

Thursday, May 1, 1997 (morning)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,

Defendant.

REPORTER'S TRANSCRIPT
(Trial to Jury - Volume 72)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 9:00 a.m., on the 1st day of May, 1997,
in Courtroom C-204, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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APPEARANCES

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PROCEEDINGS

(In open court at 9:00 a.m.)

THE COURT: Be seated, please.

Good morning. Ready to proceed?

MR. HARTZLER: We are, your Honor. We shifted the

order of our witnesses a little bit.

THE COURT: All right.

MR. HARTZLER: Mr. Pfaff will be first, and then Kyle Kraus.

THE COURT: All right.

Bring in the jury.

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

THE COURT: Members of the jury, good morning. We're ready to resume our trial with the testimony of the next witness.

If you'll come in, please.

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

(Gregory Pfaff affirmed.)

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

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

THE WITNESS: My name is Gregory Michael Pfaff. Last name is P-F-A-F-F.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mendeloff.

MR. MENDELOFF: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Sir, please tell the ladies and gentlemen of the jury where you live.

A. I live in Harrisonburg, Virginia.

Gregory Pfaff - Direct

Q. How long have you lived there?

A. Approximately eight or nine years.

Q. You'll have to keep your voice up a little bit. Okay. Are you employed?

A. Yes.

Q. How are you employed?

A. I'm self-employed.

Q. Doing what?

A. I own a delicatessen.

Q. You're from New York; is that right?

A. Yes.

Q. You're used to talking fast?

A. Very much so.

Q. Please slow down, okay?

A. Yes, sir.

Q. How long have you owned your delicatessen?

A. Four years.

Q. Prior to opening your delicatessen, did you have another business?

A. Yes.

Q. What was that business?

A. Business was Lock & Load Distributors.

Q. What kind of business was Lock & Load Distributors?

A. Sold special application ammunitions.

Q. What do you mean by special application ammunitions?

Gregory Pfaff - Direct

A. Special application ammunition is ammunition that is not used for standard target practice or hunting. It's explosive-tip ammunition, tracers, incendiary rounds, prefragmented bullets.

Q. All right. Where did you sell this kind of ammunition?

A. At gun shows.

Q. For the ladies and gentlemen of the jury, who don't know what a gun show is, can you explain what that is?

A. A gun show in layman's terms would be a flea market for firearms, military surplus, ammunition.

Q. Where are gun shows held?

A. Normally they're held in armories, auditoriums, venues of that nature.

Q. How do people who sell products in gun shows do that?

A. Vendors will call the promoters, reserve a table, and then they would show up at the shows, set up their wares on a table and present them to people coming through the door to purchase.

Q. When did you begin in this business?

A. 1990.

Q. Do you know Defendant Tim McVeigh?

A. Yes.

Q. And when did you meet Defendant McVeigh?

A. Sometime in 1992.

Q. What time during that year, do you remember, early, middle, late?

Gregory Pfaff - Direct

A. Have to be early '92.

Q. How did you meet Defendant McVeigh?

A. At a gun show.

Q. What gun show was that?

A. Monroeville, Pennsylvania.

Q. What sort of gun show is the Monroeville, Pennsylvania, gun show?

A. Monroeville was a large show that had everything from antique arms, collector, military surplus, automatic weapons, all kinds of ammunition, targets, it just sold everything that had to do with the gun business.

Q. How many times a year was the Monroeville, Pennsylvania, gun show run?

A. Four to five times a year.

Q. When you first met Defendant McVeigh, did you converse with him?

A. Yes.

Q. Where?

A. At the table.

Q. Whose table?

A. My table.

Q. How long did you talk to him?

A. Approximately a half an hour.

Q. Was Mr. McVeigh alone or with anybody?

Q. Was Mr. McVeigh alone or with anybody?

A. Alone.

Gregory Pfaff - Direct

Q. And generally what did you speak about?

A. We spoke about ammunition, different firearms, and we spoke about Desert Storm and him being in the service.

Q. All right. Did you conduct any business with Defendant McVeigh that day?

A. Yes.

Q. What business was that?

A. I sold him some ammunition.

Q. What kind of ammunition?

A. I believe it was 30-06 armor-piercing incendiaries.

Q. Are incendiaries bullets?

A. A incendiary bullet is a bullet that has a magnesium compound in it that, upon breaking apart, the bullet would ignite the magnesium. The main purpose of the bullet is to set off explosive materials.

Q. When you say armor-piercing, what's that?

A. Armor-piercing is usually a cartridge that has a steel jacket or a tungsten carbide steel center to help penetrate light armor of Jeeps, things of that nature.

Q. Now, did Defendant McVeigh have a sales booth at that gun show?

A. No.

Q. And did you sell incendiary bullets to other members of the public?

A. Yes.

Gregory Pfaff - Direct

Q. After this gun show in 1992, did you have occasion to see Defendant McVeigh again?

A. Yes.

Q. When was that?

A. It was around the middle of '92.

Q. Where?

A. Buffalo.

Q. And what were you doing in Buffalo?

A. I had another table selling ammunition again.

Q. At a gun show?

A. Yes.

Q. And when you saw Defendant McVeigh later in 1992 in Buffalo, was anyone with him?

A. No.

Q. Did you have conversation?

A. Yes.

Q. How long did this one last?

A. Approximately a half an hour.

Q. During this day when you saw Defendant McVeigh again, did you have occasion to have him -- or did you do anything for him or did he do anything for you?

A. Actually it was both. He watched my table while I went to the rest room, and then I believe he went and got coffee. I paid for the coffee; he went to get it.

Q. And on that occasion, did Defendant McVeigh buy anything

Gregory Pfaff - Direct

else from you? Did you buy anything from him?

A. Yes.

Q. Which was it?

A. I bought some blast simulators.

Q. What are blast simulators?

A. It's a mechanism that has two pieces of wire coming out. It's set off and to simulate a blast.

Q. And we're talking about blast? We're not talking about loud big boom, we're talking about what?

A. It's probably about the size of an M-80 or so. Actually smaller in length than an M-80.

Q. It's a small noisemaker?

A. Correct.

Q. And in addition to the blast simulators, what else did you buy from him?

A. I believe I bought some military smoke grenades.

Q. Now, did you have a discussion during this occasion regarding Defendant McVeigh's weapons?

A. He said that -- I asked him actually if he had any more blast simulators, and he said that he did but he had them with some other things that he owned buried in the woods.

Q. Did he say why he had those weapons buried?

A. In case he ever needed them, you know, you knew where they were and nobody else did.

Q. Now, did Defendant McVeigh have a sales booth at this show?

Gregory Pfaff - Direct

A. No.

Q. Let me direct your attention to November of 1992. Did you have occasion to receive any telephone calls from Defendant McVeigh at about that time?

A. Yes.

Q. Where were you?

A. I was in Virginia.

Q. In your home?

A. Yes.

Q. And was anyone else on the phone other than you and Defendant McVeigh?

A. Not that I'm aware.

Q. Would you tell the ladies and gentlemen of the jury what Defendant McVeigh asked you in this phone call.

A. Asked me if I was going to the Monroeville show.

Q. Did he tell you why he was asking?

A. He had the blast simulators that I was looking for.

Q. And what did you say?

A. I told him I would be there.

Q. Later that month in November of 1992, did you have occasion to see Defendant McVeigh at that Monroeville show?

A. Yes.

Q. Was anyone with him?

A. No.

Q. Did you have a conversation with him?

Gregory Pfaff - Direct

A. Yes.

Q. And how long did you talk to him?

A. Approximately a half an hour.

Q. Did you engage in any business with Defendant McVeigh at this show?

A. Yes.

Q. Tell us what it was.

A. I bought some blast simulators from him, and I also took on consignment atropine.

Q. What is atropine?

A. Atropine is an antidote to chemical warfare from what I understand.

Q. And were you able to sell that atropine?

A. At a later date, yes.

Q. And when you sold it, what did you do?

A. I sent Mr. McVeigh the money that was due him for the atropine.

Q. Now, at this show, did Defendant McVeigh bring anything else to show you?

A. From what I remember, he brought a plate of steel and showed me the difference between what a standard round would do and what the armor-piercing incendiary round would do to that plate of steel.

Q. And that's the thing that you sold him?

A. Yes.

Gregory Pfaff - Direct

Q. Did he have a sales booth set up at this show?

A. No.

Q. When's the next time you saw Defendant McVeigh?

A. I believe it was '93.

Q. And do you know when in '93 you saw him?

A. I cannot give an exact time.

Q. Do you have any benchmark that you can point to; for example, a day you know it was after?

A. It was definitely after the start of Waco.

Q. All right. And where did you see him?

A. At a gun show.

Q. Which one?

A. Monroeville.

Q. Now, was he with anyone or was he by himself?

A. By himself.

Q. Did you have another conversation with him?

A. Yes.

Q. How long did this last?

Q. How long did this last?

A. Approximately half an hour.

Q. Going fast again.

A. Sorry.

Q. Slow down.

Where did the conversation take place?

A. Excuse me?

Q. Where did the conversation take place?

Gregory Pfaff - Direct

A. At my table in the gun show.

Q. Can you tell us what he said to you and what you said to him?

A. There were the pleasantries of normal conversation, and then we were talking about the siege of Waco. He told me that he went down to Waco; down at Waco, the federal agents had a perimeter fence around the compound so nobody could go in or out. Mr. McVeigh said that he had crawled up to the perimeter fence and crawled back without being seen by any of the federal agents patrolling the perimeter.

Q. Did he say what he did then?

A. Said he sat on his car, was selling bumper stickers with anti-government slogans.

Q. Did you then discuss Waco?

A. Yes.

Q. What did he say?

A. He was very agitated about Waco, couldn't believe that it was happening, that the government had no right to do what they were doing.

Q. What else did he say?

Do you remember?

A. Yeah, I'm trying to put it together here. Basically that this could be the start of the government coming house to house to retrieve the weapons from the citizens.

Q. All right. And what was the tone in Defendant McVeigh's

Gregory Pfaff - Direct

voice when he made these comments about the Waco situation?

A. He was very angry.

Q. During the part of this conversation -- during which part of the conversation did he talk with you about Waco?

A. That was the majority of the conversation.

Q. Did he appear serious about his attitude about Waco?

A. Yes.

Q. Did you ever again see Defendant McVeigh?

A. No.

Q. Did you ever again speak with him?

A. Yes.

Q. When did this occur?

A. It was approximately the latter part of 1994.

Q. And do you know when during the latter part of '94?

A. I can only put it towards the September/October time.

Q. And what basis do you put it at the September/October --

2. And what date do you put it as the September, October

A. I remember how the weather was; and it was starting to cool off, but it was not yet winter.

Q. And how did you speak with him at that time?

A. Telephone.

Q. Had you received -- when you received this call, when was the last time you had spoken with Defendant McVeigh?

A. 1993.

Q. Let me direct your attention to the phone call you received from Defendant McVeigh. Where did you receive this phone call?

Gregory Pfaff - Direct

A. At the delicatessen.

Q. And what was the phone number at your delicatessen?

A. (703)433-3978.

Q. Now, by the way, what was your home phone at that time?

A. At that time it was (703)289-6958.

Q. Now, when you received this call at the delicatessen, was anyone else on the phone?

A. Not that I'm aware.

Q. What did Defendant McVeigh say to you and what did you say to him?

A. There were the typical pleasantries, "Hi, how you doing? Haven't seen you in a while. How's things going?" He told me he was living in Arizona and that he wanted to know if I was still in the gun business. I told him that I was somewhat phasing out the gun business at that time, and he asked me if I can get him detonation cord.

Q. Now, what is detonation cord?

A. Detonation cord is a high explosive that is used to set off -- it's a primary charge that is used to set off the main explosive; and when I say that, I mean it will set off several charges simultaneously.

Q. All right. Now, did he use the term "detonation cord" or did he use some other term?

A. Det cord.

Q. And is det cord a product that you've seen sold at gun

Gregory Pfaff - Direct

shows?

A. No.

Q. Based on your five years' experience in the guns and ammunition business, do you know why det cord is not sold at gun shows?

A. It's a highly regulated item.

Q. When Defendant McVeigh called and asked you for det cord, did you have any det cord to sell him?

A. No.

Q. Did you tell him -- excuse me.

Did you have any intention to try to get him any det cord?

A. No.

Q. Did you tell him that?

A. No.
Q. Why not?
A. Never wanted to turn off a potential customer.
Q. After Defendant McVeigh asked whether you could get him some det cord, did you discuss a shipment of det cord?
A. I told him it could not be shipped in the United States.
Q. What was his reaction?
A. That he would come and get it.
Q. What did you say?
A. Told him it was an awful long way to drive.
Q. From where?

Gregory Pfaff - Direct

A. From Arizona.
Q. And what did he say?
A. He said it didn't matter, that he needed it bad.
Q. What did you say?
A. Told him I'd see what I could do.
Q. Did you tell him when to contact you again?
A. Approximately ten days, told him to give me a call.
Q. Slow down, okay?
How long did this telephone call last?
A. Probably about five minutes.
Q. During this call, you testified Defendant McVeigh told you that he was living in Arizona?
A. Yes.
Q. Do you have any independent basis for knowing whether he was truly calling you from Arizona?
A. No.
Q. Do you have any way of knowing where Defendant McVeigh was?
A. No.
Q. Approximately one week later, did you receive another telephone call from Defendant McVeigh?
A. Yes.
Q. Where did you receive it?
A. The delicatessen.
Q. Was anyone else on the line?
A. Not that I'm aware.

Gregory Pfaff - Direct

Q. Do you have any idea where he was?
A. No.
Q. Did you recognize his voice?
A. Yes.
Q. What did he say?
A. He asked me how I was doing. Told him I was doing fine. He asked me if I got any det cord.
Q. What did you say?
A. No.
Q. Did the phone call end after that?
A. It ended rather abruptly after that, yes.
Q. You had additional -- brief additional conversation and

then it ended?

A. There was some things said. I'm not fully a hundred percent on what we talked about, but, yeah.

Q. And how did the length of this call compare to the first one?

A. It's probably about 2 minutes.

Q. Have you ever again spoken to Defendant McVeigh after this phone call?

A. No.

Q. How many times have customers contacted you and asked you to sell them det cord?

A. None.

Q. Except for this one?

Gregory Pfaff - Direct

A. Correct.

Q. Look around the courtroom and see if you see Defendant McVeigh.

A. Yes.

Q. Can you identify him, please?

A. The gentleman in the plaid shirt, blue plaid shirt.

MR. MENDELOFF: Can the record reflect the identification of the defendant?

THE COURT: Yes.

MR. MENDELOFF: Nothing further, your Honor.

THE COURT: Cross-examination?

MS. RAMSEY: Yes. If I can have just a moment, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MS. RAMSEY:

Q. Mr. Pfaff, how long were you in the gun show business, or in the lock and load business, I believe you said?

A. Lock & Load was the name of the company. I was in there from approximately August of 1990, and I pretty much stopped the business in 1993; but I did not completely shut it down until probably sometime in '95.

Q. And why did you get out of that business?

A. I opened a delicatessen.

Q. You opened a?

Gregory Pfaff - Cross

A. Delicatessen.

Q. So you started another business?

A. Yes, ma'am.

Q. When you were in the Lock & Load business, did you travel a lot?

A. Yes, ma'am.

Q. And where did you have your business?

A. At an office in my house.

Q. And when you traveled, you went to different gun shows; isn't that correct?

A. Yes, ma'am.

A. Yes, ma'am.

Q. And what area of the United States did you personally travel in these gun shows?

A. Northeast.

Q. And what states would that include?

A. That would include New York, Pennsylvania, Connecticut, Maryland, Virginia, North Carolina. Might have been to Delaware; I'm not too sure.

Q. And is that the only area of the United States where gun shows are held?

A. No, ma'am.

Q. Are they held all over the United States?

A. Yes, ma'am.

Q. Are gun shows held regularly, since you said they were like a flea market?

Gregory Pfaff - Cross

A. Yes, ma'am.

Q. Like every weekend, if you wanted to, you could go to a gun show?

A. Somewhere, yes.

Q. If you were willing to travel a distance, you could go to a gun show every weekend; is that correct?

A. Correct.

Q. And when you say that you would get a table at a gun show, did you make advance reservation, did you pay for the table --

A. Yes, ma'am.

Q. -- or how did you set that up?

A. You would make advance reservations and pay the promoter for the table.

Q. Was there a list that you received that advised you as to where these gun shows were going to be so that you could make these advance reservations?

A. You would normally get on a promoter's mailing list, and they would send you flyers of where their particular shows were.

Q. And was that flyer sent out only to people who had tables at gun shows, or was it also sent out to people who would frequent gun shows, perhaps?

