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

Lincoln

13 Street, Suite 1308, Denver, Colorado, 80203, appearing
for
14 Defendant Nichols.

15 * * * * *

16 PROCEEDINGS

17 (In open court at 8:30 a.m.)

18 THE COURT: Be seated, please. Good morning.

19 Mr. Tigar, you have a motion?

20 MR. TIGAR: Yes, your Honor.

21 DEFENDANT'S MOTION TO TERMINATE PENALTY PHASE

22 DEFENDANT'S ARGUMENT

23 At this time, your Honor, the Government,
having
24 concluded its evidence -- we move to terminate the
penalty or
25 sentencing phase of this proceeding. There is no
precise

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1 authority in Rule 29 for this; however, the statute
2 contemplates that the Government has a certain burden
of proof,
3 a three-stage burden, and that two of those three
burdens must
4 be met beyond a reasonable doubt before anyone gets to
5 weighing.

6 Under the Eighth Amendment, as well as what we
can
7 glean from the statute, the Court has not only the
power but,
8 we would respectfully suggest, the duty to make sure
that were
9 the jury to return a verdict directing that Mr.
Nichols' life
10 be taken that that verdict be one that would be
consistent with
11 the statute and the Eighth Amendment.

12 In that context, we suggest that the Court's
prior
13 opinion indicates that the Court has the same
discretion with
14 respect to this as it has with respect to the admission
and
15 exclusion of information; that is to say, one is not
bound
16 strictly by the Rule 29 standard, but the Court would
look at
17 the entire situation and ask whether or not the Eighth
18 Amendment and statutory standards are satisfied.

19 Second, your Honor, this is a weighing
statute. The
20 Government convinced the Court to strike from the
indictment
21 the allegations of intent to kill. In a weighing
statute, the
22 important decisions about death worthiness are made at
the
23 second stage, and that is the characteristic of such a

statute,

"guilt 24 as distinct from one that narrows at the so-called
25 phase."

15666

By the 1 In this proceeding, we have seen 55 witnesses.
2 Government's own count, that is a dozen more than
testified in 3 the McVeigh case. That cannot be because Mr. Nichols
was 4 convicted of more serious crimes, because in fact he
was 5 acquitted of 10 of the 11 capital counts that were
charged 6 against him and on eight of those counts also acquitted
of the 7 lesser-included offense of second-degree murder.

Dilly, 8 The only non-impact witness presented was Mr.
Dilly's 9 and your Honor will recall that the effort to turn Mr.
10 nearly 10-year-old observations into something came a
cropper. 11 And I don't need to remind the Court about what the
12 cross-examination was there.

13 What has the Government done instead, your
Honor? On

14 Tuesday, we came to the bench at the end of the day and
15 suggested that the testimony elicited had gone far
beyond what
16 the Eighth Amendment permitted and indeed beyond what
the
17 Court's orders were. The Court made certain comments
at the
18 bench at that time. On the morning of Wednesday, we
received a
19 promise in the form of a letter from the Government's
lead
20 counsel that this would not happen again.

21 Then, of course, the Court will recall the
testimony
22 of Mrs. Treanor. We have filed this morning a motion
revealing
23 that exactly the same kind of thing happened in the
McVeigh
24 case, leading Time magazine to say that the Court might
as well
25 have tried to adjudicate a monsoon. We have shown that
the day

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1 after that performance in the McVeigh case, Mrs.
Treanor went
2 on the "Today" show and said that she knew that she had
caused
3 everyone to cry: "I looked around, and everyone's eyes
were

4 red-rimmed."

brother
5 We also recall the testimony of Ms. Ice, whose
6 was the victim of an involuntarily manslaughter, who
glared at
7 the jurors and raised her voice and glared at Mr.
Nichols.

8 Extraordinary precautions have been taken,
your Honor,
9 to shield these jurors from improper influence. The
Court has
10 had a van to bring them to and from court. I am told
that the
11 van means that no one can see them coming and going,
not the
12 media, not anyone.

13 Were someone to go to a juror's home and shout
14 invective at jurors, were someone to glare at jurors
and shout
15 invective at them on their way to court, were someone
to
16 telephone them in the night and do that, were the
defendant to
17 confront the jurors in the courtroom and hurl invective
at
18 them, the Court would know how to characterize such
conduct and
19 in the case of a defendant could deprive him under
Illinois vs.
20 Allen of the right to remain in the proceedings.

21 We take extraordinary precautions, and the
Court has,

22 to shield jurors from precisely those sorts of
influences; and

23 yet without any restraint by the prosecution and
knowing full

24 well, as the prosecutors must, of the risks that were
involved,

25 the prosecutors decided to make that the centerpiece of
the 54

15668

1 witnesses that they called to you.

2 Right after Mrs. Treanor was done, your Honor,
a

3 person in the audience who we believe to be her sister,
who

4 customarily has been seated near Ms. McDonnell, Mr.
Nichols'

5 sister, said, "I hope they go through hell with that."
This

6 same person had already said, loud enough for Ms.
McDonnell to

7 hear, "Did you hear about the guy they executed?
Something

8 went wrong, so he fried. Do you think we'll get to do
that

9 with this guy?"

10 Another witness, your Honor, an employee of
the

11 judicial branch, assaulted the jurors with a vision
designed to

12 summon up a call for vengeance.

13 I raise these things, your Honor, because
whatever one

14 calls this motion -- a Rule 29, an Eighth Amendment, or
a

15 mistrial -- we respectfully suggest that no verdict to
take

16 Mr. Nichols' life would be consistent with the statute
and the

17 Eighth Amendment.

18 I've been doing this for 32 years. I have
been in

19 Versailles when the Vichy collaborators were tried.
I've been

20 in South Africa alongside my comrades in the apartheid
days, as

21 they were tried. I have seen trials in revolutionary
Cuba.

22 I've tried a case in a little Florida courthouse where
we

23 worried that the deputy wouldn't protect our client
from the

24 danger of being lynched. But I've never seen anything
like

25 this.

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1 I don't think that my words, your Honor, at
the end of

2 the case would be enough, and I respectfully suggest

that

Court's 3 despite the Court's efforts by instructions that the
shoals 4 words would not be enough, to guide this jury from the
5 of vengeance to the safe harbor of reason.

respectfully 6 And for that reason, your Honor, we
under 7 request that the Court exercise the power given to it
often been 8 Article III to say to the executive branch, as has
Justice 9 the duty of Article III judges, beginning with Chief
This 10 Marshall on circuit in the treason trial of Aaron Burr:
11 is enough and you can't do that. And we move that the
under the 12 proceedings be terminated now and the Court sentence
13 guidelines.

14 RULING

and 15 THE COURT: Well, I'm going to deny the motion
16 rely on the jury.

before -- we 17 Now, do we have other matters to take up
here, 18 told the jury we'd start at 9 this morning; but they're
19 so we can start earlier.

pleases, 20 MR. MACKEY: Yes, your Honor. If the Court

21 we have some objections to exhibits that have been
noticed by

22 the defense. I can provide those to you and --

23 THE COURT: All right. Well, you may approach
on

24 that.

25 (At the bench:)

15670

1 (Bench Conference 151B1 is not herein transcribed
by court

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

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15677

1 (In open court:)

little

2 THE COURT: Well, I think counsel can use a

3 time before 9, so we'll recess till 9.

4 (Recess at 8:44 a.m.)

5 (Reconvened at 9:00 a.m.)

6 THE COURT: Please be seated.

7 (Jury in at 9:01 a.m.)

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

the

9 We are ready to proceed now to hear and see
10 information provided by the defense, so we'll call for

11 first witness.

Nichols. 12 MR. THURSCHELL: Your Honor, we call Marife

under -- 13 THE COURT: All right. She's being re-called

14 MR. TIGAR: Re-called, your Honor.

stand 15 THE COURT: Ms. Nichols, if you'll resume the

Please 16 under the oath you took with us earlier in this case.

17 be seated.

18 (Marife Nichols was re-called.)

19 DIRECT EXAMINATION

20 BY MR. TIGAR:

21 Q. Good morning, Mrs. Nichols.

22 A. Good morning.

23 Q. You are the wife of Terry Nichols; is that right?

24 A. Yes.

began in 25 Q. I want to ask you about some events that -- that

15678

Marife Nichols - Direct

to be 1 June of 1995. That's the time period that we're going

did you 2 talking about up to the present. Now, in June of 1995,

3 leave the United States and go to the Philippines?

4 A. Yes, I did.

5 Q. And who went with you?

6 A. My daughter, Nicole.

7 Q. Okay. And did you come back to the United States
then
8 during the summer of 1995?

9 A. August.

10 Q. Yes. And during the time that -- and when you came
back,
11 where was Terry?

12 A. He is in El Reno.

13 Q. And what is El Reno?

14 A. It's the prison.

15 Q. Now, did you get a chance to visit him in El Reno?

16 A. Yes. We did.

17 Q. Did Nicole get a chance to visit, also?

18 A. Yes.

19 Q. Now, were -- was the visit that you had with a
glass
20 between you?

21 A. Yes.

22 Q. Okay. Now, did you -- did he get a chance to hold
Nicole
23 in that visit?

24 A. One of the legal team asked the guards if -- if he
could
25 hold his kid, and the guards let him.

15679

Marife Nichols - Direct

1 Q. Now, did you then return to the Philippines?

2 A. Yes.

3 Q. Were you pregnant with -- were you pregnant at the
time?

4 A. Yes, I was.

5 Q. Okay. Now, during the time that you were in the
6 Philippines, did Terry write to you?

7 A. Yes. He write to me once a week.

8 Q. And did -- was he able to telephone you?

9 A. No. Because we don't have a phone in the house.

We have

10 the neighbors' phone that is where the legal team can

call me,

11 but Terry cannot call there collect, so --

12 Q. And in his -- in the letters that he sent you, did
he talk

13 about your pregnancy and how you were doing and how
Nicole was

14 doing?

15 A. Yes. He was very concerned about Nicole and me.

He was

16 advising me to eat some good food, which is -- he
always does.

17 And he was concerned about Nicole's health. And I
traveled

18 from Cebu to Pilar Island most of the time, so --

was your
19 Q. And in connection with your pregnancy, now, where
20 next child born? In the Philippines?
21 A. Yes. Christian was born in the Philippines.
born?
22 Q. And Christian is the name -- when was Christian
23 A. December 15 of '95.
about
24 Q. Now, did Terry in his letters give you some advice
25 your pregnancy with Christian?

15680

Marife Nichols - Direct

1 A. Yes. He did.
2 Q. What did he tell you?
3 A. He advised me since -- ever since I delivered
Nicole and my
4 oldest son through natural childbirth, Lamaze -- is
that what
5 you call it here? He advised me to -- he sent a letter
to
6 Donna Carino, which was my midwife when I was pregnant
of
7 Nicole, and asked if I could -- if she could assist me
in my
8 childbirth. And Donna Carino sent him the letter that
she --
9 she would love to, and she send me a letter, too, to
invite me
10 to come over -- come back in Michigan and live with her

through

11 the pregnancy and that she will assist me in my labor.

12 Q. Now, did Terry also at this time -- during this
time try to

13 provide for you financially?

14 A. Yes. He --

15 Q. What --

16 A. He asked his mother for some money for me every
month. And

17 he did send his money in prison, too, to me.

18 Q. How did that work, as you understood it?

19 A. It's a commissary money that he have.

20 Q. And he sent that to you?

21 A. Yes. He sent that to me, too.

22 Q. All right. Now, did there come a time when you
decided to

23 move back to the United States -- to come back to the
United

24 States?

25 A. Yes.

15681

Marife Nichols - Direct

1 Q. When was that?

2 A. Late June of '96.

3 Q. And have you been living in the Denver area ever
since

4 then?

5 A. Yes.

6 Q. And since you've been living in the Denver area,
have you

7 and the children been able to see Terry?

8 A. Yes.

9 Q. How often are you able to see him now?

10 A. Once a week.

11 Q. And how -- tell the jury what -- what are those
visits

12 like? Is he able to -- to play with the kids?

13 A. Now he's able to hold and play with the kids and --
and

14 help me in somehow discipline them and change
Christian's

15 diaper. I used to tease about that to him.

16 Q. Now, in addition to that, is he able to talk to you
on the

17 telephone now?

18 A. Yes. Every night, he calls.

19 Q. I'm going to show you --

20 MR. TIGAR: If I can approach, your Honor?

21 THE COURT: Yes.

22 BY MR. TIGAR:

23 Q. I'd just like you to look through these pictures
and just

24 say the number and what the picture shows.

25 MR. TIGAR: Your Honor, I would like to offer
at this

15682

Marife Nichols - Direct

1 time M690, M691, M692, M694, M695, M696, M697.

Honor? 2 MR. RYAN: If I may have just a moment, your

3 THE COURT: Yes.

4 MR. RYAN: No objection.

5 THE COURT: They are received.

6 BY MR. TIGAR:

7 Q. Now, could you just leaf through those and give the
number

8 and just tell what it is.

9 MR. TIGAR: Your Honor, under the Court's
order, we

10 are not going to display these publicly because they
are

11 pictures of the children, but the jury will have them.

12 THE COURT: All right. And I will explain
that to the

13 members of the jury.

14 You will, of course, have the exhibits before
you when

15 you deliberate in this matter, just as you did
previously when

16 you deliberated after the trial. And I'm not going to
publish

17 these exhibits in the courtroom or otherwise because
they are

have 18 photographs dealing with the children, and the children

19 some rights of privacy.

20 You may proceed.

21 BY MR. TIGAR:

22 Q. What is No. M690?

23 A. This is a picture of me and Christian and Nicole.

24 Q. Okay. What is the next one then?

25 A. The next one, M691.

15683

Marife Nichols - Direct

1 Q. Yes.

2 A. This is a picture of Josh and Nicole and Christian.

3 Q. Now, where was that taken? In Denver?

4 A. In Denver, yes.

half sister 5 Q. Does Josh get to play with his half brother and

6 when he's here in Denver?

7 A. Yes.

8 Q. And is he able to see Terry, also?

9 A. Yes.

10 Q. What's the next one?

11 A. This is a picture of me and Christian.

12 Q. Okay. When was that taken?

13 A. Summer of '96.
14 Q. Okay. And the next one? What's the number of it?
15 A. M694. Oh. It's a picture of Christian.
16 Q. Okay. And about when was that taken?
17 A. I -- it's the winter of '96.
18 Q. And the next one, the number?
19 A. M695. This is a picture of me and Nicole and
Christian and
20 Terry.
21 Q. Where was that taken?
22 A. In the prison.
23 Q. Okay. What's the next number?
24 A. It's a -- M696.
25 Q. Okay.

15684

Marife Nichols - Direct

and Terry
ABCs in it
was

1 A. It's a picture of Nicole writing his -- her ABCs
2 and Christian -- Terry is made those flashcards with
3 for Nicole to learn.
4 Q. Where was that taken?
5 A. In the prison.
6 Q. Okay. M697.
7 A. Picture of Nicole and Christian and Terry. Terry

8 holding both of them.

9 Q. Okay. And where was that taken?

10 A. In the prison.

11 Q. Now, you mentioned some flashcards. How old is
Nicole now?

12 A. She's four years old now.

13 Q. Does she go to school?

14 A. Yes. She goes to the Jewish Community Center.

15 Q. Now, you mentioned some flashcards. I'm going to
show you

16 now what I've marked as Defendant's M258. Are those
the

17 flashcards that Terry made?

18 A. Yes. These are the flashcards that Terry made for
Nicole.

19 MR. TIGAR: All right. We offer them, your
Honor.

20 M258.

21 MR. RYAN: No objection.

22 THE COURT: Received.

23 BY MR. TIGAR:

24 Q. Now, I'm going to put these up. Where did Terry
make

25 these?

15685

Marife Nichols - Direct

1 A. In the prison.

2 Q. Okay. And what are they made out of?

3 A. File folders.

4 Q. Okay. There it says "flashcards." On the back, we
can see

5 28 cards, the ABCs, and there's the file-folder label.
And in

6 the picture that you showed us, is he working with the
7 flashcards with Nicole and Christian?

8 A. Yes.

9 Q. Okay. And here's one. That's the A. And then --
whoops.

10 And on the back --

11 A. Apple.

12 Q. -- apple. And the B. On the back is the bunny?

13 A. Bunny.

14 Q. And does it then go all through the alphabet?

15 A. Yes.

16 Q. And did -- did Terry draw all the pictures and --
and do

17 the whole thing?

18 A. Yes, he did.

19 Q. Then that's the label there for Nicole and
Christian;

20 right?

21 A. Yes.

22 Q. Now, in addition to making these items, did Terry
also make

23 cards to send?

24 A. Yes, he did.

25 Q. Okay. I'm going to show you now what I've marked
as M298,

15686

Marife Nichols - Direct

1 which is dated 13 March 1997. For you. Is that a card
that he

2 made for you?

3 A. Yes. That's a card that he made for me.

4 MR. TIGAR: We offer M289, your Honor --
excuse me.

5 M298.

6 MR. RYAN: No objection.

7 THE COURT: All right. Received. May be
shown.

8 BY MR. TIGAR:

9 Q. Now, I'm going to put this up. This is a card with
a note

10 and so on. But what's it made of?

11 A. It's made of file folders.

12 Q. File folders?

13 A. Yes. And he uses toothpaste to paste it.

14 Q. Okay. And the envelope, is that -- is that a
regular

15 envelope you can buy in the store, or is that a
handmade

16 envelope?

17 A. That's a handmade envelope, too.

18 Q. And the white we can see here, the paste, what does
he use

19 to paste that with?

20 A. Toothpaste.

21 Q. I'm going to show you now what I've marked as M299,
which

22 is a copy. Did Terry make that?

