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14104

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11 Street, Suite 1308, Denver, Colorado, 80203, appearing
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12 Defendant Nichols.

13 * * * * *

14 PROCEEDINGS

15 (Reconvened at 1:10 p.m.)

16 THE COURT: Be seated, please.

17 (At the bench:)

18 (Bench Conference 122B1 is not herein transcribed
by court
19 order. It is transcribed as a separate sealed
transcript.)

20

21

22

23

24

25

14114

1 (In open court:)

2 (Jury in at 1:20 p.m.)

3 THE COURT: All right, members of the jury.
We again

4 apologize for keeping you waiting a bit; but here
again, there

5 were things that it was necessary to take the time to
discuss

6 with counsel and we hope we can appreciate your
indulgence in
7 that. So we're sorry to keep you waiting, but we're
not going
8 to keep you long so . . . we'll go for the next
witness.

9 MR. MACKEY: And our final witness, your
Honor, would

10 be Mr. Kerry Kitchener.

11 THE COURT: Thank you.

12 THE COURTROOM DEPUTY: Would you raise your
right
13 hand, please.

14 (Kerry Kitchener affirmed.)

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

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

18 THE WITNESS: Kerry L. Kitchener, spelled
19 K-I-T-C-H-E-N-E-R.

20 THE COURTROOM DEPUTY: Thank you.

21 THE COURT: Mr. Mearns.

22 DIRECT EXAMINATION

23 BY MR. MEARNS:

24 Q. Good afternoon, Mr. Kitchener. How old are you,
sir?

25 A. 28.

14115

Kerry Kitchener – Direct

1 Q. And where do you live?

2 A. Wakefield, Kansas.

3 Q. I'm going to ask you to keep your voice up and also
try to

4 slow down a little bit so everybody can hear you and
the court

5 reporter can take down your testimony.

6 You live in Wakefield, Kansas?

7 A. Uh-huh.

8 Q. How long have you lived in Wakefield, Kansas?

9 A. About 28 years.

10 Q. Where is Wakefield in relation to Junction City?

11 A. It's northwest of Junction City.

12 Q. About how far?

13 A. About 18 miles.

14 Q. And where did you go to high school?

15 A. At Wakefield High School.

16 Q. And after graduating from high school, did you
attend any

17 college?

18 A. I attended Cloud County Community College.

19 Q. You're going to have to slow down. Where did you
go to

20 college?

21 A. Cloud County Community College.

22 Q. How many years did you attend that institution?

23 A. Three years.

24 Q. Where do you work right now?

25 A. I work for a CDP Landscaping out of Milford,
Kansas.

14116

Kerry Kitchener – Direct

1 Q. Where is Milford in relation to Wakefield?

2 A. It's southeast of Wakefield about 8 miles.

3 Q. And how long have you been working for that
landscaping
4 company?

5 A. About six months.

6 Q. And what do you do for them?

7 A. Mainly do residential landscaping, mowing grass,
planting
8 trees, and building gardens and stuff.

9 Q. Did you ever work for the Kansas Department of
Wildlife and
10 Parks?

11 A. Yes.

12 Q. And when did you work for the Parks Department?

13 A. From the summer of 1989 to about September, October
of '95.

14 Q. So a little over six years?

15 A. Uh-huh.

16 Q. And what did you do for the Parks Department?

17 A. I worked at a state park for a while and mainly did
18 maintenance on the park itself with mowing grass,
picking up
19 trash, cleaning rest rooms.

20 Q. What park was that that you're referring to?

21 A. Milford State Park.

22 Q. I'd like to show you what has been introduced in
evidence

23 as Government Exhibit 2045. And, Mr. Kitchener, do you
see
24 that on your screen?

25 A. Uh-huh.

14117

Kerry Kitchener - Direct

1 Q. And do you recognize that as a map of central
Kansas?

2 A. Yes.

3 Q. Now, you have a black pen on -- that's attached to
a wire.

4 Do you see that there?

5 A. Uh-huh.

6 Q. Okay. Could you first indicate for us on that map
where

7 Wakefield, Kansas, is, where you live.

8 A. It's about --

9 Q. You have to go -- I'm sorry. You have to go
underneath.

10 There you go.

11 A. Right in here.

12 Q. That's where Wakefield is?

13 A. Uh-huh.

14 Q. Okay. And where is Milford then? Where would
Milford be

15 on that map?

16 A. Right in there.

17 Q. And how long was it that you had maintenance
18 responsibilities at Milford Lake?

19 A. Three years. Three to four years.

20 Q. And during the six years that you worked for the
Parks

21 Department, did you have any maintenance
responsibilities at

22 any other lakes?

23 A. I did at Geary County State Fishing Lake.

24 Q. And do you see Geary Lake on -- on this map?

25 A. Yes.

14118

Kerry Kitchener - Direct

1 Q. And could you put a circle around Geary Lake for
us.

2 A. Right in there.

west 3 Q. Okay. And that's the blue dot that's just to the
4 there of the highway?

5 A. Uh-huh. Yes.

Geary 6 Q. During what years did you do maintenance work at
7 Lake?

8 A. From -- 1992 to about '95.

what 9 Q. And during those three or four years, 1992 to 1995,
work at 10 seasons or months of the year would you do maintenance
11 Geary Lake?