A. I really couldn't answer that.

Q. Okay. Did you do any advertising in order to bring people to your tables at the gun shows?

Gregory Pfaff - Cross

A. I did advertising but not specifically for the gun show venue at the tables.

Q. Now, you testified on direct examination that you sold some kind of ammunition to Mr. McVeigh.

A. Correct.

Q. I didn't understand what that was in particular. It was a bullet?

A. Yes, ma'am.

Q. And that bullet is not illegal, is it?

A. No, ma'am.
Q. And I believe you also testified on direct examination that Mr. McVeigh brought a piece of steel into one of the shows?
A. Yes, ma'am.
Q. The Monroeville show, or was that the Buffalo show?
A. It was the Monroeville show.
Q. And at that Monroeville show, he was showing you how that bullet had hit, so to speak, this piece of steel?
A. Yes, ma'am.
Q. Okay. Would that indicate to you that that bullet was being used for target practice, or something of that nature?
A. It indicated that it was being used in an evaluation of what that type of bullet would be used for.
Q. Okay.
A. And its impact and vs. a standard bullet.
Q. All right. Now, aren't there many uses for bullets?

Gregory Pfaff - Cross

A. Yes, ma'am.
Q. People use guns for target practice all the time and things of that nature, don't they?
A. Yes, ma'am.
Q. When you -- do you shoot guns, yourself?
A. Yes, ma'am.
Q. Have you in the past?
A. Oh, yes.
Q. And do you cover your ears when you shoot these guns?
A. You're supposed to.
Q. That's pretty standard, isn't it, to use either earplugs or some other type of covering if you are shooting guns at target practice or something like that?
A. That's what a lot of people would do, yes.
Q. Now, I want to turn your attention to the conversation you said that you had with Mr. McVeigh about Waco.
A. Uh-huh.
Q. Is that -- was that conversation at that time unusual to you?
A. No.

THE COURT: Proceed, please. Thank you.

BY MS. RAMSEY:

Q. Was that conversation unusual to you at the gun show?
A. No.
Q. Was that probably the main topic of conversation at that

Gregory Pfaff - Cross

gun show at that time?
A. At that time, yes.
Q. And when you traveled to these gun shows around the area or around the time that the Waco siege was going on, was that the topic of conversation of just about everybody there?
A. That was primarily a topic, yes -- that, and the laws that were being changed at that time.

Q. The Brady Bill?

A. The gun laws, yes.

Q. Was there anything that alarmed you about the conversation that you had with Mr. McVeigh?

A. He was a lot more serious than the average . . . the average conversation would go. The average conversation would go a lot more, not so much lighthearted, but not as serious as he was.

Q. When you had talked with Mr. McVeigh about his serving time in the military and actually having been at Desert Storm, was that also a very serious conversation that you had with him?

A. That was a little more lighthearted.

Q. It was?

A. Yes.

Q. Even about actually serving in Desert Storm?

A. Yes.

Q. Now, when you also talked to Mr. McVeigh about his going to Waco, did he tell you that he had done anything wrong?

Gregory Pfaff - Cross

A. No.

Q. Now, I believe you said that you saw him on three separate occasions.

A. I believe it's four.

Q. Four separate occasions.

Let me ask you one more question about the gun shows: You don't sell anything that's illegal at the gun show, do you?

A. No, ma'am.

Q. You first met him, I believe you said, at the Monroeville gun show; is that correct?

A. Yes, ma'am.

Q. And is that in New York?

A. No, that would be Pennsylvania.

Q. Pennsylvania. All right. And you had approximately a 30-minute conversation with him then?

A. Yes, ma'am.

Q. And then you also saw him at the Buffalo gun show; is that correct?

A. Yes, ma'am.

Q. And you had approximately a 30-minute conversation with him then?

A. Yes, ma'am.

Q. And then you met him where at the third time?

A. Would be -- would have been a Monroeville show.

Q. So you saw him twice at Monroeville and once at Buffalo.

Gregory Pfaff - Cross

And where was the fourth time?

A. Monroeville.

Q. So three times at Monroeville and one time at Buffalo?

A. As far as I can recall.

Q. And how long did you leave Mr. McVeigh at your table while you went to the rest room?

you went to the rest room?

A. As long as it took to go to the rest room and go back.

Q. Did you leave him 15 minutes, or so, while you took a break?

A. I'd have to say it was probably about five or ten minutes.

Q. Trusted him enough to do that?

A. Sometimes you had to do that when you were at a gun show by yourself.

Q. I understand that, but you could pick and choose who you wanted to have stand by your table, couldn't you?

A. I didn't have a problem with him at that time, no.

Q. And when you came back from going to the rest room, there wasn't any problem with your table, was there?

A. No.

Q. Now, do you know where Mr. McVeigh was from?

A. I believe it's Buffalo.

Q. From New York.

Now, when you talked with him on the telephone, you said that he told you he was living in Arizona?

A. Yes, ma'am.

Gregory Pfaff - Cross

Q. How many times did you talk with Mr. McVeigh on the telephone?

A. I can recall at least three times.

Q. Pardon?

A. I can recall at least three times.

Q. Three times. And are those the three times that you've testified about?

A. Yes, ma'am.

Q. Did you go back through your records to see if you had made any sales to Mr. McVeigh?

A. Yes, ma'am.

Q. And did you find anything in your records that would indicate you made any sales to Mr. McVeigh?

A. No, ma'am.

Q. How many times have you talked with the Federal Bureau of Investigation or the U.S. Attorney's Office with regard to this particular case?

A. Do you mean before, or after the grand jury?

Q. Both. Let's talk -- how many times -- when was the first time that you talked with somebody from the FBI or law enforcement with regard to this case?

A. It was Tuesday, in April of '95.

Q. After the bombing, I assume?

A. Yes, ma'am.

Q. All right. And how long was that conversation?

Gregory Pfaff - Cross

A. Probably about an hour.

Q. And was that at your deli?

A. Yes, ma'am.

Q. And what's the name of your deli again?

A. Brooklyn's.
Q. Brooklyn's?
A. Yes, ma'am.
Q. And who did you talk with? Do you recall?
A. An Agent Zero and an Agent Gray.
Q. And after that conversation, then when was the next time that you talked with anyone in law enforcement or the U.S. Attorney's Office?
A. I spoke to the FBI the next day.
Q. All right. And who did you speak with at that time?
A. Agent Zero and Agent Gray.
Q. And was that also at your deli?
A. Yes, ma'am.
Q. And how long did that conversation last?
A. Probably about a half hour to 45 minutes.
Q. And did you discuss the same things that you had discussed the day before?
A. No.
Q. What did you discuss that second day?
A. That evening, they asked me if I can go through my records and pull out any information that I might have.

Gregory Pfaff - Cross

Q. And you didn't find any, did you?
A. I found a check that I had signed to Mr. McVeigh.
Q. That's the consignment that you had sold for him at one of the gun shows; is that correct?
A. That's correct.
Q. The items that you sold for him at the gun show were not illegal, were they?
A. Not that I'm aware of.
Q. You also testified that Mr. McVeigh told you at some point that he had some weapons buried --
A. I'm sorry.
Q. -- is that correct; that he had some weapons buried?
A. I didn't hear the whole question.
Q. Did Mr. McVeigh tell you at one of the gun shows that he had some items or weapons buried somewhere?
A. Yes.
Q. Is that unusual for people who frequent gun shows?
A. It's a small percentage.
Q. But it's not that unusual?
A. It's not that unusual.
Q. And when was the next time that you talked with someone from the FBI?
A. It was at the grand jury.
Q. And you testified before the grand jury?
A. Yes, ma'am.

Gregory Pfaff - Cross

Q. And what was your next contact with the FBI?
A. I believe it was around March of '97.

Q. Did you talk with anyone from the United States Attorney's Office prior to your testimony at the grand jury?

A. Prior to the grand jury?

Q. Yes.

A. No. Not that I can recall.

Q. You didn't talk with anyone at Oklahoma City from the U.S. Attorney's Office?

A. Not unless it was flight arrangements. Not that I can recall.

Q. All right. So you also had a conversation with someone from the FBI in March of 1997?

A. Correct.

Q. And who was that?

A. Mr. Mendeloff.

Q. So you talked with the United States Attorney. And how long did that conversation take?

A. First time, it was probably about five or six hours.

Q. And was that in Denver, or was that in -- at the Brooklyn deli?

A. It was in Denver.

Q. All right. And did you talk with him for the five or six hours all in a row?

A. The first day, yeah.

Gregory Pfaff - Cross

Q. All right. And you talked with him again?

A. The next day.

Q. The next day. And how long was that interview?

A. About an hour.

Q. All right. And what have you -- what did you talk about with Mr. Mendeloff other than what you've told us here today? Just the same general things?

A. Yes, ma'am.

Q. Okay. And have you had any conversation with Mr. Mendeloff or with any members of the FBI since March?

A. Yes, ma'am.

Q. And when was that?

A. I believe it was around April.

Q. Of 1997?

A. Yes, ma'am.

Q. And was that here in Denver, or was that at your deli?

A. That was in Denver.

Q. And how long did those conversations last, please?

A. First day was approximately two hours.

Q. And the second one?

A. About 45 minutes.

Q. The second day, or the second time?

A. 45 minutes.

Q. All right. And have you had any further conversations?

A. Just spoke to him when I came back out. Now.

Gregory Pfaff - Cross

Q. But as far as substantive conversations with regard to the facts of the case?

A. No.

Q. And did you come in yesterday in order to testify?

A. Yes, ma'am. Actually, I came in Tuesday. Tuesday night.

Q. All right. Now, I want to turn your attention to the conversation that you said that you had with Mr. McVeigh with regard to the det cord, I believe you said. Okay?

When did you originally think that this call occurred?

A. I originally said it was three or four months from when they were asking me about it, "they" being the FBI.

Q. All right. So you originally thought that this conversation took place, I believe you said, three to six months prior to May the 9th; is that correct?

A. That would be correct.

Q. So that would have been -- then the FBI told you that the phone call occurred in late January and early April; is that correct?

MR. MENDELOFF: Objection to the form of the question.

MS. RAMSEY: I'll rephrase the question.

THE COURT: All right.

BY MS. RAMSEY:

Q. When were you told that you were incorrect as to the timing the phone calls?

MR. MENDELOFF: Objection again, your Honor.

Gregory Pfaff - Cross

THE COURT: Overruled.

BY MS. RAMSEY:

Q. When were you told that you were incorrect about the timing of the phone calls, as you recall?

A. I believe it was the first evening I was with the FBI.

Q. The first time that you met with them at your delicatessen, or the second day?

A. The first time I met with them at the delicatessen.

Q. Do you have any independent recollection of when these phone calls occurred?

A. I could put it at the time of weather, and it was not completely cold, and yet it was not completely warm. And that would put me around September, October, because it would have been too early earlier. That three months would have been too early; it would have been in the dead of winter, and that would not have been right.

Q. So there are nice days in your area of the country and bad days in your area of the country, I assume, weather-wise?

A. I'm sure.

Q. And I believe there were also a couple of phone calls that you did not take; isn't that correct?

A. I believe so.

Q. Now, when you talked with this person on the phone, did you know who it was when you immediately began talking with him?

A. Yes.

Gregory Pfaff - Cross

Q. Did you ask him who he was?

A. I'm sure that I did, yes.

Q. Okay. That's what I mean: You didn't recognize his voice. You asked him who he was, or something of that nature?

A. Well, the first thing I would normally do is say, "Hello. Who's this?"

Q. And the answer was?

A. "Tim."

Q. Not "Tim McVeigh," just "Tim"?

A. As far as I recall, it was.

Q. Do you feel that you knew him well enough for him to just answer "Tim," or do you have to talk to him a little while to figure out who he was?

A. No, I knew who he was.

Q. Now, you said he also asked you for det cord?

A. Yes.

Q. And you didn't tell him that you would not get that for him; is that correct?

A. That is correct.

Q. And you also told him to call you back and you would see if you could supply it for him; isn't that correct?

A. I said I would look for it.

Q. Right. And the reason you did that, you said, is because you didn't want to turn off a customer?

A. Correct.

Gregory Pfaff - Cross

Q. Now, when he called, or when the call was made a few days later, I believe you said --

A. I believe it might be approximately seven to ten days later.

Q. All right. Did the person actually talk with you, or was a message left on your answering machine?

A. Excuse me?

Q. Did the person actually talk with you, or was a message left on your answering machine?

A. I spoke to Mr. McVeigh at the delicatessen. The delicatessen, I don't believe at that time had an answering machine. I do not believe that the delicatessen had an answering machine.

Q. You had an answering machine at your home; is that correct?

A. At that time, I believe I might have.

Q. And he told you what?

A. When I spoke to him directly? He asked me if I got any det cord.

Q. And?

A. Told him no.

Q. You said that on the first conversation that you had with him that you were surprised that he would drive all the way across the country --

A. Uh-huh.

Q. -- for this det cord, didn't you?

Gregory Pfaff - Cross

A. Yes.

Q. And his response was?

A. He needed it.

Q. All right. I believe your response on direct was he needed it badly.

A. Yes, ma'am.

Q. Have you ever told anyone before that he said, or the voice said, I needed it badly?

A. I'm sorry?

Q. Have you ever told anyone before today, FBI, in the first conversation you had, all the other conversations you've had, that the person said they need the det cord badly?

A. I believe I told the FBI that he needed it badly. I cannot tell you which conversation with them I actually said that.

Q. But it certainly was not the first or second; isn't that correct?

A. I cannot answer that.

Q. All right. Now, you knew that Mr. McVeigh was from Buffalo, New York?

A. Correct.

Q. And isn't Buffalo, New York, kind of in your area?

A. No.

Q. Particularly when compared to Arizona, though?

A. Buffalo, New York, is eight hours away from where I live.

Q. I understand that; but if you're living in Arizona and

Gregory Pfaff - Cross

you're coming home to see your parents, it's kind of in the area of your area; correct?

A. I wouldn't say that.

Q. Okay. Do you know if Mr. McVeigh was participating at gun shows?

A. Not that I know of.

Q. Never seen him sell anything other than through you at a gun show?

A. He was carrying a shotgun at one show.

Q. He was carrying a what?

A. A shotgun.

Q. Uh-huh.

A. Looking to sell a shotgun at one show.

Q. And you knew that he followed gun shows, obviously.

A. Yes.

Q. Since that's where you had seen him every time that you saw him; isn't that correct?

A. That is correct.

Q. When you received this phone call, you did not call the FBI or law enforcement or anyone of that nature to report this phone call, did you?

A. No.

Q. In fact, you thought the phone call had no value at all, didn't you?

A. That is correct.

Gregory Pfaff - Cross

Q. Do you have any idea whether the phone call that you received, either one of them, was actually from Arizona?

A. There is no way I have of knowing that.

Q. And do you know Terry Nichols?

A. No.

Q. And I assume that you've heard that name since the phone calls; is that correct?

A. Since the media, yes, ma'am.

Q. Yes. Is it your understanding from the conversations that you had with Mr. McVeigh that he would drive around the country to gun shows?

A. Excuse me?

Q. Is it your understanding from your conversations that you had with Mr. McVeigh that he would drive across the country or drive around to these gun shows?

A. I don't know of him particularly driving around the country to gun shows. I do recall that he was saying that he was leaving the New York area.

Q. And have you ever talked with the defense about this case?

A. Yes.

Q. When was that?

A. Oh, I'm sorry. The defense?

Q. Uh-huh.

A. Not really.

Q. You were asked to be interviewed on two occasions; isn't

Gregory Pfaff - Cross

that correct?

A. Yes.

Q. And you refused that; isn't that correct?

A. Yes, ma'am.

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

THE COURT: Yes.

MS. RAMSEY: No further questions, your Honor.

THE COURT: Any follow-up?

MR. MENDELOFF: Just a little, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Mr. Pfaff, you remember during cross-examination,

Ms. Ramsey asked you about the voice that was on the phone?

A. Yes.

Q. Is there any doubt in your mind whose voice that was?

A. Not at all.

Q. Whose voice was it?

A. Tim McVeigh.

Q. And you remember during cross-examination, you were asked certain questions about your first meeting in March here in Denver with the Government?

DEVELOP WITH THE GOVERNMENT:

A. Yes.

Q. You remember testifying that you met for about five or six

Gregory Pfaff - Redirect

hours that time?

A. Yes, sir.

Q. And what was the reason that you met for five or six hours?

A. It took that long for me to put a time line so I can actually figure when I did see Mr. McVeigh and where that I saw him.

Q. All right. Now, finally, do you remember on cross-examination you were asked questions about any receipts you had for any transactions with Defendant McVeigh?

A. That I sold him, yes.

Q. And do you remember mentioning that you did come up with a check for a transaction you had with Defendant McVeigh?

A. Yes, sir.

Q. Let me show you Government Exhibit 249, please. What is that?

A. That's the check that I had for Lock & Load distributors that I wrote to Tim McVeigh.

Q. And that's after you took items on consignment from him in that November 1992 gun show; is that right?

A. Yes, sir.

Q. And it was after this gun show that you saw him again in Monroeville in '93, and you had the conversation about Waco?

A. Yes, sir.

Q. Did you -- was Government Exhibit 249 a check that you created in the normal and ordinary course of your business at

Gregory Pfaff - Redirect

Lock & Load distributors?