23 A. Yes, he did.

24 Q. Do you know about when he made that?

25 A. April of '96. I think this is the Easter.

15687

Marife Nichols - Direct

1 Q. And who did he make it for?

2 A. For Nicole and Christian.

3 MR. TIGAR: We offer M299, your Honor.

4 MR. RYAN: No objection, your Honor.

5 THE COURT: Received. May be shown.

6 BY MR. TIGAR:

7 Q. That's a picture that Terry drew?

8 A. Yes.

9 Q. I'm going to show you what I have marked as
Defendant's

10 M300, which is a card dated March 30, 1997. Did Terry
make

11 that for you?

12 A. Yes.

13 MR. TIGAR: We offer M300, your Honor.

14 MR. RYAN: No objection, your Honor.

15 THE COURT: Received. May be shown.

16 BY MR. TIGAR:

17 Q. That's an Easter card again made out of file
folders?

18 A. Yes.

19 MR. TIGAR: Your Honor, I have a number of
these

20 cards. If I could approach, we could -- we could put
them all

21 in a group.

22 THE COURT: All right.

23 BY MR. TIGAR:

24 Q. Let me show you first -- why don't you read through
each

25 one and briefly --

15688

Marife Nichols - Direct

1 MR. TIGAR: Let me do it this way to save
time. We

2 offer M301, M303, M304, M306, M308, M309, and that's
it, your

3 Honor.

Honor. 4 MR. RYAN: No objection to any of those, your

5 THE COURT: All right. They are received.

6 BY MR. TIGAR:

7 Q. Mrs. Nichols, could you just leaf through those and
just

8 tell the jury briefly what each one of them is.

9 A. M301, it's a card for me that Terry made -- made.
It's --

10 a welcome-back card. When I went to Philippines.

11 Q. And is it made in the same way as the other ones?

12 A. Yes.

13 Q. Okay. All right. The next one.

14 A. M303. He made a card for Nicole, "Daddy's little
angel."

15 M304, he made me a card. I think this is a
16 Valentine's card. It says he loves me.

17 M306, he made a -- what do you call it?
Kootchie -- I

18 don't know -- how do you call it in English?

19 Q. A cooty-catcher?

20 A. A cooty-catcher.

21 Q. Is that folded paper with numbers on it for kids to
use?

22 A. Yes.

23 Q. Okay.

24 A. M308, he made a card for Nicole, "You are my
sweetheart

25 Valentine."

15689

Marife Nichols - Direct

1 M309, he made a card for Christian to say
hello and
2 put numbers and ABCs in it.

3 Q. And so -- and during the time that you've been in
Denver,
4 have you -- has the family been able to be together
with Terry
5 and the kids at least once a week?

6 A. Yes.

7 Q. And has he continued as a father to try to work
with them
8 and teach them and have as normal a family life as
possible?

9 A. Yes, he did.

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

11 THE COURT: All right. Do you have any
questions?

12 Proceed.

13 MR. RYAN: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. RYAN:

16 Q. Good morning, Mrs. Nichols.

17 A. Good morning.

18 Q. Now, you have told the jury about a number of
things that

19 Mr. Nichols has prepared; is that correct?
20 A. Has made, yes.
21 Q. These are flashcards and notes to you and notes to
the
22 children?
23 A. Cards for the children, yes.
24 Q. All of these cards, all of these notes, all of
these
25 materials have all been made since Terry Nichols has
been in

15690

Marife Nichols - Cross

1 prison?
2 A. That's right.
3 Q. All have been made while Terry Nichols knew he was
facing
4 these charges?
5 MR. TIGAR: Objection, your Honor.
6 THE COURT: Sustained as to what he knew.
7 BY MR. RYAN:
8 Q. All of these materials were made while Terry
Nichols was
9 pending charges in this case?
10 MR. TIGAR: Objection, your Honor.
11 THE COURT: Overruled.
12 BY MR. RYAN:

13 Q. Did Terry Nichols ever prepare any flashcards
before he was

14 arrested in this case? For Jason, or for Nicole?

15 A. He never made one, but he bought one.

16 Q. Did Terry Nichols ever prepare and make a
Valentine's card

17 for you and send it to you in the Philippines in
February of

18 1995?

19 A. He prepared -- I'm sorry.

20 Q. Did he ever hand-make a Valentine's card for you
and send

21 it to the Philippines?

22 A. On '95?

23 Q. Yes. Before the bombing.

24 A. I think he bought some.

25 Q. Did you bring it with you?

15691

Marife Nichols - Cross

1 A. Some were in my apartment.

2 Q. Did he make you an Easter card on April 16th, three
days

3 before the bombing?

4 A. No. He didn't because we were together.

5 MR. RYAN: That's all I have, your Honor.

6 THE COURT: Any redirect?

7 MR. TIGAR: We have no questions.
8 THE COURT: All right. You may step down.
9 MR. TIGAR: Thank you, Mrs. Nichols.
10 THE WITNESS: Thank you, your Honor.
11 THE COURT: Next witness.
12 MR. THURSCHELL: Call Suzanne McDonnell.
13 THE COURT: Thank you.

right

14 THE COURTROOM DEPUTY: Would you raise your
15 hand, please.

16 (Suzanne McDonnell affirmed.)

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

18 Would you state your full name for the record and spell
your
19 last name.

20 THE WITNESS: Suzanne Marie McDonnell,
21 M-C-D-O-N-N-E-L-L.

22 THE COURTROOM DEPUTY: Thank you.

23 THE COURT: Mr. Thurschwell.

24 DIRECT EXAMINATION

25 BY MR. THURSCHELL:

15692

Suzanne McDonnell – Direct

1 Q. Good morning, Mrs. McDonnell.

2 A. Good morning.

Nichols? 3 Q. Mrs. McDonnell, what's your relationship to Terry

4 A. I'm his sister.

5 Q. And how many other siblings do the two of you have?

6 A. Two other brothers.

7 Q. I want to show you --

8 MR. THURSCHELL: Show the witness what's been
marked

9 as Defense Exhibit M66.

10 BY MR. THURSCHELL:

11 Q. Can you identify the people in that photograph?

12 A. Yes, I can.

13 Q. Who -- who are they?

14 A. There's myself and two of my brothers and actually
one of

15 my cousins.

16 MR. THURSCHELL: Okay. We move the -- we
move M66,

17 your Honor.

18 MR. MEARNS: No objection, your Honor.

19 THE COURT: Received. Maybe be shown.

20 BY MR. THURSCHELL:

21 Q. Can you identify the people for the jury, starting
from the

22 left.

23 A. The little girl is myself, and then it's Terry
there and my

24 cousin Dale and then my brother James.

25 Q. Now, Mrs. McDonnell, where do you presently live?

15693

Suzanne McDonnell - Direct

1 A. I live in Holly, Michigan.

2 Q. And where is that in relation to Detroit?

3 A. To -- it's north of Detroit an hour, hour and a
half.

4 Q. Okay. Where did you grow up?

5 A. In Lapeer, Michigan.

6 Q. And where is Lapeer, Michigan, in relation to
Detroit?

7 A. It's a good hour and a half north of La -- more
straight of

8 Detroit than Holly is.

9 Q. Straight north?

10 A. Yeah.

11 Q. Is -- is it in the area of Michigan known as the
Thumb?

12 A. Basically, yeah.

13 Q. Now, let me turn to your parents. Before I do
that, are

14 you currently employed?

15 A. No.

16 Q. No. Who -- what was your father's name? What is
your

17 father's name?

18 A. Robert Nichols.

19 Q. I want to show you what's been marked as Defense
Exhibit

20 M69. Can you identify the individuals in this
photograph?

21 A. Yes, I can.

22 Q. Who are they?

23 A. In front there is my brother James. To the left --

24 THE COURT: Well --

25 MR. THURSCHELL: We move the exhibit -- move
M69.

15694

Suzanne McDonnell - Direct

1 MR. MEARNS: No objection.

2 THE COURT: Received. Now it may be shown,
and you

3 may proceed to identify who's in it.

4 MR. THURSCHELL: Thank you, your Honor.

5 THE WITNESS: Up front is my brother James,
and then

6 to the left is Terry, and my father is sitting in the
chair and

7 myself behind them all.

8 BY MR. THURSCHELL:

9 Q. Now -- and what is your mother's name?

10 A. Joyce Nic -- Joyce Wilt.

11 Q. Are your parents divorced?

12 A. Yes, they are.

13 Q. Did she remarry?

14 A. Correct.

15 MR. THURSCHELL: Okay. I want to show the
witness

16 what's been marked as Defense M70.

17 BY MR. THURSCHELL:

18 Q. Mrs. McDonnell, do you recognize the individuals in
this

19 photograph?

20 A. Yes, I do.

21 MR. THURSCHELL: We move the admission of
M70.

22 MR. MEARNS: No objection.

23 THE COURT: Received. May be shown.

24 BY MR. THURSCHELL:

25 Q. And can you tell the jury who we see in this
photograph.

15695

Suzanne McDonnell - Direct

1 A. That's my older brother Les to the left and then
Terry next

2 to him and James and myself and then my mother.

3 Q. Now, what was your mother's maiden name?

4 A. Joyce Walton.

Michigan 5 Q. Walton. And do the Waltons have a history in the

6 Thumb?

7 A. Yes.

8 Q. Do you know how far back -- how long the Waltons
have been

9 living in the Thumb?

100. I 10 A. I -- from what we've -- it's about -- well over

11 think it goes back to the 1830's. 1840's. Somewhere.

12 Q. And do you know what the Waltons have been doing in
the

13 Thumb during that time?

14 A. Farming.

15 Q. Farming. I'm going to show you what's been marked
as M578.

16 Do you recognize the people depicted in this
17 photograph?

18 A. Yes.

19 MR. THURSCHELL: And, your Honor, we move
M578.

20 MR. MEARNS: No objection.

21 THE COURT: Received. May be shown.

22 BY MR. THURSCHELL:

23 Q. Who do we see here?

24 A. That's my mother's whole family there, her brothers
and

25 sisters and her mother and father.

15696

Suzanne McDonnell - Direct

1 Q. Okay. Can you point out your mother in this
picture?

2 A. Yeah. She's up at the top -- actually, at the
front of the

3 tractor, the last one to the -- to the right.

4 Q. Okay. And did -- where did your mother stand in
relation

5 to her siblings?

6 A. She was the youngest of ten.

7 Q. Young -- by the way, where do you stand in relation
to your

8 siblings?

9 A. I'm the youngest.

10 Q. Okay. Who is the oldest?

11 A. Les is.

12 Q. And then who is after that?

13 A. It's Les and then James and Terry and myself.

14 Q. Now, did you grow up on a farm --

15 A. Yes, I did.

16 Q. -- as well?

17 A. Uh-huh.

18 Q. Let me show you what's been marked as M629. Do you
19 recognize what's depicted in that photograph?

20 A. Yes, I do.

21 MR. THURSCHWELL: We move M629.

22 MR. MEARNS: No objection.

23 THE COURT: Received. May be shown.

24 BY MR. THURSCHWELL:

25 Q. What does the jury see here?

15697

Suzanne McDonnell - Direct

where I 1 A. That's actually where I grew up, the brick house
mother 2 grew up -- all of us grew up at. And that's where my
3 currently lives.

4 Q. And is that -- is that the house in the background?

5 A. Pardon?

6 Q. Is that the house in the background?

7 A. Yes. The brick house is the house.

8 Q. And what do we see in the foreground?

the 9 A. That currently now is the shop. But it used to be
10 original house where my mother and father started out.

time with 11 Q. Okay. Did all four kids live in the house at one
12 your parents?

did, 13 A. Yeah. Just for a real short time, but -- or that I

14 anyway.

15 Q. Okay. You built the new house shortly after you
were born?

16 A. Right. Right. Correct.

17 Q. You say you grew up on a farm. What did you grow
on the

18 farm while you were growing up?

19 A. Let's see. While we were growing up, corn and
wheat. And

20 then real early, early years, I remember my mother
doing a

21 little bit of sugar beets, but mainly, it was corn and
wheat.

22 And then as it progressed, we got into beans later and
-- later

23 in time.

24 Q. Okay. I want to -- and -- let me ask you this, you
were --

25 where -- how much older was Terry than you?

15698

Suzanne McDonnell - Direct

1 A. He was about four years older than I.

2 Q. Four years -- so and how -- can you describe what
Terry was

3 like as an older brother.

4 A. As an older brother. He was -- he was a great
teacher. He

5 taught me many things. I -- I remember him the most of
all my

6 brothers growing up because we, I think, had the most
time to
7 spend together since we were the closest and we worked
a lot
8 together, too.

9 Q. Okay. What kind of work did you do together?

10 A. Well, since we were the younger ones, we got the
jobs that
11 weren't really the most appealing or the -- kind of the
-- so
12 we got -- we got to pick rocks. We picked a lot of
rocks
13 together.

14 Q. And let me stop you there. What -- what is picking
rocks?

15 A. You have to go out in the fields and pick the rocks
to
16 remove them so that your -- when you run your equipment
over
17 the ground, that it doesn't damage them and then you
have
18 breakdowns and so you -- we'd spend many days out on --
in the
19 tractor and loader and picking rocks, and he and I
worked out
20 great together. He drove the tractor, I picked the
rocks. And
21 we knew our hand signals, and we just -- I don't think
too many
22 people could say that they had fun picking rocks
together, but
23 Terry and I always did. We made it fun, you know. It
was like

worked. 24 whistle while you work, and we -- we had fun while we

with 25 Q. Did you -- did you do any other unpleasant tasks

15699

Suzanne McDonnell - Direct

1 Terry?

shoveling 2 A. Yeah. We -- we got the job most of the time of

corn, and 3 corn. We had thousands and thousands of bushels of

with Terry 4 one particular area that I really remember enjoying

would have 5 is every couple of weeks in our wet holding bin, we

for 6 to empty it and to do that, you had to sit in this bin

little 7 hours and hours and just shovel and shovel and have a

nighttime, we 8 break. And on these breaks, especially in the

doing 9 would sit there and we'd have a flashlight and we'd be

and 10 puppets -- shadow puppets, you know, and just laughing

there and 11 making all kinds of these figures up on this wall in

each other 12 just, you know, having a good time, throwing corn at

13 and -- you know.

14 Q. Okay.

15 A. Making the best of it.

16 Q. Did you do other -- did you build your own
buildings on the

17 farm while you were growing up?

18 A. Yes. Yeah. We -- we built a -- I believe it was a

19 60-by-100 grain-storage building, and it was all steel.
And we

20 built -- I know of at least two grain bins that I've
helped my

21 brothers to -- to build.

22 Q. Okay. And let me -- let me ask you, this -- well,
when

23 you -- strike that.

24 Did Terry go to college?

25 A. He did for a short time. Yes.

15700

Suzanne McDonnell - Direct

1 Q. Did anyone else in your family go to college?

2 A. No.

3 Q. What's your highest level of education?

4 A. To the 12th grade. My mother encouraged me big
time to go,

5 but I was -- I -- my heart was farming. And I just
enjoyed

6 learning on the job rather than going -- I was kind of
scared.

7 I didn't want to be off with other people, really.

8 Q. Okay. Terry went away to college?

9 A. Yes, he did.

10 Q. Did your other siblings graduate from high school,
as well?

11 A. Yes.

12 Q. And where -- where did he go to college?

13 A. He went to Central Michigan in Mount Pleasant,
Michigan.

14 Q. And about -- do you remember when he went?

15 A. I believe it was in the fall of '73.

16 Q. Okay. Now, did your family start having some hard
times

17 around that time period?

18 A. Yes.

19 Q. And what were those hard times?

20 A. Well, my -- my mother and father, they had filed
for

21 divorce, so the divorce proceedings had started at that
time.

22 Shortly after he left.

23 Q. Was that a fairly bitter divorce?

24 A. It was, yes.

25 Q. Okay. Was there another traumatic incident around
the same

Suzanne McDonnell - Direct

1 time period?

2 A. When it actually -- the divorce came around, yeah,
then my
3 brother Les, he had gotten burned severely.

4 Q. He had a severe -- he was severely burned in an
accident?

5 A. Yes. He spent close to six months in the hospital
in the
6 burn unit.

7 Q. Okay. Now, when did Terry come home from college?

8 A. He spent like a -- one term or one semester, I
believe it
9 was. So it was early '74.

10 Q. Okay. And do you know why he came home after one
semester?

11 A. Well, that was about the time that my mother and
dad got
12 divorce -- the actual divorce was coming about. It was
almost
13 finished. And it was getting to be springtime, and my
mother
14 had asked my brother James if he wanted to farm. And
she knew
15 that was in his heart, that James was -- that was his
whole
16 life, and so she agreed to start back up in the farming
17 operation with him and, you know, welcomed Terry back
into the
18 scene if he wanted -- if he wanted to.

19 Q. Okay. Did -- tell me what happened to the family

after the

20 divorce.

21 A. Well, I -- my brother Les went to farm with my dad.

22 Q. He was the oldest?

23 A. Yes. He was the oldest.

24 Q. Okay.

25 A. And then -- because he got like 200 acres of land.

They

15702

Suzanne McDonnell - Direct

1 split the farm. And my mother got the 160 with the
house and

2 buildings on it. And then -- so the rest of us decided
to stay

3 with my mother, James and Terry and myself.

4 Q. Did you, with your mother and the other kids,
continue

5 farming?

6 A. Yes, we did.

7 Q. Were you successful?

8 A. I would say so, yes. We were -- I felt really
proud. I

9 was really proud that --

10 Q. Did you win any awards?

11 A. We were usually -- there's an elevator in town, and
we were

12 one of the biggest -- between, you know -- it used to

be the

County 13 Nicholsons were like the biggest farmers in the Lapeer

at the 14 area. And then as it split up, now there were two. So

year, and 15 elevator, they would have the top ten farmers of the

were both 16 I know that my dad and -- and my -- my brothers, we

17 in that top ten for a number of years.

addition to 18 Q. Okay. Did you get any community recognition in

19 that?

