurance: Did he have a floater

12 policy in addition to that?

13 A. I don't believe he did, no.

14 Q. Now, we saw the numbers originally here of 84- and 63-.

15 Now, what is your understanding of the relationship between the

16 84,000 number on building and the 63,000 on contents?

17 A. Well, they are separate limits built within the policy.

18 The building, of course, is for the dwelling itself; and the

19 contents are the personal properties in the dwelling.

20 Q. Now, if I insure my house for \$50,000, will my contents be

21 a percentage of that in your standard policy?

22 A. Not being an agent, not selling the insurance, I'm not real

23 familiar with that end; but I believe that it is built in. A

24 certain percentage would apply for the contents that can be

25 changed or negotiated, so be (sic), with the insured.

12493

Richard Spivey – Direct

this is 1 Q. Now, coming back to Defendant's 1799 in evidence,
2 what Mr. Moore said he lost; correct?

3 A. Yes. That's my list of the items that he reported.

correct? 4 Q. Okay. And that's based on what he told you;

5 A. Yes.

pistols; 6 Q. Said he lost 77 firearms, rifles, shotguns and

7 correct?

8 A. Yes.

9 Q. Then ammunition?

10 A. Yes.

11 Q. Jewelry, stones?

12 A. Yes.

13 Q. Cash, gold and silver?

14 A. Yes.

15 Q. Four vibration detectors?

16 A. Yes, sir.

17 Q. And a camera?

18 A. Yes, sir.

19 Q. And a video camera?

20 A. Yes, sir.
21 Q. Now, where did you get -- I see "location," and it
all says
22 "house." Correct?
23 A. Yes, sir.
24 Q. And then says "place of purchase," "collected for
30 years"
25 on the guns. Is that what he told you?

12494

Richard Spivey - Direct

1 A. Yes, it is.
2 Q. And then under "ammunition," it says "Stromen"
place of
3 purchase. Is that the name of a business?
4 A. I do not recollect if that was a person or if that
was a
5 business, but it was the place that he told me that it
was
6 purchased at.
7 Q. Now, he gave you -- where did you get these
replacement
8 costs and original-cost numbers?
9 A. The original-cost numbers would be the numbers that
I
10 obtained from him from his list that he provided us.
11 Q. Okay. Now, on the guns, there is no original cost,
just a

12 replacement cost. Correct?
13 A. Yes, sir.
14 Q. And then on the ammunition, the original cost,
replacement
15 cost the same?
16 A. Yes.
17 Q. Then on the jewelry and stones, there is -- looks
like
18 something has been written over here. Can you tell us
about
19 those entries?
20 A. It appears that I started with -- I would think it
looks
21 like a 4500 and maybe changed to 5500.
22 Q. Okay. Then looking here at the cash, gold and
silver, we
23 see 17,650. Correct?
24 A. Yes.
25 Q. And then going down, the vibration detectors are
500 and

12495

Richard Spivey - Direct

1 500. Then when we get to the camera, we see a 550 on
original
2 cost and 469 on replacement, and then you say "Easy
Val" and
3 "Serv. Mdise." What does that mean?
4 A. Well, "Serv." -- that is Service Merchandise, the

outlet

5 store that you can purchase the camera at. And I also
got the

6 price -- I'm not sure if I used it or if it was the
same price,

7 but Easy Val is a program that we can use through our
company

8 that replaces electronics and items of that nature.

9 Q. So that's just -- it's a computer program?

10 A. Yes.

11 Q. And that shows percentages?

12 A. Yes.

13 Q. Now, on this -- so the cost -- the replacement
cost: That

14 was the amount that under your calculation using the
Easy Val

15 for these last two items -- how would you describe it?
The

16 amount he was saying he lost?

17 A. Well, it's the actual amount that it would take to
replace

18 the items that he was claiming was lost.

19 Q. Now, have you totaled up these items?

20 A. It's not on the list; but yes, I remember -- or I
have seen

21 and known that the items total up to be over \$63,400, I

22 believe.

23 Q. So he -- the total is 63,400. Correct?

24 Now, going over here -- is that right?

25 A. Yes. Somewhere in that area. Not exactly.

12496

Richard Spivey – Direct

1 Q. When you met with a representative of the defense
last

2 night, were you asked to make a -- to check the
arithmetic?

3 A. Yes.

4 Q. And you've done that?

5 A. Yes.

6 Q. Okay. Now, on these applicable policy limitations,
you

7 have a series of numbers over here. What does that
mean?

8 A. Well, homeowner's policy has limits built into it
on

9 certain items, and those limits apply unless the
insured has an

10 endorsement which you mentioned earlier to increase the
amount

11 of coverage for those specific items.

12 Q. So these are policy limits that you filled in based
on your

13 understanding of what the limits were of the policy he
had?

14 A. Yes, it is.

15 Q. And what was your total that you came to?

16 A. \$5,913.

17 Q. Now, during your interview with Mr. Moore, was
someone else

18 present other than you and Mr. Moore?

19 A. Yes, there was.

20 Q. Who was that?

21 A. I believe it was Ms. Anderson.

22 Q. Were you introduced to her?

23 A. Yes, I believe I was.

24 Q. Can you describe her, color hair, size?

25 A. No, sir, I probably couldn't at this point.

12497

Richard Spivey – Direct

1 Q. Was she in the place with you all the time while
you were

2 talking to Mr. Moore, if you remember, or did she come
and go?

3 A. I'm -- I believe she was there the majority of the
time I

4 was speaking with him.

5 Q. Now, did you ask him whether he had been alone in
the house

6 on the 5th?

7 A. On the 5th, the date -- that is the date of loss?

8 Q. Date of the incident, yes.

9 A. I'm sure it was on the taped statement who all was
at the

10 residence at the time of the loss.

visit? 11 Q. Did he -- did you ask him who Ms. Anderson went to

12 A. Yes, I did.

13 Q. And what did he say?

I'm not 14 A. I believe she was going to Louisiana to visit --

of that 15 sure if it was friends or to a horse show or something

16 nature.

twice? 17 Q. Okay. And did you ask him who did she go visit

18 A. Possibly could have, but I don't remember --

just ask 19 Q. I'm going to show you a page of your interview and

yourself, and 20 you to look at from there to there and read it to

21 then I'll ask you if that refreshes your recollection.

