

Thursday, May 1, 1997 (afternoon)

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 73)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:37 p.m., on the 1st day of May, 1997,
in Courtroom C-204, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
Produced via Computer by Paul Zuckerman, 1929 Stout Street,
P.O. Box 3563, Denver, Colorado, 80294, (303) 629-9285

APPEARANCES

PATRICK M. RYAN, United States Attorney for the
Western District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma City, Oklahoma, 73102, appearing for the plaintiff.

JOSEPH H. HARTZLER, SEAN CONNELLY, LARRY A. MACKEY,
BETH WILKINSON, SCOTT MENDELOFF, JAMIE ORENSTEIN, AITAN
GOELMAN, and VICKI BEHENNA, Special Attorneys to the U.S.
Attorney General, 1961 Stout Street, Suite 1200, Denver,
Colorado, 80294, appearing for the plaintiff.

STEPHEN JONES and ROBERT NIGH, JR., Attorneys at Law,
Jones, Wyatt & Roberts, 999 18th Street, Suite 2460, Denver,
Colorado, 80202; JERALYN MERRITT, 303 East 17th Avenue, Suite
400, Denver, Colorado, 80203; CHERYL A. RAMSEY, Attorney at
Law, Szlichta and Ramsey, 8 Main Place, Post Office Box 1206,

Stillwater, Oklahoma, 74076, and CHRISTOPHER L. TRITICO, Attorney at Law, Essmyer, Tritico & Clary, 4300 Scotland, Houston, Texas, 77007, appearing for Defendant McVeigh.

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PROCEEDINGS

(Resumed at 1:37 p.m.)

THE COURT: Please be seated.

(Jury in at 1:37 p.m.)

THE COURT: Your next witness, please.

MR. HARTZLER: Government calls Glynn Tipton.

Mr. Mendeloff will question him.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Glynn Tipton affirmed.)

THE COURTROOM DEPUTY: Thank you. Have a seat, please.

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

THE WITNESS: Glynn Allen Tipton, T-I-P-T-O-N.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mendeloff.

MR. MENDELOFF: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Mr. Tipton, where do you live?

A. Pardon?

Q. Where do you live?

A. In Manhattan, Kansas.

Q. Where in Kansas is Manhattan located, generally?

A. It is north of I-70, about 7 miles, and west of Topeka, about 45 miles.

Q. So if you're going to divide the state into sectors, west, central, and east, where would it be?

A. Probably in the northeast.

Q. Okay. Now, sir, do you have a job?

A. Yes, I do.

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Q. Where do you work?

A. I work for VP Racing Fuels.

Q. What are your responsibilities there?

A. I'm a salesman and warehouse coordinator.

Q. Tell the ladies and gentlemen of the jury what VP Racing Fuels is.

A. We sell racing fuels to motor vehicle sports industry, which consists of race cars of all types, even going into go-carts, motorcycles, basically anything that can -- internal combustion engine that would be used for competition.

Q. How many different sorts of fuels does VP Racing sell?

A. Approximately 12, and it's growing every day.

Q. And these fuels are used to be sold -- to run in these high-performance engines you were just talking about?

A. Yes.

Q. Sir, are you familiar with a substance called nitromethane?

A. Yes, I am.

Q. What is nitromethane?

A. It is used in -- for top-fuel funny cars and top-fuel dragsters in NHRA drag racing.

Q. And what is it?

A. It's basically a fuel, rocket -- or excuse me, not rocket fuel. Just a type of fuel.

Q. Racing fuel?

A. Yes.

Glynn Tipton - Direct

Q. And is it -- if you were going to put the racing fuels on a gradient from least powerful to most powerful, what would nitromethane be?

A. It would be at the top of the scale.

Q. Does VP Racing sell nitromethane?

A. Yes. They do.

Q. Nitromethane have any particular use in the drag-racing industry?

A. No top --

Q. Just so we're clear, you just named a whole set of groups, whole different variety of drag racers. Is VP -- does nitromethane have the use of any of those dragsters?

A. Could you clarify that question.

Q. Yeah, let me try that again.

THE COURT: Thank you for asking.