12 A. Mainly the spring and the summer.

what? 13 Q. And so what months would that be? From what to
14 A. From usually March to about September, October.

Geary 15 Q. And what kind of maintenance work would you do at
16 Lake?

painting on 17 A. Do cleaning the rest rooms, picking up trash,
18 the rest rooms, building picnic shelters, just general
19 maintenance.

spring and 20 Q. About how many times a week during those -- the
go to 21 summer seasons, about how many times a week would you
22 Geary Lake during 1992 to 1995 to do maintenance work?

23 A. Right around three or four days -- sometimes more

--

24 usually, depending on what the boss wanted us to do.

25 Q. Three or four times a week?

14119

Kerry Kitchener - Direct

1 A. Uh-huh.

2 Q. What I'd like you to do now is to look at what is
in

3 evidence as Government Exhibit 1982A. And if you could
clear

4 your pen by clicking the button there.

5 Okay. Do you recognize that as an aerial
photograph

6 of Geary Lake?

7 A. Yes.

8 Q. Using that pen to indicate where on the aerial
photograph

9 you're speaking, could you show us what you would do --
excuse

10 me -- tell us what you would do when you would do
maintenance

11 work at Geary Lake between 1992 and 1995.

12 A. I'd usually come down Highway 77, which runs right
through

13 here.

14 Q. Is that coming from the north?

15 A. Coming from the north, running south. And I'd
usually come

16 up and start at the very first turn which is off of
Highway 77,
17 usually would go back to the west and follow that road back and
18 check run through there and follow the road back around and
19 up the over the rest rooms there, and usually follow and pick
20 the -- trash all the way around until I got clear back over to
21 the intersection.
22 facility Q. Let me just stop you there. Is there a rest room
23 up where you were just indicating a moment ago?
24 A. Yes.
25 approximately where Q. Okay. Could you just put an X where --

14120

Kerry Kitchener - Direct

1 facility? on that aerial photograph there is a rest room
2 A. Somewhere right in there.
3 you Q. And then you told us you would continue -- after
4 Highway finished maintaining that rest room, you'd come back to
5 77?
6 A. Uh-huh.

7 Q. What would -- what would you do at that point?

8 A. I'd follow the road that runs to the east of the
rest room

9 and it weaves all the way back and around through here.
I'd

10 usually start here, stop here, and then travel on down
the

11 highway.

12 Q. And what would you do then?

13 A. Go into the next turn -- turnoff off of Highway 77
and

14 usually go down in the lower end of this area and check
it over

15 and come back out and go back over here toward --
there's

16 another rest room right in there and check it over.
And then

17 just kind of make -- mainly make a sweep of the whole
area.

18 Q. And along the way, as you were making this sweep or
19 checking over the area, what would you be doing during
that

20 time?

21 A. Mainly picking up the trash along the roadsides;
and, you

22 know, it could be a couch or whatever.

23 Q. Okay. About how long would it take you on a
typical day to

24 do that maintenance routine when you were given that
25 assignment?

14121

Kerry Kitchener – Direct

1 A. Probably three to four hours.

2 Q. Did you ever have to -- to do other kinds of
maintenance

3 work at Geary Lake between 1992 and 1995?

4 A. Yeah.

5 Q. What other kind of maintenance work would you do at
Geary

6 Lake?

7 A. Mowing grass, cutting down -- cutting limbs off of
trees,

8 painting, building things. That was mainly the main
just (sic)

9 of it.

10 Q. Did there come a time when you were working for the
Parks

11 Department where you were assigned the responsibility
of doing

12 a creel survey?

13 A. Uh-huh.

14 Q. Tell us what a creel survey is.

15 A. It's a survey that looks at what kind of fish are
being

16 taken off -- out of a lake and what -- what kinds, what
types

17 or what size and weights.

18 Q. When was it that it was your responsibility to do
creel

19 surveys at Geary Lake?

20 A. Around March of '95.

21 Q. March of '95 until what month and year?

22 A. September, October of '95.

23 Q. Did you conduct the creel surveys pursuant to any
kind of a

24 schedule?

25 A. Uh-huh.

14122

Kerry Kitchener - Direct

1 Q. Explain how you would do it pursuant to a schedule.

2 A. I had a schedule that was given to me by the
fisheries

3 biologist, and he would hand that out at the beginning
of the

4 year or at the beginning of the survey season; and it
would

5 show what times and what days we would have to be there
to do

6 the survey.