22 MR. TIGAR: Page 2 of the transcript.

23 MR. ORENSTEIN: Thank you, sir.

bottom. 24 MR. TIGAR: About four questions from the

25 BY MR. TIGAR:

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Richard Spivey - Direct

1 Q. Does that refresh your recollection, sir?

2 A. Yes.

3 Q. And how often did you -- how many times did you ask

him who

4 Karen Anderson had gone to visit?

5 A. It appeared to be two times.

6 Q. And what did he say the first time?

7 A. I believe "some friends."

8 Q. Okay. Did he say he knew who they were?

9 A. I think after the second question, he named some
names.

10 Q. Did he answer -- what did he say in response to the
first
11 question?

12 A. I believe it was, "I don't know. Just going to see
some
13 friends."

14 Q. Now, then did he describe to you what he said
happened to
15 him?

16 A. Yes, he did.

17 Q. And did he tell you that he had been -- had been
put in
18 restraints of some kind?

19 A. Yes, he did.

20 Q. What kind of restraints did he say he had been put
in?

21 A. I believe it was some type of military ties,
something of
22 that nature.

23 Q. Once again, sir --

24 MR. TIGAR: Page 5.

25 BY MR. TIGAR:

12499

Richard Spivey – Direct

look at 1 Q. -- I'm going to show you your report and ask you to
2 what I've highlighted and see does that refresh your
3 recollection how he said he had been restrained.

4 A. Yes.

5 Q. And what did he say the restraints were?

6 A. They were police tie wraps.

7 Q. Did he say what size they were?

8 A. I don't recall.

refreshing your 9 Q. Okay. Let me find -- would it help you for

of you, 10 recollection to have a copy of your interview in front

11 sir?

12 A. Yes, sir, it probably would.

13 Q. Now, sir, what we want today is your memory of what
14 happened, and so I don't want you to read this, but I

am going

15 to place it --

I don't 16 MR. TIGAR: Is that all right, your Honor, so

17 have to keep going back and forth for refreshment?

18 THE COURT: All right.

19 MR. TIGAR: So that if we need to, we can
refer.

20 BY MR. TIGAR:

21 Q. And would you look, please, at page 5; and do you
see, does

22 that -- reading that, does that refresh your
recollection as to

23 what Mr. Moore told you about the size of the tie
wraps?

24 A. Yes. He stated they were quarter-inch police tie
wraps.

25 Q. All right. Now, did he tell you anything about
whether he

12500

Richard Spivey - Direct

1 could hear the -- this person he said robbed him going
through

2 the house?

3 A. Yes. I believe there was some conversation
regarding he

4 could tell he was going through the residence.

5 Q. Now, did he describe for you how thorough the
robber was?

6 A. I believe he did discuss the fact that he went
through

7 house -- the entire house and he could hear him opening
8 drawers. Then when he was leaving out specific rooms,
he could

9 tell from the sound of his footsteps that he had maybe

heavy

that 10 items carrying -- carrying heavy items out with him at
11 point.

house? 12 Q. Now, did you ask Mr. Moore if he had a safe in his

13 A. I believe I did.

14 Q. And what did he say?

15 A. I do not recall.

16 Q. Page 8, sir.

and he 17 A. Yes, I did ask him if he had a safe in his house,
18 replied, "No."

the 19 Q. Now, did you discuss with him whether he had called
20 sheriff's office?

21 A. Yes, I did.

22 Q. And what did he say about that?

said no; 23 A. I believe I asked him if he had called 911, and he

had 24 that he had called a gentleman in the area that he felt
25 been in that area for a long time and had several
contacts.

12501

Richard Spivey - Direct

the 1 Q. And did he say how long, according to him, it took

2 sheriff's office to get there?

3 A. I believe he might have, but I do not recall.

4 Q. Page 10, middle of the page, sir, if you remember.

5 A. He said that the people did not come for an hour
and a
6 half.

7 Q. Now, was he able to tell you from whom he had
bought these
8 items that he said were missing?

9 A. He couldn't tell me the entire list of the guns,
but he was
10 able to tell me some of the other items, other than the
11 firearms.

12 Q. But firearms, he could not. Is that right?

13 A. No.

14 Q. Now, did you look through the house?

15 A. Yes, I did.

16 Q. Did you ask Mr. Moore to reenact what had happened
to him?

17 A. I believe I did, or he might have done that on his
own.

18 Q. Did you take pictures of your visiting through the
house;

19 that is, your looking through the house?

20 A. Yes, I did.

21 Q. Now, did you see the closet in the master bedroom?

22 A. Yes, I did.

23 Q. Now, why were you interested in looking at the

closet?

24 A. Best I can recall, there was some questions on my
part as
25 the number of guns that he stated were in the closet,
the size

12502

Richard Spivey - Direct

1 of the closet, and the amount of other items in the
closet. I

2 had questions as to whether that large number of guns
could all
3 fit in the closet.

4 Q. How many guns had he said were -- were taken?

5 A. At least the 77, and seems like that he talked
about there

6 were a few others that might have been taken, also.

7 Q. And from his description, did it look like the
number of

8 long guns he had described being taken would fit in his
clothes

9 closet?

10 A. That's -- that was one of the questions that I had.
It

11 seemed like it would have been a tight fit if they
would have

12 all gotten in there.

13 Q. Now, this -- I'm going to show you now some of
what's been

14 received in evidence as Defendant's Exhibit 1206. This

is

Correct? 15 your -- these are your photos and your photo log.

16 A. Yes, it is.

correct? 17 Q. And you're writing here what he's telling you;

18 A. Yes.

the 19 Q. And he says that an unknown person was waiting at

20 corner of the house. Correct?

21 A. Yes.

Right? 22 Q. And forced him at gunpoint back in the house.

23 A. Yes, sir.

some 24 Q. Now, when you say "unknown person," he did give you

25 names of suspects; correct?

12503

Richard Spivey - Direct

1 A. Yes. At the end of the statement.

you? 2 Q. And do you remember what names of suspects he gave

3 A. Not all of them, but I do remember Timothy McVeigh.

telephone lines 4 Q. And then you have a picture here that says

where the 5 were cut. Does this -- did the original picture show

6 telephone lines -- the junction box there?

7 A. Yes. I believe the picture, original Polaroid
photograph,

8 resembled that --

9 Q. I'm going to show you what's been received in
evidence as

10 1740E, Government's 1740E. Are we looking at that same
11 junction box down the side?

12 A. Yes, sir.

13 Q. All right. And you see the lines, the overhead
lines

14 coming in here?

15 A. Yes, sir.

16 Q. Now, turning to the next page, this in its original
was a

17 picture of -- this is a picture of Mr. Moore?

18 A. Yes, I believe it is.

19 Q. The original? And he's showing you -- what's he
showing

20 you there?

21 A. He was demonstrating the position that he was in
after he

22 was brought into the house.