20 A. Oh, yeah. Yeah. We did. I -- I do remember that.

21 Q. Was there, in fact, a newspaper article?

22 A. Yeah.

that was? 23 Q. Okay. That recognized you. Do you remember when

quite sure. 24 A. I'm thinking around -- I'm thinking -- I'm not

25 It's either '76 -- between '76 and '78.

15703

Suzanne McDonnell - Direct

Exhibit 1 Q. I want to show you what's been marked as Defense

2 M95. Do you recognize that?

3 A. Yes, I do.

4 Q. And what is that?

5 A. That's a picture of my brother James, myself and
Terry.

6 Q. Well, what's the whole -- the whole --

7 A. It's an article in the -- in the Lapeer County
Press, which

8 is the only -- you know, the major paper that's in the
area.

9 MR. THURSCHELL: We offer M95.

10 MR. MEARNS: No objection.

11 THE COURT: Received. May be shown.

12 BY MR. THURSCHELL:

13 Q. And it doesn't quite fit on the ELM0 here, but read
the

14 headline for the jury there.

15 A. "Farming Nicholises Just Hang in There."

16 Q. And zooming in a bit. Can you identify the people
in the

17 photograph?

18 A. Yes.

19 Q. Starting from the left?

20 A. That's my brother James, myself, and then my
brother Terry.

21 Q. Now, did your mother eventually start expanding the
farm?

22 A. Yes, she did.

23 Q. And how did she do that? What did she --

24 A. She started purchasing other farm parcels.

25 Q. Okay. Where were these other farm parcels?

15704

Suzanne McDonnell - Direct

1 A. I know one was just 5 miles away from her house,
and then

2 she purchased some up in -- what we call the Cass City,
Decker

3 area.

4 Q. Okay. And did one of those parcels have a
farmhouse on it?

5 A. Yes.

6 MR. THURSCHWELL: I'm showing the witness
what's been

7 marked as M519.

8 BY MR. THURSCHWELL:

9 Q. Do you recognize that picture?

10 A. Yes, I do.

11 MR. THURSCHWELL: We move M519.

12 MR. MEARNS: No objection.

13 THE COURT: Received. May be shown.

14 BY MR. THURSCHWELL:

15 Q. Could you tell the jury what they are looking at
there.

16 A. Yeah. That's what we call the "farmhouse," and
that's

17 where my brother James currently lives.

18 Q. Okay. And was this -- was this the farmhouse on
the parcel

19 of land in the Decker area?
20 A. Yeah. She had bought like two parcels of land and
that --
21 we bought one at an auction, and then we bought this at
a
22 private -- private sale.
23 Q. About how much -- about how much land in the Decker
area
24 did you end up with?
25 A. Oh, gosh. Now?

15705

Suzanne McDonnell - Direct

1 Q. Well, at that time -- at that -- when did your
mother buy
2 the Decker property?
3 A. There's 160 acres there. There's another 58 -- the
first
4 parcel we purchased was 58 acres, and then we purchased
the
5 160, and I know we had another 40. And I know -- I
keep saying
6 "we" because --
7 Q. When did your -- when did your mother first
purchase the
8 Decker-area property, including the one with the house?
9 A. Sometime -- I'm thinking -- I know it's in between
'76, '78
10 time period.

as the 11 Q. Okay. And did you all work that farm area, as well
12 one in Lapeer?
13 A. Yes, we did.
14 Q. Okay. How did you manage that?
15 A. It was kind of tough, but the ground in Lapeer was
always
-- we 16 drier sooner in the springtime, so we would work and we
17 worked like a total of about -- between 12- and 1500
acres.
18 And so we would work all the ground in Lapeer first,
get it all
19 worked up, planted, and then we would load up the big
tractors
20 on the trailer and transport those up 40 miles away to
the farm
21 and then haul up the -- it would take us two, three
days to get
-- and 22 the equipment up there, and then we would set up, work
23 we would work up the ground up there and travel back
home,
24 usually to spend, you know -- to stay at night.
25 Q. All right. Was that -- was that the four of you in
the --

15706

Suzanne McDonnell - Direct

1 your mother and the --

2 A. Most of the time. Sometimes she didn't always
come, but a

3 lot of times.

4 Q. So it was the either --

5 A. Three or four.

6 Q. Or the three kids?

7 A. Yeah.

8 Q. Okay. Now -- and Terry worked the farm there with
you,

9 too?

10 A. Right.

11 Q. This was in the '76 to '78 time period?

12 A. Right.

13 Q. At some point during that time period, did Terry
move to

14 Colorado?

15 A. Yes, he did.

16 Q. Okay. Do you recall when he did that?

17 A. Yeah. It -- I had graduated in '77, so he left
sometime

18 in -- like the summer -- May or June of '77.

19 Q. Okay. And do you know why he moved to Colorado?

20 A. I think it was kind of stressful for him, and he
kind of

21 wanted to get out and do -- kind of be independent,
find

22 something that he kind of wanted to do, too. Something
else.

23 Q. Something on his own apart from the family farm?

24 A. Yeah.

25 Q. Why was it stressful for him?

15707

Suzanne McDonnell - Direct

1 A. Well, we'd had a -- had a lot go on, you know, with
the
2 divorce and then with Les being burnt and -- and you
work day
3 in and day out with not really a whole lot of time off,
and you
4 worked pretty close, and sometimes it wasn't under the
best of
5 conditions.

6 Q. Let me -- did you get paid for your farm work?

7 A. No. We didn't get paid. No. We just -- we just
all
8 worked together and, you know, mother made sure we had
the
9 things that we needed.

10 Q. Now, do you know what Terry did while he was in
Colorado?

11 A. Yeah. He -- he eventually got a real estate
license.

12 That's what he was kind of going for. He kind of
enjoyed that
13 aspect.

14 Q. Okay. And did -- and do you recall when he came
back from

15 Colorado?
16 A. It was somewhere in the winter of '77, '78. Like
between
17 December -- November, December, January, February,
somewheres
18 in that area.
19 Q. Six to eight months after he left?
20 A. Yeah. He was only gone a short time, really.
21 Q. And when he came back, did he continue to work on
the farm?
22 A. Yes, he did. My mother said, you know, he was
welcome to
23 come back.
24 Q. Did he do anything else for work?
25 A. He also did real estate, and then he did work at a
John

15708

Suzanne McDonnell - Direct

1 Deere dealership.
2 Q. Was Terry interested in investments during that
period?
3 A. Yes.
4 Q. What kinds of investments was he interested in?
5 A. Real estate buying and selling, buying a house or
buying a
6 parcel and trying to make some money, you know, trying
to make
7 a -- what do you -- I lost the words there.

8 Q. And did he read The Wall Street Journal during that
period?

9 A. Oh, yeah.

10 Q. Was he interested in the stock market?

11 A. Yes.

12 Q. How far back did his interest in the stock market
and

13 investments go?

14 A. I remember getting The Wall Street Journal
delivered at our

15 house and it was specifically for Terry for a number of
years.

16 Probably -- probably almost since he got out of
college.

17 Just -- not college, but high school. You know, at
least '76,

18 if not '74.

19 Q. Okay. Now, I want to go back and ask you some
question --

20 more specific questions about Terry, but first, I want
to ask

21 you, did you -- while you were growing up, did you have
pets?

22 A. Yeah. We had a number of different kinds of pets.

23 Q. What kind of pets did you have?

24 A. Well, besides having lots of cats, kittens, dogs, I
think

25 our first experience was with a little baby deer.

Suzanne McDonnell - Direct

1 Q. Okay.

2 A. And we had an owl and a hawk and --

3 Q. You had --

4 A. We had a raccoon, we had a skunk.

5 Q. Did you -- now, were those pets that you bought in
the pet
6 store?

7 A. No. Actually, when you're out working in the
fields, you

8 come across them. Sometimes you hurt -- you run them
over by

9 accident. You don't -- you don't know it. I know I
had that

10 happen to me.

11 Q. Let me -- was -- and did Terry take care of these
pets?

12 A. Yeah. Especially -- the deer, we all kind of did,
but

13 Terry especially. The owl and the hawk, those were his
-- we

14 always -- he and I always tried to get a fox, but we
never did.

15 Q. I want to show you what's been marked as M73. Can
you --

16 do you recognize this photograph?

17 A. Yes, I do.

18 MR. THURSCHELL: We move M73.

19 MR. MEARNS: No objection.

20 THE COURT: Received. May be shown.

21 BY MR. THURSCHELL:

22 Q. What is the jury looking at here?

23 A. That's my brother Terry feeding our baby deer,
Jeanie. We

24 named her Jeanie.

25 Q. Okay. Now, was Jeanie fully domesticated?

15710

Suzanne McDonnell - Direct

1 A. No. We -- the only reason we got her basically is
because

2 my brother was out -- James was out plowing and he hit
the

3 deer, and it -- either hit it or it was so new it
couldn't

4 walk, and we looked around for the mother. And so we
brought

5 it home and we got it -- nursed it back to -- to
health, and so

6 we raised it. But we always let it outside, but it did
come

7 inside, too.

8 Q. Okay.

9 A. And we'd many occasions have it in the house.

10 Q. Let me show you what's been marked as M615. Do you
11 recognize this photograph?

12 A. Yes, I do.

13 MR. THURSCHELL: We move M615.

14 MR. MEARNS: No objection.

15 THE COURT: Received.

16 MR. THURSCHELL: Publish? Thank you.

17 BY MR. THURSCHELL:

18 Q. What's the jury looking at here?

19 A. That's my mother in the red, and that's our deer,
Jeanie,

20 and myself down in the lower part. And I don't recall
what

21 she's feeding her there, but she loved apples. And on
Sundays,

22 she always came to the house and had pancakes and
applesauce

23 with our Sunday breakfast. We always had pancakes and

24 applesauce and sausage on Sunday morning.

25 Q. And the deer got the benefit of that?

15711

Suzanne McDonnell - Direct

1 A. Oh, yeah, she had -- she would knock on the window.
The

2 popular song was "Knock Three Times on the Ceiling,"
and she

3 would come to our front window and knock three times on
the

4 window and, "Let me in, let me in," and we would feed
her.

5 Q. Let me show you what's been marked as Defense
Exhibit M512.

6 Do you recognize that photograph?

7 A. Yes, I do.

8 MR. THURSCHELL: We move M512.

9 MR. MEARNS: No objection.

10 THE COURT: Received.

11 THE WITNESS: That's my brother. My brother
Terry
12 with the owl.

13 BY MR. THURSCHELL:

14 Q. And is that the owl that he domesticated?

15 A. Yeah. They all -- all the animals, you know -- we
didn't
16 keep them caged up or anything. We let them roam
around. They
17 had their free will to go wherever, but they always
returned
18 and -- but survived on their own.

19 Q. Did you say Terry took care of the deer along with
the rest
20 of you and the birds were his special --

21 A. Yeah. Terry had -- the hawk and the owl were
really
22 Terry's because, like I say, James got the deer and we
all --
23 it was just really an amazing thing. We had the whole
town
24 come out. Our bus would pull in and they would -- kids
would

25 get off and pet the deer and see the deer.

15712

Suzanne McDonnell - Direct

1 Q. Let me turn to another area. Did you get a chance
to
2 observe Terry with kids after you were -- became
adults?

3 A. Yes.

4 Q. Okay. Did you have -- do you have a child?

5 A. Yes, I do.

6 Q. Okay. Did Terry -- Terry relate -- how -- tell me
how
7 Terry got along with your child. Is that Natalie, your
8 daughter?

9 A. My daughter Natalie.

10 Q. Okay. How did Terry relate to Natalie?

11 A. She was the first niece for any of my brothers.
And I

12 remember Terry -- I think my brother James visited
first of all

13 at the hospital, but Terry, I believe, was the first
one that

14 came out to my house and held my -- my daughter, and he
was

15 always really good.

16 Q. I want to show you what's been marked as M45. Do
you

17 recognize that photograph?

18 A. Yes, I do.

19 MR. THURSCHELL: We move M45.

20 MR. MEARNS: No objection.

21 THE COURT: Received. May be shown.

22 BY MR. THURSCHELL:

23 Q. And what do we see here?

24 A. That's my brother Terry about -- I would say and my
25 daughter Natalie, it was either December of '80 or

January

15713

Suzanne McDonnell - Direct

1 somewheres of '81. Shortly after she was born.

2 Q. Shortly after she was born. Did -- does Terry have
a son
3 named Joshua?

4 A. Yes, he does.

5 Q. Did you get a chance to see how Terry related to
Josh?

6 A. Yes.

7 Q. Can you just tell the jury a little bit about what
you

8 observed.

9 A. Oh, he -- he just always tried to -- to make things
and do

10 things. He was really creative at making things. And
he

Josh for 11 was -- he was always there. I know he took care of
12 many, many years.

of fact? 13 Q. Took care of Josh as a single parent, as a matter

14 A. Yes. Yes.

15 Q. Let me show you M63.

that this 16 MR. THURSCHWELL: And, Judge, we would ask

children, as 17 be subject to the order that applied to the other

18 well.

receipt? 19 THE COURT: All right. Any objection to its

20 MR. MEARNS: No. No objection, your Honor.

21 THE COURT: All right. It'll be received.

22 BY MR. THURSCHWELL:

jury be 23 Q. And do you -- what does the jury -- what will the

24 looking at here when they look at this?

25 A. That's my brother and his son Josh.

15714

Suzanne McDonnell - Direct

1 Q. Okay. And where are they sitting?

house at 2 A. At my mother's favorite picture-taking spot in her

3 the fireplace.

creative. 4 Q. Okay. Now, you've mentioned that Terry was
Did 5 the Walton family -- that is, your mother's family --
have an 6 annual tradition?
7 A. Yes. Every -- every Christmas, I don't know how
many 8 years, but there was like the Sunday before Christmas,
we -- 9 the whole Walton family would get together. They had
to rent a 10 hall. There would be at least 100 of us. And, you
know, bring 11 food. And the aunts would all prepare the turkey and
take care 12 of all the meals, and they also had Santa Claus that
would come 13 for the little kids and pass out presents.
over the 14 Q. Now, did Terry make any contribution to that party
15 years?
cousins 16 A. Yeah. As we got older, you know, all of us little
parties 17 grew up and it wasn't really as much fun to go to these
having 18 and -- and when Terry had kids, you know, we started
arrived 19 kids and Terry had Josh -- Terry and Lana had Josh, he
he had 20 one Christmas party -- I believe it was like '83 -- and
21 made a pinata.

22 Q. Let me show you what's been marked as M49. What
are you --

23 do you recognize that picture?

24 A. Yes, I do.

25 MR. THURSCHELL: We move M49.

15715

Suzanne McDonnell - Direct

1 MR. MEARNS: No objection.

2 THE COURT: Received.

3 THE WITNESS: That's my brother Terry with his
first

4 pinata. He made that Santa Claus all from scratch,

5 papier-mache -- newspapers and papier-mache, and did
all the --

6 you know, trimmings there and stuffed it full of candy
for the

7 kids.

8 BY MR. THURSCHELL:

9 Q. Now, I want to show you what's been marked as M50.
Ask if

10 you recognize this photograph.

11 A. Yes, I do.

12 MR. THURSCHELL: We -- we move M50.

13 MR. MEARNS: No objection.

14 THE COURT: Received.

15 THE WITNESS: That one -- that one, I believe,
is the

16 second one. I think it was '94 -- '84. That's my
daughter and
17 then my brother Terry and my mother there. And the
pinata,
18 that Christmas pin -- Christmas tree pinata that he
made.

19 BY MR. THURSCHELL:

20 Q. And showing you M61. Do you recognize what's
depicted in
21 this photograph?

22 A. That's -- yes. I do.

23 MR. THURSCHELL: Okay. We move M61.

24 MR. MEARNS: No objection.

25 THE COURT: Received.

15716

Suzanne McDonnell - Direct

1 BY MR. THURSCHELL:

2 Q. And what is the jury looking at here?

3 A. That's Terry again with another -- another year
probably --
4 yeah. '86, '85, '86. Another -- a bell pinata.

5 Q. Is that the -- the area where the party was held
that we're
6 looking at?

7 A. Yeah. That's the area where Terry set up the
pinatas, and

8 he would -- he had a string on it so that he could move

it up

child 9 and down for the kids, depending on the height of the

10 that was swinging the bat.

-- do 11 Q. I want to show you what's been marked as M76. What

12 you recognize what's depicted in this photograph?

13 A. Yes. Yes, I do.

14 MR. THURSCHELL: Okay. We move M76.

15 MR. MEARNS: No objection.

16 THE COURT: Received.

17 BY MR. THURSCHELL:

18 Q. And what are we looking at there?

him 19 A. That's Terry, and his son Josh is right in front of

was 20 there, the little one. And the snowman pinata. That

actually, I 21 another one that he had made, another year. And

I 22 think that's my daughter's arm there, swinging the bat.

23 recognize the dress.

24 Q. And is -- why is his hand raised in the picture?

and make 25 A. Because he would swing it back and forth and try

15717

Suzanne McDonnell - Direct

pinatas 1 it either easier -- because sometimes, he'd make these
2 and the kids couldn't break them. They -- they had a
ball. He 3 kind of gave all the -- almost all the kids, especially
4 little ones, a chance to -- to get a chance at the bat
to -- to 5 try and swing it, and the kids just looked so forward
-- after 6 the first year, those kids just -- they couldn't wait
for Terry 7 to show up, "Is he coming with the pinata," you know,
because 8 it's something that had never happened when we were
growing up.