7 Q. Now, when you say "we," were you doing -- were you
the

8 person who was assigned to do creel surveys at Geary
Lake from

9 March of '95 to September or October of '95?

10 A. Yeah.

11 Q. Explain to us what you would do when you were --

had the

again 12 responsibility of doing a creel survey at Geary Lake,

13 using this photograph, 1982A.

start and go 14 A. I would like go on a maintenance run. I would

around. 15 around the north end of the lake and follow that road

bank of 16 And if there was fishermen that were either along the

to talk 17 the dam, fishing there, I'd usually walk down and try

18 to them and --

fishermen who 19 Q. And what was the purpose of talking to the

20 might be fishing at that area of the lake?

kinds 21 A. To see what kind of fish they were catching, what

that 22 of -- what lengths, weights, different types of species

23 were there.

caught? 24 Q. And did you count the fish that the fishermen had

25 A. Yes.

14123

Kerry Kitchener - Direct

1 Q. And did you measure the fish?

2 A. Yeah.

3 Q. And did you record that information?
4 A. Uh-huh.
5 Q. And what did you do with the information after you
recorded
6 it?
7 A. I turned it in to the supervisor or the fisheries
8 biologist, and he would send it on down to somebody
else.
9 Q. Now, continue then. Using the aerial photograph,
tell us
10 what your routine would be when you conducted a creel
survey.
11 A. I would drive on around the lake and follow the
roads all
12 the way around till I got back to Highway 77. And then
I'd
13 come back in and I'd go down Highway 77, pull in; and
usually,
14 if there was fishermen fishing along the banks here and
along
15 here, I'd usually get out and talk to them and ask them
the
16 same questions that "What kind of fish were you
catching, how
17 long, how big," just a general type of question.
18 Q. Did you park in any particular area at the lake for
any
19 extended period of time when you would do a creel
survey?
20 A. Yeah. I'd park right around in here by the boat
ramp.
21 There's a pretty good boat ramp there.

were 22 Q. Why would you pick this location to park while you
23 doing your creel survey?
that 24 A. Because it was the only one that was halfway decent
fishermen 25 would show any -- that would -- where most of the

14124

Kerry Kitchener - Direct

1 would park at.
1995? 2 Q. Was that the only modern boat ramp at Geary Lake in
up with 3 A. Yeah. But there was another one that was all grown
it. 4 weeds, and it was silted in pretty good, so nobody used
in 1995 5 Q. So in your experience, the boat ramp that was used
6 was the one just to the north of that?
7 A. Uh-huh. This right around in here.
8 Q. What was the most popular area for you to come upon
9 fishermen in 1995?
and the 10 A. Most popular was right around the boat ramp area
right 11 parking area, and that's right where the blue dot is
12 here.
13 Q. If you saw a vehicle that was parked there but had

not a

14 fisherman out on the lake or boat ramp associated with
that

15 vehicle, what would you do?

16 MR. TIGAR: Object to what he would have done,
your

17 Honor, without a time frame.

18 BY MR. MEARNS:

19 Q. Let's focus, then, on April of 1995. If you came
upon a

20 vehicle parked in that area in 19 -- in April of 1995,
what did

21 you do?

22 A. If the vehicle was parked there, I'd get out and if
-- and

23 make sure -- you know, see if there was -- if the
fishermen or

24 the person who drove that car -- or if there was
anybody near

25 it, I'd usually go over and talk to them and ask them
-- you

14125

Kerry Kitchener - Direct

1 know, do my little survey.

2 Q. And you, again, would count the fish?

3 A. Uh-huh.

4 Q. And you would measure the fish?

5 A. Uh-huh.

was
conduct
6 Q. Was there any set length of time on a given day --
7 there any set length of time that you were supposed to
8 the creel survey?

9 A. Yeah.

10 Q. What was that length of time?

11 A. About two hours.

two
12 Q. And was it -- was the creel survey required to be
13 hours?

14 A. Yeah.

document on --
15 Q. I want you to look now on your -- there's a

Government
16 on the witness stand before you. It's marked

17 Exhibit 1985 for identification. Do you see that?

18 A. Uh-huh.

19 Q. And do you recognize that document?

20 A. Yeah.

21 Q. What is it?

22 A. It's a state fishing lake creel survey schedule.

that you
23 Q. And is that a copy of the creel survey schedule

24 followed in April of 1995?

25 A. Yeah.

Kerry Kitchener – Direct

1 Q. And was that a schedule that was provided to you so
that
2 you could conduct the business of the Parks Department?

3 A. Uh-huh.

4 Q. And was that schedule then maintained by the Park
5 Department --

6 A. Yeah.

7 Q. -- as a record to show when you conducted creel
surveys in
8 April of '95?

9 A. Yeah.

10 MR. MEARNS: Your Honor, we would offer
Government
11 Exhibit 1985.

12 MR. TIGAR: I -- we've agreed about this, but
I'll
13 just look at the exhibit.

14 THE COURT: Sure, you may.

15 MR. TIGAR: Thank you, your Honor.

16 No objection, your Honor.

17 THE COURT: 1985 received.

18 MR. MEARNS: If we may publish it on the
computer?

19 THE COURT: Yes.

20 MR. MEARNS: Is it possible to go back and
view the

21 whole document? Thank you.

22 BY MR. MEARNS:

23 Q. Beginning at the top of the document, it says,
"1995, State

24 Fishing Lake, Creel Survey Schedule for April"; is that
right?

25 A. Uh-huh.

14127

Kerry Kitchener - Direct

1 Q. And was this the April, '95, schedule that you
followed?

2 A. Yeah.

3 Q. Beginning now just below that where there are three
4 columns, one titled "day," one titled "sample period,"
and one

5 titled "start" -- do you see that?

6 A. Uh-huh.

7 Q. And if we could focus in on that area and the first
entry

8 where it says "one." Explain to us what the "day"
column

9 signifies.