23 Q. Okay. And then down here -- I know this is a copy,
but

24 this looks like -- is this the interior of the van?

25 A. Yes, sir, I believe it is.

Richard Spivey - Direct

van? 1 Q. What did he tell you about what he had kept in the

-- there 2 A. Seems like I remember him talking about there were

talked 3 was cash in the van, but I do not recall what else we

4 about.

being in 5 Q. Did you talk to him about a list of serial numbers

6 the van?

7 A. I could possibly have, but I do not recall.

located? 8 Q. Did he tell you where in the van the cash was

9 A. I believe he did describe that.

the 10 Q. What did he say about where the cash was located in

11 van?

I'm 12 A. It seemed like it was hid in a -- in a compartment.

back end 13 not sure if it was a door compartment or back in the

14 in a compartment in the back end of the van.

what 15 Q. Okay. Out of the -- so one, or the other. That is

16 you remember?

17 A. Yes.

were 18 Q. And here you're saying, "Insured stated the guns

19 stolen from closets." Correct?

20 A. Yes, sir.

21 Q. You took pictures of closets? I'm going to skip
over here.

22 Now, here is a note. Would you read what that
says,

23 please.

24 A. "Pistol located on night stand was not taken."

25 Q. And what is this picture in the original? The
night stand?

12505

Richard Spivey - Direct

1 A. Yes, sir, I believe it is.

2 Q. And do you know whether or not the claim for \$5,913
was

3 paid by your company?

4 A. Yes, it was paid.

5 Q. Now, did Mr. Moore relate to you what the person
that he

6 said robbed him said to him when he went out of his
house that

7 morning of the 5th?

8 A. Yes, I believe he mentioned that someone else was
going to

9 be watching the house when he left.

10 Q. All right. Now, did he say -- tell you what he
said to

11 the -- this person; that is --

12 A. I'm sorry. What?
13 Q. Let me take this one step at a time.
14 A. Okay.
15 Q. He told -- we established that he told you he came
out of
16 his house. Correct?
17 A. After the robbery occurred.
18 Q. No, this is -- I'm talking about that morning.
19 A. Okay. When he first came out.
20 Q. And did he tell you he saw somebody?
21 A. Yes.
22 Q. And he said that -- how did he say that person was
dressed?
23 A. In military-style outfit.
24 Q. Okay. What did he say the person said to him?
25 A. I believe he told him to lay down on the ground.

12506

Richard Spivey - Direct

1 Q. Did Mr. Moore say that he said anything to that
person?
2 A. I believe Mr. Moore eventually told him that
someone else
3 was coming out to the house that morning or maybe for
lunch
4 that day.
5 Q. Did Mr. Moore tell you in words or substance that
he had

6 said to the robber, "Are you a fed?"

7 A. I believe that is on the statement, yes.

8 MR. TIGAR: I have nothing further. Thank you
very
9 much, Mr. Spivey.

10 THE COURT: Mr. Orenstein?

11 MR. ORENSTEIN: May I have a moment, your
Honor?

12 THE COURT: Yes.

13 CROSS-EXAMINATION

14 BY MR. ORENSTEIN:

15 Q. Good morning, Mr. Spivey.

16 A. Good morning.

17 Q. We've previously met; correct?

18 A. Yes.

19 Q. Now, on approximately November 16: Does that date
sound
20 right for your interview?

21 A. Yes, it does.

22 Q. And you interviewed Mr. Moore on that date?

23 A. Yes, I did.

24 Q. Now, it's your normal practice when you conduct an
the
25 interview to identify who is present at the start of

Richard Spivey – Cross

1 interview?

2 A. Yes, it is.

3 Q. And make sure that whoever is present at the start
of the

4 interview consents to being interviewed?

5 A. Yes.

6 Q. And to being recorded; correct?

7 A. Correct.

8 Q. And you do the same thing at the end of the
interview, make

9 sure that the people who are there say yes, I know that
this

10 has been tape-recorded?

11 A. Yes.

12 Q. And you didn't identify Ms. Anderson, Mr. Moore's
13 companion, at the beginning of the interview?

14 A. No, I did not.

15 Q. And you didn't identify her at the end of the
interview?

16 A. No, I didn't.

17 Q. And there may be four times in the entire 20-some-
odd pages

18 of transcript when it appears she's saying something?

19 A. Yes.

20 Q. Now, when you interviewed Mr. Moore that day, he
told you

21 that he saw one robber; correct?

22 A. Yes, sir.

23 Q. And that the robbery started outside of his home?

24 A. Yes, sir.

25 Q. He was accosted by a masked gunman in military clothing?

12508

Richard Spivey – Cross

1 A. Yes, sir.

2 Q. The man had a mask?

3 A. Yes, sir.

4 Q. The man had a shotgun?

5 A. Yes, sir. I believe so.

6 Q. He told you that the robber had a garrote wire attached to

7 the gun?

8 A. Yes, sir.

9 Q. He told you that he was tied up with tie wraps?

10 A. Yes, sir.

11 Q. And that the robber also put duct tape over his eyes?

12 A. Yes, sir, I believe so.

13 Q. He told you that he asked the robber a number of questions

14 and that the robber did not respond to his questions. Correct?

15 A. Correct.

16 Q. Now, you know that the police had been out to
investigate

17 the robbery?

18 A. Yes.

19 Q. And you know that in talking about whether Mr.
Moore had

20 called the sheriff's office, he told you first "No"?

21 A. Correct.

22 Q. And then immediately after that, he mentioned that
the

23 dispatcher had called him back?

24 A. Yes.

25 Q. Do you want to take a look at page 10. About the
middle of

12509

Richard Spivey - Cross

1 the page.

2 A. He answered that he did not call the sheriff; he
called

3 another gentleman by the name of Bill Stoneman, first.

4 Q. Right. And immediately above where he's talking
about

5 Mr. Stoneman, did he tell you that "the dispatcher
called me

6 back in 20 minutes and said, 'We're working an accident

7 downtown. It will be an awhile before we can get out
there.'

8 That's what she said"?

9 A. Yes, that was his response.

10 Q. So he told you about the conversation he had had
with the
11 dispatcher?
12 A. Yes, sir.
13 Q. And that that -- she was calling him back?
14 A. Correct.
15 Q. Now, with respect to what Mr. Moore had stolen from
him and
16 what he was asking to be paid for, during your
interview, you
17 went over at some length the guns that he had had in
his house;
18 correct?
19 A. Correct.
20 Q. And he told you that they had been stored in
closets?
21 A. Yes.
22 Q. After talking about the guns, you asked him what
else had
23 been stolen; is that right?
24 A. Yes, sir, probably.
25 Q. And was his response to that without any further
prompting

12510

Richard Spivey - Cross

1 from you that "Well, \$8700 in cash has been taken, but

I know

2 that's worthless as far as telling you that"?