A. Yes, sir.

MR. MENDELOFF: Move the admission of Government Exhibit 249, your Honor.

MS. RAMSEY: No objection.

THE COURT: Received, 249.

MR. MENDELOFF: Nothing further, your Honor.

THE COURT: Do you have any --

MS. RAMSEY: No, your Honor.

THE COURT: Can the witness be excused, Mr. Mendeloff?

MR. MENDELOFF: Yes, your Honor.

THE COURT: Do you agree?

MS. RAMSEY: Yes, your Honor.

THE COURT: You may step down. You're now excused from further attendance at the trial.

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. HARTZLER: The Government calls Kyle Kraus. Miss Wilkinson will question him.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Raise your right hand, please.
(Kyle Kraus affirmed.)

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

spell your last name.

THE WITNESS: Kyle Kraus, K-R-A-U-S.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Miss Wilkinson.

MS. WILKINSON: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Mr. Kraus. How are you doing?

A. Good.

Q. Can you tell us how old you are, please.

A. 23.

Q. Where do you live?

A. In Amherst, New York.

Q. What is the biggest city near Amherst, New York?

A. Buffalo.

Q. How long have you lived in Amherst?

A. About a year and a half.

Q. Where did you live before you lived in Amherst?

A. Lockport, New York.

Q. And is Lockport in the general vicinity of Buffalo, also?

A. Yes, it is.

Q. How long did you reside in Lockport?

A. 21 years.

Q. Can you tell us where you graduated from high school?

A. Lockport High School.

Q. Did you go to college?

Kyle Kraus - Direct

A. Yes.

Q. Where did you go?

A. My freshman year, I went to Cortland State College, and then following that I went to the University of Buffalo.

Q. Can you keep your voice up a bit?

A. Okay.

Q. Thank you. Have you finished your college education?

A. No, I have not.

Q. Why is that?

A. I'm going for a couple extra degrees. Some concentrations.

Q. Are you also employed at this time?

A. Yes, I am.

Q. Tell us a little bit about your job.

A. What we do is corp -- we do computers, basically. We do corporate internets and intranets. We also sell hardware to PCs and do software/hardware upgrades.

Q. Can you tell us the name of your business?

A. Edge Marketing.

Q. What's your title?

A. Vice president of sales.

Q. How did you get into that business?

A. Couple years ago, I opened up my own computer company. And

it's very competitive in the Buffalo area, because it's a fairly small area. There's a high number of computer salespeople.

Kyle Kraus - Direct

Then I had worked at the University of Buffalo doing web administration for the Division of Student Affairs. It was while working there that I really found my niche was doing web design and selling web sites, so I took the next logical step.

Q. Can you tell us what web administration is?

A. That's basically the design of a web site and the maintenance of a web site, making sure that the information is accurate; that it's up there for people to see so that people can access the information on, you know, a fairly quick and effective basis.

Q. Are you married?

A. No, I'm not.

Q. Let me ask you, do you know the defendant, Timothy McVeigh?

A. Yes, I do.

Q. What's your relationship with him?

A. I'm his cousin, second cousin.

Q. Can you explain how you're related to him as a cousin?

A. My mother and Tim's father are cousins.

Q. What is the age difference between you and the defendant?

A. About five-and-a-half years.

Q. Did you ever go to school together?

A. No, I did not.

Q. Did you spend time with him when you were growing up?

A. Spent a fair amount of time together.

Q. Tell the jury a little bit about that.

Kyle Kraus - Direct

A. Most of the time that we spent together consisted of like holidays, you know, summertime type of stuff; lot of family activities. Our family's pretty close, so we do a lot of family things.

Q. Tell us about your Christmas traditions.

A. Every year for -- since I've been around and before that time, every year on Christmas, we rotate to like one of six houses, where we -- everybody meets up for Christmas and we exchange gifts and, you know, sing "The Twelve Days of Christmas" and that kind of stuff.

Q. Did that include Mr. McVeigh and his family?

A. Yes.

Q. Did you keep up with the defendant and what he was doing after he graduated from high school?

A. Yes.

Q. Are you aware or were you aware that he went into the Army?

A. Yes.

Q. And when he went into the Army, did you keep in touch with him?

A. Yes. I did.

Q. How?

A. I believe when he first went in, there was like maybe a letter or two; but pretty much after that, it was when he was home on leave and at Christmastime.

Q. Did you also speak to his father and his sister about what

Kyle Kraus - Direct

he was doing?

A. Yes.

Q. Now, did there come a time when you received a package from the defendant when he was in the Army?

A. Yes.

Q. When was that?

A. That was in the fall of 1991.

Q. And what was in the package?

A. A book and a letter.

MR. NIGH: I'm going to object to reference to testimony from the fall of 1991 under Rule 403.

THE COURT: Well, where are you going with it?

MS. WILKINSON: He received the book that we have talked about earlier, your Honor.

THE COURT: Objection overruled.

BY MS. WILKINSON:

Q. I'm sorry. I'm not sure I heard your last answer, Mr. Kraus.

A. I received a book, The Turner Diaries, and a letter.

Q. What did the letter say?

A. It was just basically a "Hey, how you doing" type of letter and just had asked me that this was a book that I might be interested in and, you know, take a look at it.

Q. Where did the package come from?

A. From Kansas.

Kyle Kraus - Direct

Q. How do you recall that?

A. Because I was not expecting to receive a package from Kansas, you know, and I didn't receive a whole lot of mail at the time.

Q. How old were you at the time when you received the book?

A. I was 18.

Q. Later, after the bombing, did you meet with the FBI?

A. Yes, I did.

Q. Did you turn over the book that you had received from the defendant?

A. Yes, I did.

MS. WILKINSON: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Can you take a look at Government's Exhibit No. 1, Mr. Kraus?

A. Yes.

Q. Do you recognize that?

A. Yes.

... 100.

Q. What is it?

A. This is The Turner Diaries.

Q. Is that the copy that you provided to the FBI?

A. Yes, it is.

Q. How do you know that's the same copy?

A. Agent William Briggs had initialed and dated it in front of

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me.

Q. Did you watch -- I'm sorry. Go ahead.

A. Yes, he initialed and dated it in front of me.

MS. WILKINSON: Your Honor, Government offers Exhibit

1.

MR. NIGH: Your Honor, I object under Rule 403 and Rule 404.

THE COURT: Overruled. 1 is received.

BY MS. WILKINSON:

Q. Now, you told us you were in 12th grade when you received this; is that right?

A. Yes.

Q. Did you read it?

A. Yes, I did.

Q. What did you think of it?

A. It was -- it's a very powerful book. It's very moving.

Q. Were you interested in some of the issues that were in that book at that time?

A. Yes.

Q. Tell us about that.

A. I was interested in gun control. Brady Bill was being talked about, and so forth. And it, you know, had just interested me as, you know, taking people's guns away, that type of thing, what they were going to do.

Q. You were going to school full-time when you received the

Kyle Kraus - Direct

book?

A. I was registered full-time. I only attended classes in the morning.

Q. Did you also have a job?

A. Yes.

Q. What were you doing?

A. I worked at Johnson's Country Store. We sold hunting and fishing equipment.

Q. What else did you sell there?

A. We sold like fishing poles, guns, camping equipment and, you know, clothing.

Q. Do you know whether the defendant knew you were working at Johnson's County Store at the time -- or Country Store? Excuse me.

A. Yes.

Q. How do you know that?

A. He would come in now and again and just, you know -- we

would talk guns. You know, I enjoyed guns and, you know, knew a fair amount about them; and so, you know, we could talk and learn a little bit about what was going on.

Q. Did you and the defendant talk about gun control?

A. Not a whole lot.

Q. Did you talk about it a little bit?

A. A little bit.

Q. What did he say to you?

Kyle Kraus - Direct

A. Just that, you know -- that, you know -- that the Brady Bill, you know, wasn't a good idea and that it was -- it wasn't fair, you know, and so forth.

Q. Did the defendant tell you why he sent you a copy of The=20 Turner Diaries when you were in high school?

A. Basically because we shared, you know, a -- an opinion together that, you know, we weren't, you know, totally thrilled with the Brady Bill and that, you know, they wanted to really limit on who could own guns and what you could own so that, you know, this book had a lot to do with that.

Q. You told us that you read the book. Did you read the entire book?

A. Yes, I did.

Q. Did there come a time when you had a discussion with the defendant about The Turner Diaries?

A. Yeah.

Q. When was that?

A. That was at Christmas of 1991.

Q. Where was the discussion?

A. At the -- Tim's house.

Q. Do you know where, or can you recall where in his house that you had this discussion?

A. It could have been in any -- it was -- it may have been his room, or in the basement, or even in the kitchen. I -- you know, during the Christmas parties where, you know, basically

Kyle Kraus - Direct

everybody's all over the house; so it's hard to say -- remember exactly where.

Q. Was anyone else present other than you and the defendant?

A. No, I do not believe so.

Q. Did you tell us -- I don't think I asked you. Did you tell us who authored the book, The Turner Diaries?

A. Andrew Macdonald.

Q. Now, how did this conversation come up with the defendant about The Turner Diaries?

A. Just, you know, to ask me if I had received it and if I had read it, what I thought about it.

Q. He was interested in obtaining your opinion?

A. Yeah.

Q. What did you tell him?

A. That I just -- pretty much what I had said before: It's

just a very powerful book, and it has a lot to say; and it would be very, you know, very frightening if it really did come to this.

Q. What did he say to you?

A. That, you know, the government continues this kind of stronghold, this -- you know, it isn't an exact quote, but, you know, that someday it could possibly come to this because they're tightening legislation so tight.

Q. Now, we understand you can't remember the exact words of your conversation.

Kyle Kraus - Direct

A. Uh-huh.

Q. But in substance, what did you understand him to mean by the "stronghold"?

A. That someday it could come to this.

Q. What could come to this?

A. A civil war, if the government continued to, you know, take guns away or continue to have a real stronghold or strong arm on the public.

Q. What type of civil war?

A. Kind of like a revolution, type of -- that's what's depicted in the book.

Q. Now, did you ever discuss the Second Amendment and the defendant's views of the Second Amendment?

A. Not specifically the Second Amendment. But when dealing with, you know, the Brady Bill and that directly, you know, had to do with the Second Amendment.

Q. What did he tell you he thought about the Brady Bill?

A. He just didn't like it. And it was -- it wasn't a fair -- you know, he didn't think it was constitutional, and it was a bill that shouldn't be passed.

Q. You've told us that you read this book back in 1991; correct?

A. Correct.

Q. Have you reviewed the book again prior to coming to court?

A. Yes, I have.

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Q. Have you reviewed excerpts of the book that the Government has prepared to determine that they are accurate and reflect what's actually on each page in the book of the experts that you have seen?

A. Yes.

Q. Let me turn your attention to Government's Exhibit 1A, which should be on your screen. Do you see that?

A. No.

THE COURTROOM DEPUTY: Computer?

MS. WILKINSON: Yes.

THE WITNESS: Yes.

BY MS. WILKINSON:

Q. And could you open your book to page 1.

Are you able to see those excerpts on your screen?

ARE YOU ABLE TO SEE THOSE EXCERPTS ON YOUR SCREEN:

A. Yes.

Q. Now, on your excerpt, does it show the cover of The Turner=20 Diaries?

A. Yes, it does.

Q. And does it show the full page listed there, page 1?

A. Yes.

Q. And is there the highlighted portion that shows the portion that you've reviewed?

A. Yes, it does.

MS. WILKINSON: Your Honor, Government offers Exhibit 1A.

Kyle Kraus - Direct

MR. NIGH: Your Honor, I object. The Government's exhibit has highlighting which I don't believe is contained in Exhibit 1, and I object --

THE COURT: What's the purpose of this?

MS. WILKINSON: To publish it to the jury, your Honor.

THE COURT: Selected parts, parts that you've selected from a whole book?

MS. WILKINSON: Yes, your Honor, the parts that we believe are relevant to Mr. McVeigh's state of mind and the blueprint.

THE COURT: And what's this witness doing with it?

MS. WILKINSON: He's reviewed --

THE COURT: Is he a foil for presenting it?

MS. WILKINSON: No, your Honor. It's just so we can publish these excerpts.

THE COURT: Objection sustained. You can't just pick pieces out of the book.

BY MS. WILKINSON:

Q. Mr. Kraus, can you tell us briefly what this book is about?

A. It's about a group of people who -- who have had enough of the government and decide that they're going to take it into their own hands and move forward with measures and attempt to start a civil war.

Q. What type of measures do they take?

A. They wanted to first strike back at the government and at

Kyle Kraus - Direct

the people who have made the laws that -- you know, that had infringed what they thought; you know, have been infringing upon their rights.

Q. What type of action do they take?

A. They do a few things. The first thing is they build a truck bomb. They also mortar the White House or they mortar a federal building, and they -- they murder and assassinate people.

Q. After you had this conversation in December of 1991 with Mr. McVeigh, did he send you any other books?

A. Yes.

Q. What did he send you?

A. The Hunter.
Q. When did he send you The Hunter?
A. That would be in the spring of 1992.
Q. Who authored the hunter?
A. Andrew Macdonald.
Q. Did you receive anything with The Hunter when you received it from the defendant?
A. Maybe just a note that -- you know, just to let me know who it was from and, you know, just saying hello and so forth.
Q. Where were you when you received The Hunter?
A. I was in Lockport.
Q. Where did the package come from?
A. It came from Pendleton, which is an outskirt of Lockport.

Kyle Kraus - Direct

Q. What did you think when you received a package from your local area?
A. I just thought it was -- you know, it was odd that I had received a -- you know, a fairly big package from across town. I didn't know what it was.
Q. Did you know the defendant was in the area at that time?
A. I wasn't sure that he was there. I thought that he was there working currently. I thought that he was still in Lockport working, yes.
Q. Did you see him off and on during that time period?
A. Yes, off and on if he stopped by the house, you know, or some kind of family event or something.
Q. After you received the book, did you ever discuss with him why he mailed it to you instead of giving it to you in person?
A. Yeah, he said it was just easier, he didn't know if I would be home or if he would see me or whatnot. So he just mailed it to me so I would receive it, I would get it.

MS. WILKINSON: Your Honor, may I approach?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Showing you Government's Exhibit No. 2, do you recognize that?
A. Yes.
Q. What's that?
A. It's The Hunter.

Kyle Kraus - Direct

Q. And how do you recognize it?
A. There's the initials on the inside page.
Q. Did you also turn over Government's Exhibit No. 2 to the FBI?
A. Yes, I did.

MS. WILKINSON: Government offers Exhibit 2.

MR. NIGH: I object --

THE COURT: Same ruling.

MR. NIGH: -- to No. 2 under 403.

THE COURT: Objection overruled. 2 is received.

BY MS. WILKINSON:

Q. Now, when you received *The Hunter*, you told us when in 1992?

A. It was in the spring.

Q. Did you read it?

A. I read it briefly. I looked at it and had read the first few chapters.

Q. Can you tell us what the book is about?

A. It was --

MR. NIGH: I'm going to object --

THE COURT: Sustained, if he's only read a few chapters.

THE WITNESS: Umm --

THE COURT: No, I sustained the objection, meaning you don't answer.

Kyle Kraus - Direct

BY MS. WILKINSON:

Q. You can't answer.

A. Okay.

Q. Now, let's turn to April 19, 1995. Can you tell us when you found out about the bombing of the Murrah Building?

A. Later that afternoon.

Q. How did you find out?

A. On the TV.

Q. What did you do?

A. I was basically at my -- I was at my home and watching TV, and they had -- just watching the press coverage and so forth of it.

Q. And at a certain point, did you take some action?

A. Yeah, I -- what had happened is I had thought about what happened, and as soon as they had realized how they believe that the bombing occurred, I said it was right in line with

The=20
Turner Diaries.

Q. So what did you do?

A. I went upstairs and got the book.

Q. And when did you meet with the FBI?

A. The following day.

Q. What did you tell them about the books?

MR. NIGH: I'm going to object.

MS. WILKINSON: I'll rephrase it, your Honor. I'll withdraw it.

Kyle Kraus - Direct

THE COURT: All right.

BY MS. WILKINSON:

Q. What did you do, when you met with the FBI?

A. I -- they had asked -- I turned the books over.

MS. WILKINSON: No further questions.

THE COURT: Mr. Nigh, do you have some questions?

MR. NIGH: Yes, your Honor.

CROSS EXAMINATION

CROSS-EXAMINATION

BY MR. NIGH:

Q. Good morning, Mr. Kraus.

A. Hi.

Q. My name is Rob Nigh. You and I have spoken on the telephone before.

A. Correct.

Q. But we've never met in person.

A. Right.

Q. First of all, I'd like to direct your attention back to when you received The Turner Diaries.

A. Uh-huh.

Q. What year was that?

A. 1991.

Q. So some six years ago?

A. Yes.

Q. And is that the only conversation that you had with Mr. McVeigh about the book?

Kyle Kraus - Cross

A. Yes.

Q. And essentially the discussion surrounded gun control; is that correct?

A. Yes.

Q. And I think during direct examination you said that when you talked to Tim about the book, the both of you talked about how this could happen?