10 A. This column here signifies the day of the 1st day
of April.

11 Q. Okay. Beginning then, going over to the right, it
says,

12 "sample period." What does that reflect?

13 A. That re -- that's the -- probably the best time to

take the

14 survey. And it really reflects what time to start,
like at

15 3:30 in the afternoon to 7:00 that night, or 7:30.

16 Q. So those -- those numbers reflect military time?

17 A. Uh-huh.

18 Q. And so that's 2:30 p.m. to approximately 7:30 p.m.?

19 A. 3:30 to 7:30.

20 Q. Excuse me, 3:30. Thank you. And does that -- who
21 determined that time frame, 3:30 to 7:30, that sample
period?

22 A. The biologist or people that were higher up that
had

23 more -- knew more about the surveys.

24 Q. Now, going to the third column, the last column on
the

25 right, it indicates "start" and "1700." Tell us what
that

14128

Kerry Kitchener - Direct

1 means.

2 A. That was the time I would start -- approximate time
I would

3 start the survey, and that was at 5:00 in the
afternoon.

4 Q. And so on April 1 of 1995, what time period did you
conduct

5 a creel survey at Geary Lake?

6 A. Approximately 5:00 in the evening to 7:00 that
night.

7 Q. Now, when you say "approximately," how much time
variation

8 from 5:00 to 7:00 are we talking about?

9 A. 5 to 10 minutes.

10 Q. Now, if we could focus on the days in the center of
the

11 schedule beginning with April 10. What time on April
10, 1995,

12 did you conduct a creel survey at Geary Lake?

13 A. At 1:30 in the afternoon.

14 Q. Until what time?

15 A. Till 3:30 that same afternoon.

16 Q. And between 1:30 and 3:30 on April 10, did you see
a yellow

17 Ryder truck parked at Geary State Lake?

18 A. No.

19 Q. And if we could go to the 11th. What time on April
11,

20 1995, did you start your creel survey at Geary Lake?

21 A. Around 8:00 in the morning to 10:00 that same
morning.

22 Q. And during those two hours, 8 a.m. to 10 a.m., on
April 11,

23 1995, did you see a yellow Ryder truck parked at Geary
Lake?

24 A. No.

25 Q. If I could have the next entry, please. What's the
date

14129

Kerry Kitchener – Direct

1 that's reflected there?

2 A. April 13.

13, 3 Q. What time did you start your creel survey on April
4 1995?

5 A. Around 4:00 in the afternoon.

6 Q. How long did you conduct that creel survey?

7 A. For two hours, until 6:00 that same day.

8 Q. Between 4 and 6 p.m. on April 13th, 1995, did you
see a 9 yellow Ryder truck parked at Geary Lake?

10 A. No. No.

Easter 11 Q. Turning to the next entry for Sunday, April --

on that 12 Sunday, April 16, 1995, did you conduct a creel survey
13 day?

14 A. Yes.

Easter 15 Q. At what time did you start your creel survey on
16 Sunday?

17 A. At 4:00 in the afternoon.

Geary 18 Q. And how long on that Easter Sunday did you stay at

19 Lake to do your creel survey?

20 A. Around an hour and a half or so.

21 Q. That day, you didn't stay the full two hours?

22 A. No.

April 16, 23 Q. And during that hour and a half on Easter Sunday,

Lake? 24 1995, did you see a yellow Ryder truck parked at Geary

25 A. No.

14130

Kerry Kitchener - Direct

date for 1 Q. Turning to the next entry, which is -- what is the
2 that entry?

3 A. April 17th.

Monday, 4 Q. And what time did you conduct your creel survey on

5 April 17th?

6 A. At 7:30 in the morning.

7 Q. And how long did you do it that day?

8 A. Two hours.

9 Q. Till what time?

10 A. 9:30.

did you 11 Q. And from 7:30 to 9:30 in the morning on April 17th,

12 see a yellow Ryder truck parked at Geary State Lake?

13 A. No.

14 Q. Okay. Now, if we could go back to -- to the middle
of --

15 several columns there in the middle. Did you conduct a
creel

16 survey at Geary Lake on Tuesday, April 18th, as
reflected in

17 the schedule?

18 A. I can't -- no.

19 Q. Did you -- do you know whether or not you did a
creel

20 survey that day?

21 A. No.

22 Q. On April 19th, did you conduct a creel survey at
Geary

23 Lake?

24 A. Yes.

25 Q. What time did you start your creel survey on
Wednesday,

14131

Kerry Kitchener - Direct

1 April 19th?

2 A. Around 5:00 in the evening.

3 Q. And how long were you there?

4 A. For two hours.

5 Q. And did you --

6 A. Till 7.

7 Q. I'm sorry?

8 A. Till 7:00 that same night.

Lake
9 Q. Did you see a yellow Ryder truck parked at Geary
10 during those two hours?

11 A. No.

April,
12 Q. On any of the times that you were at Geary Lake in
13 1995, doing your creel survey, did you see a yellow
Ryder truck

14 parked anywhere on the grounds at Geary State Lake?

15 A. No.

all
16 Q. On any of the times that you did a creel survey at
17 during 1995 from March to September or October, did you
ever
18 see a yellow Ryder truck parked anywhere on the grounds
at
19 Geary Lake?