3 A. Yes, I believe that was the response.

4 Q. Because he knew that he wasn't going to get paid
for that

5 because he wasn't covered for that; correct?

6 A. Yes, sir.

7 Q. Now, you were asked about whether Mr. Moore talked
about

8 suspects, people who might be involved?

9 A. Yes.

10 Q. And he mentioned Mr. McVeigh; correct?

11 A. Correct.

12 Q. He mentioned Mr. Trickel?

13 A. Yes, that name sounds familiar.

14 Q. Mentioned another person?

15 A. I believe there were three names mentioned.

16 Q. In talking about Mr. McVeigh, did he tell you
possible

17 locations where Mr. McVeigh goes from one place to
another?

18 A. I believe he did discuss the fact that Mr. McVeigh
traveled

19 around to different gun shows and had been across the
country

20 doing that.

21 Q. Did he tell that Mr. McVeigh goes to Kansas?

22 A. I believe he -- yes, he did.

23 Q. And to Michigan?
24 A. Yes.
25 Q. And to Kingman, Arizona?

12511

Richard Spivey - Cross

1 A. Yes.
2 Q. Now, Mr. Spivey, you're a claims adjuster. You
were at
3 that time; correct?
4 A. Yes.
5 Q. And you've since been promoted to a supervisor; is
that
6 correct?
7 A. Yes, sir.
8 Q. Now, it's not part of your business to pay out
claims that
9 you think are fraudulent?
10 A. No, sir.
11 Q. You paid out this claim, didn't you?
12 A. Yes, we did.
13 Q. No matter how small a claim is, will you pay it out
if you
14 think it's fraudulent?
15 A. If we think it's fraudulent and we determine it
needs more
16 investigation, we will make that decision at that point
whether

17 we're going to investigate it further.
18 Q. And if you think it's fraudulent, you'll continue
to
19 investigate, rather than pay out?
20 A. Depending on the amount of money we're talking
about,
21 whether it's economically feasible to do that. At some
point,
22 we do make the decision to go ahead and pay the claim
instead
23 of investigating it further.
24 Q. Now, there are certain things that you've come to
recognize
25 in your experience that raise warning signs, red flags
--

12512

Richard Spivey - Cross

1 A. Yes, sir.
2 Q. -- about a claim. One of them that is the insured
is in a
3 hurry to get his money; correct?
4 A. Yes, sir.
5 MR. TIGAR: Objection to this, your Honor.
6 THE COURT: Sustained.
7 BY MR. ORENSTEIN:
8 Q. Was Mr. Moore in a hurry to get his money?
9 A. No.

you to 10 Q. Was Mr. Moore contacting you in an effort to get

11 help him find out who did this?

12 A. Yes, he was.

his 13 Q. Had Mr. Moore recently, before the loss, obtained

14 insurance?

around two 15 A. I do not believe so. I believe the policy was

16 years old.

and 17 Q. So he didn't get the insurance and then turn around

18 file a claim?

19 A. No, sir.

20 MR. TIGAR: Objection.

21 THE COURT: Sustained.

22 BY MR. ORENSTEIN:

was in a 23 Q. Did you take steps to determine whether Mr. Moore

owns? 24 financial position to own the things that he claimed he

25 A. Yes, I did.

12513

Richard Spivey – Cross

position to 1 Q. And you determined that he was in a financial

2 own the things that he claimed he lost?

3 A. Yes.

claims
4 Q. And after reviewing that, you determined that the
5 should be paid?

6 A. Yes.

7 MR. ORENSTEIN: Thank you. I have no further
8 questions.

9 REDIRECT EXAMINATION

10 BY MR. TIGAR:

11 Q. Hello again, Mr. Spivey. Very briefly, sir.

company;
12 The steps you took: You called a securities
13 correct? Or you contacted a securities company to find
out
14 about Mr. Moore's financial position?

15 A. Oh, yes. Some type of stock and bond company, yes.

16 Q. What did they report back about his net worth?

excess
17 A. A lady faxed me a piece of paper stating it was in
18 of a million dollars.

ask him
19 Q. Now, at the time you were interviewing him, did you
20 about the amount of cash that he was talking about?

having that
21 A. Yes, I did ask him -- I was inquisitive about
22 much cash on his person at the house.

cash?
23 Q. And what did he say was the reason he had that much

also, 24 A. They -- of course, he bought and sold guns; and
a lot 25 Ms. Anderson was in the horse business and she traveled

12514

Richard Spivey - Redirect

1 with the horse business.
2 Q. And then did he take out some cash and show it to
you?

3 A. Yes, he did reach in his pocket and pull out some
bills and 4 flashed them.

5 Q. How -- how big a roll?
6 A. It was a significant amount of money, but I
wouldn't know 7 how much it was.

8 Q. Now, sir, what was the total amount of the claim
here, 9 \$5900?

10 A. Yes, sir.
11 Q. Now, very briefly, I want to show you one picture
here from

12 your list. This is Bates' page 6 of what's in evidence
as --

13 excuse me -- as Defense D1206. Here is a picture --

14 Xerox. And you say silver -- could you just read that,
please.

15 A. "Silver coins located under bed were not taken."

16 Q. If we were to see the original Polaroids, are they
-- are

17 those pictures of coins?

18 A. Yes, it is. I believe they're located in a bag.

19 Q. And did -- what did Mr. Moore say about that?

20 A. He just made me aware that there were some items --
maybe

21 as proof that he had those type of items in the house,
but he

22 did show me those that he indicated were not stolen,
were not

23 located during the robbery.

24 MR. TIGAR: Thank you very much, Mr. Spivey.

25 I have no further questions.

12515

1 MR. ORENSTEIN: Nothing further.

2 THE COURT: Excusing the witness, I take it?

3 MR. ORENSTEIN: Agreed.

4 MR. TIGAR: Yes.

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

6 Next witness?

7 MR. TIGAR: Rodney Bowers.

8 THE COURTROOM DEPUTY: Raise your right hand,
please.

9 (Rodney Bowers affirmed.)