A. I . . . could you rephrase that, please?

Q. Sure. It was a fictional book, was it not?

A. Yes.

Q. Talked about espionage and running around undercover and things like that?

A. Uh-huh.

Q. Is that right?

A. Yes.

Q. And you took it as an entirely fictional account?

A. Yes.

Q. Directing your attention, if I might, to Government's Exhibit No. 1, which I think is the book -- is that right?

A. Yes.

Q. Would you turn to the front inside cover?

A. Uh-huh.

Q. Right after the title page.

A. Yes.

Q. First edition of the book was in May of 1978; is that

Kyle Kraus - Cross

right?

A. Yes.

Q. And that was when it was written; is that your understanding?

A. Yeah, that's my understanding.

O. You and Mr. McVeigh shared some of the same interests in

reference to gun control; is that right?

A. Yes.

Q. And was the discussion surrounding this book in that context?

A. Yes.

Q. Did he ever say anything to you about the aspects of the book that dealt with bombing a federal building?

A. No, he did not.

Q. In fact, the bombing in The Turner Diaries was at FBI headquarters in Washington, D.C.; is that right?

A. I'm not sure of the exact location that they had specified in the book.

Q. Does that sound right to you?

A. Yeah, I mean it sounds correct.

Q. And there was also a mortar attack on the Capitol?

A. Yeah, that followed the initial truck bombing that they had depicted in the book.

Q. There was also another event in The Turner Diaries about downing a commercial airliner with a bazooka; do you remember

Kyle Kraus - Cross

that part?

A. No.

Q. Coming out of New York?

MS. WILKINSON: Your Honor, I'm going to object.

We're now doing what we were trying to do, which is offering portions of book.

THE COURT: Well, he's testing his familiarity with the book. Overruled.

BY MR. NIGH:

Q. Do you remember a part about downing a commercial airliner

over New York?

A. I don't specifically remember that in the book.

Q. Did you have any conversations with Mr. McVeigh about The=20 Turner Diaries after 1991?

A. No, I don't believe so.

Q. You saw him after that, did you not?

A. Yes, I did.

Q. Did he ever bring the book up again?

A. No.

Q. In reference to The Turner -- I mean the book Hunter, when did you receive it?

A. I received it about six to -- about six months after I received The Turner Diaries, which was in the spring of 1992, late spring.

Q. So about five years ago?

Kyle Kraus - Cross

A. Yes.

Q. Did you ever have any discussions at all with Mr. McVeigh about the book Hunter?

A. Not about the context of The Hunter.

Q. Did you have any discussions about whether he had ever read the book Hunter?

A. I don't believe we had a discussion about his, if he'd read The Hunter. I believe that it was in the letter that he had put with the book was that he thought this was a book that I may be interested in and that he had read.

Q. Did he tell you it was by the same author as the book The=20 Turner Diaries?

A. No.

Q. Did you learn that it was by the same author?

A. Yes. It's printed on the cover.

Q. Essentially a sequel?

A. I guess so. I don't know if it would be a sequel, but it was narrated and written in the same context as The Turner=20 Diaries. It was like a diary of written -- written in the past of what somebody had experienced. It was kind of their diary of what they had done.

Q. Kind of a made-up scenario of what archaeologists might find sometime later?

A. I'm not real clear on the question.

Q. That's because my question wasn't real clear.

Kyle Kraus - Cross

A made-up scenario?

A. Yes.

MR. NIGH: Your Honor, can I have just a moment?

THE COURT: Yes.

MR. NIGH: Thank you, your Honor.

BY MR. NIGH:

Q. Mr. Kraus, let me direct your attention, again, if I may to the inside cover, the copyright information.

A. Yes.

Q. Do you see the cumulative total of books that have been sold in The Turner Diaries?

A. No, I do not.

Q. About in the middle of the page?

A. No, they just list the editions and the year they were printed.

Q. And then after that, does it have a cumulative total of copies?

A. No, it doesn't.

MR. NIGH: Your Honor, may I approach for just a moment?

THE COURT: Yes.

MR. NIGH: Slightly different version than the one I have, your Honor.

BY MR. NIGH:

Q. Mr. Kraus, does the book talk about the events of

Kyle Kraus - Cross

September 16, 1991? You can turn to page 1.

A. Yes, it does.

Q. Is that the time period that they're talking about in the book?

A. Yes.

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

THE COURT: Any follow-up questions.

MS. WILKINSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Sir, you told us that you stopped reading The Hunter midway through the book; is that right?

A. That's right.

Q. Why?

MR. NIGH: I object to that, your Honor.

THE COURT: Sustained.

Is the witness excused?

MS. WILKINSON: Yes.

MR. NIGH: Yes, your Honor.

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

Next witness.

MR. HARTZLER: The Government calls Carol Swanson.

Mr. Mackey will question her.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Would you raise your right

Kyle Kraus - Redirect

hand, please.

(Carol Swanson affirmed.)

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

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

THE WITNESS: Carol Swanson, and S-W-A-N-S-O-N.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mackey.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MACKEY:

Q. Good morning, Ms. Swanson.

A. Good morning.

Q. Tell the jury, please, where you're from.

A. Flint, Michigan.

Q. And how long have you lived in or around Flint, Michigan?

A. My whole life. 56 years.

Q. Now, I didn't ask that question.

Are you married?

A. Yes, I am.

Q. And have children?

A. Yes, I do.

Q. And --

A. Two children.

Q. How old are they?

Carol Swanson - Direct

- A. 34 and 31.
- Q. Do you presently operate a business in Flint, Michigan?
- A. Yes, I do. I have a Mailbox Etc=C4=C4 store.
- Q. And are you the sole proprietor of that business?
- A. Yes.
- Q. How long have you had a Mailboxes Etc=C4=C4 location in Flint?
- A. I've had it 11 years, going on 12.
- Q. Tell the jury what services your business offers?
- A. We are a postal and business service, and we rent out private mailbox rentals.
- Q. And for customers interested in renting a mailbox, tell the jury exactly what service you provide. How do they get their mail?
- A. Of course, mail is delivered to us. We sort the mail and put it in the boxes. When a customer comes in, there are a couple of forms that they do have to fill out.
- Q. That's for a new customer?
- A. New customer, yes.
- Q. Tell the jury what forms you routinely fill out for new customers.
- A. One is required by the Post Office. It is a 1583, I believe it is. And the other is just a contract with us.
- Q. And what sort of information goes on the postal form?
- A. The postal form is the customer's, of course, name, address, contact address, their driver's license, and another

Carol Swanson - Direct

- piece of ID, whether it be Social Security, or whatever.
- Q. And generally speaking, what sort of information goes in on the lease or the agreement with Mailboxes Etc=C4=C4?
- A. Name, address, phone number, how they heard about us, whether it's a friend, Yellow Pages, and it's just a basic contract in getting a box.
- Q. And over the years, have you had a occasion to fill out a lot of both of those forms?
- A. I do believe so.
- Q. Do you, Mrs. Swanson, routinely keep those forms on file with your business?
- A. Yes, we do. We are required by the post office to have those.
- Q. All right. When are those forms filled out in relationship to the opening of the mailbox itself?
- A. Usually when a customer comes in, we talk about the purpose of the box and the uses of it. Then we usually just hand the form to the customer and they fill it out.
- Q. Let me direct your attention, please, Mrs. Swanson, to January, 1993, and ask if you personally had occasion to open a mailbox at your business in Flint, Michigan, for a customer named Timothy McVeigh.
- A. Yes, we did.
- Q. When was that box opened?
- A. I believe it was opened on January 7. The service was not

Carol Swanson - Direct

to start till about the 15th of the month, just for billing purposes.

Q. And how long did that customer have mailbox service at your location?

A. I believe until about the middle of October.

Q. Same year?

A. Of the same year, of '93.

Q. Before you, Mrs. Swanson, you should find a series of Government exhibits. I'm going to direct your attention to Exhibits 24 and 30, first of all.

A. Okay.

Q. Do you have those in front of you?

A. Yes.

Q. Let's turn first to Exhibit 24. Tell the jury, please, what that is.

A. That is our mailbox service agreement, and again, just explaining what our service is. If a customer is going to receive COD items, of course they have to leave their deposit.

Q. Excuse me. Does Exhibit 24 relate to the customer named Timothy McVeigh?

A. Yes, it does.

Q. Turn your attention now to Exhibit 30. Tell the jury what that is.

A. That is the postal application for delivery of mail through the agent. And that is the Form 1583 that was filled out by

Carol Swanson - Direct

Timothy McVeigh.

Q. Those are the two corresponding forms you described earlier in your testimony?

A. Yes. Right.

Q. As it relates to the customer Timothy McVeigh; is that right?

A. Yes.

Q. And do you recall in April 1995 being contacted by the FBI?

A. Do -- yes, I do.

Q. And did they ask you to search for any records you had concerning Timothy McVeigh?

A. Yes, they did.

Q. And are Exhibits 24 and 30 ones that you found among your records at Mailboxes Etc=C4=C4?

A. Those are the exact ones.

MR. MACKEY: Your Honor, I'd move to admit Exhibits 24 and 30.

MS. MERRITT: No objection.

THE COURT: They are received, 24 and 30.

MR. MACKEY: ELMO, please.

BY MR. MACKEY:

Q. Mrs. Swanson, you see before you on the screen below you a depiction of Exhibit 24?

A. Yes.

Q. All right. And that's a mailbox services agreement for

Carol Swanson - Direct

Timothy McVeigh that you opened in January of '93?

A. Yes, it is.

Q. Let me focus in now so that we can perhaps read some of this.

Would you tell the jury what box you assigned and what address you assigned to that customer in 1993.

A. It would have been the customer's name, and it was G4225 Miller Road, No. 146, Flint, Michigan, 48507.

Q. And the 146 would be the box at your location?

A. Right.

Q. And the personal information below there: Did you see that filled out at the time?

A. Yes, I did.

Q. And there's a line for customer signatures. Do you see that?

A. Yes.

Q. And is that the signature affixed to that agreement on that date?

A. Yes, it was.

Q. Read into the record, please, if you can, the identifying information below that, then.

A. Giving the address, the address given would be 6592 Dysinger, D-Y-S-I-N-G-E-R, Road, No. 17, Lockport, New York, 14094; no home phone number on it and just a friend recommendation.

Carol Swanson - Direct

Q. On the right-hand side of that same document, do you see writing of what appears to be a different style?

A. That is my handwriting.

Q. And what does that tell you?

A. It was just notes to us saying the first rental was a three-month rental, two-key deposit, and it started January 15. The date on the document was January 7.

Q. And the two keys: What does that refer to?

A. One is a box key, and the other key is what we call 24-hour-access key that gives a customer access to their box, of course, 24 hours.

Q. On January 7, or thereabouts, 1993, did you tender to this customer keys for access to that box?

A. Yes, we did.

Q. Let me turn your attention, then, to Government Exhibit 30. What is that, please?

A. That is the Post Office Form 1583. And it's application for delivery of mail through an agent, and we are the agent.

Q. Was this filled out in your presence on January 7, '93?

A. Yes, it was.

Q. And how do you know that?

A. Mainly because I am the person that signed it.

Q. Do you see your signature in the bottom left-hand corner?

Q. Do you see your signature in the bottom left-hand corner?

A. Yes, it is.

Q. What identification did you get from this customer on that

Carol Swanson - Direct

date?

A. They had identification was a New York driver's license and military ID.

Q. And did you verify the driver's license information that appears on Exhibit 30 when you filled it out?

A. Yes. The document was produced.

MR. MACKEY: Your Honor, I'd move to admit, pursuant to 902, driver's license information for one Timothy James McVeigh, Government Exhibit 32.

MS. MERRITT: No objection.

THE COURT: 32 is received.

BY MR. MACKEY:

Q. Mrs. Swanson, would you look at Government Exhibit 32 in front of you. It might still be in the folder.

A. 32.

Q. Before coming to court today, did you compare the driver's license number that appears on exhibit 32, certified application of the New York driver's license application with the information that appears on Exhibit 30, your agreement?

A. Yes, we did. We just verified the number and the date so that it would be a valid ID, just wasn't an expired license.

Q. Are the numbers that appear on 30, Exhibit 30, the same as Exhibit 32?

A. Yes, they are.

Q. All right, thanks. In May, Mrs. Swanson, of 1993, any mail

Carol Swanson - Direct

that was directed to Timothy McVeigh at this box, would that have been delivered pursuant to your agreement with that customer?

A. Yes, it would have.

MR. MACKEY: I have nothing else, your Honor.

THE COURT: Ms. Merritt, do you have some questions?

MS. MERRITT: Yes, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MS. MERRITT:

Q. Good morning Mrs. Swanson.

A. Good morning.

Q. How are you. Mr. McVeigh opened this mailbox in January of 1993; correct?

A. Yes, it was.

Q. And when he opened it, it was for a three-month period; is that correct?

A. That was the first billing period, yes, with a box renewal becoming due upon the three months, yes.

Q. And then he extended the box on two occasions; is that correct?

A. That's right.

Q. And so he would have had the box until October of 1993; is that your understanding?

A. Right. We were, said at that time the box would be closed.

Carol Swanson - Cross

Q. So he did not extend again in October 1993; correct?

A. No, he did not.

Q. And he did return the keys to you; is that correct?

A. Yes, he had returned the keys earlier. And we had applied that to his postage account for forwarding.

Q. Now, I believe you met with Mr. McVeigh on how many occasions, would you say, two?

A. Myself, only two. I believe my daughter met once before; that would be about it.

Q. And you gave the FBI a description of what you remembered Mr. McVeigh to look like; is that correct?

A. Yes, I did.

Q. And you described him as being tall, slim build, blond hair?

A. Right.

Q. Is that correct?

A. Yes, I did.

Q. Now, after -- after that you spoke with him on the phone several times; isn't that correct?

A. Yes, we did.

Q. And the purpose of those telephone conversations, was that so he could give you instructions as to where to forward his mail; is that correct?

A. Yes, it was.

Q. And you recall in February of 1993, you forwarded some mail

Carol Swanson - Cross

to Florida?

A. Yes, we did. That was, I believe, the first forwarding.

Q. And your last verbal contact with Mr. McVeigh was around July 1993; is that correct?

A. But I think we had contact also the end of September.

Q. Did you tell the FBI that your last contact with him was around July of 1993?

A. I did, yes.

Q. Now, you said that he had a key to the front door of the business; correct?

A. Right.

Q. Did you have security cameras there that would record the photograph of people who would enter with a key to get mail?

A. No, we do not have a security camera. We just have the security gate that of course closes our part off.

Q. And this was a 24-hour-access facility; correct?

A. Yes.

Q. So someone could come in at 2:00 in the morning to get their mail?

A. Right, as long as they had a key to the front door.

Q. Now, after he stopped getting -- after his box was closed in October of 1993, did you either return or destroy any mail that then arrived for him?

A. Usually for at least 30 days after a box is closed, the mail is still forwarded to whatever instructions we were given

Carol Swanson - Cross

at the time. Sometimes it is a bit longer. If there's postage left on the account, we will continue the first class mail. Fourth class is usually not forwarded.

Q. So his box was over in October '93; correct?

A. Right.

Q. You would have continued to forward the mail until November 1993?

A. Yes.

Q. And then after November of 1993, if it was first class mail, you would have returned it to sender?

A. We would have. Most of it was not returned until after the holiday. I believe we forwarded mail through December at that time.

Q. Okay. And then third or fourth class mail you would have destroyed --

A. Right.

Q. -- that came after November of 1993; is that correct?

A. Yes.

Q. Now, you did turn -- make photocopies of the envelopes of two pieces of mail that came for Mr. McVeigh and turned those over to the FBI; is that correct?

A. Yes, those were instructions that I had left in the file; when they came in, they were just put in the file.

Q. And those two pieces of mail were letters from the United States Army; is that correct?

Carol Swanson - Cross

A. One was, I believe.

Q. Was Mr. McVeigh polite when you spoke to him on the telephone?

A. Yes, he was.

Q. Now, you stated that when he opened the box, he gave you for identification a New York driver's license and a military ID; correct?

A. Yes.

Q. And the address that he gave you for the application was 6592 Dysinger, D-Y-S-I-N-G-E-R; is that correct?

A. Yes.

Q. And that's D, as in Donald; not B, as in boy; right?

A. Yes.

MS. MERRITT: Your Honor, if I could show what's been admitted as Government's Exhibit 31.

THE COURT: Yes.

THE COURTROOM DEPUTY: 32.

THE COURT: 33. I think

THE COURT: 32, I think.
MS. MERRITT: Excuse me, he didn't.
If I might have a moment, your Honor.
THE COURT: Yes.
MS. MERRITT: Nothing further. Thank you.
THE COURT: Anything further?
MR. MACKEY: Two questions, your Honor.
THE COURT: All right.