BY MR. MENDELOFF:

Q. Call me mumbles from now on.

You just mentioned a whole list of different kind of cars.

A. Yes.

Q. Does nitromethane work in all those cars or a small category of those cars?

A. It's just basically used in top-fuel dragsters and top-fuel funny cars in NHRA drag racing.

Q. Now, NHRA is what?

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A. They're the National Hot Rod Association.

Q. Are there particular races featuring cars that race on nitromethane?

A. Yes.

Q. And you mentioned top-fuel dragsters and top-fuel funny cars. For the people on the jury who don't know much about drag racing, can you tell what a dragster is?

A. It's a very -- it's a home-built car built out of chrome hollow tubing usually, about a 300-inch wheel base with an aluminum body. And it's basically got a Chrysler Hemi motor.

Q. If you're going to describe one physically so we know, what do they look like?

A. They're long, slender, narrow, have enormous tires

A. They're long, slender, narrow, have enormous tires.

Q. And they have no body on the front basically?

A. No, they do have -- they are skinned with aluminum.

Q. All right. Now, what about funny cars, what is a funny car?

A. Funny car is basically a fiberglass body that resembles a production automobile.

Q. What's the difference between a funny car and a regular automobile?

A. The funny car has absolutely no interior, it's just a shell of a body, basically on a tubular built -- custom-built chassis. Again, the wheel base is going to be different.

Q. How about the engine?

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A. The engine is going to be again a Chrysler Hemi with a blower on it.

Q. What are the top speeds of these dragsters and funny cars?

A. They're over 300-mile per hour in the quarter mile.

Q. So you're going from a dead stop to what speed?

A. 300-plus miles per hour.

Q. In how short of a time?

A. In approximately -- the dragsters are a little under 4 seconds, 4.6 seconds. The funny cars are right around 5 seconds to 4.9 seconds.

Q. And they run on this nitromethane fuel?

A. Yes.

Q. Now, what is the horsepower of these racing engines?

A. There's no real way to measure it in terms, but what they've estimated is somewhere between 5- to 6,000 horsepower.

Q. And, sir, in addition to selling racing fuel, do you have any involvement as a mechanic in relation to cars?

A. Yes.

Q. Racing cars?

A. I've worked as a mechanic.

Q. What do you do in that regard?

A. Years ago I used to work on the line for General Motors. I've worked on several race cars for friends.

Q. And for purposes of comparison, what is the horsepower of a typical automobile compared to this 5- or 6,000 horses on your

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top-fuel dragsters and funny cars?

A. Today's automobile would have approximately, somewhere between 2- to 300 horsepower.

Q. All right. Now, do you sell racing fuel out of a fixed location?

A. Yes, I do.

Q. And what location is that?

A. That would be out of Manhattan, Kansas.

Q. Does the VP Racing company have other locations as well?

A. Yes.

Q. Where are they located?

A. There's one in San Antonio, one in Fort Lauderdale, one in Georgia -- I believe that's Atlanta, Georgia -- Pennsylvania; Terre Haute, Indiana. There's one in Calgary, Canada.

Q. Okay. And do you sell racing fuel out of any location other than your office -- offices that you've mentioned, including the one in Manhattan, Kansas?

A. Yes, we sell at the racetrack as well.

Q. What kind of racetracks are you talking about?

A. Any type of racetrack, drag race, circuit track racing; any number of motor sports.

Q. And have you had occasion to work for VP Racing selling fuel at these various race tracks?

A. Yes, I have.

Q. In 1994, did you do that?

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A. Yes, I did.

Q. What different volumes of nitromethane do you sell at racetracks?

A. Usually it sells in the 55-gallon drum.

Q. And if somebody wants to buy less, is it possible to buy less?

A. Yes, you can buy a gallon at a time.

Q. Approximately how many times in 1994 did you attend drag races to sell racing fuel?

A. I believe it was approximately three to four.

Q. Let me direct your attention to the weekend of Friday, September 30, to Sunday, October 2, 1994. Do you remember that weekend?