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

11 Would you state your full name for the record
and
12 spell your last name.

13 THE WITNESS: Rodney Bowers, B-O-W-E-R-S.

14 THE COURTROOM DEPUTY: Thank you.

15 DIRECT EXAMINATION

16 BY MR. TIGAR:

17 Q. Good morning, Mr. Bowers.

18 A. Good morning.

19 Q. Would you tell the jury, please, what you do for a
living.

20 A. I'm a reporter for The Arkansas Democrat-Gazette.

21 Q. Where is The Arkansas Democrat-Gazette
headquartered?

22 A. Little Rock.

23 Q. And do you have any particular specialty as a
reporter?

24 A. General reporter.

25 Q. How long have you been a journalist?

12516

Rodney Bowers - Direct

1 A. 17 years.

2 Q. I beg your pardon?

3 A. 17 years.

4 Q. Sir, you're a print-media journalist, not a radio
5 journalist?

6 A. Yes.

7 Q. I wonder if I could ask you, could you keep your
voice up
8 so that everybody within this enclosure can hear you.
There is
9 a microphone right there. Are you a little nervous?

10 A. Not too bad.

11 Q. Okay. Well, going back to the year 1995, were you
working
12 for The Arkansas Democrat-Gazette?

13 A. I was.

14 Q. Now, is the Democrat-Gazette -- what is it, a
daily,
15 weekly?

16 A. It's a statewide daily.

17 Q. Is it the only daily newspaper in Little Rock?

18 A. Yes, sir.

19 Q. Okay. Now, in 1995, did you have occasion to do
some
20 reporting about a man named Roger Moore?

21 A. Yes, sir, I did.

22 Q. Did you try to contact Mr. Moore?

23 A. Yes, sir.

24 Q. Had you read about an incident involving Mr. Moore
that led

25 you to try to contact him?

12517

Rodney Bowers – Direct

dealer 1 A. Generally speaking. There was reports about a gun
2 in Garland County, Arkansas.

3 Q. Now, did you go out to his house?

4 A. Eventually I did, yes, sir, once I located it.

went out to 5 Q. All right. And did you get to see him when you
6 his house?

7 A. No, sir.

8 Q. Did you do something to try to get his attention?

to his 9 A. Yes, sir. On second or third occasion of going out
call 10 house, I left a business card with a note asking him to
11 me.

12 Q. Okay. And did he call you?

13 A. Yes, sir. Next day.

14 Q. Pardon?

15 A. The next day, he called. Yes, sir.

him? 16 Q. Did you interview him about what had happened to

the 17 A. Yes, sir. I spoke to him for about 30 minutes on

18 telephone.

19 Q. And did he say in words or substance: Whatever I
was doing

20 for the FBI is F-blank-blank-blank-blank-blank up
because they

21 blew my cover?

22 A. Yes, sir.

23 Q. And can you tell us exactly what words he used?
You don't

24 have to use the F word, but just the other ones.

25 A. That was it.

12518

Rodney Bowers - Direct

1 Q. Okay. And then did he also describe this incident
where he

2 said he was robbed; right?

3 A. Yes, sir.

4 Q. Did he tell you how he had freed himself from his
5 restraints?

6 A. Yes, sir.

7 Q. And what did he say about what he did after he
freed

8 himself from his restraints?

9 A. He said he went to the neighbor's house and
telephoned the

10 sheriff's office.

11 Q. And did he give you his opinion of how the
sheriff's office

12 had investigated the case?

13 A. Yes, sir, he did.

14 Q. Okay. And again, with whatever deletions you feel

15 appropriate, what did he say about that?

16 A. He felt that they were not interested in
investigating the

17 case. He thought possibly that someone in the
sheriff's office

18 may have been involved in it.

19 I asked him specifically how.

20 And he told me that they found his vehicle,
his van

21 too quickly in a remote area and -- I think he said it
was 20,

22 30 minutes and it was 2 or 3 miles from his house on an

23 abandoned logging road.

24 Q. Now, did he say that there was something that was
missing

25 from the van?

12519

Rodney Bowers - Direct

1 A. Yes, sir. He said he had a list with serial
numbers of

2 some of his guns hidden in a door panel in the van and
it was

3 missing.

4 Q. Did he say something about the officers' attitudes

that you

5 can remember?

6 A. Yes, sir. He did not believe that they were
sincere in

7 their efforts to investigate the crime.

8 Q. Did he say they didn't give a . . .

9 A. I don't recall exact words.

10 Q. May I show you this --

11 MR. TIGAR: May I approach, your Honor?

12 THE COURT: Yes.

13 MR. TIGAR: Thank you.

14 BY MR. TIGAR:

15 Q. Take a look at that and read it to yourself and see
if that

16 refreshes your recollection.

17 Does it refresh your recollection?

18 A. Yes, sir.

19 Q. Tell the jury what he said about that.

20 A. They didn't give a -- expletive -- about the case.

21 MR. TIGAR: Will your Honor indulge me for a
moment?

22 THE COURT: Yes.

23 MR. TIGAR: Thank you very much, Mr. Bowers.

24 No further questions.

25 THE COURT: Ms. Wilkinson?

1 MS. WILKINSON: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MS. WILKINSON:

4 Q. Good morning, Mr. Bowers.

5 A. Good morning.

6 Q. You've been a reporter for a long time, haven't
you?

7 A. A while, yes.

8 Q. Interviewed a lot of folks?

9 A. Yes, ma'am.

10 Q. And you've talked to some people on the telephone;
right?

11 A. Yes, ma'am.

12 Q. Sometimes folks will talk to you in person?

13 A. Yes, ma'am.

14 Q. And when you talked to Mr. Moore, this was at what
time?

15 A. It was early June, 1995.

16 Q. So it was after the bombing in Oklahoma City;
correct?

17 A. Yes, ma'am.

18 Q. You spoke to him over the phone?

19 A. Yes, ma'am.

20 Q. Did you record your conversation with him?

21 A. No, ma'am.

22 Q. Why not?

23 A. It's not a general practice.

24 Q. Why is that?

25 A. Just generally don't tap a phone. It's not something I do.

12521

Rodney Bowers – Cross

often 1 Q. Haven't you said before that people you interview

2 clam up when you turn on the tape recorder?

often 3 A. If you turn on the tape recorder in person, that's

Other 4 the case. On the telephone -- in my state, it's legal.

5 states, it's illegal to tap -- to have a -- a telephone
6 recording.

notes 7 Q. So instead of having a tape recording, you rely on
8 that you take during the conversation?