Carol Swanson - Redirect
REDIRECT EXAMINATION

BY MR. MACKEY:

Q. Based on your review of your records and your recollection, Mrs. Swanson, did Mr. McVeigh have keys to Box 146 in May of 1993?

A. Yes, he did.

Q. Finally, other than the Florida address, did Mr. McVeigh give you other addresses to which he wanted his mail forwarded?

A. Yes, there was.

Q. And there was one address in Decker, Michigan?

A. Yes, that was one.

Q. And another in Kingman, Arizona?

A. Yes, it was.

MR. MACKEY: Nothing else.

THE COURT: Is there any recross, Ms. Merritt?

MS. MERRITT: No, your Honor.

THE COURT: The witness to be excused, I take it.

MR. MACKEY: Yes, your Honor.

THE COURT: Is that agreed? Ms. Merritt?

MS. MERRITT: Yes.

THE COURT: Agree to excuse the witness?

All right. You can step down and go back to Michigan.

THE WITNESS: Thank you.

THE COURT: Members of the jury, we'll take our morning recess at this point, as is the custom that we have followed, it being about midway through the morning. So again you're excused for the usual 20-minute break; and again the usual cautionary instructions to continue to be careful to not make up your minds before you hear all of the evidence and to avoid discussion of any aspects of the case among yourselves and all others.

You're excused now for 20 minutes.

(Jury out at 10:23 a.m.)

THE COURT: Recess to 10:45.

(Recess at 10:24 a.m.)

(Reconvened at 10:45 a.m.)

THE COURT: Be seated, please.

(Jury in at 10:45 a.m.)

THE COURT: Next witness.

MR. HARTZLER: Government calls Dana Rogers.

Mr. Mackey will question.

THE COURT: Thank you.

(Dana Rogers affirmed.)

THE COURTROOM DEPUTY: Have a seat, please.

Would you state your full name for the record and

would you please your full name for the record and spell your last name.

THE WITNESS: My name is Dana Rogers, R-O-G-E-R-S.

THE COURT: Mr. Mackey?

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

Dana Rogers - Direct

BY MR. MACKEY:

Q. Mr. Rogers, good morning.

A. Good morning.

Q. Would you tell the jury where you reside, the city, please.

A. I live in Longmont, Colorado.

Q. Not too far from here?

A. That's right.

Q. And where do you work?

A. I work for Paladin Enterprises in Boulder, Colorado.

Q. Could you spell "Paladin" for the court reporter, please.

A. P-A-L-A-D-I-N.

Q. And how long have you worked for Paladin Press.

A. Eight years.

Q. Your educational background? What is it, please.

A. I have a B.S. degree in finance and a B.S. degree in economics.

Q. Have you ever attended law school?

A. No, sir.

Q. What is the position you currently hold at Paladin Press?

A. I'm the director of finance.

Q. Have you been in that position for the duration of your employment?

A. Yes, I have.

Q. Could you give the jury an overview of your job? What do you do?

Dana Rogers - Direct

A. Basically the duties of a chief financial officer, including custodian of the records.

Q. Could you tell the jury what business Paladin Press is engaged in?

A. We're a publishing and video production company. We sell books and videos.

Q. And how do you sell them?

A. Primarily through mail order.

Q. All right. Do you print any books?

A. No, sir, we don't.

Q. Essentially, distribute books printed by others?

A. Printed by others and published by us, yes.

Q. Does Paladin Press have a target market? How would you describe the market that you --

A. No, we're mass distribution. We advertise in magazines, radio, place ads. Our catalogue is our biggest advertising medium.

Q. What sort of books or line of materials is offered by

Paladin Press?

A. Military science, martial arts, police science, self-defense.

Q. You mentioned the use of catalogues. Could you tell the jury a little bit more about what play or what use Paladin Press makes with its catalogues?

A. We release anywhere from 12 to 15 new books or videos each

Dana Rogers - Direct

month -- or every other month. Excuse me. And we advertise primarily that through our catalogue. We print about 90,000 catalogues every other month.

Q. And on what frequency? I'm sorry. I didn't hear.

A. Every other month.

Q. All right. Thank you.

To whom do you send the catalogue?

A. Primarily to our mailing list. We have an in-house mailing list of anywhere from 30- to 35,000, and anyone who calls and requests a catalogue may purchase one for \$2.

Q. And how does one get on the Paladin Press mailing list?

A. By making a purchase, and then we'll mail you a catalogue every other month for the next year.

Q. Can you tell the jury how Paladin Press receives orders for its books and videos?

A. Any number of ways. The primary way is through the mail or through our 800 number service, which is an off-site service out of state. We take orders on the phone at our office in Boulder. All -- excuse me. All orders are processed through Boulder, so we're -- wherever they come from, they go through our office.

Q. Do you also take written orders?

A. In the mail, yes.

Q. Yes. Tell the jury a little bit in overview fashion at this point what kind of records Paladin Press keeps at your

Dana Rogers - Direct

direction, your oversight, for processing and completing orders placed by customers.

A. We keep the original order document. If it was sent through the mail, we'll keep that order slip that was taken by the 800 service. We keep that slip. If it was taken over the phone, we have a computer record. They're all entered into a centralized order-processing function, all put through a computer record system so that we can ship within 24 hours.

Q. Generally speaking, what's the nature of the information that you collect and maintain in your business about each one of those orders?

A. When it was placed, who placed it, how it was paid for, and when it was shipped.

Q. And do you keep those records in such a fashion that you can go back and retrieve particular customer purchases?

A. Yes.

Q. Directing your attention then to May of 198 -- 1985, did the FBI make a request of you to search those files for any orders placed by a customer named Timothy McVeigh?

A. Yes, they did. We were requested and -- by a fax, later followed by letter. They supplied name, address, a credit card number, and requested us to search our records.

Q. Did you do so?

A. Yes, I did.

Q. What did you find?

Dana Rogers - Direct

MR. NIGH: I'm going to object under Rule 402 based upon the time period.

THE COURT: Overruled.

You may answer.

THE WITNESS: I'm sorry. The question, please.

THE COURT: "What did you find," was the question.

MR. MACKEY: It was, your Honor.

BY MR. MACKEY:

Q. What did you find in your search, Mr. Rogers?

A. We found we had an order placed about the time that they had originally outlined as well as a subsequent order.

Q. Do you recall the dates of those two orders?

A. One was in 1992 and the other in 1993.

Q. Before you, Mr. Rogers, you'll find a series of Government's exhibits in the accordion folder. Pull out, please, at this time Government's Exhibits 18 and 19.

A. Okay.

Q. Do you have them in front of you?

A. Yes, I do.

Q. Have you seen them before today?

A. Yes, I have.

Q. Where did they come from?

A. I supplied them to the FBI.

Q. Are those the records that you produced in your search for orders placed by Timothy McVeigh?

Dana Rogers - Direct

A. Yes.

MR. MACKEY: Would move to admit Government's Exhibit 18 and 19.

MR. NIGH: Your Honor, I object based upon the date.

THE COURT: Yes. Same objection that you had. Is that the only objection?

MR. NIGH: It is, your Honor.

THE COURT: All right. 18 and 19?

MR. MACKEY: 18 and 19.

BY MR. MACKEY:

Q. They relate, do they not, Mr. Rogers, to the same order, the 1992 order?

A. Yes, they do.

THE COURT: All right. They're received.

MR. MACKEY: May I publish Exhibit 18 please?

MR. MACKEY: May I publish Exhibit 19, please?

THE COURT: Yes.

BY MR. MACKEY:

Q. Mr. Rogers, looking in the screen below you, can you see -- or with the exhibit in front of you, can you tell the jury what that document is, please.

A. This is an order blank taken by our 800 service for an order dated May -- excuse me -- March 3, 1992. The order was received by our 800 service. At that time, it was in Alabama, I believe. It references a credit card; the purchaser's name, Timothy McVeigh; telephone number; an address at 6289 Campbell

Dana Rogers - Direct

Boulevard, Lockport, New York, 14094.

Q. What did Mr. McVeigh order in March of 1992 from Paladin Press?

A. Two books. The first is Ragnar's Big Book of Homemade Weapons for \$25 and an Improvised Explosives book for \$10.

Q. Thank you. Exhibit 19: Tell the jury, please, what that document is.

A. This is some internal -- I believe there is two pages in here. May I take this out?

Q. Yes.

A. This is an internal report showing that we processed the order on March 5, 1992, references the purchaser's account number, the zip code -- and that's part of their account number -- the purchaser's name, date it was processed, what was purchased, and the total paid.

Q. Does the information on Exhibit 19 relate then to the order form you've identified on Exhibit 18?

A. Yes, it does.

Q. Does it show that Paladin Press was paid?

A. Actually, next page, the deposit report, shows that we were paid.

Q. And does it show the date of shipment?

A. It is on about March 5.

Q. In 1992 and '93, what was Paladin Press' policy as to the speed with which they would process customer orders?

Dana Rogers - Direct

A. As it is now, we process them and ship the order within two days of receipt.

Q. Based on the records that you've researched, was this order shipped to Mr. McVeigh at the address given?

A. As far as we're able to determine, yes.

Q. Turn your attention now, Mr. Rogers, to Government's Exhibit No. 20. Tell his Honor and the jury what that exhibit is, please.

A. This is our catalogue from Volume 23, No. 3; would have been in 1993, May.

Q. Would that have been the catalogue you're describing that Paladin Press would have offered to its customers, anyone on

the mailing lists, in May of 1993?

A. As well as anyone who called and requested a catalogue, yes.

MR. MACKEY: Your Honor, I'd move to admit Government's Exhibit 20.

MR. NIGH: Same objection, your Honor.

THE COURT: All right. Overruled. 20 received.

BY MR. MACKEY:

Q. Mr. Rogers, does that show the cover for your catalogue on Government's Exhibit 20?

A. Yes. The front cover.

Q. Turn your attention to page 1, please. In the bottom right-hand corner, what's being shown to the jury at this

Dana Rogers - Direct

point? Describe what that is.

A. This is the contents or the directory of where books on these particular topics can be found within the catalogue.

Q. Table of contents organized by subject matter?

A. Yes, sir.

Q. And in May of 1993, Paladin Press offered materials under the category of explosives and demolition starting on page 43. Is that right?

A. That is correct.

Q. Turn, if you would, to page 43 in that catalogue.

Is that the first page of the offerings of Paladin Press on explosives and demolitions?

A. Yes, it is.

Q. What's the first listing under that category?

A. It's a book entitled Homemade C-4, A Recipe For Survival by Ragnar Benson.

Q. With the Court's permission, would you read into the record the description for that book, for just that book.

MR. NIGH: I object, your Honor.

THE COURT: Pardon me?

MR. NIGH: Object under Rule 403.

THE COURT: Overruled.

This is the only portion of the book that you believe to be relevant?

MR. MACKEY: It is, your Honor. The catalogue. Yes,

Dana Rogers - Direct

your Honor.

THE WITNESS: "Serious survivors know that the day may come when they need something more powerful than commercial dynamite or common improvised explosives. For blowing bridges, shattering steel, and derailling tanks, they need C-4. But, as many of the goodies survivors hunger for, C-4 is not legally available to civilians and is hard to come by on the black market.

"Ragnar's recipe for homemade C-4 calls for" three --
"for just three ingredients, all legal, common and inexpensive.

It requires no special utensils, reference books or training. The step-by-step directions will show you how to make your own C-4 and survive!"

"For informational purposes only. 5 1/2 by 8 1/2, softcover, photos, 56 pages. ISBN 0-87364-558-8, \$12."

BY MR. MACKEY:

Q. That particular catalogue code number -- that is used by the customer and by Paladin Press to process orders?

A. The ISB?

Q. Yes.

A. No, that's an international book number.

Q. Can that number sometimes be used by customers to place an order?

A. Yes.

Q. Turn your attention finally on the catalogue to the back

Dana Rogers - Direct

cover.

What is that, please.

A. That's the -- inside the back cover, and it's the order blank used by most of the people to order through the mail.

Q. It's part of the catalogue?

A. Yes.

Q. And how do customers use that mail-order slip in placing orders with Paladin Press?

A. Primarily they'll fill it out and mail it into us.

Otherwise, they may fill it out at home and call us so they'll have the information in front of them on what they want to order.

Q. Does it necessitate cutting out the back portion of the catalogue?

A. Yes, or tearing it off.

Q. If you're on the mailing list, or were in May of 1993, how might you put your customer name on that order?

A. A lot of folks will use the sticker, mailing label that's on the outside of the catalogue, and put it on the inside cover.

Q. If you turn your attention now to Exhibit 21. It should be in front of you, please.

Describe what you see, Exhibit 21.

A. Do you want to put it on the screen?

Q. For right now, I just need you to identify it.

Dana Rogers - Direct

A. This is an order blank from inside the catalogue, the same catalogue we just went over. It has a mail label sticker showing an account number and advertising code. It is --

Q. Let me ask it this way, Mr. Rogers: Is that the order for a Timothy McVeigh in May of 1993?

A. Doesn't have a date on it, but it would be around then because it was the May, '93 catalogue, yes.

MR. MACKEY: Would move to admit Government's Exhibit

MR. NIGH: Same objection, your Honor.

THE COURT: Overruled. 21 received.

BY MR. MACKEY:

Q. Can you read into the record, Mr. Rogers, the name of the customer and the mailing address?

A. It's last name first, McVeigh, Timothy, 4225 Miller Road, No. 146, Flint, Michigan, 48507.

Q. And what did that customer order?

A. One copy of Homemade C-4 by Ragnar Benson, the book referenced -- I believe that's the same ISB we just went over -- for \$12.

Q. Total payment was what, please.

A. \$16 including postage, and it was paid by check or money order.

Q. Look at Government's Exhibit 23. Tell his Honor and the jury what that is.

Dana Rogers - Direct

A. This is a photostatic copy of the money order that was used to pay for the order we just reviewed.

MR. MACKEY: Your Honor, I'd move to admit Government's Exhibit 23.

MR. NIGH: Same objection, your Honor.

THE COURT: 23 received. Overruled.

BY MR. MACKEY:

Q. Mr. Rogers, are you familiar with how to read dates on money orders?

A. Not particularly, no.

Q. Can you tell the jury the customer who purchased this money order, according to Exhibit 23?

A. The purchaser of the money order is listed as Tim McVeigh at 4225 Miller Road, No. 146.

Q. And the person to whom the mail order or the postal money order was made payable to, please.

A. Made payable to Paladin Press.

Q. In what amount?

A. In the amount of \$16.

Q. Would you also look at Government's Exhibit 22.

A. Okay.

Q. And tell the jury what that is, please.

A. These are similar reports to what we just reviewed on the earlier order, the ordering master report, reflecting the order that was placed on May 5, 1993, the product purchased, and the

Dana Rogers - Direct

amount paid.

The second is the deposit report for the same date showing the payment in the amount of 16 was received.

Q. Based on that record and other records you've identified, did Paladin Press fulfill that order in May, 1993?

A. Yes, we did.

O. Turn now to Government's Exhibit 25. please.

Tell his Honor and the jury what that exhibit is, please.

A. That is a copy of the book Homemade C-4 that we described earlier.

Q. Is that the same material that Paladin Press mailed to the customer in May, 1993?

A. Yes. Same book, yes.

MR. MACKEY: Move to admit Government's Exhibit 25.

MR. NIGH: Same objection, your Honor.

THE COURT: Overruled. 25 is received.

MR. MACKEY: Your Honor, I failed to move to admit Government's Exhibit 22 and would do so now.

THE COURT: Same objection?

MR. NIGH: Yes, your Honor.

THE COURT: Overruled. 22 is received.

MR. MACKEY: With the Court's permission, I'd like to publish simply the cover and the table of contents to Government's Exhibit 25.

Dana Rogers - Direct

THE COURT: All right.

MR. NIGH: Your Honor, I object to the table of contents.

THE COURT: That's overruled.

BY MR. MACKEY:

Q. Mr. Rogers, is that the cover of a book entitled Homemade=20 C-4, A Recipe For Survival?

A. It is.

Q. And read to the jury the table of contents from that book.

A. Contents are the Preface and Introduction. Chapter 1 is Ammonium Nitrate. Chapter 2 is Nitromethane. Chapter 3 is Home Manufacture of C-4. Chapter 4 is The Finished Product, and then there is a Conclusion.

MR. MACKEY: Thank you, Mr. Rogers.

I have nothing else, your Honor.

THE COURT: Cross-examination, Mr. Nigh.

MR. NIGH: Your Honor, I have some exhibits for the Court, for the witness and for the Government, if I may.

THE COURT: All right. Proceed, please.

MR. NIGH: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. NIGH:

Q. Good morning, Mr. Rogers.

A. Good morning.

Q. First of all, I'd like to talk about your catalogue that

Dana Rogers - Cross

you referenced during your direct examination testimony.