9 Q. Okay. I want to show you what's been marked as
M52. Do 10 you recognize that photograph?

11 A. Yes, I do.

12 Q. What is that?

13 MR. THURSCHELL: We move M52.

14 MR. MEARNS: No objection.

15 THE COURT: Received.

16 THE WITNESS: That's another -- that's the
snowman 17 pinata and then all the little kids around. I think
Josh's 18 head is -- is right there in the front -- you know,
looking at 19 the snowman. He just -- he loved that. One time, he
wanted

20 to -- he wanted -- when it opened, he went around,
grabbing all
21 the candy, and his dad, Terry, had to tell him, "No,
no, you've
22 got to share. You have to share."
23 He didn't like that idea too much. He did.
There was
24 enough for all of them.
25 BY MR. THURSCHELL:

15718

Suzanne McDonnell - Direct

1 Q. Mrs. McDonnell, have you stayed in touch with Terry
since
2 he's been in jail?
3 A. Yes, I have.
4 Q. Okay. How have you stayed in touch with him?
5 A. By phone and by letters. And visits.
6 Q. Okay. Now, I want to show you -- oh, I'm sorry.
Did he
7 stay in touch with other members of the family, to your
8 knowledge?
9 A. Yes, he did. My mother, I know; and I know he
called my
10 father when he could. And Les. But he's -- Les is
hard to get
11 a hold of. But yes, he basically kept -- kept in
contact

12 with -- with all of us.

13 Q. I want to show you M621. And ask, first of all, do
you

14 recognize the handwriting?

15 A. Yes, I do.

16 Q. Whose handwriting is it?

17 A. It's Terry's.

18 Q. Okay. Have you seen this letter before?

19 A. Yes, I have.

20 MR. THURSCHWELL: We move M621.

21 MR. MEARNS: No objection.

22 THE COURT: Received.

23 MR. THURSCHWELL: May I approach, your Honor?

24 THE COURT: Yes.

25 BY MR. THURSCHWELL:

15719

Suzanne McDonnell - Direct

1 Q. Mrs. McDonnell, what's the date on that letter?

2 A. It's Thursday night, 4th May, '95.

3 Q. Is that shortly after Terry's arrest?

4 A. Yes.

5 Q. I -- could you please read the first page of that
letter.

6 A. I'll try to do my best. I'm sorry. I've kind of
lost my

7 voice here so --

8 "Mother: This is the first chance I've gotten
to

9 write a letter to anyone. I would like to have you or
Sue to

10 call and talk to Marife and see how she is doing. I
would like

11 to know if she could stay with Sue at her home. It
would be

12 better than staying alone with Nicole in a strange
motel in a

13 strange town where she knows no one and she" cannot --
"she

14 can't go outside. I can't remember Sue's address, so
that's

15 why I'm writing to you. Please try to help Marife and
Nicole.

16 I'm thinking about them in a motel room stuck with no
place to

17 go. Marife does not yet a drivers' license, so she
can't

18 drive. I would like someone perhaps Joe & Sue to come
down and

19 pick her up. That way, she could also hopefully get
some of

20 her, Nicole, and maybe some of my things out of our
house. I

21 think there are some things left at the house. I'm
sure Marife

22 could use more of her clothes and Nicole's, too. Also
some

23 toys and dolls for Nicole. I know that Nicole loves
her Sesame

24 Street book and the little pull choo-choo train, and
her little
25 yellow ladies. The train might be in the box in the
basement

15720

Suzanne McDonnell - Direct

1 yet.
2 "I know Marife would like to go back to the
3 Philippines at this time, and Nicole would" like -- and
go with
4 Nicole with her. "I have no problem with that" as
"that would
5 be the best thing at this time because I have no idea
how long
6 this will take. She would be probably safer home and
it would
7 be better for her to be near her family and friends.
The last
8 time (and first) that I have talked to Marife, she
thought the
9 FBI would give her money back to her. I certainly hope
so. So
10 that she can take care of Nicole. If you can help her
-- let's
11 see. See if you can help her by --" oh "-- by talking
to Agent
12 Scott Crabtree, FBI, Salina, Kansas, (913) 823-6787,
and try to
13 keep me informed as to where they are and how they are
doing."

14 Q. Do you know who Agent Scott Crabtree is?

15 A. Yes.

16 MR. THURSCHWELL: Now, your Honor, may I
17 approach
18 again?

19 THE COURT: Yes. I thought you said the
20 bench.

21 MR. THURSCHWELL: Oh, I'm sorry.

22 BY MR. THURSCHWELL:

23 Q. Mrs. McDonnell, before I ask you about that letter,
24 Terry
25 in the last letter asked about you possibly being able
26 to do
27 something
28 something
29 personally for Marife?

30 A. I know he -- he wanted me to have her stay at our
31 house.

15721

Suzanne McDonnell - Direct

32 Q. Okay. Did he ask you to try to get her money by
33 selling

34 stock for him?

35 A. Yes.

36 Q. Okay. What -- what happened? Tell the jury how
37 that

38 happened.

39 A. He contacted me and wanted me to get the penny

stocks that

7 he had had from Marife, and so I had to send for those,
and

8 Marife sent me -- the stocks to me. We had to go
through

9 getting the power of attorney to sell the stocks, so he
gave me

10 his power of attorney to -- to sell the stocks.

11 Q. Okay. Now, turning to the letter in front of you,
M106, do

12 you recognize the handwriting on that letter?

13 A. Yes, I do.

14 Q. Have you seen that letter before?

15 A. Yes.

16 Q. That's a letter addressed to you?

17 A. Correct.

18 MR. THURSCHELL: Okay. We move M106.

19 MR. MEARNS: No objection.

20 THE COURT: Received.

21 BY MR. THURSCHELL:

22 Q. Mrs. Nic -- Mrs. McDonnell, could you read the
first

23 paragraph of that letter to the jury.

24 A. Sure. It's dated 2 January, '96, Tuesday.

25 "Dear Sue: Just wanted to write you for a
quick note

Suzanne McDonnell - Direct

1 to thank you for the Christmas card and all that you
and your
2 family have done for me. Tell Natalie thanks for her
letter
3 and that I will write her shortly. As I am sure you've
heard,
4 Marife has given birth to Christian on the 16th
December, '95,
5 at 8:31 a.m., Saturday, 8 pounds, 6 ounces. I talked
to Rose
6 on Friday, 29th December, '95, and Rose said that
Marife had
7 called and talked to her. Rose said all was well. I
hope so.
8 I hate not being there and at least not being there and
able to
9 talk to Marife directly. Anyhow, I've decided to try
to write
10 more often. I hate writing. It takes so long. To
keep your
11 phone bills down and mother's, too. Marife needs the
money
12 that you, mother (everyone) are sending her" for more
than I --
13 "are sending her more than I need to make any collect
calls. I
14 can write a letter. That only costs 32 cents, a lot
cheaper
15 than a collect call. And I don't want to give anyone
extra
16 phone expenses and jeopardize any money that is being
sent to

will do 17 Marife. She needs to know she can count on it, and I
I'm 18 what I can to help her. (Marife didn't tell me this.)
the 19 sure" -- in parentheses. "I'm sure the extra days in
parentheses. 20 hospital were the results of forced labor." In
caused 21 (I'll know more once I get a letter from Marife.) That
Jason or 22 the extra loss of blood. Marife had no problems with
23 Nicole. (She was 9-pounds-plus.) But we had the good
doctors don't 24 assistance of a midwife then. The hospitals and
they 25 like to wait. Time is money to them and anything extra

15723

Suzanne McDonnell - Direct

section, 1 can do, the more money they make. (Force labor, C-
help her 2 etc.) Marife was not overdue, but I wasn't there to
more and 3 through it, either. So anyhow, I should be writing
4 calling less."
to 5 Q. Okay. Did you get any cards from Terry in addition
6 letters?

7 A. Yes, I did.

8 Q. Showing you on the ELM0 what's been marked as M103.
Is

9 this one of the cards you received from Terry?

10 A. Yes, I did.

11 MR. THURSCHELL: We move M103.

12 MR. MEARNS: No objection.

13 THE COURT: Received.

14 BY MR. THURSCHELL:

15 Q. And do you know if he sent cards to other members
of your

16 family?

17 A. Yes.

18 Q. Did he send any to your mother?

19 A. Yes, he did.

20 Q. Did she show them to you?

21 A. Yes.

22 Q. Showing you what's been marked as M583. Is this
one of the

23 cards that he sent to your mother?

24 A. Yes, it is.

25 MR. THURSCHELL: We move the admission of
M583.

15724

Suzanne McDonnell - Direct

1 MR. MEARNS: No objection.

2 THE COURT: Received.

3 BY MR. THURSCHELL:

4 Q. Have you visited Terry in prison?

5 A. Yes, I have.

6 Q. Has that been recently?

7 A. Yeah. Throughout the trial here, and then several
times
8 during the past two-and-a-half years.

9 Q. Have you had a chance to observe him with Nicole
and
10 Christian?

11 A. Yes.

12 Q. Can you describe some of the things he's done with
them in
13 your -- that you've observed?

14 A. On the weekends, I take -- it's either my mother or
I. We
15 take Nicole, Marife, and the kids in to see Terry. And
I pick
16 them up and I say, "Are you ready to go see Daddy?"
And they
17 are -- they are all excited, ready to go see him. And
we get
18 in there and they give big hugs and kisses to Daddy.
And he
19 plays with them. Puts them on his shoulders. And
Christian
20 especially likes to be swung like a clock. He's --
"Clock,
21 clock." He doesn't really talk a lot yet, but he can

get that

22 word "clock" out, and Daddy knows what it means. And
it's like

23 a pendulum. And -- and we also make things with him,
too.

24 MR. THURSCHWELL: No further questions.

25 THE COURT: Do you have some questions, Mr.
Mearns?

15725

1 MR. MEARNS: May I have a moment, your Honor?

2 We have no questions, your Honor. Thank you.

3 THE COURT: All right. You may step down.

4 THE WITNESS: All right.

5 THE COURT: You're excused.

6 MR. THURSCHWELL: We call Leslie Nichols.

7 THE COURT: All right.

8 THE COURTROOM DEPUTY: Would you raise your
right

9 hand, please.

10 (Leslie Nichols affirmed.)

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

12 Would you state your full name for the record
and

13 spell your last name.

14 THE WITNESS: Leslie Allen Nichols, N-I-C-H-O-

L-S.

15 THE COURTROOM DEPUTY: Thank you.

16 DIRECT EXAMINATION

17 BY MR. THURSCHELL:

18 Q. Good morning, Mr. Nichols.

19 A. Good morning.

20 Q. Mr. Nichols, where do you live?

21 A. 1400 Grosbeck Road in Lapeer.

22 Q. Is that the house you grew up in?

23 A. Yes, it is.

24 Q. Okay. And are you Terry Nichols' oldest brother?

25 A. Yes, I am.

15726

Leslie Nichols - Direct

1 Q. All right. Let me ask you -- oh, are you working?

2 A. Yeah. I'm a self-employed truck driver.

3 Q. Self-employed truck driver?

4 A. Yes.

5 Q. Okay. Let me ask if you remember the first house
you grew
6 up in.

7 A. It was a small house: living room, bedroom. Oh,
bathroom.

8 And a washroom. All six of us slept in one room.

9 MR. THURSCHELL: Your Honor, I want to show

the

10 witness what's been marked as M573.

11 THE WITNESS: That's the house.

12 MR. THURSCHELL: We move M573.

13 MS. WILKINSON: No objection.

14 THE COURT: Received.

15 BY MR. THURSCHELL:

16 Q. Mr. Nichols, how many bedrooms were there in the
house?

17 A. Only one.

18 Q. Now, where did you sleep?

19 A. We all slept in bunk beds.

20 Q. You -- when you say "we all" --

21 A. Terry, James, and I had bunk beds.

22 Q. Okay.

23 A. Susie had a crib, and mother and Dad had their
bedroom --

24 had their bed.

25 Q. Their bed. Now, were you all in the same room, or
were you

15727

Leslie Nichols - Direct

1 in different --

2 A. All in the same room.

3 Q. Okay. How long -- how old were you when you moved
out of

4 that house?

5 A. I was probably about eight years old.

6 Q. All right. And had Susie recently been born?

7 A. Yes.

8 Q. You built a new house next door?

9 A. In '58 -- '59 and '60.

10 Q. Okay. And then you moved in there?

11 A. Right.

12 Q. Where did you go to elementary school?

13 A. I started out in Barringer School, and then I went
later to

14 Slater School when they closed the Barringer School.

15 Q. Let me show you what's been marked as M197. Before
--

16 before I ask about this, how many rooms in that
schoolhouse?

17 A. Just one room.

18 Q. One-room schoolhouse. And how -- did all of you
attend at

19 one time?

20 A. Yes, we did.

21 Q. I want to now ask you to look at your monitor. And
do you

22 recognize this?

23 A. Yes. James and Terry and me.

24 MR. THURSCHELL: Before you say, your Honor,
we move

25 M197.

15728

Leslie Nichols - Direct

1 MS. WILKINSON: No objection.

2 THE COURT: Received.

3 BY MR. THURSCHELL:

4 Q. Is this -- Mr. Nichols, is this a photograph of the
-- the

5 school in 1960, 1961, the students in it?

6 A. Yes.

7 Q. And can you just point out -- you can reach under
-- well,

8 could you take your pen -- there's a light pen that's
attached

9 to a -- to a thing and reach underneath the desk, and
could you

10 just circle first yourself.

11 A. Right here.

12 Q. Okay. And then James.

13 A. James up here.

14 Q. And then Terry.

15 A. And Terry.

16 Q. Thank you. Now, let me turn to your life on the
farm. Did

17 you -- all you kids work on the farm?

18 A. Yes, we did.

19 Q. And about how old were you when you began working

in the

20 fields?

old.

21 A. I started driving tractor when I was three years

22 Q. You actually were driving a tractor?

23 A. Just steering it.

24 Q. Steering it. Practicing?

25 A. I couldn't touch no pedals.

15729

Leslie Nichols - Direct

field

1 Q. When did you actually start driving it out in the

2 itself?

3 A. Probably about eight or nine.

4 Q. Let me show you what's been marked as M200. Do you

5 recognize that photograph?

6 A. That's me.

7 MR. THURSCHELL: We move M200.

8 MS. WILKINSON: One moment, your Honor.

9 THE COURT: Yes.

10 MS. WILKINSON: No objection.

11 THE COURT: Received.

12 BY MR. THURSCHELL:

13 Q. And is that you on the tractor?

14 A. Yes, it is.

15 Q. How old are you there; do you know?
16 A. Probably three or four.
17 Q. All right. That's when you're practicing?
18 A. Yeah.
19 Q. Okay. And you said you started around the age of
eight or
20 nine?
21 A. Right.
22 Q. Was that true of Terry, as well?
23 A. Basically, yes.
24 Q. Okay.
25 A. We all took our turns.

15730

Leslie Nichols - Direct

1 Q. Let me show you what's been marked as Defense
Exhibit M566.
2 Ask if you recognize this photograph.
3 A. That's my mother and Terry.
4 MR. THURSCHELL: Okay. We move M566.
5 MS. WILKINSON: No objection.
6 THE COURT: Received.
7 BY MR. THURSCHELL:
8 Q. And tell the jury who they are looking at there.
9 A. My mother and Terry.

says 10 Q. Okay. And is -- there's a date on the side that

11 "April, '66." Is that about the right date, to your
knowledge?

12 A. Yes. Yes, it is.

13 Q. Now, apart from working, what did you do for fun as
kids?

14 A. We played baseball, football, played games, like
Monopoly

15 and cards and euchre and poker. Learned a lot of card
games.

16 Q. Did you -- did you play organized baseball with a
league?

17 A. No.

18 Q. Why not?

19 A. We didn't have time. We didn't have no way to get
there.

20 Q. When you say you "didn't have time," what were you
doing?

21 A. We was on the farm, working.

22 Q. All right.

23 A. Our folks didn't have time to take us.

24 Q. Okay. Fair to say that you did -- the work was
hard and

25 long at the farm?

15731

Leslie Nichols - Direct

1 A. Yes.

of 2 Q. Okay. Now, did you do anything -- any other kinds

3 sports as -- as kids?

4 A. Oh, we snow skied, sleigh ride, water-skied.

5 Q. Okay.

6 A. Played football.

7 Q. Did you go hunting?

8 A. Went hunting, fishing.

Exhibit -- 9 Q. Let me show you what's been marked as Defense

Honor. 10 MR. THURSCHELL: Excuse me one moment, your

Honor. 11 M568. I'm sorry. Well -- I'm sorry, your

12 BY MR. THURSCHELL:

13 Q. Do you recognize this photograph?

14 A. Yes, I do.

15 MR. THURSCHELL: We move M568.

16 MS. WILKINSON: No objection.

17 THE COURT: Received.

18 BY MR. THURSCHELL:

19 Q. What -- who is the jury looking at here?

20 A. James and Terry.

the date 21 Q. Okay. With their fishing rods. And again, the --

22 on the side there says, "April, '58"?

23 A. '58.

24 Q. Do you think -- is that accurate, to the best of

your

25 knowledge?

15732

Leslie Nichols - Direct

1 A. Yeah. I would say so, yes.

2 Q. Okay. Were you in the Boy Scouts?

3 A. Yes, I was.

4 Q. All three of you?

5 A. Yes, we was.

6 Q. All right. Did you used to go -- did you ever go
to school

7 dances?

8 A. Yes, we did.

9 Q. Okay. How often?

10 A. Probably twice a year.

11 Q. All right. Let me show you what's been marked as
M472. Do

12 you recognize this photograph?