A. Yes, I do.

Q. And did you have occasion to attend a drag race and sell fuel on that weekend?

A. Yes.

Q. What was the name of the drag race you were at?

A. Sears Craftsman Nationals.

Q. What is the Sears Craftsman Nationals?

A. It's a NHRA drag race.

Q. And where was the Sears Craftsman Nationals run?

A. It was in Topeka, Kansas.

Q. And is it run there every year?

A. Yes.

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Q. Same weekend?

A. Yes.

Q. And where in Topeka, Kansas, is the drag race located?

A. It's technically Pauline, which is --

Q. And that is located where in relation to Topeka?

A. South of Topeka on Highway 75.

Q. Okay. Now, when you say technically, where is Pauline in relation to Topeka? How far away?

A. It's just a few miles outside. You really can't tell the difference other than the little sign on the road.

Q. And what was the name of the track where the Sears Craftsman National Drag Race was held on that weekend?

A. It's Heartland Park, Topeka.

Q. What kinds of cars ran at the Sears Craftsman National in that first weekend in October?

A. There would be top-fuel dragsters, top-fuel funny cars, pro stock, pro stock bike, federal mobile dragsters, federal mobile funny cars, comp, super comp, super street, super gas, super stock, and stock.

Q. Okay. Lots of different cars.

A. Yes.

Q. And including -- included in those cars were, I believe you mentioned, top-fuel dragsters and funny cars; is that right?

A. Yes.

Q. Did you sell nitromethane at that race on that weekend?

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A. Yes.

Q. And where did you sell the nitromethane?

A. We sell it there at the truck, the fuel truck.

Q. Where at the Heartland Park Racetrack did you sell the nitromethane?

A. In the pits. There's a location where they park the fuel trucks.

Q. Now, just so -- for the people who don't know anything about racing again, where in relation to the track are the pits?

A. They're just to the east of the racetrack. Right next to the racetrack.

Q. I'm sorry, I talked while you were talking.

Just to the east of the track?

A. Just right next to the racetrack to the east.

Q. All right. Now, what kind of racetrack are we talking about at Heartland Park; a drag strip, a straight track, or an oval?

A. It's a straight track as well as a road race course.

Q. All right. Let me direct your attention to Government Exhibit --

MR. MENDELOFF: I'm going to need the computer, please.

BY MR. MENDELOFF:

Q. Let me direct your attention to Government Exhibit 182.

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MR. MENDELOFF: Came up and it was gone, Judge.

BY MR. MENDELOFF:

Q. Now, what is Government Exhibit 182?

Q. Here we go. What is Government's Exhibit 182?

A. That's a picture of Heartland Park, Topeka.

Q. Does that fairly and accurately depict the way Heartland Park, Topeka, looked the first weekend in October, 1994?

A. Yes, it does.

MR. MENDELOFF: Move the admission of Government Exhibit 182, your Honor.

MS. MERRITT: No objection.

THE COURT: Received.

MR. MENDELOFF: May we publish this, Judge?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. All right. Now, Mr. Tipton, you just mentioned two parts of this racetrack, a strip and a drag race -- or a road-race section.

A. Yes.

Q. Do you see those both in this photo?

A. Yes, I do.

Q. Where is the strip located?

A. The strip runs down that-a-way.

Q. Okay. And show us where the beginning of the strip and the

end of the strip is just so we get --

A. The beginning is right down here by the tower and the end

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is right down here.

Q. And then you mentioned a road-race section. Where would that be?

A. That would be . . . well, they've got two different courses on here, and I'm not real familiar on how they run these courses; but the drag strip is used as part of that course, and then it just runs out and around.

Q. Now, I take it you don't run drag races and road races at the same time?

A. No.

Q. Now, you just mentioned -- if you'd remove those lines with that little button on the pen; if you press it several times.

And will you show us where on this -- in this photo the pits were.

A. The pits are . . .

Q. General area.

A. This area right here.

Q. All right. Now, I've shown you a close-up. Is that an accurate depiction of generally where the pits were?

A. Yes.

Q. Let me ask you next to look at Government Exhibit 183. What is that?

A. That's a picture of the strip.

Q. All right. Does it fairly and accurately depict the way the strip looked that weekend?

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A. Yes.

Q. And that's an aerial or a ground-level view?

A. That's pretty much looks like from the stands right beside the tower.

Q. All right.

MR. MENDELOFF: Move the admission of Government Exhibit 183, your Honor.