A. Okay.

Q. And you said that that is mailed to everyone on your mailing list. Is that right?

A. Yes, it is.

Q. How many people are on your mailing list?
A. Approximately 30- to 35,000.
Q. So every month, 30- to 35,000 people receive that same catalogue; is that right?
A. Every other month; and it would be a new catalogue every other month.
Q. And people also can receive the catalogue if they call Paladin and request and pay for it?
A. Yes, sir.
Q. Now, if I could, I'd like to direct your attention to the first order form that you testified about as Government's Exhibit 18. Do you have that in front of you?
A. Yes, I do.
Q. Now, that is in reference to an order that was placed back in March of 1992. Is that right?
A. That's correct.
Q. And the date appears down at the bottom March 3 of 1992?
A. That's correct.
Q. And the first item is Ragnar's Big Book of Homemade=20 Weapons. Right?

Dana Rogers - Cross

A. First item that was purchased, yes.
Q. Is that the same Ragnar Benson that wrote Homemade C-4?
A. Yes, it is.
Q. The same author?
A. Yes, sir.
Q. Mr. Benson is one of your most popular authors at Paladin Press, is he not?
A. He has a number of books. Yes, he does.
Q. And there are a number of people that order those books?
A. Yes.
Q. Let's talk about Homemade C-4 for a moment, which I think you have in front of you as well. What is the Government's exhibit number on the book itself?
A. 25.
Q. If we could look at that for a moment.
MR. MACKEY: My copy is here.
MR. NIGH: I think this is fine.

BY MR. NIGH:

Q. That was the book that was ordered in the subsequent order; is that right?
A. That's the book that was ordered in 1993, yes.
Q. But it's by the same author of the book that was ordered in 1992?
A. That's correct.
Q. How many copies of Homemade C-4 has Paladin Press sold?

Dana Rogers - Cross

A. Over 37,000.
Q. Over 37,000?
A. Yes.

Q. And is that because -- or -- is Ragnar Benson, the author of that book, one of your most popular authors?

A. Yes. He has a number of titles that we've published.

Q. Are they similar to this one?

A. Similar in what way, sir?

Q. Cover the same type of subject matter: Explosives?

A. Weapons, explosives, yes, survival.

Q. Now, if I understood you correctly on direct examination, the FBI asked you to search your records concerning orders from Timothy McVeigh and they made that request in 1995.

A. That's right.

Q. And the -- you completed the search of your records; right?

A. As instructed, yes.

Q. And this is what you were able to find, these two orders back in 1992 and in 1993.

A. That's correct.

Q. Were there any since then?

A. Not that I know of.

Q. Did you check your records thoroughly to see if there were?

A. Yes, we did.

Q. Again, if I could direct your attention to the book Ragnar Benson's Homemade C-4, Government's Exhibit 32 -- I'm sorry.

Dana Rogers - Cross

Government's Exhibit 25. And the inside cover. You made reference to the table of contents. Do you see that?

A. Yes.

Q. And Chapter 1 is Ammonium Nitrate. Correct?

A. Yes.

Q. Chapter 2 is Nitromethane?

A. Yes.

Q. And Chapter 3 is Homemade C-4. Is that right?

A. Home Manufacture of C-4.

Q. Home Manufacture of C-4. And that begins at page 17. Is that correct?

A. Yes, that's correct.

Q. I'd like to direct your attention, if I could, Mr. Rogers, to a file folder in front of you. It should have Defendant's Exhibit 32 in it.

A. Yes, I do.

Q. Does that appear to be a photocopy of Homemade C-4?

A. Of sorts, yes.

Q. All right. Meaning that the quality of the photocopy is not that terrific?

A. That's right.

Q. And if I could direct your attention to the inside part of that, does it appear to be Chapter 3, Home Manufacture of C-4?

A. Yes, page 17.

Q. And does it continue through the rest of Chapter 3 over to

Dana Rogers - Cross

page 34?

A Yes

MR. NIGH: Your Honor, I'd move for the admission of Defendant's Exhibit O-34 -- O-32.

THE COURT: Well, the whole book is in evidence.

MR. NIGH: It is, your Honor. It's going to be difficult for me to publish parts of it without the defense exhibits.

THE COURT: Why are you publishing any parts of it? That's what I said the Government couldn't do.

MR. NIGH: The reason I need to do it, your Honor, is because of the admission of the table of contents.

THE COURT: Well, what's the criteria by which you're selecting pieces of this book?

MR. NIGH: It is relevant to establish the process that this book describes as necessary to make C-4.

THE COURT: Well, this witness isn't here to testify about C-4. He's just testifying about the orders of the book.

MR. NIGH: Certainly, your Honor. What my submission would be is that because the table of contents has been published, that is unduly prejudicial unless the contents are also published.

THE COURT: The entire book is in evidence. I'm not going to have it come in in bits and pieces as well, unless the witness has special knowledge or there is some particular

Dana Rogers - Cross

reference to it that he's capable of testifying about; but just as a lever to put in particular parts of the book, that's inappropriate.

MR. NIGH: That would be the reason that I would be offering it, in reference to the table of contents that was published, your Honor.

THE COURT: All right.

THE WITNESS: Am I done with this folder?

THE COURT: No. You just wait for questions.

BY MR. NIGH:

Q. Let's go back for a minute, if we may, Mr. Rogers, to the description of Homemade C-4, which appears in the catalogue, which is Government's Exhibit 20.

First, let's start with the cover of the catalogue, Government's Exhibit 20.

And the cover describes some of the other publications that Paladin offers. Is that right?

A. Yes, it does.

Q. How to Make \$100,000 As a Private Investigator?

A. Yes.

Q. American Bounty Hunter? Right?

A. It's a video.

Q. And Professional Gun Dealer?

A. Yes.

Q. And if you know, is that about going to gun shows and

Dana Rogers - Cross

buying and selling and trading firearms?

A. That's what it says here.

Q. Are your catalogues usually accurate about books?

A. It usually is, yes.

Q. Directing your attention, if I may, to the page which references Homemade C-4, which I believe is page 17 of your catalogue in Government's Exhibit 20.

I'm sorry. Page 43 of the catalogue.

Have you found that?

A. Yes, sir.

Q. The description of Homemade C-4 that appears there indicates that the book is for serious survivors. Is that right?

MR. MACKEY: Your Honor, I object. They've got the wrong part of the catalogue.

THE COURT: Pardon me?

MR. MACKEY: They have the wrong part of the catalogue up on the screen currently.

THE COURT: I thought we were looking at page 43, Exhibit 20.

MR. MACKEY: It needs to be moved to the far left, too.

MR. RYAN: They have right now.

THE COURT: Do we have it right now?

MR. MACKEY: Yes, your Honor.

Dana Rogers - Cross

MR. NIGH: Sorry about that, your Honor.

BY MR. NIGH:

Q. Do I have the right part in front of you now?

A. I'm looking at the catalogue itself.

Q. All right. Under Homemade C-4, A Recipe For Survival: That's the name of the book -- correct -- as described in the catalogue?

A. Yes, it is.

Q. And it starts out with the statement that it is for serious survivors. Is that right?

A. "Serious survivors know . . ." Yes.

Q. And you understand that at Paladin Press to mean people that are interested in survivalism; is that correct?

A. Yes.

Q. And that would be part of your target market that you were talking about on direct examination with Mr. Mackey. Is that right?

A. Yes.

Q. Do you know if people sell your books at gun shows?

A. Yes, they do.

Q. And do they sell Homemade C-4 -- the book Homemade C-4 at gun shows?

A. I don't know.

Q. And these other books that your documents reflect were ordered in 1992: Do you know whether they're sold at gun

Dana Rogers - Cross

shows?

A. I would imagine the weapons book is. I don't know about Improvised Explosives.

Q. You have no knowledge either way. Is that right?

A. That's correct.

Q. Do you know how many of those other two books, the weapons book, was sold by Paladin Press or had been sold by Paladin Press?

A. The weapons book is probably over 5,000 and the Improvised=20 Explosives book is probably over 10,000 copies.

Q. That have been sold by the same manner, via your mail order business; is that correct?

A. Yes.

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

THE COURT: Yes.

MR. NIGH: That's all I have.

THE COURT: Mr. Mackey, do you have any redirect?

MR. MACKEY: Just one question, your Honor.

REDIRECT EXAMINATION

BY MR. MACKEY:

Q. In the table of contents to the catalogue, you have a section, do you not, dedicated to the topic "Survival"?

A. Yes, we do.

Q. That's not found in the same section of the catalogue.

A. No, it starts on page 26.

Dana Rogers - Redirect

Q. Totally separate subject, totally separate listings in that catalogue.

A. Yes.

Q. Homemade C-4 is listed under "Explosives and Demolitions." Correct?

A. "Explosives and Demolitions," yes.

MR. MACKEY: I have nothing else.

MR. NIGH: No, your Honor.

THE COURT: Excusing this witness?

MR. MACKEY: I am, your Honor.

MR. NIGH: Yes, your Honor.

THE COURT: All right. You're excused.

Don't take the exhibits with you.

THE WITNESS: No.

THE COURT: Oh, okay.

Next, please.

MR. HARTZLER: Government calls David Darlak.

Mr. Mendeloff will question him.

THE COURTROOM DEPUTY: Raise your right hand, please.

(David Darlak affirmed.)

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

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

THE WITNESS: David Allen Darlak, D-A-R-L-A-K.

THE COURT: Mr. Mendeloff.

MR. MENDELOFF: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MENDELOFF:

- Q. Where do you live, Mr. Darlak?
- A. Niagara Falls, New York.
- Q. How long have you lived there?
- A. Approximately eight months.
- Q. Are you employed?
- A. Yes.
- Q. And what is your job?
- A. I own a sign shop in Wheatfield, New York.
- Q. And what kinds of work do you do in your sign shop?
- A. All types of signs, a lot of graphic work.
- Q. And where are your customers located?
- A. Niagara County, Erie County, the surrounding counties.
- Q. And does that include any big cities?
- A. Yes. Buffalo. Buffalo, New York.
- Q. What about Niagara Falls?
- A. Niagara Falls, New York, too.
- Q. That's a big city?
- A. Yes.
- Q. And how long have you had that business?
- A. Since September of last year.
- Q. Prior to that business, did you have some other employment?
- A. Yes, I worked at a sign shop in Buffalo, New York, called

David Darlak - Direct

NAS Quick Sign.

- Q. And before that?
- A. I worked at a sign shop in Tonawanda, New York, called Rosewood Signs.
- Q. When did you work at Rosewood Signs?
- A. I worked there from early 1986 to late 1988, and then I worked there again from '92 -- early '92 to early '95.
- Q. So you worked there for two periods with a break in between; is that right?
- A. Correct.
- Q. And that break was during the period '88 to '92, roughly?
- A. Yes.
- Q. And what did you do during that time?
- A. I was in the U.S. Army.
- Q. Now, what is your education?
- A. High school degree or diploma and approximately two years of college.
- Q. When did you graduate high school?
- A. '86.
- Q. In June?
- A. Correct.
- Q. Do you know Tim McVeigh?
- A. Yes, I do.
- Q. How do you know him?
- A. I met him in high school.

David Darlak - Direct

Q. And did you become friends?

A. Correct.

Q. When did you meet him?

A. Ninth grade.

Q. Can you look around the courtroom and see if you can identify him for us?

A. Yes, he's over there.

MR. MENDELOFF: May the record reflect the identification of the defendant.

THE COURT: Yes.

BY MR. MENDELOFF:

Q. When during high school did you develop a friendship with him?

A. Approximately eleventh grade.

Q. In what class?

A. Computer class.

Q. Did you have other classes with him as well?

A. Yes.

Q. Were you the same year in school, or different year?

A. Same year.

Q. Did you graduate in the same graduation class?

A. Yes.

Q. That would have been June of '86; is that right?

A. Yes.

Q. Now, following high school, did Defendant McVeigh,

David Darlak - Direct

yourself -- and you continue your friendship?

A. Yes.

Q. And at the time, where were you living?

A. I was living in Wheatfield, New York.

Q. Where was Defendant McVeigh living?

A. Pendleton, New York.

Q. Are those towns located in relation to some other larger city?

A. Yes. They are pretty close to Niagara Falls, New York.

Q. Suburbs?

A. Yes.

Q. During the period 19 -- or during the period after high school, where were you working?

A. Rosewood Signs.

Q. And that was the first period that you were at Rosewood Signs that you mentioned a few minutes ago.

A. Correct.

Q. How often did you see Tim McVeigh during this time frame right after high school while you were working at Rosewood Signs? That would be '86 to '88.

A. Anywhere from one to two times a week.

Q. How often would you talk to him?

A. Roughly the same.

Q. What kinds of things did you two do together when you saw each other?

David Darlak - Direct

A. We used to shoot guns. If we were at my house, we played basketball. I had an ATC. We'd ride that.

Q. What's an ATC?

A. A three-wheeler. Just hang out and talk.

Q. How often did Tim McVeigh come to your house in the period 1986 to '88?

A. I'd say roughly once a month.

Q. And as a result of these visits, did he get to know your family?

A. Yes.

Q. Who did he get to know in your family?

A. Anyone who was living there at the time.

Q. And did you have a brother named Michael who was living there at the time?

A. Yes.

Q. During this time frame, did your brother Michael have any involvement with car racing?

A. Yes, he did.

Q. What involvement was that?

A. It was called modified dirt racing. He was a -- he worked on his friend's car.

Q. For the members of the jury that aren't racing enthusiasts, can you tell us what modified dirt racing is?

A. It's basically just a race car used to race on a dirt track.

David Darlak - Direct

Q. Now, is this a street car, or an actual race car?

A. No, it's a race car.

Q. In 1988, did you enter into any business dealing with Defendant McVeigh?

A. Yes.

Q. What was that?

A. We purchased some land together.

Q. Where was that?

A. Humphrey, New York.

Q. And what size land was that?

A. It was approximately 9 acres.

Q. Where in relation to the location of your homes was Humphrey, New York?

A. Approximately 50 miles south.

Q. Can you describe for us what this piece of land looked like?

A. It was a small tract, about 200 feet across on the side of a mountain, a lot of trees.

Q. And about how much did you pay for the land?

A. Approximately \$7,000.

Q. How did you decide to enter into this purchase with the defendant, McVeigh?

A. Tim was already in the deal buying it, and I expressed an

interest in also going in on it with him; so we did that.

Q. And in whose name was it purchased?

David Darlak - Direct

A. Both of our names.

Q. In 1988 at about the time you bought this land, did the defendant, McVeigh, make any statement about his desire to construct anything on it?

A. Yes.

Q. What did he want to build?

A. He wanted to build a bomb shelter on there.

Q. Made out of what?

A. Concrete blocks.

Q. Did he tell you why?

A. Not really, but I -- I kind of got the impression that he was afraid of nuclear war.

Q. Now, how long did you continue to work at Rosewood Signs?

A. Till late '88.

Q. What happened then?

A. Then I went into the U.S. Army.

Q. Now, just prior to the time that you entered the Army in '88, do you know whether Tim McVeigh had a career change as well?

A. Yes, he did.

Q. When was that?

A. Summer of '88, he went into the military, also.

Q. That would have been a few months before you?

A. Yes.

Q. Now, what happened to your piece of land?

David Darlak - Direct

A. We held it until late '92, I think.

Q. After you got out of the military?

A. Yes.

Q. And how did you make payments for it?

A. We paid it off monthly.

Q. From your different locations, monthly?

A. Yes.

Q. During your period in the military, did -- were you trained -- did you train together, or separately?

A. Separately.

Q. Were you stationed together, or separately?

A. No. Still separate.

Q. And did you maintain contact throughout that time?

A. Yes.

Q. How?

A. Letters.

Q. How long have you served in the military?

A. Approximately three and a half years.

Q. Until when?

A. Early '92, April.

Q. Now, did you have a less-than-proud exit from the military?

A. I had a bad-conduct discharge.

... I had a bad conduct discharge.

Q. And what was that as a result of?

A. Alcohol-related automobile accident.

Q. And were you prosecuted in the military courts for that?

David Darlak - Direct

A. Yes, court-martial.

Q. Court-martial. And did you do any time?

A. Ten months of military confinement.

Q. And while you were in the brig, did Defendant McVeigh visit you?

A. Yes, he did.

Q. And after you got out of the military, you started at Rosewood Signs?

A. Correct.

Q. And then later in the current business you're in now. Is that right?

A. Yes.

Q. And is this business your business?

A. Me and a partner.

Q. Now, do you know how long Tim McVeigh continued to serve in the military?

A. I believe it was to the end of '91.

Q. Upon your release from the Army in 1992, where did you live?

A. In Wheatfield, New York, in my parents' house.

Q. Upon Tim McVeigh's release from the service, do you know where he lived?

A. He lived at his father's house in Pendleton, New York.

Q. Was he working at the time?

A. Yes.

David Darlak - Direct

Q. Do you know where?

A. The security firm.

Q. Upon your release from the service, you say you took this job in Rosewood Signs. Did you and Mr. McVeigh maintain a friendship after you got out of the service?