20 A. No.

work at
21 Q. Now, how many years, again, did you do maintenance
22 Geary State Lake?

years.
23 A. For -- around almost three years. Three for four

24 Q. That was 1992 to 1995?

25 A. '5.

Kerry Kitchener - Direct

1 Q. During the -- any of the times that you were at
Geary Lake
2 during those years to do maintenance work, did you ever
see a
3 yellow Ryder truck parked at Geary Lake?

4 A. No.

5 Q. During all of the times that you've worked at Geary
Lake or
6 ever been there for personal reasons, have you ever
seen a
7 yellow Ryder truck at Geary State Lake?

8 A. No.

9 MR. MEARNS: No further questions, your Honor.

10 THE COURT: Cross-examination?

11 MR. TIGAR: May I retrieve the exhibit, your
Honor?

12 THE COURT: Yes.

13 CROSS-EXAMINATION

14 BY MR. TIGAR:

15 Q. Good afternoon, sir. I'm Michael Tigar, one of the
lawyers
16 appointed to help Terry Nichols.

17 This creel survey schedule that we've been
looking at

18 here, that's a record that was made by the -- your --
your

19 boss?

Parks. 20 A. Well, it's through the Department of Wildlife and

21 Q. And do you know when this was made?

22 A. I sure don't.

when's the 23 Q. Okay. Well, let me -- let me start by asking,

State 24 first time that you started working up there at Geary

25 Fishing Lake?

14133

Kerry Kitchener - Cross

1 A. The very first time?

2 Q. Yes, sir.

3 A. Probably in the summer of '92.

4 Q. And when did you start doing the creel surveys?

5 A. In 1995.

During that 6 Q. Well, let's just look at April, 1995. Okay?

creel 7 time, what -- did you have jobs other than doing the

8 survey?

9 A. Uh-huh.

lake? 10 Q. All right. Did you have jobs at more than one

Wakefield, 11 A. Mainly at the wildlife area which is north of

12 Kansas, and Geary County State Fishing Lake.

at that 13 Q. Were those the two areas that you were working in

14 time?

15 A. Yes.

16 Q. Okay. And you worked a regular eight-hour day?

17 A. Uh-huh.

18 Q. And a 40-hour week?

19 A. Uh-huh.

you were 20 Q. Now, when were you first -- do you remember when

out 21 first contacted by the FBI about the work that you did

22 there and what you'd seen?

23 A. No.

24 Q. Well, was it back in 1995?

25 A. Yeah.

14134

Kerry Kitchener - Cross

1 Q. Okay. Back about in April, 1995, shortly after the
2 Oklahoma City bombing?

3 A. Yeah. I guess so.

4 Q. I mean, you remember that; right?

5 A. Yeah.

any 6 Q. Okay. And you were asked then whether you'd seen

7 trucks on the 17th of April; do you remember that?

8 A. No.

9 Q. Okay. Well, let's talk about this creel survey.
When you
10 did the survey, what were you supposed to do? Make out
cards?

11 A. Uh-huh.

12 Q. And in April of 1995, would there be good fishing
at that

13 lake?

14 A. Yeah. It's early spring. The fish are biting.
People are

15 actually getting cabin fever and they want to get out
on the

16 lake and have a good time.

17 Q. So when does that fish-are-biting-early-spring
thing of

18 fishermen coming to the lake start?

19 A. I don't know. Whenever they get the first itch to
get

20 outside, I guess.

21 Q. I mean, there are certain days when you didn't see
many

22 fishermen and there's days when you did see more?

23 A. Right.

24 Q. And did you see many in January?

25 A. No.

Kerry Kitchener – Cross

- 1 Q. Didn't have many fish to count; right?
- 2 A. Because I wasn't even around down there in January.
- March? 3 Q. You weren't. When did you start doing that? In
- 4 A. Started doing it March of 1995.
- 5 Q. Did you see many people around the 1st of March?
- 6 A. A handful.
- would 7 Q. And when you say "a handful," about how many folks
- 8 you run into the first week in March up there?
- 9 A. Two or three. They were the diehards.
- April, 10 Q. Okay. And -- and then when -- getting on towards
- 11 would you start seeing more?
- 12 A. Yeah.
- week of 13 Q. How many would you run into, let's say, the first
- 14 April on a day when you were out counting?
- 15 A. Two or three or four, depending.
- 16 Q. Started to be more; right?
- 17 A. Uh-huh.
- they, early 18 Q. Now, the leaves weren't on the trees yet, were
- 19 April?
- 20 A. They were just starting to bud then.
- would be 21 Q. Just starting. In the city where you live, there

would 22 more leaves on the trees, but out in the country, there
23 be fewer; right?
doesn't have 24 A. Because I live in a small town, so it really
25 anything --

14136

Kerry Kitchener - Cross

1 Q. Not like the big city; right?
2 A. Right.
3 Q. So it pretty much hasn't started to bud up.
4 A. Right.
all the 5 Q. So you could see pretty well as you were standing
6 way around the lake; correct?
7 A. Uh-huh.
would go 8 Q. And when you would see fisherpeople out there, you
measure 9 up and ask them what they had caught and count them and
10 them; correct?
11 A. Right.
12 Q. And then would you make a card?
13 A. Yes.
14 Q. What would you do with the card?
15 A. I would turn it in to the fishery biologist.

and how 16 Q. Did the card show the times that you'd been there
17 many people you'd spoken to?
and what 18 A. They would show the -- they have a time and a name
19 the weather was like for that day.
17th? 20 Q. All right. Well, what was the weather like on the
21 A. It was cloudy and rainy.
22 Q. Did you work the 18th?
23 A. No. Not at Geary County I didn't. I worked at the
24 wildlife area.
25 Q. But you didn't go to Geary Lake on the 18th?