MS. MERRITT: No objection.

THE COURT: Received. You may publish it.

MR. MENDELOFF: Yes, please, your Honor.

BY MR. MENDELOFF:

Q. Now, the beginning of that track is where, and the end of the track is where?

A. Beginning is back over here, and the end would be way down there.

Q. All right. Great. If you would remove those lines, please.

Now, you said that the VP Racing had a presence at that race that weekend. Is that right?

A. Yes.

Q. What kind of presence did VP Racing have? What did you do then?

A. You're talking about the equipment that's there?

Q. No -- well, the equipment and what you were doing.

A. Basically we -- we have a semi-tractor-trailer that comes

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in, sets up shop, and sells racing fuel to all the different types of race cars that are there that weekend.

Q. And did you have a display set up on that semi-tractor?

A. Well, we set up a table out in front for some of the smaller products. The racing fuel is kept inside the truck. The pricing is on the semi doors as they swing open.

Q. Are there doors to the back and the sides?

A. There is one side door and the doors in the back.

Q. And the signs are located on which doors?

A. On the back door that faces toward the customer, one back door, and then the side door as well.

Q. Now, how do you access the trailer from the side door?

A. There's some steps, aluminum steps, that you fix to the side of the trailer.

Q. How can the public get into the pit area?

A. All they need to do is purchase a pit pass.

Q. All right. During that weekend, when did you work at the Sears Craftsman Nationals?

A. I worked all four days of the Sears Craftsman Nationals.

Q. And during that weekend, did you have occasion to have a conversation about a fuel you had never heard of before?

A. Yes, I did.

Q. What fuel was that?

A. It was anhydrous hydrazine.

Q. What is anhydrous hydrazine?

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A. It's a pure form of rocket fuel.

Q. All right. And do you know what kind of rockets it operates?

A. To the best of my understanding, it's NASA-style rockets.

Q. What day did this conversation take place?

A. Saturday, October the 1st.

Q. Do you remember when during that day the conversation took place?

A. It was shortly after noon, approximately 1 to 2:00.

Q. Now, you say approximately; are you absolutely certain about 1 to 2:00, or is that your best estimate?

A. It was shortly after noon, because at that point in time one of the guys that was there had already left, and he left right at noon.

Q. All right. Was anyone else present for this conversation that you had?

A. No.

Q. Now, would you look around the courtroom and see if you see anybody that looks like the person you saw that day at the track having the conversation about fuel?

MS. MERRITT: Your Honor, I'm going to object to any in-court identification at this time based upon the reasons we've previously submitted in our pretrial motion to suppress in-court identification.

THE COURT: Overruled.

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THE WITNESS: Yes, I do.

BY MR. MENDELOFF:

Q. Would you point him out and identify him.

A. He's sitting at the defense.

Q. What's he wearing?

A. Flannel shirt, blue flannel shirt.

Q. Now, that day can you describe --

MR. MENDELOFF: May the record reflect the identification of the defendant, Timothy McVeigh, your Honor?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. That day, can you describe how he looked or how the person that you talked to looked?

A. Had very slender build, narrow face, jaw line, two to three days' growth, short hair.

Q. You say two to three days' growth. You mean on his face?

A. Yes.

Q. Now, how certain are you that the person you've identified, the defendant, Timothy McVeigh, is the person you saw at the track that day?

A. I would say I'm 90 percent sure.

Q. And what is the basis of your hesitancy?

A. Just the difference between what I remember from that day and what I see today.

Q. That would be what?

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A. Just the difference in clothing, the two to three days' growth.

Q. Now, what were you doing just before this conversation began?

A. I was going back into the semi-truck. I had been outside, going back in through the side door.

Q. And as you went into the side door, did anyone call out to you?

A. Yes.

Q. And who called out to you?

A. There was an individual that said, "Hey, boss."

Q. And is that the person that you've identified today?

A. Yes.

Q. And when the person said, "Hey, boss" to you, what did you do?

A. I turned around and asked how I could help him.

Q. Now, at the point that you asked how you could help him, where in the vicinity of the truck were you?

A. I was in the doorway of the side door of the truck.

Q. And when you asked how you could help him, what did he say?

A. He started asking me about whether I could get anhydrous hydrazine in 55-gallon drums.

Q. All right. What was your response?

A. I said that at that point in time I didn't know, that I needed to check with the chemical man for VP Racing Fuels.

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Q. And did you tell him when you would check?