A. Yes.

Q. And how long after your exit date from the service did you and -- you see Tim McVeigh?

A. Approximately a couple weeks.

Q. In the next several months from the spring to the fall of 1992, how often did you see Tim McVeigh?

A. Frequently.

Q. What sorts of things did the two of you do at that time?

A. We would shoot guns, talk, go out to bars. We went bear-hunting one time.

Q. Where?

A. Adirondack, New York.

Q. Did you go to each other's homes again?

A. Yes.

Q. Did you have occasion to go to a gun show with him?

A. Yes.

Q. And what was the reason you went to the gun show with him?

A. Just to sell -- sell stuff.

Q. All right. Now, let me ask you during that time frame in the late spring to summer of 1992, did Tim McVeigh give you any

David Darlak - Direct

books to read?

A. Yes.

Q. What did he give you?

A. He gave me The Turner Diaries.

MR. MENDELOFF: May I approach, your Honor?

BY MR. MENDELOFF:

Q. Let me show you Government's Exhibit 1. Have you ever seen that book before?

A. Yes, I have.

Q. What is that?

A. That's The Turner Diaries.

Q. Did the book that Tim McVeigh gave you differ in any significant degree from that book?

A. No. That looks like it.

Q. All right. Where were you when Tim McVeigh gave you The=20 Turner Diaries?

A. I believe at his house.

Q. What, if anything, did he tell you when he gave you a copy of the book?

A. That I should read it. He gave me a brief overview of what it was about.

Q. And later, did he inquire as to your opinion of the book?

A. Yes.

Q. When was this?

A. Within a few months after he had given it to me, he had

David Darlak - Direct

asked me during that time, "Have you read it? Have you read it?"

And I said, "No, I haven't read it."

Q. Do you still have The Turner Diaries book Tim McVeigh gave you?

A. No, I don't.

Q. What happened to it?

A. He asked me for it back.

Q. When did he ask you for it back?

A. Sometime during the summer.

Q. And did he tell you what he -- why he wanted it back?

A. He wanted to give it to somebody else.

Q. During this post-Army period, did Tim McVeigh have occasion to visit you at your place of employment, Rosewood Signs?

A. Yes.

Q. Did he have occasion to call you there?

A. Yes.

Q. Did there come a time when Tim McVeigh moved from the

Lockport/Niagara Falls area?

A. Yes.

Q. And when was this?

A. That was the end of '92.

Q. Did he discuss with you his plans to leave?

A. No.

Q. Before he left, did he tell you where he was going?

David Darlak - Direct

A. No.

Q. He just left?

A. Yes.

Q. After Tim McVeigh disappeared, did there come a time when you received a pair of telephone calls from him?

MR. NIGH: I object.

THE COURT: Sustained as to "disappeared."

BY MR. MENDELOFF:

Q. After Tim McVeigh left the Lockport area, did you receive several telephone calls from him?

A. Yes.

Q. Do you have a clear recollection of when you received these calls?

A. It was sometime in the fall of '94.

Q. As of the time you received the phone call, the first of these phone calls, how long had it been since you talked to Tim McVeigh?

A. Not since '92, late '92.

Q. Where did you receive this call?

A. At Rosewood Signs.

Q. Can you give us the phone number there?

A. (716)692-1435.

Q. When you last talked to Tim McVeigh, where were you working?

A. Rosewood Signs.

David Darlak - Direct

Q. And you were still there when you received this call in the fall of '94. Is that right?

A. Yes.

Q. Was anyone else on the phone when you spoke with Tim McVeigh?

A. No.

Q. What was said in this conversation?

A. Basically just "How are you doing? Where you been?" I told him what I was doing. He told me he was working at a Value hardware store.

Q. Value hardware?

A. Yeah.

Q. Did he say where?

A. In Arizona.

Q. Did you tell him anything about a purchase you had made recently?

A. Oh, of my vehicle. I purchased a vehicle. I told him

A. Oh, of my vehicle. I purchased a vehicle. I told him about that.

Q. As the conversation went on, did he ask you any question?

A. Yes. He asked me if I knew where he could purchase racing fuel.

Q. And then what did you say?

A. I said no.

Q. Did he ask you any other questions?

A. He asked if I could find out and if I could buy him some.

David Darlak - Direct

Q. Did you ask him anything else at that point?

A. I asked him why he needed that.

Q. What did he say?

A. He said he was at work, he had to go, could he have my home phone number.

Q. What did you tell him?

A. I gave him my home phone number where I was living at the time.

Q. Where were you living at the time?

A. At my sister's house.

Q. What was her name?

A. Silvernail.

Q. That's her married name?

A. Yes.

Q. What phone number did you give him?

A. (716)692-5002.

Q. When you asked Defendant McVeigh, "What do you need the racing fuel for," did he ever answer that question?

A. No.

Q. Do you have any way of knowing whether Tim McVeigh was really in Arizona when he was calling you?

A. No.

Q. Have you ever known Tim McVeigh to be involved in car racing?

A. No.

David Darlak - Direct

Q. Have you ever known him to have purchased racing fuel?

A. No.

Q. Following this telephone conversation, did there come a time when you received another call from Tim McVeigh?

A. Yes.

Q. When in relation to the first call?

A. A couple days later.

Q. And where did Tim McVeigh call this second time?

A. My sister's house.

Q. This is the Silvernail home?

A. Correct.

Q. Do you remember what day of the week this phone call was?

A. No, I don't.

Q. Were you there to receive the call?

A. No.

Q. Was anyone else there?

A. No.

Q. How did you find out about this call?

A. It was a message on an answering machine.

Q. And do you -- excuse me. And what was the message?

A. I don't remember too much of it, other than "Forget about the racing fuel."

Q. After the second call in 1994, did you ever speak again to Tim McVeigh?

A. No.

David Darlak - Direct

MR. MENDELOFF: One moment, please, your Honor.

THE COURT: Yes.

MR. MENDELOFF: Nothing further, your Honor. Thank you.

THE COURT: All right. Mr. Nigh?

MR. NIGH: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. NIGH:

Q. Good morning, Mr. Darlak.

A. Good morning.

Q. My name is Rob Nigh. I'm one of the lawyers for Tim McVeigh. You and I have never spoken, have we?

A. No.

Q. And how many times have you spoken with agents for the FBI?

A. Seven times.

Q. Seven separate occasions?

A. Yes.

Q. When was the first occasion?

A. An agent, or a lawyer?

Q. Let's start with FBI agents.

A. Oh, FBI? I couldn't even count how many times.

Q. They've seen you a number of times?

A. Correct.

Q. When was the first time they came to see you?

A. A couple days after the bombing.

David Darlak - Cross

Q. Would that have been in April of 1995, or May of 1995?

A. I believe it would have been April.

Q. How much time did they spend with you on that occasion?

A. Maybe an hour, maybe more.

Q. How much time passed before they came to see you again?

A. I don't remember.

Q. Was it within a month?

A. It was within a month, yes.

Q. How much time did they spend with you on that second occasion?

A. I really can't remember.

Q. Was it a fairly lengthy conversation?

A. Yes.

Q. Perhaps as much as an hour?

A. Yes.

Q. And after that, when was the next time they came to see you?

A. I really don't know the number of times they've come to see me.

Q. Was there a third occasion when they came to see you?

A. Yes.

Q. And did they spend more than an hour with you on that third occasion?

A. I don't think so. They got -- as the visits -- they became shorter and shorter.

David Darlak - Cross

Q. Somewhat less than an hour on the third occasion?

A. Yes.

Q. Was there a fourth occasion when they came to see you?

A. Yes.

Q. And somewhat less and hour on that occasion?

A. Yes.

Q. Was there a fifth occasion?

A. I don't remember how many there were, sir.

Q. Were there as many as 10?

MR. MENDELOFF: Objection, your Honor: Asked and answered.

THE COURT: Overruled. He's suggesting the possibility.

THE WITNESS: 10 would be a good number.

BY MR. NIGH:

Q. Many of those during the course of 1995?

A. Yes.

Q. Were there some during the course of 1996?

A. Maybe a few. Maybe one.

Q. Hour-long meeting that time?

A. I don't even really remember.

Q. Did they come to see you in 1997?

A. Yes.

Q. How many occasions in 1997?

A. Two, maybe three.

David Darlak - Cross

Q. Would this be in addition to the 10 that we talked about just a moment ago?

A. No. I think that would be included.

Q. Then have you come to Denver before this occasion?

A. Yes, I have.

Q. How many occasions have you come to Denver?

A. Two times.

Q. When was the first time you came to Denver?

A. Earlier this year.

Q. In early 1997?

A. Correct.

Q. Was it in January?

Q. was it in January?

A. I don't recall when it was.

Q. Do you know if it was in February?

A. I -- it could have been in February.

Q. Who did you see when you came to Denver the first time in 1997?

A. One of the prosecutors, Mr. Mendeloff, and Special Agent Jon Hersley.

Q. How much time did you spend with Mr. Hersley and Mr. Mendeloff?

A. I believe I was here for three days, and I spent probably about six hours total with them at that -- at that time.

Q. Six hours going over your testimony?

A. Not just going over testimony, going over everything, I

David Darlak - Cross

guess.

Q. Everything that you knew?

A. Yes.

Q. When was the next time that you met with either the FBI or prosecutors?

A. That would be just before Easter.

Q. In 1997?

A. Correct.

Q. Did you come to Denver again?

A. Yes, I did.

Q. On that occasion?

A. Yes, I did.

Q. How long were you here that time?

A. I was here for approximately 27 hours.

Q. And how much of that 27 hours did you meet with either the FBI or with federal prosecutors?

A. About two hours.

Q. Still going over your testimony?

A. Yes.

Q. And was there a third occasion that you came to Denver prior to today?

A. No. Just this -- this time.

Q. Have you had any other meetings with FBI agents or prosecutors?

A. No.

David Darlak - Cross

Q. During the course of that entire period of time, have you ever spoken to a representative from Mr. McVeigh?

A. Once.

Q. Was that a man named David Fechheimer?

A. Yes.

Q. And he came to see you at your place of business?

A. Correct.

Q. And you refused to talk to him, didn't you?

A. Yes, I did.

Q. Wouldn't provide him with any information at all?

A. I said, "I don't want to speak to you, sir."
Q. Did anybody ask you not speak to representatives of Mr. McVeigh?
A. No.
Q. That was just your own decision?
A. That was my own decision.
Q. Was that a decision that you made after 10 meetings with the FBI?
A. That was a decision I would have made if he would come and saw me the day after the bombing.
Q. Now, if I understood your testimony correctly on direct examination, you say that this phone call that you received from Mr. McVeigh was in the fall of 1994.
A. Correct.
Q. Did you appear before the federal grand jury in Oklahoma

David Darlak - Cross

City on May 9, 1995?

A. Yes, I did.
Q. And did you tell the grand jury that the call had come roughly one year before your testimony before the grand jury?
A. Yes, I did.
Q. Which would have been May of 1994?
A. Correct.
Q. One year prior?
A. Correct.
Q. To the time that you appeared.

So you told the federal grand jury that the telephone call from Mr. McVeigh had come in the spring and not the fall.

A. I said roughly a year, and it wasn't roughly a year. It was shorter than that.
Q. Well, it was roughly less than half of that, according to what you're saying today.
A. Yes.
Q. So did you change your mind at some point in time about when the phone call had come?
A. I didn't change my mind. I more clearly remembered exactly when it was.
Q. Your recollection improved over time?
A. Yes, it did. I was pretty -- May was just a couple months after the bombing, and I was pretty shaken after that.
Q. Did your recollection improve over time during the course

David Darlak - Cross

of your meeting with FBI agents?

A. It improved over time thinking about it.
Q. Did the FBI agents urge you that the phone call had been made in the fall --
A. No, they did not.
Q. -- of 1994?
Did they talk about that subject with you?
A. Yes, they did.

Q. Were they concerned about the timing of the call?
A. I don't know if "concern" is a word that I would use.
Q. Interested?
A. Interested, yes.
Q. Now, I'd like to direct your attention back to this land that you purchased with Mr. McVeigh.
A. Yes.
Q. That was back in 1988?
A. Yes.
Q. Near Humphrey, New York, in the southern part of New York?
A. Yes.
Q. And Mr. McVeigh said that he is interested in building a shelter --
A. Correct.
Q. -- on the land?
Did you associate that with survivalism?
A. Yes.

David Darlak - Cross

Q. Now, there came a time that you and Mr. McVeigh entered the military. Is that right?
A. Yes.
Q. In fact, you gave Mr. McVeigh a brochure that had to do with the military?
A. Yes, I did.
Q. And he was very interested in it and then joined up?
A. Yes.
Q. And you joined shortly after that?
A. Yes.
Q. And then as I understand it, you encountered some legal problems while you were in the military?
A. Yes, I was court-martialed?
Q. And received a dishonorable discharge as a result?
A. Bad conduct.
Q. Spent ten months in a military jail?
A. Confinement junior; correct.
Q. Did your friend Mr. McVeigh come to see you when you were in jail?
A. Yes, he did.
MR. NIGH: That's all I have, your Honor.
THE COURT: Any follow-up?
MR. MENDELOFF: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

David Darlak - Redirect

Q. Now, on cross-examination, Mr. Nigh asked you about your visits here to Denver. Remember that, Mr. Darlak?
A. Yes.
Q. And you were asked about your first visit in which you said you spent six hours?
A. Yes.

Q. And you said you went over everything?
A. Yes.
Q. Did you review any specific materials during that visit?
A. Yes.
Q. And what were those in general?
A. That was my testimony from when I testified on the grand jury.
Q. Any documents?
A. Yes.
Q. How many documents? Do you have any recollection of the number?
A. Many.
Q. All right.
A. Many documents.
Q. All right. And what was the reason that that visit was as long as it was?
A. I looked at a lot of documents.
Q. Now, Mr. Darlak, let me . . .
THE COURTROOM DEPUTY: What exhibit?

David Darlak - Redirect

MR. MENDELOFF: Government's Exhibit 33.

THE COURTROOM DEPUTY: Is it admitted?

MR. MENDELOFF: Your Honor, it might help if I could just hand the witness this so we can lay the foundation.

THE COURT: All right.

BY MR. MENDELOFF:

Q. You remember the questions on cross-examination regarding the timing of the call -- calls Mr. McVeigh made to you?
A. Yes.
Q. And do you remember Mr. Nigh asking you whether anybody had pressured you or suggested an answer?
A. Yes.
Q. What were you told was the defining principle of your testimony in terms of what you should be doing?
A. I don't understand that.
Q. What were you told about telling the truth in this?
MR. NIGH: I object as leading, your Honor.
THE COURT: Sustained.

BY MR. MENDELOFF:

Q. What were you told was the main principle underlying your testimony here?
MR. NIGH: Same objection.
THE COURT: Overruled.
THE WITNESS: To tell the truth.

BY MR. MENDELOFF:

David Darlak - Redirect

Q. Did anyone ever pressure you about any of your testimony?
A. No.
Q. In determining the timing of this phone call, was there something that you remembered that assisted you in determining

SOMETHING THAT YOU REMEMBERED THAT ASSISTED YOU IN DETERMINING the timing of the call?

A. Yes.

Q. And what was that?

A. Where I was living at the time.

Q. All right. Let me ask you to look at Government's Exhibit 33. Is that a summary of where you were living throughout that time?

A. Yes.

MR. MENDELOFF: Your Honor, we move the admission of Government's Exhibit 33.

MR. NIGH: I object.

THE COURT: Sustained.

BY MR. MENDELOFF:

Q. Tell the ladies and gentlemen of the jury how it was you were able to peg -- excuse me. Tell the ladies and gentlemen of the jury how you were able to peg what time the phone call came in.

A. Well, I know that I was living at my sister's for a while, and I know that the weather was nice. And after I pegged down when I was living at my sister's, I knew it couldn't have been in the spring, because I just started living there in the

David Darlak - Redirect

spring.

Q. So when you first were interviewed by the agents, that was in May of 1995. Is that right?

A. Correct.

Q. And a year before that would have been May of when, 1994?

A. '94.

Q. When did you move to your sister's home?

A. Roughly around that time.

Q. And how do you know -- how is it based on your own memory that you know that that was not when the call came in?

A. Because I was living at my sister's for quite a while before that call came in.

MR. MENDELOFF: Nothing further, your Honor. Thank you.

MR. NIGH: No, your Honor.

THE COURT: Excusing this witness?

MR. MENDELOFF: No, your Honor. We need to call him back later in the case.

THE COURT: All right. You may step down. You'll be notified when to reappear.

Next, please.

MR. HARTZLER: Government calls Gary Mussatto.

Mr. Mendeloff will question him.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Gary Mussatto affirmed.)

David Darlak - Redirect

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

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

THE WITNESS: Gary E. Mussatto, M-U-S-S-A-T-T-O.

THE COURT: Mr. Mendeloff.

MR. MENDELOFF: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Sir, tell the ladies and gentlemen of the jury where you live.