14137

Kerry Kitchener - Cross

1 A. Not that I can remember.
Junction 2 Q. Now, where is the wildlife area? Up north of
3 City?
4 A. Yeah.
and 5 Q. So to get to Geary Lake from where you were living
6 working, you would arrive from north; is that correct?
7 A. Uh-huh.
work? 8 Q. And on Easter Sunday, what kind of a shift did you
9 A. Just mainly a two-hour creel survey.

that you 10 Q. You didn't do any of the maintenance or other work

11 were doing; correct?

12 A. No.

many hours 13 Q. Now, let's take a look at the 11th. What -- how

14 did you spend at Geary Lake on the 11th?

15 A. Two hours.

on the 16 Q. And did you do anything other than a creel survey

17 11th at Geary Lake?

18 A. Not that I can remember.

19 Q. Did you do any maintenance on the rest rooms?

20 A. Not that I can remember.

trash? 21 Q. Did you remember -- do you remember picking up any

22 A. No.

the 23 Q. All right. Well, how about on the 13th? Well, on

24 12th, did you go to Geary Lake on the 12th at all?

25 A. For the survey?

14138

Kerry Kitchener - Cross

1 Q. No. For any purpose.

2 A. No. For the survey, I did.

3 Q. On the 12th? Okay. Well, let me put this back up

here and

4 refresh your memory. It doesn't --

5 A. It doesn't have a 12 on there.

6 Q. Pardon?

7 A. There's no 12 there.

8 Q. There's no 12, but that's not your paper, I understand.

9 Just tell us what you remember. Do you remember going there

10 and counting fish on the 12th?

11 A. No.

12 Q. Okay. Do you remember being assigned to do any other work

13 on the 12th, picking up trash or the other things, the

14 important things to keep the park going?

15 A. No. Because the -- I could have been working on the north

16 end of the lake, Milford Lake, with my other boss -- with my

17 boss.

18 Q. You say "could have been." What I'm asking you, sir -- I

19 know it's a long time ago -- can you remember whether you went

20 to Geary Lake at all on the 12th?

21 A. No.

22 Q. Now, your responsibilities during this time did include

23 more than the creel survey; correct?

24 A. Uh-huh.

25 Q. Were you the only person that was having to do the

14139

Kerry Kitchener - Cross

1 maintenance of the rest rooms and the -- you know,
getting the

2 trash and keeping the place cleaned up during this
time?

3 A. At that time, yeah.

4 Q. So during April, 1995, you had the job of creel
survey and

5 keeping Geary Lake, you know, clean for the campers,
plus you

6 had the other job up north; right?

7 A. Right.

8 Q. Okay. Well, on the 17th, do you remember what time
-- did

9 you work on the 17th? That would be a Monday, on doing
any of

10 the picking up trash or cleaning the rest rooms at
Geary Lake?

11 A. On the 17th?

12 Q. Yes. A Monday.

13 A. That was -- I can't think right now.

14 Q. Okay. Are you a little nervous?

15 A. Uh-huh.

16 Q. I'm sorry. Is it -- don't worry about it. Just do
the

ask 17 best you can remember. That's all -- that's all we can

18 for.

or was 19 Now, on the 18th, was that a day you had off,

20 it just a day you had off from creel survey?

survey. 21 A. That was just a day I had off from the creel

going to 22 Q. All right. Did -- on the 18th, do you remember

23 the lake, to Geary Lake at all?

24 A. No.

don't 25 Q. Okay. And do you remember that you didn't, or you

14140

Kerry Kitchener - Cross

1 remember whether or not you did?

2 A. Don't know if I did, or not.

Lake to get 3 Q. Okay. Now, when you would go and work at Geary

on, 4 the -- you know, the trash done, the rest rooms and so

would try to 5 would you have any particular time of day that you

6 get that done during April of 1995?

and trash 7 A. Well, I'd usually try and get all the rest rooms

8 picked up in the morning because most of the afternoon

was

9 spent mowing and trimming everything else.

10 Q. So if you had gone on the 18th, you would have gone
there

11 in the morning; right?

12 A. Right.

13 Q. Now, can you remember seeing any Ryder trucks at
Geary Lake

14 on the 18th?

15 A. No. Because I wasn't -- I don't know if I was
there, or

16 not.

17 Q. Okay. I understand. Your testimony is you have
never seen

18 a Ryder truck at Geary Lake; is that right?

19 A. Right.

20 Q. All right. So -- and you don't remember whether
you were

21 there on the 18th; right?

22 A. Right.

23 Q. And if -- if it did -- if it did happen you were
there, you

24 never saw a Ryder truck; right?