9 A. Yes, ma'am.

with 10 Q. You took notes with your -- on your conversation

11 Mr. Moore?

12 A. Yes, ma'am.

13 Q. Do you have those notes with you?

14 A. No, ma'am.

15 Q. Did you save those notes?

16 A. For a period of time, I believe I did.

17 Q. Do you know where they are right now?

18 A. I have no idea.

19 Q. But you did write up some of your conversation in
an
20 article that you published in your newspaper; correct?

21 A. Yes, ma'am.

22 Q. And when you spoke to Mr. Moore, he was upset about
his
23 name being in the media, wasn't he?

24 A. Yes, ma'am.

25 Q. He was very upset about that, wasn't he?

12522

Rodney Bowers - Cross

1 A. Very upset, yes.

2 Q. And when he told you that his cover had been blown,
he was
3 referring to the media, wasn't he?

4 A. His cover with the media?

5 Q. That the media had blown his cover?

6 A. Yes, ma'am.

7 Q. Because his name had been publicized?

8 A. Yes.

9 Q. And up to that point, he had been cooperating with
the FBI

10 without his name being public. Correct?

11 A. I don't know that to be a fact.

12 Q. Well, he told you that he had been interviewed by
the FBI?

13 A. Yes, ma'am.

14 Q. He told you he had been interviewed by them several
times?

15 A. Yes, ma'am.

16 Q. But he wouldn't tell you how many times?

17 A. Correct.

18 Q. And he wouldn't tell you what he was talking to the
FBI

19 about; correct?

20 A. That's true.

21 Q. Although he did tell you that he was identifying
some

22 property, didn't he, from Mr. Nichols' house?

23 A. No, ma'am.

24 Q. You don't recall that?

25 A. I don't -- I don't remember him saying that he was

12523

Rodney Bowers - Cross

1 identifying property.

2 Q. Okay.

3 MS. WILKINSON: May I have a moment, your
Honor?

4 THE COURT: Yes.

5 BY MS. WILKINSON:

6 Q. Do you remember him saying that "I was spoken to by
the FBI
7 about items found in Mr. Nichols' house"?

8 A. Yes, ma'am.

9 Q. And you understood that that occurred after the
bombing in
10 Oklahoma City; correct?

11 A. Yes, ma'am.

12 Q. Didn't he tell you that the FBI showed up at his
door a
13 couple days after the bombing?

14 A. Yes, ma'am.

15 Q. You didn't discuss that subject matter?

16 A. He didn't go into detail about that.

17 Q. But he did tell you that it was about property
recovered
18 from Mr. Nichols' home?

19 A. I believe that to be the case, yes.

20 MS. WILKINSON: We have no further questions,
your
21 Honor.

22 MR. TIGAR: No further questions.

23 Thank you, sir.

24 THE COURT: I take it we're excusing him.

25 MR. TIGAR: Yes.

12524

1 MS. WILKINSON: Yes.

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

3 Next, please.

4 MR. TIGAR: Larry Hethcox.

5 THE COURTROOM DEPUTY: Would you raise your
right

6 hand, please.

7 (Larry Hethcox 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: It's Larry B. Hethcox, H-E-T-H-
C-O-X.

12 THE COURTROOM DEPUTY: Thank you.

13 DIRECT EXAMINATION

14 BY MR. TIGAR:

15 Q. Good morning, Mr. Hethcox.

16 A. Good morning, sir.

17 Q. I'm going to ask you, sir, if you would, to keep
your voice

18 up just so everybody within this enclosed area can
hear. If

19 you need a microphone, that's what that is sticking out

there.

20 A. Okay.

21 Q. Where do you live, sir?

22 A. I live in Little Rock, Arkansas.

23 Q. What do you do for a living?

24 A. I'm a helicopter pilot for the Little Rock Police

25 Department.

12525

Larry Hethcox – Direct

Little

1 Q. How long have you been a helicopter pilot for the

2 Rock Police Department?

3 A. For the past year.

4 Q. How long have you been flying helicopters?

5 A. Oh, since about 1966.

6 Q. In the military?

7 A. I was.

1994,

8 Q. Now, going back to the period of fall and winter of

9 what were you doing for work at that time?

10 A. I was a salesman for a food-brokerage company.

11 Q. And have you ever met a man named Roger Moore?

12 A. Yes, I have.

13 Q. How many times in your life have you had contact
with Roger

14 Moore?
15 A. I believe it's been five times. Two times I saw
him in
16 person and three phone calls.
17 Q. All right. Now, when was the first time that you
can
18 remember being contacted by the man who you later
learned was
19 Roger Moore?
20 A. This was in late November or early October of '94,
I guess.
21 He called me. I had a gun that I had for sale in the
paper,
22 and Roger Moore called me and wanted to come look at
the gun.
23 Q. Now, where had you advertised this gun?
24 A. In the local paper in Little Rock, the Democrat-
Gazette.
25 Q. That's your daily paper there?

12526

Larry Hethcox - Direct

1 A. That's correct.
2 Q. Now -- and did someone then come to your house to
look at
3 the gun?
4 A. Yes, they did.
5 Q. And that is the man you later learned was Roger
Moore?

6 A. That's correct.

7 Q. What name was this individual using at that time?

8 A. He introduced hisself -- it was not Roger Moore,
but I
9 cannot remember what he said his name was.

10 Q. Okay. Was he with someone, or was he by himself?

11 A. He was with a lady.

12 Q. And do you remember her name?

13 A. I later learned -- was told -- that her name was
Karen
14 Anderson, I believe.

15 Q. Okay. Now, did you sell him a gun?

16 A. I did.

17 Q. What kind of a gun was that?

18 A. It was a Remington 700 ADL, .308 caliber.

19 Q. Now, a few days later, did you have another contact
with
20 Mr. Moore?

21 A. Yes, I did. Mr. Moore called me.

22 Q. And what did he say to you?

23 A. He asked me if I had the serial number of that gun.
He
24 informed me that he had been robbed and needed that
money
25 for -- needed that number for insurance purposes.

Larry Hethcox - Direct

1 Q. Okay. Did he describe the details of the robbery
to you?

2 A. He did describe the details of the robbery.

3 Q. Okay. What -- how -- what did he tell you happened
to him?

4 A. He told me that he was outside working in his yard
and a

5 man came out of the woods wearing a military-type
outfit with a

6 firearm.

7 Q. Did he say what kind of a firearm?

8 A. I'm sure he did, but I can't recall specifically.

9 Q. Okay. And then what did he say happened?

10 A. He said after that, the man made him get on the
ground, he

11 tied him up, fired the gun -- and I can't recall if
that was

12 before or after he tied him up.

13 Q. All right. But Mr. Moore told you that the man had
fired

14 the gun?