13 A. Yes, I do.

14 MR. THURSCHELL: We move M472.

15 MS. WILKINSON: No objection.

16 THE COURT: Received.

17 BY MR. THURSCHELL:

18 Q. And could you tell the jury who they are looking at
there.

19 A. That's Terry right there.

20 Q. Okay. Terry with that -- is he going to a prom?

21 A. I think it was the prom. Dance.

22 Q. Okay. Mr. Nichols, what -- what was Terry like as
a kid?

23 A. Just an ordinary farm boy growing up.

24 Q. Do you -- do you have any specific memories of him
doing

25 anything athletic?

15733

Leslie Nichols - Direct

1 A. Yeah. We played sports. He climbed. He was like
a

2 monkey. He was always in the trees, climbing around,
hanging

3 from his knees.

4 Q. I'm going to show you what's been marked as M608.
Do you

5 recognize that photograph?

6 A. Yes, I do.

7 MR. THURSCHELL: We move M608.

8 MS. WILKINSON: No objection.

9 THE COURT: Received.

10 BY MR. THURSCHELL:

11 Q. And what is the jury looking at there?

12 A. Terry on top of a swing set.

13 Q. Is that something he used to do often?

14 A. Yeah.

15 Q. And the date on the side there says, "October,
'59." Is

16 that accurate, to the best of your knowledge?

17 A. Yes, it is.

18 Q. Show you what's been marked as M587. Do you
recognize this

19 photograph?

20 A. Yes, I do.

21 MR. THURSCHELL: We move M587.

22 MS. WILKINSON: No objection.

23 THE COURT: Received.

24 BY MR. THURSCHELL:

25 Q. And who are -- who is the jury looking at there?

15734

Leslie Nichols - Direct

1 A. James and Terry.

2 Q. Did Terry have any special talent in terms of
standing on

3 his hands?

4 A. Yeah. He could walk down the hall without touching
the

5 floor.

6 Q. Okay. Let me show you what's been marked as M72.
Do you

7 recognize that photograph?

8 A. Yes, I do.

9 MR. THURSCHELL: We move M72.

10 MS. WILKINSON: No objection.

11 THE COURT: Received.

12 BY MR. THURSCHELL:

13 Q. And what is the jury looking at there?

14 A. That's Terry riding his unicycle to town.

15 Q. And he was riding his unicycle to town. Did he do
that frequently?

16 frequently?
17 A. Yeah. Quite often. Probably once a week, every
other week.

18 Q. And how far was town?

19 A. 5 miles to town.

20 Q. So he'd ride it there and back?

21 A. Right.

22 Q. Okay. Now, Mr. Nichols, you had a fairly severe
accident in 1974; is that correct?

23 A. Yes, it is.

15735

Leslie Nichols - Direct

1 Q. Could you briefly tell the jury how that happened.

2 A. I was welding on a diesel fuel tank, quit and went
to
3 lunch, started welding again.
4 Q. Just slow down. Slow down a little bit.
5 A. I was welding on a diesel fuel tank, and I quit and
went to
6 lunch. Come back about an hour and a half later and
started
7 welding again, and it blew up.
8 Q. Okay. And were you badly burned?
9 A. Yes, I was.
10 Q. How badly?
11 A. Third -- third-degree burns.
12 Q. Okay. How long were you in the hospital?
13 A. Five-and-a-half months.
14 Q. Now, did this accident have an impact on your
family?
15 A. Yes, it did.
16 Q. Did it have an impact on Terry, to your knowledge?
17 A. Yes.
18 Q. Did Terry do anything as a result of the accident?
19 A. He offered to offer blood and skin.
20 Q. Offered blood and skin?
21 A. Yes.
22 Q. Did you actually get blood and skin from Terry?
23 A. No, because it was not an identical twin.
24 Q. Okay. So the doctors told him he couldn't donate.

All

25 right.

15736

Leslie Nichols – Direct

Terry 1 Now, Mr. Nichols, have you kept in touch with
2 since he was arrested?

3 A. Yes, I have.

4 Q. And how have you kept in touch with him?

5 A. Oh, letters and cards, phone calls.

Defense 6 Q. All right. Let me show you what's been marked as
7 the Exhibit M192. Do you recognize what's shown there on
8 screen in front of you?

9 A. Yes, I do.

10 MR. THURSCHELL: We move M192.

11 MS. WILKINSON: No objection.

12 THE COURT: Received.

13 BY MR. THURSCHELL:

14 Q. What is this?

15 A. Birthday card.

16 Q. Birthday card from Terry?

17 A. Yes.

18 Q. I just want to focus in a little bit on the card
itself.

Navistar 19 There's some other words, Peterbilt, GMC, Ford,
20 written on there. What are those?
21 A. Those are just different truck makes and models.
22 Q. Different types of trucks?
23 A. Yes.
24 Q. Finally, Mr. Nichols, did you get a chance to
observe Terry
25 in his role as father?

15737

Leslie Nichols - Direct

1 A. Yes, I did.
2 Q. When was that?
3 A. Oh, when he had Josh born. When Josh was born.
4 Q. Okay. Do you remember what -- about what time
period that
5 was?
6 A. I don't remember exactly when Josh's birthday was.
No, I
7 don't.
8 Q. Was it in the early 80's?
9 A. Mid 80's there.
10 Q. Okay. And how would you describe Terry's
relationship to
11 Josh?
12 A. He was a good father. Teaching father.

13 Q. What did he teach him that you observed?
14 A. Basics. You know, if his toys broke down, how to
fix them.
15 You know, how to read and write. How to build -- you
know, if
16 his toys broke, how to fix them, put them back
together.
17 Q. Did you -- how old Josh when he was trying to teach
him to
18 read and write?
19 A. Probably about two, three years old.
20 Q. Okay. So he was not in school?
21 A. No. He wasn't in school, no.
22 MR. THURSCHELL: No further questions, your
Honor.
23 THE COURT: Ms. Wilkinson, do you have
questions?
24 MS. WILKINSON: Yes, your Honor.
25 CROSS-EXAMINATION

15738

Leslie Nichols - Cross

1 BY MS. WILKINSON:
2 Q. Good morning, Mr. Nichols.
3 A. Good morning.
4 Q. You told us a little bit about your relationship to
Terry.
5 Can you tell us, was he the second brother, or the
third

6 brother in order?

7 A. He's my third -- well, second brother.

8 Q. Okay. So James is younger than Terry?

9 A. No. James -- James is between Terry and I.

10 Q. What's the age difference between you and James?

11 A. Two years.

12 Q. And what's the age difference between James and
Terry?

13 A. One year.

14 Q. Since Mr. Nichols has been in jail, have you been
able to

15 visit him?

16 A. Yes, I have.

17 Q. And has your brother James been able to visit him?

18 A. Yes, he has.

19 Q. And during these visits, are you and your brother
able to

20 talk to Terry about whatever issues you want to talk to
him

21 about?

22 A. Yes, we have.

23 Q. Now, while you were growing up, were you close to

24 Mr. Nichols?

25 A. Yes, I believe so.

Leslie Nichols – Cross

1 Q. And was he close to your brother James?

2 A. Yes.

3 Q. Did you know and did you keep in touch with Terry
when he

4 lived on the farm in Decker, with Marife Nichols and
his

5 daughter?

6 A. On and off different times, we did.

7 Q. And did you see him with your brother James?

8 A. Yes. Because we -- I did.

9 Q. Did you also see Mr. Nichols with Timothy McVeigh
at the

10 farm in Decker, Michigan?

11 A. Yes.

12 Q. Now, during that time, did you talk to Terry and
James

13 about their political views?

14 MR. THURSCHELL: Objection, your Honor.
Beyond the

15 scope of direct.

16 THE COURT: Sustained.

17 BY MS. WILKINSON:

18 Q. You told us that you and James have been able to
visit

19 Mr. Nichols in prison; is that right?

20 A. Right.

21 Q. And are you aware of your brother's conversation --
James'

22 conversations with Mr. Nichols, Terry Nichols?

23 A. No, I'm not.

24 Q. You've never been present when they have had any

25 discussions?

15740

Leslie Nichols - Cross

1 A. No, I'm not.

2 Q. If I could, I'd like to ask you just a few
questions about

3 your recovery from the accident that occurred in --
1974; is

4 that right?

5 A. Yes, it is.

6 Q. Was Terry Nichols with you and did he visit you in
the

7 hospital?

8 A. Yes.

9 Q. And was he -- did you discuss with him what had
happened to

10 you?

11 A. No. Not at first.

12 Q. But eventually, when you recovered?

13 A. Right.

14 Q. Did you and he discuss the blast?

15 A. Yeah. Yes, we did.

were
ammonium
on

16 Q. Okay. And during your time on the farm when you
17 growing up, did you and your brothers become aware of
18 nitrate and fuel oil and those uses to blow out stumps
19 farms?

20 A. Not exactly that way.

21 Q. Okay. In what way did you?

22 A. Well, just fertilizer and dynamite was all.

23 Q. And --

24 A. We was pretty young at the time.

those
25 Q. All right. At some point, did you learn how to use

15741

Leslie Nichols - Cross

1 to blow out stumps on your farm?

2 A. I never did, no.

3 Q. Did Terry?

4 A. I don't believe so when I was on the farm.

of how
stumps?
5 Q. Did you ever tell the FBI that you had become aware
6 to use diesel oil and ammonium nitrate to blow out

7 A. Yes. I'm aware of it.

a stump
8 Q. And you know that a small quantity of that can blow

9 out and cause a great deal of damage; isn't that right?

10 A. Yes.

11 Q. And Terry Nichols was also aware of that; isn't
that right?

12 A. Yes.

13 Q. Now, when you were recovering from your accident,
he saw

14 what had happened to you; correct?

15 A. Yes.

16 Q. And he was very concerned about you?

17 A. Yes.

18 Q. And he knew that that was the result of the blast
--

19 A. Yes.

20 Q. -- of fuel oil; correct?

21 MS. WILKINSON: I have no other questions,
your Honor.

22 THE COURT: Do you have any follow-up?

23 MR. THURSCHELL: Nothing further, your Honor.

24 THE COURT: All right. I take it he's
excused?

25 MR. THURSCHELL: He's excused.

15742

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

2 THE WITNESS: Thank you.

3 THE COURT: We'll take our morning recess at
this
4 time, members of the jury, for the usual period of 20
minutes
5 with the usual cautions, of course, of avoiding
discussion
6 about the issues before you, waiting until you've heard
it all
7 and you've been instructed to begin deliberations and,
of
8 course, avoiding anything outside the evidence and
keeping open
9 minds until you've heard it all.

10 So you're excused now. 20 minutes.

11 (Jury out at 10:25 a.m.)

12 THE COURT: We'll be in recess. 20 minutes.

13 (Recess at 10:25 a.m.)

14 (Reconvened at 10:45 a.m.)

15 THE COURT: Be seated, please.

16 MR. TIGAR: May we approach, your Honor?

17 THE COURT: Yes, sure.

18 (At the bench:)

19 (Bench Conference 151B2 is not herein transcribed
by court
20 order. It is transcribed as a separate sealed
transcript.)

21

22

23

24

25

15757

1 (In open court:)

2 (Jury in at 10:47 a.m.)

3 THE COURT: All right. Next, please.

4 MR. THURSCHELL: Call Lyle Rauh.

5 THE COURTROOM DEPUTY: Would you raise your
right
6 hand, please.

7 (Lyle Rauh 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: Lyle Duane Rauh, R-A-U-H.

12 THE COURTROOM DEPUTY: Thank you.

13 THE COURT: Proceed.

14 DIRECT EXAMINATION

15 BY MR. THURSCHELL:

16 Q. Good morning, Mr. Rauh.

17 A. Good morning.

18 Q. Mr. Rauh, where do you live?

19 A. 1378 Lapeer, Michigan (sic).
20 Q. And what do you do for a living?
21 A. I'm a custom-home builder in Lapeer.
22 Q. And you build and develop houses and housing
tracts?
23 A. Yes, I do. Developer as well. I've done about 200
homes.
24 Q. Okay. How do you know Terry Nichols?
25 A. We grew up together and we were neighbors. We
lived about

15758

Lyle Rauh - Direct

1 2 miles away from each other. Our family farmed as
well as his
2 family farmed, and I would say basically I first met
him like
3 in kindergarten, first grade. We went to a one-room
school, so
4 we seen him all the time every day, even though we were
in
5 different classes and --
6 Q. All right. And you said you worked together?
7 A. Yes, we did.
8 Q. Did you actually farm -- did you farm -- families
actually
9 farm together during a certain period?
10 A. Yes. It was about two years that we farmed
together.

dairy 11 Their family was a cash-crop farmer. Our family was a
12 farmer, and we had an opportunity to -- that Terry's
dad wanted 13 to save the straw that they was leaving behind the
combines, 14 and so we baled not only the straw and then resold it
as well 15 as the hay. We sold about -- somewhere between 80- and
90,000 16 bales of hay and straw during two summers, late 60's,
early 17 70's, like '70, '71, in that time span.

18 Q. Let me show you what's been marked as Defense
Exhibit 702.

19 A. Yes.

20 Q. Do you recognize that photograph?

21 A. Yes, I do. I took that photograph.

22 MR. THURSCHELL: We move M702.

23 MR. ORENSTEIN: No objection.

24 THE COURT: Received.

25 BY MR. THURSCHELL:

15759

Lyle Rauh - Direct

1 Q. What's the piece of land we're looking at there?

2 A. That is a piece of land just outside of Lapeer,
Michigan.

3 It was owned -- it was land that we rented.

4 Q. When you say "we," who are you referring to?

5 A. A couple years, Terry's mom and dad rented the
farm; and

6 then there was different years that my mom and dad
rented the

7 farm.

8 Q. So this was land that you shared?

9 A. That is correct.

10 Q. Okay. And did you -- did you farm it at that time?

11 A. Yes. Yes, we did.

12 Q. And what do we see here? When was this photograph
taken,

13 by the way?

14 A. This photograph was taken on November 26, 1994.

15 Q. And how is the land being used now?

16 A. The land is being developed. Actually, my dad and
I and

17 some friends are developing that land that Terry and
their

18 family, we, used to farm, which now we're putting up
homes in

19 the 2- to 500,000 range.

20 Q. And is this -- focusing in on the home there, is
that a

21 home that you built?

22 A. Yes, it is.

23 Q. Mr. Rauh, what was it like working with Terry
Nichols?

24 A. You could depend on him. He was always there for
you.

25 Unfortunately, he always got what you -- would be
referred to

15760

Lyle Rauh - Direct

1 as the crappy jobs, because he was the youngest of
three

2 brothers. He was as well younger than myself, and
there was --

3 Terry's two older brothers, Terry, myself and both dads
and

4 Joyce worked together. Terry, being the youngest of
everybody,

5 got the worst-desirable job; but what was enjoyable
with

6 working with him was the fact that he never complained
and he

7 was always there. If you had work to be done and you
wanted

8 him to do it, he would drop what he was doing, help
you, and go

9 back and finish what he was to do.

10 Q. What kinds of work did you do together? You said
you were

11 out there in the fields.

12 A. We baled hay, worked up the fields, combine, cut
hay, raked

13 hay, loaded a lot of semis, trucks, because not only
was we

14 baling the hay and things, but we also was putting it
into the
15 barns, which was lot of times where Terry was stuck
because it
16 was hot and humid, the worst job, and then reloading
the semis
17 because we were selling to individual brokers who
wanted the
18 hay and straw.

19 Q. Let me show you what's been marked as Defense
Exhibit M699.

20 Do you recognize this photograph?

21 A. Yes, I do.

22 MR. THURSCHELL: We move M699.

23 MR. ORENSTEIN: No objection.

24 THE COURT: Received.

25 BY MR. THURSCHELL:

15761

Lyle Rauh - Direct

1 Q. What are we looking at here?

2 A. In this picture, you're looking at Terry and
myself. Also

3 during the time that we worked together, his mom and
dad built

4 a large grain building. I don't know the size but

5 approximately probably the size of this room, I would
say.

6 Q. And where was that located?

7 A. That was located right at their farm.

8 Q. And did the family with your help put it up?

9 A. Yes. Terry -- their family and our family put the
building
10 up for them so as to be able to put it up as economical
as
11 possible.

12 What you're seeing in the picture is Terry and
I are
13 actually mixing cement.

14 Q. Which is you and which is Terry in this picture?

15 A. I'm the one without the shirt on.

16 Q. Okay. Did there come a time when your family
needed some
17 extra help farming?

18 A. Yes.

19 Q. When was that?

20 A. 1969, my dad had a bad accident.

21 Q. What happened?

22 A. Actually, he was milking cows; and one cow got
spooked and
23 fell on him, doubled him up. Actually collapsed both
lungs and
24 pulled all his muscles. He was laid up for just short
of a
25 year. We had a --

Lyle Rauh - Direct

1 Q. Did -- were you able -- were you able to continue
the
2 farming operation at this point?

3 A. Well, that was a decision that we had to make
immediate,
4 because we was in the dairy farm, which meant the cows
had to
5 be milked every morning, every night. I do have three
older
6 brothers who had all left because they were older and
in
7 college. And so I was in school. Dad tried to find
help,
8 trying to think of who would be dependable. He
couldn't think
9 of anybody.

10 At school that day, I talked to Les and the
Nichols
11 boys, and they offered -- they volunteered and helped
us out.
12 They came every morning and every night and helped us
on those
13 cows.

14 Q. That was before and after their own day of work?
15 A. We started milking at 5 in the morning, which meant
they
16 had to have been up by 6 -- or by 4, 4:30. We milked
the cows,
17 went to school, after school. They helped. They saved
us.

18 Q. And was that all three of the brothers?

19 A. At different times, yes.

20 Q. Les, Terry, and James.

21 A. Yes. They -- between the three of them, they were
there
22 every morning and every night.

23 Also, they helped plant all our crops because
my dad
24 was still laid up.

25 Q. Was that in your experience of them -- was that

15763

Lyle Rauh - Direct

1 characteristic of the Nichols boys?