25 A. No.

14141

1 MR. TIGAR: Okay. I have no further

questions.

2 THE COURT: Mr. Mearns.

3 MR. MEARNS: Very briefly, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. MEARNS:

6 Q. If you could look at 1985 on the computer.

7 April, 1995, was about two-and-a-half years
ago;

8 right, Mr. Kitchener?

9 A. Uh-huh.

10 Q. Do you know that with respect to creel surveys in
April of

11 '95 that you followed this schedule to the letter?

12 A. Yeah. Pretty much.

13 Q. Was your maintenance responsibilities at Geary Lake
14 coordinated in any way with respect to your creel-
survey

15 responsibilities?

16 A. Depending on the times of the survey, my day
usually

17 started at 8:00 in the morning, and it was usually an
8-hour

18 day, 8 to 5; but if my survey would start at 5:00 in
the

19 afternoon, I would stay for the next two hours, which
would be

20 till 7:00, and finish out the survey, and I'd get an
extra two

21 hours of overtime.

your 22 Q. Was it -- did your supervisor try to coordinate
23 maintenance responsibilities with your creel-survey
24 responsibilities on the same days?
25 A. Uh-huh.

14142

Kerry Kitchener - Redirect

1 MR. TIGAR: Objection. If he knows what his
2 supervisor did.

3 THE COURT: Well, of course. This is based on
what 4 you know. That's how you've answered?
5

6 THE WITNESS: Uh-huh.

7 THE COURT: All right.

8 BY MR. MEARNS:

9 Q. Now, based upon this schedule, you know you did not
do a 10 creel survey on April 18th, 1995?
11

12 MR. TIGAR: Objection to leading, your Honor.

13 THE COURT: Sustained.

14 BY MR. MEARNS:

15 Q. Do you do a creel survey on April 18, 1995?

16 A. No.

17 Q. Based upon the fact that you didn't do a creel
survey on 18 April 18th, is it likely or unlikely that you did

maintenance

17 at Geary Lake on April 18th?

18 MR. TIGAR: Object to leading, your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: I can't remember. It's too far
back.

21 BY MR. MEARNS:

22 Q. Do you have any recollection of being at Geary Lake
on

23 April 18th?

24 A. No.

25 MR. MEARNS: No questions, your Honor.

14143

Kerry Kitchener – Recross

1 MR. TIGAR: Just one thing, your Honor, if I
can, your

2 Honor.

3 THE COURT: Sure.

4 RECCROSS-EXAMINATION

5 BY MR. TIGAR:

6 Q. The -- on days when you wouldn't do the creel, is
your --

7 well, how many days a week would you have to go to
Geary Lake

8 to work on, you know, keeping it clean and the rest
rooms and

9 so on?

10 A. Usually about three times a week.

during 11 Q. Okay. And if you didn't have creel-survey duties

there 12 April -- on a particular day during April, 1995, were

down to 13 times when your supervisor would say, "You've got to go

14 Geary Lake anyway, and just clean it up"?

15 A. Yeah.

16 MR. TIGAR: Okay. Thank you. No further
questions.

17 MR. MEARNS: He may be excused, your Honor.

18 THE COURT: All right. I take it you agree.

19 MR. TIGAR: Yes, your Honor, of course.

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

21 Mr. Mackey?

22 MR. MACKEY: Yes, your Honor.

we would 23 Finally, your Honor. Pursuant to agreement,

24 move to admit Government Exhibit 2135.

25 MR. TIGAR: May I just stand at the lectern?

14144

1 THE COURT: Yes, you can be there together.

2 MR. MACKEY: And 2136.

3 MR. TIGAR: No objection, your Honor.

4 THE COURT: All right. 2135, 2136 are
received.

5 MR. MACKEY: And for the record, I will
describe

6 Government Exhibit 2135 to be records of Roger Moore's
credit

7 card use, telephone credit card use for the day 11-5,
1994,

8 reflecting two credit card calls, one placed to
Louisiana and

9 one placed to Florida, both those calls placed from a
number

10 Area Code (501) 767-6185, which is reflected in
Government

11 Exhibit 2137 -- 2136, to be that of Mr. Walt Powell in
Hot

12 Springs -- or Royal, Arkansas.

13 Also and finally for the record, your Honor,
we'd move

14 to admit Government Exhibit 2149, which is a calendar
of dates

15 for the years 1994 and 1995.

16 MR. TIGAR: No objection, your Honor.

17 THE COURT: All right. 2149 is received as a
18 calendar.

19 MR. MACKEY: United States rests, your Honor.

20 THE COURT: Government rests. Is there any
21 surrebuttal?

22 MR. TIGAR: No, your Honor.

23 THE COURT: Very well.

24 Members of the jury, that means you've now
heard all
25 of the testimony in this case that you will hear and
all of the

14145

1 exhibits that have been received, of course, as a part
of the
2 evidence. So you have the evidence, but you don't have
the
3 case. And as I have told you earlier, we will recess
now so
4 that we're not going to be in a position of hurrying
with
5 respect to the remaining parts of the trial, those
remaining
6 parts being the opportunity for the lawyers on each
side to
7 present their arguments to you, during which, of
course, they
8 will be expected to review what you have heard and to
point out
9 to you what each side suggests you to consider with
respect to
10 the significance or insignificance of the evidence, to
state,
11 really, the positions of both sides in the case --
that's a
12 very important part of the case -- and of course, what
I have

13 to tell you about the law, the instructions on the law,
which
14 will be quite detailed, and which, when you hear me
give you
15 these instructions, you will also have written copies
of. So
16 you will know that.