15 A. Yes, he did.

16 Q. Did he say how -- how this person had fired the
gun?

17 A. Not -- you mean as --

18 Q. I mean at somebody, or in -- towards a tree, in the
air,

19 towards the ground? Did he say?

20 A. He told me. I can't recall. I know it wasn't

towards

21 someone.

22 Q. Okay.

23 A. But I cannot recall exactly what he said.

24 Q. All right. And then what did he say happened next?

25 A. Okay. He was tied up, drug inside, forced to open
a safe,

12528

Larry Hethcox - Direct

1 was duct-taped around his mouth.

2 Q. All right. And what did he say -- that who was
forced to

3 open a safe?

4 A. Mr. Moore.

5 Q. All right. And did Mr. Moore then say what had
been taken?

6 A. Yes. He said that there was weapons taken, there
was money

7 taken, and there was paintings taken.

8 Q. Paintings?

9 A. Paintings.

10 Q. What did he say the value of the items that were
taken?

11 A. I don't remember the exact dollar amount, but I do
recall

12 that it was in excess of \$100,000.

13 Q. Now -- so that was your third contact with him.

Correct?

14 A. That was my third contact, yes.

15 Q. Now, was there a fourth time that you talked to
him?

16 A. There was. And it was that same night after I had
searched

17 for the serial number of that gun and was not able to
find it

18 right away. I called him and informed him that I
couldn't find

19 it but told him where the gun was purchased and could
get the

20 number there.

21 Q. And did you ever see Mr. Moore again after that
evening?

22 A. Yes. That following summer, June, July -- I don't
remember

23 exactly the month -- he stopped by the house. I was
out in the

24 front yard, didn't recognize him at first; and as he
walked up,

25 he said, "Remember me? I'm the guy that you sold the
gun to."

12529

Larry Hethcox - Direct

1 And I remembered him; and that was the last time I saw
him.

2 Q. And did he ask you some questions on that occasion?

3 A. He asked me if I had talked to the FBI or the ATF
and the

FBI and 4 media. And I informed him that yes, I talked with the
5 the ATF.

6 Q. Did he have any response to that?

had 7 A. Only some negative responses about how the media
8 treated him badly.

1994 9 Q. When he was describing this episode to you back in
10 when he called you, did he say that he had said
anything to the

11 person that he said had robbed him that you remember?

12 A. Not that I can recall.

no 13 MR. TIGAR: Thank you very much, sir. I have
14 further questions.

15 CROSS-EXAMINATION

16 BY MR. ORENSTEIN:

17 Q. Good morning, Mr. Hethcox.

18 A. Good morning.

19 Q. We met last night, didn't we?

20 A. Yes, we did.

21 Q. You sold the gun to Roger Moore; correct?

22 A. That is correct.

there, 23 Q. And that was in October, November, sometime around
24 in '94. Is that right?

25 A. That's correct.

12530

Larry Hethcox – Cross

1 Q. And I think you told me that it was before the
start of
2 deer season. That's how you recall?

3 A. Right. Just prior to deer season.

4 Q. You were trying to get rid of the gun before deer
season
5 started and demand went down?

6 A. Yes.

7 Q. And a few days later, you got a call from Mr. Moore
and he
8 was looking for the serial number on that gun because
he had
9 been robbed?

10 A. That's correct.

11 Q. Now, when was the first time that you were asked to
12 describe what he told you in that conversation? When
was the
13 first time that you were asked by law enforcement to do
that?

14 A. This was -- all I know, it was between March and
probably
15 June of -- would be 1995.

16 Q. All right. Now, in that period, you were
interviewed by an
17 agent for the ATF. Correct?

18 A. That's right.
19 Q. And he was asking you about the gun itself; is that
right?
20 A. Well, yes. He asked me about the gun itself.
21 Q. Is it true that the first time you were recontacted
and
22 asked about the conversation that Mr. Moore had with
you and
23 what he described didn't occur until October of '95?
24 A. Say that again, please.
25 Q. It's true, isn't it, that the first time you were
asked

12531

Larry Hethcox - Cross

1 about the conversation itself, rather than just having
sold the
2 gun to Mr. Moore, but the first time you were asked
about the
3 conversation in which Mr. Moore described the robbery
-- that
4 wasn't asked of you until October of '95?
5 A. I'm still not for sure I quite understand.
6 Q. I'm sorry. I'm stating it very poorly.
7 The first time you were contacted was in --
sometime
8 in that period of March to June?
9 A. By someone other than Mr. Moore, you're talking
about?

Gahn. 10 Q. By law enforcement. That was an ATF Agent, Joe
11 Correct?
12 A. That's correct.

Moore? 13 Q. And he asked you about selling the gun to Mr.
14 A. Correct.

15 Q. He didn't ask you at that time about the
conversation. You
16 weren't asked to describe the conversation.
17 A. I don't recall if I was asked at that time or not.

18 Q. You were contacted later -- this was the fall of
'95 -- by
19 another agent of the FBI; and during that interview,
you were
20 asked to describe what Mr. Moore had told you about the
21 robbery. Is that correct?
22 A. Yes, I'm sure that's correct.

23 Q. So it's a year after the initial conversation that
you
24 had -- not the initial conversation. A year after Mr.
Moore
25 told you about the robbery that you were first asked to

12532

Larry Hethcox - Cross

1 describe what he told you.
2 A. That's the first time I can recall that happening.

told you 3 Q. And you couldn't recall the specific words that he

4 at that time; is that right?

5 A. There were many specific words I could not recall,
yes.

6 Q. You knew he told you he had been robbed?

7 A. That's correct.

8 Q. And you thought you had some of the other
information and

9 you did the best you could to recall it? Is that
right?

10 A. Uh-huh.

11 Q. And now it's another two years later, and you're
still

12 doing your best to describe what he told you?

13 A. That's correct.

14 Q. Okay. But there is no doubt in your mind that
shortly

15 after you sold him the gun, Mr. Moore came to you
looking for a

16 serial number of the gun that you had sold him?

17 A. That's correct. He called me wanting the serial
number,

18 yes.

19 Q. Because it had been robbed from him?

20 A. Yes.

21 Q. Now, the gun that you sold him was a Remington 700
ADL

22 rifle; is that right?

23 A. That's right.

24 MR. ORENSTEIN: May I approach, your Honor?

25 THE COURT: Yes.

12533

Larry Hethcox – Cross

1 BY MR. ORENSTEIN:

2 Q. Now, Mr. Hethcox, I've left in front of you
Government's

3 Exhibit 1753, which is not yet in evidence. Do you
recognize

4 what that is?