2 A. Yes.

3 Q. Willing to help when needed?

4 A. Yes.

5 Q. You were in high school at the same time as Terry;
is that
6 right?

7 A. He was two grades younger than I was. Yes.

8 Q. Did you socialize with him at that time?

9 A. Yes. We would see each other as well as we rode to
and
10 from school together, as well as we went as families
and

11 things -- we had like hay rides for the kids in the

12 neighborhood and also like the teachers, future
teachers clubs

13 and the library clubs and the Girl Scouts, and so we
put on hay

14 rides.

15 Q. Let me stop you. Let me ask you about the hay
rides. What

16 were those hay rides?

17 A. Hay rides, you'd have a tractor and a couple wagons
and

18 straw and invite your friends over and take them for a

19 couple-hour ride on a hay ride; and it was things that
Terry

20 and I and everybody pitched in to help after chores,
and we

21 would do them in the evenings.

22 Q. And who had the hay rides?

23 A. All of us. In other words, Terry, James, myself,
or in

24 situations like where I was in the future teachers club
at

25 school and library clubs, they would put it on and
Terry and

15764

Lyle Rauh - Direct

1 myself and James, whoever was there, would help get
everything

2 ready and help out.

3 Q. Was that on the Nichols farm?

Exhibit

4 A. Both farms, either our farm or their farm.

5 Q. I want to show you what's been marked as Defense

6 M618, ask if you recognize that scene?

7 A. Yes, I do.

8 MR. THURSCHELL: We move M618.

9 MR. ORENSTEIN: No objection.

10 THE COURT: Received.

11 BY MR. THURSCHELL:

12 Q. What are we looking at here?

13 A. We're actually looking at the Nichols farm. It's
our two

14 wagons. There is about half-a-dozen people on the
wagon, and

15 the deer is -- when we was farming also during the
summers of

16 cutting hay and things, one day there was a deer there
out in

17 the field; and we didn't want to hurt it, so we picked
it up so

18 it wouldn't get into the hay 'bine and took it home.
And Susie

19 and Terry and the family nursed it, and I'm not sure
exactly,

20 but had it for about a year, year and a half. It was
just like

21 a pet. It would come into the house, sleep at night in
front

22 of the fireplace. During the day it ran out just like
any

licking 23 other deer. And what you see in there is the deer is

24 the gentleman's hand right there.

well; is 25 Q. Let me ask you: You knew Terry as an adult as

15765

Lyle Rauh - Direct

1 that right?

2 A. Yes, I did.

deciding 3 Q. Did you know him about around the time that he was

4 to marry Lana Osentoski, now Lana Padilla?

5 A. Yes, I did.

6 Q. Did you talk to him about that?

over and 7 A. Actually, one night Terry asked if he could come

8 see me and came up and talked to me for a while because

marry Lana; 9 actually Joyce had advised not to -- not for him to

because 10 and Terry -- I was sort of like an older brother to him

brother. And 11 his older brothers pick on him like every older

had not 12 he wanted my opinion: What do you think -- because we

river 13 only with the farm, we had gone ski trips together and

we've done 14 canoe trips and Cedar Point and different things --

15 a lot of different things together, and he wanted my
opinion.

16 And my answer was -- because he had told me
first that

17 Joyce had a different opinion and it was because that
Lana had

18 been married before. And my opinion was: Terry, if
you love

19 her, then yes, marry her.

20 Q. And do you know that he did marry her?

21 A. Yes.

22 MR. THURSCHWELL: No further questions, your
Honor.

23 THE COURT: Any questions?

24 MR. ORENSTEIN: No questions, your Honor.

25 THE COURT: All right.

15766

1 MR. THURSCHWELL: The witness is excused.

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

3 Next witness, please.

4 MR. THURSCHWELL: Call Susan Simpson.

5 THE COURTROOM DEPUTY: Would you raise your
right

6 hand, please.

7 (Susan Simpson 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: Susan Kay Simpson, S-I-M-P-S-O-
N.

12 THE COURTROOM DEPUTY: Thank you.

13 DIRECT EXAMINATION

14 BY MR. TIGAR:

15 Q. Good morning, Ms. Simpson.

16 A. Hi.

17 Q. Hi. Where do you live?

18 A. Lapeer, Michigan.

19 Q. How long have you lived in Lapeer, Michigan?

20 A. Oh, probably 20 years.

21 Q. And do you know Terry Nichols?

22 A. Yes.

23 Q. When did you meet Terry Nichols?

24 A. '75.

25 Q. How did you come to meet?

15767

Susan Simpson - Direct

1 A. I worked at the Cheese and Wine there --

2 Q. Let's stop just a minute. What is the Cheese and

Wine?

3 A. I'm sorry. The Cheese and Wine shop is a party
store, and

4 I worked there.

5 Q. And where? In Lapeer?

6 A. Yes.

7 Q. Okay. And do they sell -- cheese and wine I guess,
but

8 what else?

9 A. It's a small store, and they used to do cheese
plates and

10 meat plates and parties and things like that.

11 Q. And you were working there?

12 A. Yes.

13 Q. When did you start working there?

14 A. I believe it was '75, the summer of '75.

15 Q. Who was the owner of the Cheese and Wine store?

16 A. Rem Currell.

17 Q. And go ahead -- how did you come to meet Terry
Nichols?

18 A. Terry had been evidently coming in and helping out
there

19 before I started working there, and so he would come in
at

20 night and help close the store and help out when Rem
wasn't

21 there. He was there quite a bit.

22 Q. And did Rem have some particular concern that led
him to

23 want somebody to be there at night when it was being
closed up?

24 A. Well, the store had been robbed before I started
working

25 there, which is kind of unusual for that area at that
time, but

15768

Susan Simpson - Direct

1 it had been robbed a couple of times. So most of the
time, one

2 of the girls would be left there alone at night, so
Terry would

3 come in a lot and just help out, help close the store.

4 Q. Did he get a salary for this?

5 A. No, I don't believe so. It was just a helping out.

6 Q. How did he work it out with Rem, the owner? What
was the

7 arrangement as you observed it?

8 A. He -- if Rem went to Florida or something,
sometimes the

9 boys would come in and help out. Maybe he compensated
them

10 then, but otherwise it was just -- it was just a
helping-out

11 situation.

12 Q. Now, at the time that you met Terry, was the
Nichols family

13 going through some problems?

14 A. It was, I believe, after his parents' divorce and

after

15 Les's burn incident.

16 Q. And what -- what was -- did you know that Terry had
been to

17 college?

18 A. Yes.

19 Q. And he had come back home?

20 A. Yes.

21 Q. And when he wasn't working with you, closing up the
Cheese

22 and Wine shop, what was he doing, having come back from
23 college?

24 A. He came back home to help on the family farm.

25 Q. Have you grown up in farm country?

15769

Susan Simpson - Direct

1 A. Yes.

2 Q. And did you observe his relationship with the other
members

3 of his family?

4 A. Yeah. He was close with his family.

5 MR. TIGAR: Thank you very much, Ms. Simpson.

6 I have no further questions.

7 MR. GOELMAN: No questions.

8 THE COURT: All right. You may step down.
You're

9 excused.

10 MR. THURSCHELL: Call Lana Padilla.

11 THE COURT: All right.

12 If you'll resume the stand, you're being
recalled
13 under the oath earlier taken.

14 THE WITNESS: Okay.

15 (Lana Padilla was re-called.)

16 THE COURT: Mr. Woods.

17 MR. WOODS: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MR. WOODS:

20 Q. Good morning, Ms. Padilla.

21 A. Good morning.

22 Q. You have testified here earlier in this trial. Is
that
23 correct?

24 A. Yes.

25 Q. And you were subpoenaed by the Government to
testify?

15770

Lana Padilla - Direct

1 A. Yes.

2 Q. And on cross-examination, we went into the
information

that 3 about you and Terry, the period of your marriage; is

4 correct?

5 A. Yes.

during that 6 Q. And the employment and the activities of Terry

7 period. That's already been covered; correct?

8 A. Correct.

Terry's 9 Q. What I want to do today is confine my questions to

10 role as a father. You had a son; is that correct?

11 A. Yes.

12 Q. And the son is Josh?

13 A. Joshua.

14 Q. What year was he born? What was his birthday?

15 A. August 11, 1982.

to 16 Q. And the period of your marriage was January, '81,

17 December, '89. Is that correct?

18 A. I'm sorry?

19 Q. What day were you married on?

20 A. January 29, 1981.

21 Q. And your divorce was in December, '89?

22 A. Yes.

23 Q. How old were you when you married, Ms. Padilla?

24 A. I think I was 31.

25 Q. Okay. And do you recall how old Terry was?

15771

Lana Padilla - Direct

1 A. I think he was 25 or 26.

2 Q. And you had two children at that time. Is that
correct?

3 A. Yes.

4 Q. And the two children were Troy and Barry?

5 A. Yes.

6 Q. And what ages were they at that time of the
marriage?

7 A. Barry was 11, and Troy was -- '74 -- seven.

8 Q. I want to show you what has been marked for
identification

9 purposes as M338 and ask if you have seen that photo --
photo

10 before.

11 A. Yes.

12 MR. WOODS: We would offer into evidence M338.

13 MR. MACKEY: No objection.

14 THE COURT: Received.

15 BY MR. WOODS:

16 Q. Now, what is the jury seeing here, Ms. Padilla?

17 A. Terry holding Josh when he was first born.

18 Q. And that's -- this is in August of '82?

19 A. Yes.

20 Q. Now, you mentioned that you had two other sons, and

I want

21 to show you what has been marked for identification
purposes as

22 M397.

23 MR. WOODS: We would --

24 BY MR. WOODS:

25 Q. You recognize that picture?

15772

Lana Padilla - Direct

1 A. Yes.

2 MR. WOODS: We would offer into evidence M397.

3 MR. MACKEY: No objection.

4 THE COURT: Received.

5 BY MR. WOODS:

6 Q. Tell the jury what is depicted in this photograph.

7 A. That's in the backyard of my grandmother's home in
Ubly,

8 Michigan, and that's Terry playing with Barry and Troy.

9 Q. Now, these are your two sons from a previous
marriage?

10 A. Correct.

11 Q. And when you got married to Terry, did the two sons
live

12 with you?

13 A. Yes, they did.

14 Q. Would you describe for the jury what Terry's role

was in

15 relation to the two sons that was living with you? Was
he

16 acting as a father, a caring and loving father with
them?

17 A. Yes. Terry was very supportive in his role as a
stepfather

18 with Barry and Troy and tried to instill in them right
and

19 wrong.

20 Q. Tried to give guidance and teach them things?

21 A. Very much.

22 Q. Now, I want to show you what has been marked as
M449. Do

23 you recognize that photo?

24 A. Yes.

25 MR. WOODS: We would offer M449 into evidence.

15773

Lana Padilla - Direct

1 MR. MACKEY: No objection.

2 THE COURT: Received.

3 BY MR. WOODS:

4 Q. Would you tell the jury what they're seeing in this
5 photograph.

6 A. It's a vacation in Florida, and it's Josh and
Natalie and

7 me and Terry.

8 Q. All right. Now, who is Natalie?

9 A. Natalie is Terry's niece.

10 Q. Is that Natalie Fisher?

11 A. Yes.

12 Q. And that's the daughter of his sister, Susie?

13 A. Yes.

14 Q. How old is Josh there?

15 A. Oh, I don't remember exactly, but probably about a
year --

16 a year. Year and a half.

17 Q. And this is in Florida?

18 A. Yes.

19 Q. Did you take vacations in Florida more than once?

20 A. Yes. We visited Terry's family and my family
occasionally.

21 Q. After you were married to Terry Nichols, did he
expose you

22 to outdoor activities that you had not participated in
before?

23 A. Yes.

24 Q. Would you tell the jury what changes you
experienced in

25 your life upon marrying Terry.

15774

Lana Padilla - Direct

1 A. Well, having been raised on a dairy farm, we didn't

do a

2 lot of family-type outing activities. But when I met
Terry, he
3 was very much into family functions and activities, and
he took
4 me snow skiing the first time -- didn't know how, but I
5 learned; took me water-skiing, which I didn't know how
and I
6 didn't learn; took me canoeing, volleyball playing, did
a lot
7 of outdoor activities.

8 Q. And did he involve your two sons in this, Barry and
Troy?

9 A. Yes.

10 Q. Did he teach them to ski?

11 A. Yes, and my little brother and sister.

12 Q. Now, you had some younger brothers and sisters; is
that
13 correct? You were the oldest in the family?

14 A. Yes.

15 Q. And describe Terry's role with your younger
brothers and

16 sisters.

17 A. Well, my brother and sister -- my brother was the
same age

18 as my oldest son, Barry; and so they spent a lot of
time with

19 Terry and I. And everything we included -- he always
included

20 them to go with us on outings; so he was introducing
them to a

21 little different type of social family-type outings.

22 Q. I want to show you what has been marked for
identification

23 purposes as M400. Do you recognize that photo?

24 A. Yes.

25 MR. WOODS: We would offer into evidence M400.

15775

Lana Padilla - Direct

1 MR. MACKEY: No objection.

2 THE COURT: Received.

3 BY MR. WOODS:

4 Q. Would you tell the jury what they're seeing in this
photo.

5 A. That's Josh and Terry, and it's a Christmas party
called

6 the Walton Christmas party, which is Terry's family.
And it's

7 a pinata that Terry made, a Christmas tree pinata that
he made

8 and filled with candy for the kids.

9 Q. Was this something that he would do every
Christmas?

10 A. It was pretty much a tradition for Terry to do
that.

11 Q. I want to show you a group photo -- a group of
photos

12 marked as M430. Do you recognize those group -- that
group of

13 photos?

14 A. Yes. This is another Christmas party.

15 Q. Okay. Let me move it into evidence first.

16 MR. WOODS: We would offer into evidence M430.

17 MR. MACKEY: No objection.

18 THE COURT: Received.

19 BY MR. WOODS:

20 Q. And would you explain to the jury what's depicted
in this

21 group of photos.

22 A. It's the Walton Christmas party, and it's a
different one.

23 This is where he had made a pinata, a bell for the
kids, and we

24 were just having a -- it was a Christmas party.

25 Q. All right. And who is depicted in the two right
photos?

15776

Lana Padilla - Direct

1 A. Terry and me.

2 Q. Okay. And those are the children that attended the
party

3 on the left?

4 A. Uh-huh, little -- I think one of them is Natalie,
and then

5 there is a number of other little cousins.

for 6 Q. Okay. Now, I want to show you what has been marked
7 identification purposes as M334. Do you recognize that
8 photograph?

9 A. Yes.

10 MR. WOODS: We would offer into evidence M334.

11 MR. MACKEY: No objection.

12 THE COURT: Received.

13 BY MR. WOODS:

in that 14 Q. And would you explain to the jury what's depicted
15 photograph.

the 16 A. It was a family outing. We drove up to -- across
17 Mackinaw Bridge. And that's Terry and Josh and Troy.

18 Q. Troy is your older --

19 A. Troy is the middle son.

Where is 20 Q. Okay. Now, Mackinaw Bridge to Mackinaw Island:
21 that?

22 A. In Michigan.

23 Q. Okay.

took. 24 A. It's north. It's probably a 5-hour drive that we

Terry did 25 Q. Was this typical of the activities that you and

Lana Padilla – Direct

1 with your children?

2 A. Yes.

3 Q. And I'll show you what's been marked for
identification

4 purposes as M141. Do you recognize that photograph?

5 A. Yes.

6 MR. WOODS: We would offer M141 into evidence.

7 MR. MACKEY: No objection.

8 THE COURT: Received.

9 BY MR. WOODS:

10 Q. And would you tell the jury what's depicted in that
11 photograph.

12 A. Josh.

13 Q. And?

14 A. And Terry built a snowman and the dog. And this
was in our

15 home on Lamton Road.

16 Q. In what city?

17 A. Cass City, Michigan.

18 Q. And during the course of your marriage, Ms.
Padilla, with

19 Terry Nichols, you lived in that area of Decker/Cass
City the

20 whole time; is that correct?

21 A. Correct.

22 Q. Okay. Now I want to show you what's been marked

for

23 identification purposes as M394. Do you recognize that

24 photograph?

25 A. Yes.

15778

Lana Padilla - Direct

1 MR. WOODS: We would offer into evidence 394.

2 MR. MACKEY: No objection.

3 THE COURT: Received.

4 BY MR. WOODS:

5 Q. Tell the jury what's exhibited in this photograph.

6 A. This is -- I believe we were still unpacking our
boxes and

7 moved from one home we sold. This was on the Argyle
Road

8 80-acre farm that we bought, and Josh -- I remember him
saying
9 to Dad, "I'm going hunting."

10 And he slipped on his little, red rubber boots
because

11 he didn't have time to put on his shoes. And he ran
out to the

12 garden, and all of a sudden he ran in and said he
caught a

13 deer.

14 Q. Caught a deer?

15 A. "Got a deer, Dad."

16 Q. What happened with the deer? What --

17 A. Well, we got a camera and we took the picture, and
then we
18 let the deer go back with his mother.

19 Q. Okay. Okay. I want to show you what's marked for
photo?
20 identification purposes as M425. Do you recognize this

21 A. Yes.

22 MR. WOODS: We would offer into evidence 425.

23 MR. MACKEY: No objection.

24 THE COURT: Received.

25 BY MR. WOODS:

15779

Lana Padilla - Direct

1 Q. Explain to the jury what this photo depicts.

2 A. This was Terry and I and my two older sons, Barry
and Troy;

3 and there was an exchange student that worked on the
farm for

4 my mother and father, and this was a -- going-away
party for

5 him. And we took the kids. Josh was -- Josh was
little and he

6 was not there. He was probably two years old. This
was at

7 night.