17 And this is a rather long gap here between now
and
18 Monday morning when we expect to present these parts of
the
19 trial, and it is very important for you to recognize
your
20 responsibility during this time, which is, of course,
just as
21 I've said at all earlier times but now must underscore
it
22 because you know you've heard the evidence, and that is
to keep
23 open minds. I know how difficult that can be.

Recognizing the
24 responsibilities that you have with respect to the
case, it is
25 only a natural human reaction to at least in your own
minds

14146

1 think, "Well, what do I think?" Please don't do that.
2 Also, you must be very careful as you come
into

3 contact with other people to not only, of course, avoid
4 discussing with anyone, including other jurors, family
members,
5 all other persons, anything about this case and, of
course,
6 avoiding anyone who would seek to talk with you about
the case.

7 I'm not suggesting that anyone would make that attempt;
but you
8 must, of course, resist that if it should happen.

9 And as a part of the instructions that I give
you now,
10 you must consider that even though we're not going to
be in
11 this courtroom tomorrow or Saturday or Sunday, you must
12 consider that you're on duty during those times, and
that means
13 you should not report to your employers that you're
available
14 for employment during that time. You're still in the
Court's
15 employment. And I emphasize that because I want to
avoid the
16 possibility that if you were with your fellow workers
at any
17 time, they know you've been gone and probably why, and
I don't
18 want anything to happen here with conversation with any
of them
19 where, you know, they ask you about the trial or
suggest to you
20 how -- what you ought to do.

21 If I were, you know, not trusting of you, I
would send
22 you off to a hotel now and sequester you. I have the
power to
23 do that. I don't want to do that. But you've got to
be also
24 worthy of my trust, our trust, and be very careful
during this
25 entire time. I'm going to worry about you, so, you
know -- it

14147

1 isn't because I don't trust you, but I just know the
nature of
2 human beings and what other people might -- might want
to do.
3 So that's why I'm telling you stay away from your
workplace,
4 your colleagues that you ordinarily work with, and that
5 includes -- this is the time of year when a lot of
workplaces
6 have holiday events or parties or the like. You're not
going
7 to go to those because that's an even worse
environment.
8 Sometimes there are lubrication of tongues at such
parties, and
9 we don't want anybody to fall afoul of these
instructions even
10 accidentally.

I'm 11 So, you know, what I'm really saying to you is
to favor 12 trying to do everything in your favor, but you've got
requirements, 13 us and comply with these instructions and these
of your 14 recognizing the importance of this case, of course, and
time is 15 responsibility in it. The best thing for you in this
to your 16 to, you know, stay healthy and rest and be able to come
with -- 17 job here, your primary job now, on Monday morning.
18 So we trust you to do that. And of course,
now. 19 you probably have a lot of questions in your mind right
good part 20 If I said, "Any questions," we'd probably be here a
I'll 21 of the afternoon. I'll be answering those questions.
deliberating 22 give you detailed instructions next week on the
So I 23 jury, what is required, and how we're going to proceed.
you have 24 know that you'd like to have all of the questions that
Please wait. 25 now answered. They will be answered in due time.

1 Trust me on that.

2 So with all of that, members of the jury, I'm
going to
3 excuse you now until 8:45 on -- next Monday morning.
You're
4 excused.

5 (Jury out at 2:01 p.m.)

6 THE COURT: Mr. Tigar.

7 DEFENDANT'S RULE 29 MOTION

8 MR. TIGAR: At this time, your Honor, Mr.
Nichols
9 moves under Federal Rule of Criminal Procedure 29 for a
10 judgment of acquittal and reurges all the grounds
previously
11 urged as well as the other bases, insufficiency of the
evidence
12 and so on. I won't argue it in detail, your Honor.
The Court
13 has heard our position before.

14 RULING ON DEFENDANT'S RULE 29 MOTION

15 THE COURT: Very well. The Rule 29 motion is
denied.

16 Now I'm going to be meeting with the lawyers.
We're

17 not giving them until Monday morning because,
obviously, as I
18 think those who are in attendance here well know, the
attorneys
19 in the case have an opportunity to participate in the
Court's

to the 20 development of the instructions on the law to be given
I 21 jury, and they will have a full opportunity to do that.
begin 22 suggest that we meet in chambers yet this afternoon to
23 that process, at any rate.
before you 24 And do counsel want to have a little time
25 do that? Like 2:30 or something?

14149

1 MR. MACKEY: 2:30 is fine, your Honor.
2 MR. TIGAR: Yes, your Honor. Thank you.
3 THE COURT: We'll be meeting at 2:30. The
trial will
4 be in recess until Monday at 8:45.

5 (Recess at 2:03 p.m.)

6 * * * * *

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25

14150

1 REPORTER'S CERTIFICATE

2 I 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 11th day of December, 1997.

5

6

Carpenter

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Bonnie