5 A. I do.

6 Q. What is it?

7 A. It's a record of purchase of that particular weapon
from

8 Wal-Mart.

9 Q. It's the record for when you bought the gun that
you later

10 sold to Mr. Moore; is that right?

11 A. Yes, when the gun was originally sold.

12 Q. And does it bear your signature?

13 A. That is my signature.

14 MR. ORENSTEIN: Government offers Exhibit
1753.

15 MR. TIGAR: No objection, your Honor.

16 THE COURT: Received.

17 BY MR. ORENSTEIN:

18 Q. Now, that document --

put it 19 MR. ORENSTEIN: If I may retrieve it so I can
20 on the screen, your Honor.

21 THE COURT: All right.

22 BY MR. ORENSTEIN:

your 23 Q. Now, just for the convenience of the jury, that's
24 signature over there; correct?

25 A. That is correct.

12534

Larry Hethcox - Cross

there we 1 Q. Now, let me zoom in a little bit. All right. And
2 see the serial number of the gun. Is that right?

3 A. I assume that is the serial number of the gun, yes.

where 4 Q. Now, we can zoom out just to show. That's the part
5 the gun is described; correct?

6 A. That's correct.

and 7 Q. The rifle is a 700 ADL, .308 -- that's the caliber;
that 8 serial number we see the letter C6580372. Am I reading

9 correctly?

10 A. Yes.

the 11 MR. ORENSTEIN: Now, if I may approach to show
12 witness an exhibit that's in evidence.

13 THE COURT: Yes.

14 BY MR. ORENSTEIN:

1810 in 15 Q. Mr. Hethcox, I'm showing you Government's Exhibit
16 evidence. Let me ask you if you recognize that gun.

17 A. It looks exactly like the gun I sold him.

18 Q. When you say "him," you're referring to Mr. Moore?

19 A. Yes.

20 Q. And can you find the serial number on it?

21 A. The serial number is on it.

and the 22 Q. Let me ask you to take a look at the serial number,
23 serial number from the yellow sheet is still on the
screen.

24 And would you tell the jury if it's the same number.

25 A. It is the same number.

12535

Larry Hethcox – Cross

1 Q. So that's the gun that you sold to Mr. Moore?

2 A. Yes, it is.

3 Q. And that he told you was stolen from him?

4 A. Yes.

5 Q. Did you ever give or sell that gun to Mr. Terry

Nichols?

6 A. No, I didn't.

7 MR. ORENSTEIN: Thank you, sir.

8 I have no further questions.

9 Let me just retrieve the gun.

10 THE COURT: All right.

11 Mr. Tigar, any redirect?

12 MR. TIGAR: Yes, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. TIGAR:

15 Q. Mr. Hethcox, if we can just put up here on the
board: This

16 is a -- an ATF form. Is that right, sir?

17 A. That's correct.

18 Q. And does that -- what does that tell us about this
19 purchase; that it's an original purchaser?

20 A. That it was sold by a federal firearms dealer.

21 Q. And that would be Wal-Mart; correct?

22 A. That would be Wal-Mart.

23 Q. And when you purchased this weapon, it was new;
correct?

24 A. It was new.

25 Q. And on here, are we going to find the date of that

12536

Larry Hethcox - Redirect

1 purchase?

2 A. Yes. Find the date of my signature, yes.

3 Q. August 20, 1991?

4 A. Yes.

5 Q. And that's when you bought it. Is that correct,
sir?

6 A. I believe that to be correct. The gun, I think,
was put in

7 layaway for a few days. I'm not sure if that was dated
prior

8 to my receiving the gun or not, but it was --

9 Q. It was around that time?

10 A. It's around that time, yes.

11 Q. And then you're asked to answer all of these
questions. Is

12 that correct, sir?

13 A. That's correct.

14 Q. And then there is a penalty provision and you sign.
15 Correct?

16 A. That's correct.

17 Q. And there is no doubt in your mind, sir, is there,
that

18 this is the correct serial number; correct?

19 A. That is the serial number that's on the gun, yes.

20 Q. Had there been some confusion about that before
that --

21 that some agent had contacted you more than once about
that, or

22 do you recall that?

23 A. No, sir. I recall no confusion about that serial
number.

24 Q. Okay. All right. So that is exactly the correct
serial

25 number; right?

12537

Larry Hethcox - Redirect

1 A. Yes, sir.

2 Q. And when you sold that gun -- all right -- you sold
it to a

3 man you later learned was Roger Moore; correct?

4 A. That's correct.

5 Q. And you don't recall the name he was using at the
time;

6 right?

7 A. I do not.

8 Q. Now, how did he pay you for this gun?

9 A. He paid me in cash.

10 Q. How much cash did he give you?

11 A. \$350, I believe it was.

12 Q. Did you see him peel a bill off a roll, or do you
remember

13 what he was carrying at the time?

14 A. No, sir, I don't recall.

15 Q. And you remember that -- do you remember that
transaction

16 clearly?
17 A. I remember that transaction clearly.
18 Q. And when this person later -- when the man you
later
19 learned was Mr. Moore called you, he gave you certain
details
20 about his robbery; correct?
21 A. That's correct.
22 Q. And just to go over that, are you sure that he told
you
23 that somebody fired a shot?
24 A. Yes. He said someone fired a shot.
25 Q. Are you sure he told you that he had paintings
missing?

12538

Larry Hethcox - Redirect

1 A. Yes, sir.
2 Q. Are you sure that he told you that it was more than
3 \$100,000?
4 A. Yes, sir.
5 MR. TIGAR: I have no further questions.
6 MR. ORENSTEIN: Nothing further. Witness
excused.
7 MR. TIGAR: He can be excused, your Honor.
8 THE COURT: All right. You may step down.
You are

9 excused.
10 We'll take our noon recess at this time,
members of
11 the jury, with the usual cautions of taking advantage
of the
12 time to rest, relax, nourish, but not talk about the
case or
13 things related to it; and, of course, continue to avoid
14 anything outside the evidence, knowing that the
evidence is far
15 from complete at this time.

16 So you're excused now till about 1:30, 1:32.
17 (Jury out at 12:02 p.m.)

18 THE COURT: Okay. We'll be in recess.
19 (Recess at 12:02 p.m.)

20 * * * * *

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14 1753 12533 12533

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17 D1124 12485 12485

18 D1206 12490 12490

19 D1762 12387 12387

20 D1768 12445 12445

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22 D1798 12389 12390

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1 REPORTERS' CERTIFICATE

2 We certify that the foregoing is a correct transcript from

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

4 at Denver, Colorado, this 4th day of December, 1997.

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Paul Zuckerman

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Kara Spitler