8 Q. Where is this photo taken?

9 A. In the basement of a -- a restaurant in Cass City,
10 Michigan.

11 Q. And this is a family outing?

12 A. A family function.

13 Q. With you and Terry and the two sons?

14 A. And all of my family.

15 Q. Did Terry include the two sons in everything that
he did
16 with you?

17 A. Yes.

18 Q. What is their relationship now with Terry Nichols,
your two
19 sons, Troy and Terry?

20 A. Troy and Barry?

21 Q. Barry. I'm sorry.

22 A. They're -- well, whenever Terry calls and talks
with Josh

23 or me, they like to say hello. He is -- still a very
warm and

24 supportive role he gives them. And the kids think very
highly.

25 And there is -- they have a lot of good to say.

15780

Lana Padilla - Direct

1 Q. Do they respect and look up to Terry Nichols?

2 A. Yes.

3 supervision?

Q. That is based on their growing up with his

4 they've

A. Yes. I think they appreciate it a lot more as

5 gotten older.

6 worked

Q. Now, when you were married to Terry Nichols, you

7 off

full-time except for approximately a year that you took

8 after Josh was born. Is that correct?

9 A. Yes.

10 functioning

Q. And who maintained the home and kept the family

11 and going to school, etc.?

12 A. Terry did.

13 those

Q. What was a typical day like in your family during

14 a day

eight years when you were working full-time? How would

15 start and end?

16 A. For the family, or for me?

17 were out

Q. For the family that you observed. You, of course,

18 correct?

of there early in the morning, I take it. Is that

19 The

A. Correct. I would be -- I commuted a lot of times.

20 travel to

work I did, I might have been on the road. I would

21 school.

and from, but Terry would always get the kids off to

22 Breakfast was very important.
23 Q. Who cooked breakfast?
24 A. If there was -- usually Terry would cook.
25 Q. What did he normally cook?

15781

Lana Padilla - Direct

1 A. Healthy. Oatmeal, bran cereal.
2 Q. Okay. Who cooked the meals by and large for the
whole day
3 and the whole month and the whole year?
4 A. I would cook on weekends or holidays, but he
basically did
5 most of the cooking.
6 Q. And this was during the period that you owned the
rental
7 properties?
8 A. Correct.
9 Q. And he was maintaining those?
10 A. Yes, he was.
11 Q. Okay. Now, did Terry spend a lot of time in self-
study?
12 A. Yes.
13 Q. And I believe you've already told the jury the
number of
14 licenses that he picked up: A security license and
insurance

15 license?

16 A. Yes.

17 Q. What else did you observe Terry do during those
days that
18 you were married to him?

19 A. Well, he always made sure we had a garden and made
sure
20 that the garden was in control. And the purpose of the
garden
21 and canning -- we canned together usually. He took
care of all
22 of our paperwork. He took care of my paperwork. If I,
you
23 know -- a lot of the administrative things with what I
was
24 doing, he was very well -- he was like my assistant,
and I
25 would turn everything over to him with confidence that
he would

15782

Lana Padilla - Direct

1 take care of it.

2 Q. And during that time he worked at a grain elevator,
managed
3 a grain elevator; is that correct?

4 A. There was a period of time, yes.

5 Q. And a period of time he worked with you selling
securities
6 and insurance; is that correct?

7 A. Yes.

8 Q. Now, what did you observe his role to be with Josh,
in
9 raising Josh, his natural son, during that period of
time?

10 A. Full-time. He was a full-time father. He was not
an
11 imaginary father. He was always, always in his own
soft-spoken
12 way teaching Josh with whatever he said. He would
always give
13 him something of substance.

14 Q. Okay. Now, there came a time when you encouraged
Terry to
15 go into the Army. Is that correct?

16 A. We were having some difficulties, and there was an
Army
17 recruiter office where my office was at. And I -- I'm
not sure
18 exactly how it all happened, but whatever would make
Terry
19 happy, if that's what he chose to do, I was supportive.

20 Q. And he went in the Army in May of '88. Do you
recall that?

21 A. Yes.

22 Q. And then there came a time during that period when
he was
23 in the Army where he came and got Josh so that he could
have
24 Josh in Kansas at Fort Riley with him. Do you recall
that?

25 A. Yes.

15783

Lana Padilla – Direct

1 Q. Do you recall approximately when that happened?

2 A. After boot camp.

3 Q. Okay. Boot camp was four months. So that would be
4 September or October of '88? Is that correct?

5 A. I think so.

6 Q. Now, what caused that to happen, Ms. Padilla? Why
did

7 Terry need to come and get Josh to take him to Kansas?

8 A. I was working a lot. I had an office that was 50
miles

9 from our home, and everything that was -- everything
that Terry

10 was taking care of, I was taking care of then. And
also, one

11 of the -- one of the main reasons was that my oldest
son was

12 recovering from drug use, drug rehab.

13 Q. Okay.

14 A. And he didn't really want Josh around that. And
also, I

15 was working a lot.

16 Q. Was this a mutual decision of you and Terry for
Josh to go

17 to Kansas?

18 A. It was a difficult decision, but it was mutual.

19 Q. Okay. And Terry stayed in Kansas until May, '89.
Do you
20 recall that?

21 A. Yes.

22 Q. And do you recall that he received a hardship
discharge?

23 A. Yes.

24 Q. Okay. And you probably haven't seen the Army
records of

25 that discharge, have you?

15784

Lana Padilla – Direct

1 A. No, I haven't.

2 MR. WOODS: May it please the Court, we would
offer

3 into evidence the military records reflecting the
discharge of

4 Terry Nichols of May 15, '89. And that exhibit is M43,
M40,

5 M37, M42, 41 and 44. Those are the Army records of Mr.
Nichols

6 provided to us by the Government that we'd offered into
7 evidence.

8 MR. MACKEY: We have no objection.

9 THE COURT: All right. They're received.

10 BY MR. WOODS:

these.
recall
and
back?
period of

11 Q. Ms. Nichols, I'm not going to go through each of
12 The jury will have them for examination. But do you
13 that Terry received an honorable discharge in May, '89,
14 came back to Michigan?
15 A. Yes.
16 Q. And where did he live at that time when he came
17 A. On the farm on Argyle Road, on our place.
18 Q. And whose house was that?
19 A. It was our home.
20 Q. And who lived with him at that time?
21 A. My son Troy.
22 Q. And Josh?
23 A. And Josh, yes.
24 Q. Now, did he raise and supervise Troy there for a
25 a year or so?

15785

Lana Padilla - Direct

graduated
continue

1 A. He -- Troy stayed with Terry pretty much until he
2 from high school.
3 Q. He wanted to stay in that area so that he could

4 his schooling?

5 A. Yes.

6 Q. And Terry supervised and acted as a father to him.
Is that

7 correct?

8 A. Yes, he did. Yes.

9 Q. During that time, did you observe that he was a
loving and

10 caring father to Troy?

11 A. Yes.

12 Q. And what about Josh?

13 A. Yes.

14 Q. And I take it that that has been the case from '89,
when

15 you got your divorce, up until Terry's arrest in '95 --
April,

16 '95. Is that correct?

17 A. As far as supportive of Josh?

18 Q. Yes.

19 A. Yes.

20 Q. And was there ongoing discussions between you and
Terry

21 Nichols about Josh coming to Kansas in the summer of
'95 to

22 live with Terry and Marife?

23 A. When Terry expressed his buying a home, there was
24 discussion at that point. Not a lot of dialogue but
discussion

25 that maybe Josh could come and live with him again.

15786

Lana Padilla - Direct

1 Q. And were you going to leave that decision up to
Josh?

2 A. We were going to leave it up to Josh.

3 Q. What did you feel Josh would want to do?

4 A. Live with his father in the country, small town.

5 Q. And at that time, you were living in Las Vegas. Is
that
6 correct?

7 A. Yes.

8 Q. Now, since Terry's arrest, has he kept up his
contact with

9 Josh?

10 A. Yes.

11 Q. How has he done that?

12 A. Phone calls. Phone calls, letters, and visits.

13 Q. How many times have you been able to bring Josh to
where

14 Terry is, either in El Reno prison in Oklahoma, or the
federal

15 prison here in Denver?

16 A. We visited Terry in El Reno, and we also visited
Terry in

17 Denver at Englewood. I don't know how many times, but
yes, we

18 have -- we have visited him personally.

of Josh; 19 Q. And that's something you've wanted to do on behalf

20 is that correct?

21 A. Yes.

in 22 Q. As to the phone calls, can you or Josh call Terry

23 prison?

24 A. No.

25 Q. You have to receive the call from him?

15787

Lana Padilla - Direct

1 A. Yes.

2 Q. Are those collect calls?

3 A. Yes, they're collect.

4 Q. And have you borne that cost?

5 A. Yes, I have.

to do 6 Q. And tell the jury why you have done that and want

7 that?

8 A. I think it's -- it's very important because of the

that Terry 9 relationship as far as the divorce. It's important

10 and Josh be able to communicate. And Josh has a
separate phone

11 line, therefore, that Terry can call in on if he
chooses, and

12 he doesn't really have to communicate to anybody else.
But he
13 chooses to call on the main line and talks to all of
us. But
14 it's important, because Terry was not an imaginary
father and
15 Josh -- Terry is the most important person in Josh's
life.

16 Q. How frequently does Terry call Josh?

17 A. On an average, a couple times a week.

18 Q. Okay. And has that been going on for the two-and-
a-half
19 years since his arrest?

20 A. Yes.

21 Q. And you're aware of that because you're at the
home. Is
22 that correct?

23 A. Yes.

24 Q. And do you often talk to Terry Nichols during that
time?

25 A. Yes.

15788

Lana Padilla - Direct

1 Q. And are you aware that those phone calls are
recorded?

2 A. Yes. Sometimes I forget that; but yes, I do know
they're

3 recorded.

Is that 4 Q. You mentioned that Terry writes letters to Josh.

5 correct?

6 A. Yes.

7 Q. And have you seen those letters?

8 A. Yes.

9 Q. Have you kept each letter?

10 A. Yes.

11 Q. And tell the jury why you're keeping all those
letters.

12 A. Josh reads them and then sets them down, and I know
that in

13 his heart he would like to be able to reread them; so I
keep

14 them all and at times will reflect on them and look at
them,

15 basically for Josh.

16 Q. And there have been a number. Is that correct?

17 A. Yes.

18 MR. WOODS: May I approach, your Honor?

19 THE COURT: Yes.

20 BY MR. WOODS:

21 Q. Ms. Padilla, I'm not going to have you read all of
them,

22 but there are three letters here that I would like to
move into

23 evidence.

24 MR. WOODS: And we would offer into evidence
M143,

25 142, and 183, along with a drawing, which is 185.

15789

Lana Padilla – Direct

1 MR. MACKEY: No objection.

2 THE COURT: The exhibits are received.

3 BY MR. WOODS:

4 Q. Ms. Padilla, if you would open the first one that's
on top

5 there.

6 A. Okay.

7 Q. What's the date of that letter?

8 A. November 28, 1995.

9 Q. That's approximately five, six months after his
arrest?

10 A. Yes.

11 Q. And it's a one-page letter?

12 A. Front and back.

13 Q. It's just that one in the right hand I want to
read.

14 MR. WOODS: We would ask that the witness read
the

15 letter, your Honor.

16 THE COURT: All right. You may do so.

17 THE WITNESS: Okay.

18 "Josh, just a short note to say hi and how are
you

to get 19 doing. I hope you take -- you try your best in school
if you 20 along with all your teachers. I think it would be best
at home 21 continue going to school rather than someone teach you
Remember that 22 unless you can find a good person to teach you.
there is 23 home school, you aren't with others, and during breaks
24 no one to play with or talk to your age.
try to 25 "Even if school is a bit boring, you should

15790

Lana Padilla - Direct

History is 1 learn all you can in math, reading and writing.
real well. 2 important, too. Everyone needs to know the three Rs
darn 3 Those will get you through life. Without them, life is
to be 4 tough. I'm glad I know how to read well, but I'd like
by while 5 able to read even faster. It sure helps pass the time
learn a 6 sitting in here waiting for the trial, plus one can
It 7 great deal by reading. Reading helps expand your mind.
8 helps you to grow inside.

9 "Math, good knowledge of math is important so
that you
10 don't get taken when dealing with people; and it comes
in real
11 handy when you need to figure out problems, distance,
12 measurements, change, etc.
13 "Writing is needed so no" (sic) "one can write
14 important details down so as not to forget them, and
good
15 spelling helps in writing so people know what you're
writing.
16 "You got a very powerful tool on top of your
17 shoulders, and you need to use it. Otherwise, it's
just
18 wasted. If you really want to do something for me, the
best
19 and most important thing you can do is learn well your
math,
20 reading and writing. That is what would make me most
proud of
21 you, Josh. You know you have it in you. You just need
to
22 apply yourself. Put good effort into it. It's just
like"
23 reading -- excuse me "-- riding a bike. It's difficult
at
24 first, but with a little practice and ambition you
learn to
25 ride and enough -- you to ride and enough of it.

Lana Padilla – Direct

1 "The same can happen with school. If
knowledge
2 through reading, writing and arithmetic were not that
3 important, I certainly wouldn't keep talking about it
to you.
4 It's essential.
5 "Well, enough on that. Oh, one other thought,
though.
6 It's also very important to -- one other thought. It's
also
7 very important to learn to respect people, especially
adults.
8 They have been around much longer than you have, and
they went
9 through most everything you have, so generally, the
adults are
10 talking from experience and to try -- and trying to
help you
11 avoid some of the mistakes they have. Listen to them.
12 "Enclosed are some comics and other articles
for you
13 to read. Take the time to read them. It certainly
won't hurt
14 you. I'll ask you about them this coming Sunday when I
call.
15 Surprise me, and you tell me about them before I ask
you.
16 "Are you going to be going out for football
again this
17 year? Hey, write me another letter. The last one was
great.

Shoot me 18 You did well at spelling and writing. Keep it up.
19 out another letter.
you, 20 "Well, got to go. Keep your chin up. I love
21 Dad.
note." 22 "This is longer than I planned. Some short
23 BY MR. WOODS:
has a 24 Q. All right. Now, the next folder that I handed you
25 yellow page in it. What is the exhibit number on the
folder?

15792

Lana Padilla - Direct

1 A. 142.
2 Q. And that's a short, half-page letter?
3 A. Yes.
4 MR. WOODS: We ask to read that, your Honor.
5 THE COURT: All right. You may.
6 THE WITNESS: This is Tuesday, September 26,
1995.
baseball 7 "Josh, enclosed is an article about three
interest you. 8 players. I thought this story --" might "-- may
me? You 9 Hey, where is that letter you said you would write to

10 must be writing one heck of a letter if it's taking
this long
11 to get here. It doesn't have to be long. Just one
page is
12 fine."

13 Are making -- "Are you making use of that gym
after
14 school, or have all the girls got you preoccupied and
busy
15 catering to them?

16 "Also enclosed is a comic you may get a laugh
at. I
17 may cut this letter short because I want to get it out
today
18 and Mr. Morris will be stopping by any minute. He's
here now.
19 Keep your chin up. Love you, Terry."

20 BY MR. WOODS:

21 Q. And then the last letter is 183; is that correct?

22 A. Yes.

23 Q. I ask that you read that.

24 MR. WOODS: And first, your Honor, I want to
publish a
25 drawing that's referred to in this letter. It's been
admitted

15793

Lana Padilla - Direct

1 into evidence.

2 THE COURT: All right.

3 BY MR. WOODS:

4 Q. Go ahead and read the letter.

5 A. This is written March 20, 1997.

6 "Josh, enclosed you will find a drawing. Tell
me if

7 it reminds you of a past event that you may remember.
I may

8 not have all the details of exactly how things were, so
you

9 will have to forgive me if that's -- if that's any
10 inaccuracies. That rabbit that saw the whole thing was
hard to

11 understand, so I'm doing the best I can.

12 "As far as the drawing looking like you, well,
I'm

13 just not that good yet, so you will have to accept a
generic

14 look, just like the deer and the rabbit.

15 "I also thought you may enjoy the drawing,
since we

16 have no photo of that time. That's usually what
happens,

17 though, isn't it? No camera for that special shot.

18 "By the way, how are things going?

19 "I've been waiting for your letter a long
time, so I

20 decided to write you again. Maybe you can send a
drawing to me

21 of something that you remember. Don't worry about how

good it

22 looks. Drawing, like anything, takes some time and
practice.

23 "Try it, though. You may have a talent that
you don't

24 know about. Just try to picture in your mind what it
looks

25 like and go slow. And be sure you have a large eraser.
First

15794

Lana Padilla - Direct

1 lightly sketch what you want, then go over it with a
darker

2 line. Don't worry if you have to -- have no colored
pencils or

3 markers. A simple No. 2 pencil can work well. One can
get

4 many different shades with a pencil.

5 "Well, this letter will be short, but send me
6 something. I'll be waiting. I'll talk to you soon by
phone.

7 Be good, Josh. I love you. Take care. One of these
days,

8 we'll have to go hunting again."

9 Q. Now, these three letters which were sent among the
many

10 that you have: Is that typical of the type of letters
that

11 Terry would write to Josh?

12 A. Yes.

13 Q. Was he trying to maintain his fatherly role?

14 A. Yes.

15 Q. And supervising and encouraging Josh?

16 Have you noticed that he has done that for the
past

17 two-and-a-half years?

18 A. Absolutely.

19 Q. Is that any change from what he had done for the
prior 13

20 years of Josh's life?

21 A. No.

22 Q. I want to show you what's been marked for
identification

23 purposes as M698 and ask if you have seen this item
before.