A. Osage City, Kansas.

Q. How long have you lived in Osage City?

A. Around 53 years, I guess.

Q. Did you move away from there and come back and move away and come back?

A. Yes.

Q. And where in Kansas is Osage City?

A. It's about 35 miles southwest of Topeka, Kansas.

Q. And how long have you lived there?

A. In Osage City?

Q. I'm sorry. Are you married?

A. Yes.

Q. And what is your wife's name?

A. Kay.

Q. Are you employed?

Gary Mussatto - Direct

A. Yes. I'm self-employed.

Q. In what business?

A. I'm in the used car business.

Q. How long have you been involved in the used car business off and on?

A. Since 1961.

Q. Over the years, have you had involvement in the field of car racing?

A. Yes.

Q. And did you during that time -- what involvement did you have?

A. Well, I owned -- owned and mechanicked a sprint car from 1971 to 1990.

Q. All right. And where do you race that sprint car?

A. We raced all over the country. We --

Q. Give us an idea of where?

A. We raced in Florida, Tennessee, Missouri, Iowa, Nebraska, Kansas, Oklahoma, Texas. We even raced out here in Denver a time or two.

Q. What kind of racing was the sprint car?

A. Sprint car racing. Dirt racing, oval.

Q. On an oval?

A. Yes.

Q. As opposed to a drag race on a strip?

A. Yes.

Gary Mussatto - Direct

Q. Now, do cars that race on drag strips use fuel that's any different from cars that race on an oval?

A. Some of them do and some of them don't. The top fuel cars and your funny cars, they use nitromethane; and a lot of them use racing gas and alcohol.

Q. All right. What kinds of fuel is used in drag racing that's not used in oval strip racing?

A. Well, nitromethane.

Q. What's the difference between nitromethane and the kind of fuel that you use on oval strips?

A. Well, racing gasoline is just a high octane gasoline; and racing alcohol is just a grade of fuel that they use that runs a lot cooler.

Q. And nitromethane is what?

A. It's stuff that they use -- it's real volatile. It's hard on engine parts and it's used in top fuel cars and funny cars.

Q. Are those the most powerful race engines there are?

A. Yes.

Q. Let me direct your attention to December of 1990. At that time did you purchase a new business?

A. Yes, I did.

Q. What business was that?

A. I bought the old Salt City Raceway at Hutchinson, Kansas. It's located on Mohawk Road there west of Hutchinson?

Q. Did you rename the Salt City Raceway something?

Gary Mussatto - Direct

A. Yes. We renamed it Hutchinson Raceway Park.

Q. How long had the actual racetrack been there?

A. Oh, it's probably been there 30, 40 years.

Q. To your knowledge, was the track ever anything but an oval?

A. No.

Q. After you purchased the track, did you do anything to advertise your business?

A. Yes. We advertised on radio and TV, and we had a Yellow Pages ad.

Q. What was the known number of that business?

A. Area code (316) 662-2213.

Q. Was that the number in 1994?

A. Yes.

Q. Was your Yellow Pages ad there in 1994?

A. Yes.

MR. MENDELOFF: May I approach, your Honor?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. I've handed you Government's Exhibit 581. What is that?

A. That's a copy of the page out of the Yellow Pages in the Hutchinson phone book.

Q. Were you responsible for putting this ad into that phone book?

A. Yes, sir.

Q. Did you maintain a copy of that ad at your office?

Gary Mussatto - Direct

A. Yes.

Q. Is this -- did you create the ad and maintain it in the normal and ordinary course of your business --

A. Yes.

Q. -- of the racetrack?

MR. MENDELOFF: The Government would move the admission of 581, your Honor.

MS. MERRITT: No objection.

THE COURT: 581 is received.

BY MR. MENDELOFF:

Q. After you purchased this track, did you operate it?

A. Yes.

Q. On what dates did you operate the track?

A. We generally opened in April and closed down in the latter part of September.

Q. All right. And you did that for what years?

A. About three and a half years.

Q. All right. So you opened in April and closed in September, '91?

A. Yes, '91, and we closed the racetrack in latter part of May or first of June in '94.

Q. So for '91, '92 and '93, you had the regular race season?

A. Right.

Q. In '94, what happened?

A. We just weren't doing very good at it, so we closed it up

Gary Mussatto - Direct

and put it up for sale.

Q. So you opened in April and closed in May or June?

A. Yes.

Q. While you operated the track, did you sell any racing fuel?

A. Yes, we did.

Q. What kind of racing fuel did you sell?

A. We sold Sunoco gasoline and racing alcohol.

Q. Did you sell nitromethane?

A. No.

Q. Why not?

A. Because it's outlawed in our type of racing.

Q. Now, based on your experience in the racing industry for many, many years, is it well known that your racetrack is an oval?

A. Yes.

Q. And would a racer in your industry living in Kansas know that?

A. Yes.

Q. After you closed the track, do you maintain the track's telephone number?

A. Yes.

Q. Do you do anything to arrange for calls to be answered?

A. We always had it on call forwarding, because we only used the office at the racetrack on race days; so it -- when we were not at the office at the racetrack, it was always forwarded to

Gary Mussatto - Direct

our house right there on the property.

Q. So even though the track was closed, the phone -- the calls into the track would still come to your home?

A. Yes.

Q. Home phone.

At some point in 1994, did you and your wife change your residence?

A. Yes, we did.

Q. And how did you change your residence?

A. We moved from Hutchinson back to Osage City.

Q. And do you remember the date that you moved?

A. Yes. It was on September 30.

Q. Which was what day of the week?

A. It was on Friday.

Q. And how do you remember that date?

A. Well, because I had a new job that I was going to start the next day, and I had to be there by the next day.

Q. All right. So you moved Friday, September 30?

A. Yes.

Q. What were you doing on Thursday, September 29?

A. Thursday morning, I got up early and was -- had to go to town to make arrangements to get a rental truck to load my furniture in that afternoon.

Q. And when you left to rent the truck that morning, was anyone else at home?

Gary Mussatto - Direct

A. Yes. My wife was there.

Q. When you returned with the rented truck, did your wife tell you anything about a phone call?

A. She'd had a phone call that morning from somebody wanting to buy some racing fuel; and she didn't normally handle that, so she told them they'd have to call back this afternoon when I was there.

Q. Were you there that afternoon?

A. Yes.

Q. Did you receive a call?

A. Yes.

Q. What time of day?

A. It was midafternoon.

Q. How many phone calls did you receive that afternoon?

A. I think that was the only one I got.

Q. And how sure are you about the date and time of this call?

A. Well, I'm pretty sure.

Q. And when the phone rang, how did you answer it?

A. I answered that this is Gary.

Q. Did the caller ever identify himself?

A. No.

Q. I'm sorry.

A. He asked me if this was Hutchinson Raceway Park; and I said

yes.

Q. Now, could you tell from the caller's voice anything about

Gary Mussatto - Direct

his age? What did he sound like?

A. Just didn't sound like he was an older person.

Q. And you answered the phone, "This is Gary," and he asked if it was Hutchinson Raceway Park?

A. Right.

Q. And what did you respond?

A. Then he asked me if -- if I sold racing fuel; and I said yes. And he asked me if I had any nitromethane.

And I told him that I didn't have; we didn't use that type of fuel.

Q. Did he identify anything about himself at all?

A. No, he didn't.

Q. Did he identify his occupation?

A. No, he did not. I asked him if he was a racer; and he said yes.

Q. So you asked him if he was a racer and he said yes. And he asked you if you sold nitromethane and you said no?

A. No.

Q. Then what happened?

A. He asked me if I knew where he could get some; and I said, well, he'd have to either go to a drag strip or to somebody that sold racing fuel.

Q. Did you make a suggestion?

A. Well, I told him there was a guy in Manhattan that sold VP that might be able to help him.

Gary Mussatto - Direct

Q. VP Racing fuel?

A. Yes.

Q. At the time of this call were you familiar with the Sears Craftsman National Drag Race?

A. Yes.

Q. What is the Sears Craftsman National Drag Race?

A. It's a national event on the NHRA circuit that's held every year in Topeka and Heartland Park.

Q. For people who don't know what the NHRA is, what is that?

A. That's the National Hot Rod Racing Association.

Q. And that's held when?

A. It's held in October. First weekend.

Q. First weekend in October?

A. Yes.

Q. And the Sears Craftsman race was held when in relation to this call that came in on Thursday?

A. About the same time. It was probably started on Thursday.

Q. I'm sorry. Okay. So the call came in Thursday; and when was the race -- when did the race start?

A. Well, the races actually started on Friday.

Q. And how long did the race last?

- A. Lasts through the weekend.
Q. Is nitromethane sold at the Sears Craftsman race?
A. Yes.
Q. Do you recall whether you told the caller that he could buy

Gary Mussatto - Direct

nitromethane at that race?

- A. It's possible.
Q. How long did the call last?
A. A couple minutes or less.
Q. And how is it that you recall this call?
A. It was just a strange call that a person would call a dirt racetrack for that type of fuel.
Q. Have you ever sold nitromethane at that oval?
A. No.
Q. Have you ever even had anybody even ask you for nitromethane?
A. No.

MR. MENDELOFF: Nothing further your Honor.

THE COURT: Ms. Merritt?

CROSS-EXAMINATION

BY MS. MERRITT:

- Q. Good morning, Mr. Mussatto.
A. Good morning.
Q. You were first interviewed by the FBI in this case when?
A. Oh, I was in the process of building my new shop, so it had to be in 1995.
Q. Would it have been around November of 1995?
A. Could have been.
Q. Did you call the FBI, or did they contact you?
A. No, they contacted me.

Gary Mussatto - Cross

- Q. Now, I believe you stated that you owned this raceway from December of 1990 until April of 1995; is that correct?
A. I didn't sell -- actually sell the racetrack until April of '95.
Q. Okay. So you purchased it in December of 1990. Right?
A. Yes.
Q. You closed it in June of 1994. Right?
A. Yes.
Q. And when did you sell it?
A. April of '95.
Q. April of '95?
A. Yes.
Q. And you believe that the racetrack still uses the phone number that you used back in 1994?
A. Yes. We kept the phone number open so that the person that took it over after us would have the same number.
Q. And you got a lot of calls for regular racing fuel. Is that correct?
A. We got some. Mostly, they bought it at night, at the nights when they raced there.

...right when they race there.

Q. Okay. Now you stated that nitromethane is not allowed at circle race tracks; right?

A. Right.

Q. But it is allowed and it is used in top fuel dragsters; right?

Gary Mussatto - Cross

A. Yes.

Q. And you remember you got this call about the time you were moving to Osage City; is that right?

A. Yes, I did.

Q. And the caller identified himself as a race car driver; right?

A. He just said he was a racer.

Q. And he told you he was looking for racing fuel?

A. Right.

Q. And you told him that you sell racing fuel and methanol; correct?

A. Yes. I told him all we had was racing gas and racing methanol.

Q. And is that when he told you he was looking for nitromethane?

A. Yes.

Q. And you told him you didn't have any; right?

A. Right.

Q. Now, this caller did not give you his name; correct?

A. No.

Q. And he didn't tell you where he was calling from?

A. No.

Q. He didn't tell you how much nitromethane he was looking for?

A. No.

Gary Mussatto - Cross

Q. He didn't tell you what he would use the nitromethane for, did he?

A. No.

Q. He didn't tell you when he wanted the nitromethane, did he?

A. No.

Q. And you and he did not discuss any specifics concerning his requested purchase of nitromethane; right?

A. No.

Q. You couldn't tell if the call was long distance?

A. No.

Q. You didn't hear any background noises during the conversation?

A. No, ma'am.

Q. And you believe that you can determine someone's age over the telephone just hearing the voice and not seeing the person?

A. Well, I've been in the car business for 30-some years; and I talk to a lot of people on the phone.

Q. And you estimated this person's age at between 20 and 45

years of age?

A. I would guess that, yes.

Q. Can you tell me why you picked those years instead of, say, 25 to 40?

A. Just the way the guy sounded.

Q. Okay. And you also believe that you can tell a person's race over the telephone, because you said that you believed he

Gary Mussatto - Cross

was caucasian?

A. Not necessarily.

Q. Did you tell the FBI that you believed he was -- the caller was caucasian?

A. Yes. Yes.

Q. Now, you only spoke with this caller once; is that correct?

A. That's right.

Q. Now, you stated on direct examination that you recall telling the caller about someone at VP Racing Fuels who would sell nitromethane; correct?

A. I told him there was a place in Manhattan that sold it. I had been there. I didn't remember the guy's name that owned it at the time, because I had negotiated to buy fuel from the folks a couple years before when we set our fuel deal up.

Q. Okay. Now, you recall being interviewed by the FBI on November 29, 1995; correct?

A. Yes.

Q. Okay. Do you recall telling the FBI that you didn't know whether or not you mentioned to the caller that he might obtain nitromethane from someone in Manhattan, Kansas, or the name of that person?

A. It's possible.

Q. You don't recall that you told them that?

A. It's possible.

Q. Is there anything that might refresh your recollection,

Gary Mussatto - Cross

such as a report of your interview with the FBI on that date?

A. Like I say, it's been a couple years ago and -- I just told them everything that -- that I could recollect from the call.

Q. Do you think that if you reviewed the report of the interview with you that that might refresh your recollection about what you told them concerning the people in Manhattan, Kansas, that sold racing fuel -- that sold nitromethane?

A. It's possible.

MS. MERRITT: Your Honor, may I have the report shown to him?

THE COURT: Yes.

Perhaps you can identify a piece of it, so he doesn't have to read the whole thing.

MS. MERRITT: Yes, I will. Right.

BY MS. MERRITT:

Q. Mr. Mussatto, can you tell me what I've handed you?

Does -- can you look --

THE COURT: It's not important what you handed him.

Just show him --

BY MS. MERRITT:

Q. I'm going to direct your attention to the -- let me figure out which paragraph.

On the second page.

A. Okay.

Q. The third paragraph that starts with "Mussatto is

Gary Mussatto - Cross

acquainted with . . ."

A. Yes.

Q. Can you read that paragraph to yourself?

A. "Mussatto is acquainted --"

THE COURT: No, to yourself.

BY MS. MERRITT:

Q. To yourself.

A. I'm sorry.

THE COURT: You're just being asked whether this refreshes your recollection.

THE WITNESS: Yeah, that's -- that's pretty much --

BY MS. MERRITT:

Q. Does that refresh your recollection as to what you told the FBI?

A. Yes.

Q. Okay. You can put that down now. You don't need it anymore.

Now, did you tell the FBI that you were acquainted with the man in Manhattan, Kansas, who sold nitro fuel?

A. Yes.

Q. Did you tell them that you may have told the caller about this person, but you're not sure?

A. Yes.

MR. MENDELOFF: Objection, your Honor. That's not what the report says.

Gary Mussatto - Cross

THE COURT: That's his testimony. You can't object to his testimony.

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

THE COURT: Yes.

MS. MERRITT: Nothing further.

THE COURT: Do you want your report back?

MS. MERRITT: Sure.

THE COURT: All right. Mr. Mendeloff?

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Did you just read that report, Mr. Mussatto?

A. I read that one paragraph.

Q. And did the report indicate to you accurately --

THE COURT: The report isn't in evidence.

MR. MENDELOFF: I understand, your Honor.

MR. MENDELOFF: I understand, your Honor.

THE COURT: His testimony is what was asked for.

MR. MENDELOFF: I understand. I'm going to solicit that, Judge.

THE COURT: All right.

BY MR. MENDELOFF:

Q. Based on the report -- putting that report to one side, what is your recollection about what you told the person that called you?

A. I was just trying to help the guy, and I told him that I thought maybe he could find what he was looking for in

Gary Mussatto - Redirect

Manhattan.

Q. At where?

A. At the guy that sold VP Racing fuel.

Q. Is that what you told the FBI early on?

A. Yes.

MR. MENDELOFF: Nothing further, your Honor.

THE COURT: Is the witness excused?

MR. MENDELOFF: Yes.

THE COURT: Agreed?

MS. MERRITT: Yes, your Honor.

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

Members of the jury, we'll take our noon recess at this time with the usual cautions, of course, that you can talk about other things than the trial during the time of this recess. And I'm sure you're resourceful in that regard, but please do not discuss the case or anything about it. Keep open minds. Understand we're moving along, but we have a ways to go.

You're excused now. We're going to recess till 1:37.

(Jury out at 12:07 p.m.)

THE COURT: Mr. Hartzler?

MR. HARTZLER: Your Honor, we are indeed moving along. We're moving at a faster pace than we anticipated. We're scrambling to bring witnesses in.

There is a local witness named Sharri Furman. We advised defense last night that we'd try to get her here for this afternoon. I understand Ms. Merritt does not have her file. We've been trying to give the defense two days' notice, so we will not be able to give them two days' notice; but a --

THE COURT: Can you get ready for her?

MS. MERRITT: No, your Honor. I was not notified last night that --

THE COURT: Well, why can't you get ready for her?

MS. MERRITT: Because I don't have her material here.

THE COURT: You get ready for her.

Court is in recess. 1:35.

(Recess at 12:08 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 1st day of May, 1997.

Paul Zuckerman

Kara Spitler