24 A. Yes. It's Josh -- yes, I have.

25 MR. WOODS: We would offer into evidence M698,
your

15795

Lana Padilla - Direct

1 Honor.

2 MR. MACKEY: No objection.

3 THE COURT: Received.

4 BY MR. WOODS:

5 Q. And what is this, Ms. Padilla?

15th 6 A. It's a birthday card Terry made for Josh on his
 7 birthday.
 8 Q. Which was when?
 9 A. August 11, this year.
this 10 Q. And has Terry sent cards to you and to Josh during
 11 period of time?
 12 A. Yes.
 13 Q. Are these cards that he's drawn and made himself?
 14 A. Yes.
 15 Q. Let me see if you can -- can you read that?
 16 A. Yes. August 11, 1997.
birthday. 17 "Joshua, just a simple note to say happy
 18 wish you well on this special day. May the days and
years 19 ahead bring you joy and happiness. Though I'm not with
you at 20 this time, you are always in my thoughts. Keep in mind
that 21 you can succeed in anything you put your mind to. And
 22 remember: What a man thinks, so is he. So keep good
thoughts 23 always. Love, Dad."
 24 Q. Now, when you were married to Terry, did you have a
group 25 photo made of you and Josh and your two sons?

Lana Padilla - Direct

1 A. Yes.

2 MR. WOODS: If I may approach.

3 THE COURT: Yes.

4 BY MR. WOODS:

5 Q. I'm going to show you what's been marked for
identification

6 as M357. Do you recognize that?

7 A. Yes.

8 MR. WOODS: We would offer into evidence M357.

9 MR. MACKEY: No objection.

10 THE COURT: Received.

11 BY MR. WOODS:

12 Q. Would you point out to the jury who is depicted in
this

13 large group photo.

14 A. This is Terry Nichols. This is me. This is Barry,
my

15 oldest son. Troy and Josh.

16 Q. Now, are all the boys living with you now, Ms.
Padilla?

17 And Josh is. And where is Troy?

18 A. They're all living with me.

19 MR. WOODS: Thank you, your Honor. No further
20 questions.

21 THE COURT: Mr. Mackey, do you have some

questions?

22 MR. MACKEY: Just a very few, your Honor.

23 MR. WOODS: Thank you.

24 CROSS-EXAMINATION

25 BY MR. MACKEY:

15797

Lana Padilla - Cross

1 Q. Ms. Padilla, I have just a few questions for you,
if you 2 don't mind.

3 Mr. Woods showed you and you read to the jury
three 4 letters, all dated since the time of Mr. Nichols'
arrest.

5 Correct?

6 A. Right.

7 Q. And I heard him represent that there are others
like those

8 of similar nature that you didn't produce today; is
that

9 correct?

10 A. There is other letters, correct.

11 Q. And those are all letters that were written since
the time

12 of his arrest?

13 A. Yes.

14 Q. Did you search for any correspondence, any written

letters

15 from Terry Nichols to Josh that were written between
the period

16 September of '94 and April of '95?

17 A. No. I don't remember any correspondence; but I
might not

18 have saved them, either.

19 Q. As you sit there now, you have no recollection of a
20 frequent routine, series of letters being sent by Mr.
Nichols

21 to Josh?

22 A. There were phone calls but no letters I remember.

23 Q. You told the jury that as you observed Terry
Nichols and

24 his relationship with Josh, one important goal was that
he

25 teach Josh something of substance. Was that your
testimony?

15798

Lana Padilla - Cross

1 A. Yes.

2 Q. In the summer of 1994, do you remember that Terry
Nichols

3 was living with Marife Nicole in Marion, Kansas?

4 A. He was there for a short time in the summer of '94.
Not

5 very long.

6 Q. Mr. Nichols was living in Marion, Kansas, during

that time

7 period?

8 A. Yes. I thought you meant Josh.

9 Q. That was my question. In fact, Josh did go out to
Marion,

10 Kansas, and spent some time on the Donahue Ranch;
correct?

11 A. Yes.

12 Q. The plan was initially to spend some time during
the

13 summer, at least through his birthday on August 11?

14 A. I think so.

15 Q. The plans changed and he came home early?

16 A. He came home early.

17 Q. That was a result of some conflict that developed
within

18 the Nichols household; correct?

19 A. Terry was working very long hours, and Josh was in
the

20 house with Marife a lot; and it just -- it just was
21 conflicting.

22 Q. I see. When Josh came home, though, you learned
about what

23 he had done with his father during the time he did
spend with

24 him at the Marion farm; correct?

25 A. Not really. No. Josh didn't -- we didn't really
talk

Lana Padilla - Cross

1 about what he did, no.

2 Q. Did you learn, Mrs. Padilla, at any point in time
that part

3 of what Mr. Nichols spent his time with during that
summer in

4 1994 with his son Josh was building small explosives?

5 A. During the summer of '94?

6 Q. Yes.

7 A. I never heard that, no.

8 Q. How about previously in 1993 during his stays in
Michigan?

9 A. The first time I heard anything -- no. The first
time I

10 ever heard anything about building any type of bottle
bombs was

11 when the FBI asked us.

12 Q. But you know, do you not, Mrs. Padilla, that part
of what

13 Mr. Nichols taught his son was how to build bombs?

14 A. I don't know that firsthand, but that's what I have
been

15 told.

16 Q. You understand that from Josh.

17 A. We don't talk about -- I only heard it asked by the
FBI to

18 Josh.

19 Q. Did you hear Mr. -- Josh Nichols respond, "Yes, we

did

20 that"?

21 A. He talked about it, yes.

22 MR. MACKEY: Thank you.

23 MR. WOODS: Nothing further, your Honor.

24 THE COURT: All right. You may step down.

25 MR. THURSCHELL: Call Sandy Papovich.

15800

1 THE COURT: Thank you.

right

2 THE COURTROOM DEPUTY: Would you raise your

3 hand, please.

4 (Sandra Papovich affirmed.)

please.

5 THE COURTROOM DEPUTY: Would you have a seat,

and

6 Would you state your full name for the record

7 spell your last name.

H.

8 THE WITNESS: Sandra Papovich, P-A-P-O-V-I-C-

9 THE COURTROOM DEPUTY: Thank you.

10 THE COURT: Mr. Tigar.

11 DIRECT EXAMINATION

12 BY MR. TIGAR:

13 Q. Good morning, Ms. Papovich.

14 A. Good morning.

15 Q. Where do you live?

16 A. I live in Snover, Michigan.

If you

17 Q. There is a microphone there that looks like this.

area

18 could lean over a little closer, then everybody in this

19 can hear you.

20 Do you know Terry Nichols?

21 A. Yes, I do.

22 Q. How long have you known him?

23 A. Approximately 16 years.

the

24 Q. Well, I want to ask you about the time beginning in

25 middle of 1988. Did Terry Nichols go into the Army?

15801

Sandra Papovich - Direct

1 A. Yes, he did.

you

2 Q. And based on what you observed -- were you -- are

3 married?

4 A. Yes.

Nichols and

5 Q. All right. And did the Papovichs know Terry

6 Lana Nichols?

7 A. Yes.

8 Q. And you knew they had a son?

9 A. Yes.

10 Q. How did, based on what you observed -- how is it
that Terry

11 went into the Army?

12 A. How is it he went into the Army?

13 Q. Yeah. How was it that he came to make the decision
to go

14 into the Army?

15 A. The only knowledge I have is what his ex-wife told
me; that

16 she worked in the same building with a recruiting
office and

17 she would bring Army literature home for Terry to read.

18 Q. And after Mr. Nichols went in the Army, what did
you

19 observe happening to his son and Lana's son, Joshua,
and to

20 Lana's sons, Troy and Barry, by her former marriage?

21 A. Well, I observed that there was no supervision.
Joshua

22 went to stay with his aunt, and the other two boys were
left

23 alone at the farmhouse to fend for themselves.

24 Q. And what did Terry Nichols do about that when he
found out

25 about it?

Sandra Papovich - Direct

1 A. Well, when he found out that Joshua was with a
relative, he
2 immediately came home and got him, took him back out to
Kansas
3 with him so that he could care for him.

4 Q. And what did he do in Kansas to care for Joshua
that you
5 knew about?

6 A. Well, it was my understanding that he hired a
housekeeper
7 with a -- she had a son of her own -- to take care of
Joshua;
8 but oftentimes he was called away for a couple of days
at a
9 time, and so the arrangements with the housekeeper
wasn't
10 working out. So that's when he applied for the
hardship
11 discharge.

12 Q. And so then he came back to Michigan at some point?

13 A. Yes, and he lived at the farmhouse taking care of
Joshua
14 and Troy.

15 Q. Now, did you and your husband have occasion to
visit with
16 Terry Nichols and he with you?

17 A. Yes.

18 Q. And did you see what kind of a dad he was?

19 A. Yes.

20 Q. How did he take care of the boys?
21 A. In my eyes, he took care of them very well. He
loved the
22 boys and he tried to teach them discipline and he just
tried to
23 take care of them and teach them.
24 Q. Was he interested in what they were eating?
25 A. Oh, yes.

15803

Sandra Papovich - Direct

1 Q. And how did he manifest that?
2 A. Well, he always tried to make sure they ate healthy
foods.
3 He always baked his own bread for them, and he would
make his
4 own cereal out of wheat. It was a healthy diet that he
was
5 trying to instill in them.
6 Q. Did you observe that that was an interest of his,
this
7 organic food?
8 A. Yes.
9 Q. Was there an incident where he tried to convince
you that
10 that was the way to go?
11 A. He didn't try to convince me, no. When he saw that
my

12 husband and I were interested in eating organically
grown food,
13 he came over and gave us a 50-pound bag of organically
grown
14 wheat. And he also purchased a grinder for us and
wouldn't let
15 us pay him back for it so that we could grind the
wheat, and he
16 give us his recipes for making bread and making cereal.

17 MR. TIGAR: Excuse me just a moment.

18 Will your Honor indulge me just a moment?

19 THE COURT: Yes.

20 BY MR. TIGAR:

21 Q. In his role as a parent, did Terry see that Joshua
got to
22 be with the other kids in the area?

23 A. Yes, he did.

24 Q. Well, I'm going to show you what's been marked as
you
25 Defendant's Exhibit 453 -- M453. I just ask you, do

15804

Sandra Papovich - Direct

1 recognize the people in that picture?

2 A. Yes. I recognize some of them. One of them is my
3 daughter.

4 Q. Okay.

5 MR. TIGAR: I move its admission.

6 MR. SENDEL: No objection, your Honor.

7 THE COURT: It's received.

8 BY MR. TIGAR:

9 Q. Okay. Now the jury can see it. Tell us who is in
the
10 picture.

11 A. Well, my daughter, Janelle.

12 Q. Which one is she?

13 There is a pen attached to a cord. Should be
on top
14 there. Can you see it?

15 A. Oh.

16 Q. There it is. And if you reach underneath the
glass, you
17 can write directly on the TV screen.

18 A. Okay. This one is Janelle.

19 Q. And who else do you recognize?

20 A. The Lamming girl. I forget her first name. And
Andrea
21 Walsh, and Joshua, of course.

22 Q. Joshua is the one -- the big boy right there?

23 A. Right.

24 Q. And do you know when this was taken?

25 A. To the best of my recollection, probably '89.

Sandra Papovich – Direct

off at 1 Q. Did you have occasion in 1989 to drop your daughter

2 a birthday party that was being held for Josh?

3 A. Yes.

4 Q. How old was Josh at that birthday party?

5 A. Seven, I believe.

until 6 Q. Now, did Terry continue to take care of Josh then

7 Joshua eventually moved to Las Vegas?

8 A. Yes.

9 MR. TIGAR: Thank you very much Ms. Papovich.

10 THE COURT: Any questions?

11 MR. SENDEL: Very briefly, your Honor.

12 THE COURT: All right.

13 CROSS-EXAMINATION

14 BY MR. SENDEL:

Nichols 15 Q. Mrs. Papovich, you told us that you had known Terry

was 16 for approximately 16 years. And during that time, he

17 always a loner, wasn't he?

a quiet 18 A. All depends on your definition of "loner." He was

19 person.

a 20 Q. You remember giving an interview, Mrs. Papovich, to

of 21 defense investigator for Mr. Tigar and Mr. Woods in May

22 1996?

23 A. Yes, I do.

24 Q. And didn't you tell him at that time that Mr.
Nichols was a

25 loner?

15806

Sandra Papovich - Cross

1 A. I probably used that phrase.

2 Q. You also said that Mr. Nichols was someone that
never had
3 any buddies or, in your words, "chums." Isn't that
correct?

4 A. I said I never knew his buddies.

5 Q. Now, after Mr. Nichols returned from the Army, you
did get
6 the chance to meet Timothy McVeigh, didn't you?

7 A. On a -- on a couple occasions.

8 Q. And you became aware that Terry Nichols and Timothy
McVeigh

9 were really good friends, didn't you?

10 A. This is what I was told. They were friends from
the Army.

11 I don't know how well they knew each other. That's
just what I

12 was told.

13 Q. And after the Army, the last time you saw Terry
Nichols in

right? 14 Michigan I believe was approximately 1993. Is that

15 A. Late '93.

16 Q. And you didn't see him again?

17 A. Well, he's been in your custody.

Terry 18 Q. Between 1993 and April of 1995, you didn't see

19 Nichols, did you?

when he 20 A. No. I was supposed to see him the following year

able to 21 came home, but our schedules conflicted and I was not

22 see him.

in Kansas 23 Q. And during the time that Terry Nichols was living

was 24 after he left Michigan in 1993, you had no idea what he

25 doing in Kansas, did you?

15807

scope. 1 MR. TIGAR: Objection, your Honor. Beyond the

2 THE COURT: Sustained.

3 MR. SENDEL: Pardon me? I didn't understand.

4 THE COURT: I sustained the objection.

the 5 MR. SENDEL: I didn't understand the basis for

6 sustention, your Honor.

I 7 THE COURT: You don't need to know the basis.

8 sustained it.

further 9 MR. SENDEL: Thank you, your Honor. I have no

10 questions.

11 THE COURT: Any other --

12 MR. TIGAR: No, I have nothing further.

13 Thank you very much, Mrs. Papovich.

excused. 14 THE COURT: You may step down. You're

time. 15 I think we'll take the noon recess at this

we'll 16 Members of the jury, before we recess -- and

I've 17 take the usual 90-minute recess -- I can advise you --

the 18 talked with counsel. We do anticipate completion of

5:00, so 19 testimony here this afternoon and probably well before

able to 20 you'll be excused at that time because we will not be

presentations 21 go forward with what remains, which will be the

respect 22 of counsel and their arguments. Just as was true with

argue 23 to the trial, both sides will have an opportunity to

instruct you on 24 this -- these issues; and then, of course, I'll

25 the law, and we'll do that on Monday.

15808

1 So again, that can be done, you know, one
right after
2 the other and wouldn't be helpful, I think, to go
forward with
3 that this afternoon, then interrupt it and come back,
and so
4 forth. More effective, I'm sure you would agree, if
you hear
5 it all at the same -- on the same day.
6 So I just wanted to let you know that so that
you will
7 anticipate -- be able to anticipate what the timing
will be
8 here. And, of course, now during this recess and as
will be
9 true during the weekend recess, you must keep open
minds,
10 waiting until you've heard it all, because just hearing
from
11 the witnesses testify, of course, is not all of the
information
12 that's already been received. Some of these matters
are
13 exhibits. Some of them have not been displayed to you.
And of
14 course, then, the arguments and instructions are
important as

15 well.
16 So we'll recess now till 1:25. You're excused
for
17 now.
18 (Jury out at 11:55 a.m.)
19 THE COURT: May I see counsel a moment.
20 (At the bench:)
21 (Bench Conference 151B3 is not herein transcribed
by court
22 order. It is transcribed as a separate sealed
transcript.)
23
24
25

15812

1 (In open court:)
2 THE COURT: All right. We'll be in recess,
1:25.
3 (Recess at 11:57 a.m.)
4 * * * * *
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1 WITNESSES (continued)

2 Sandra Papovich

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3 Direct Examination by Mr. Tigar

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5 DEFENDANT'S EXHIBITS

Withdrawn

6 Exhibit Offered Received Refused Reserved

7 M37 15784 15784

8 M40-M44 15784 15784

9 M45 15712 15712

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21 M95 15703 15703

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24	M141	15777	15777
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		DEFENDANT'S EXHIBITS (continued)			
Withdrawn	Exhibit	Offered	Received	Refused	Reserved
	1				
	2				
	3	M183	15788	15789	
	4	M185	15788	15789	
	5	M192	15736	15736	
	6	M197	15727	15728	
	7	M200	15729	15729	
	8	M258	15684	15684	
	9	M289	15686	15686	
	10	M299	15687	15687	
	11	M300	15687	15687	
	12	M301	15688	15688	
	13	M303-M304	15688	15688	
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		DEFENDANT'S EXHIBITS (continued)			
Withdrawn	Exhibit	Offered	Received	Refused	Reserved
	1				
	2				
	3	M472	15732	15732	
	4	M512	15711	15711	
	5	M519	15704	15704	
	6	M566	15730	15730	
	7	M568	15731	15731	
	8	M573	15726	15726	
	9	M578	15695	15695	
	10	M583	15723	15724	
	11	M587	15733	15733	
	12	M608	15733	15733	
	13	M615	15710	15710	
	14	M618	15764	15764	
	15	M621	15718	15718	

16 M629 15696 15696
17 M690-M692 15681 15682
18 M694-M697 15681 15682
19 M698 15794 15795
20 M699 15760 15760
21 M702 15758 15758

22 * * * * *

23

24

25

15816

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 2d day of January, 1998.

5

6

Paul Zuckerman

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Bonnie

Carpenter

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