A. I told him I'd have to check on Monday.

Q. All right. Did the man who you say looked 90 percent like Defendant McVeigh say anything in response?

A. He just -- at some point in time, he mentioned that he used

to have access to the anhydrous hydrazine but no longer had access and was just basically wanting the price and the availability.

Q. At the time man -- this man asked for anhydrous hydrazine, did you know that anhydrous hydrazine was a rocket fuel?

A. No, I did not.

Q. Does VP Racing supply rocket fuel?

A. No.

Q. What is the reason that you said you'd have to check on the

price of fuel?

A. I just wanted to make sure that, you know, we didn't have access to it 'cause I wasn't familiar with it, and I wanted to check because I didn't want to miss a sale.

Q. At this point, did the conversation continue?

A. Yes.

Q. Tell me what happened

Q. Tell me what happened.

A. I asked to get a name and phone number so that I could get back with him with the information, and he told me that at this point in time that he was in the process of moving between Junction City and Salina and that he didn't have a phone

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number. So I went back into the truck to get him a business card so that he could get back in touch with me.

Q. Did he give you a name?

A. Yes, he did give me a name of John.

Q. Let me ask you to direct your attention -- I'm sorry -- what happened when you came out of the trailer? You went in to get a business card.

A. Yes.

Q. What happened when you came out?

A. I gave him the business card, and I turned around -- the conversation basically ended, and I turned around to go back in the truck.

Q. Okay. Now, let me ask you to direct your attention to Government Exhibit 146.

A. All right.

Q. There should be a sheaf of papers there. If you look through there, you should see it.

What is 146?

A. It's a copy of our business card.

Q. And do you use that business card in the normal and ordinary course of your business?

A. Yes, I do.

Q. How does this compare to the business card you handed the defendant, McVeigh, that day?

A. It would be the same.

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MR. MENDELOFF: Move the admission of Government Exhibit 146.

MS. MERRITT: No objection to the business card, your Honor.

THE COURT: All right. 146 received.

BY MR. MENDELOFF:

Q. Now, after you handed the business card to Defendant McVeigh, did you say anything about when he should contact you?

A. I believe I told him that I would be able to get ahold of who I needed to on Monday morning and that I should have an answer by Monday afternoon.

Q. All right. Then what did you do physically?

A. I went to go back into the truck.

Q. And at that time did you get another question asked you?

A. I got back up into the semitrailer itself, and he asked what the price of a drum of nitromethane was.

Q. And how did you respond?

A. I responded at \$1200.

Q. What happened then?

A. The conversation ended and he left.

Q. All right. Now let me ask you to look in your sheaf of papers there again, Government Exhibit 184. What is that?

A. That's our price sheet for 1984 -- or, excuse me, 1994.

Q. Was it made and maintained in the normal and ordinary course of your business at VP Racing?

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A. Yes.

MR. MENDELOFF: Move the admission of Government Exhibit 184, your Honor.

MS. MERRITT: No objection.

THE COURT: Received, 184.

MR. MENDELOFF: Can we publish that, Judge?

THE COURT: You may.

BY MR. MENDELOFF:

Q. Now, Mr. Tipton, just so we can get our bearings, can you tell us what is the -- what this exhibit says at the top of the page?

A. "Retail Price Sheet."

Q. And there are several columns there?

A. Yes.

Q. And what do they say?

A. Basically you've got your 55-gallon drum price, your 30- or 29-gallon drum, and then price per gallon.

Q. All right. Now, above that, it says, "Effective March 1, 1994."

A. Yes.

Q. Were these prices still effective in October of 1994?

A. Yes.

Q. And in the far left column, do you see anything else listed? You have your drum prices on one side, and what's on the other side?

Glynn Tipton - Direct

A. Oh, the address.

Q. And how about in this part of the page?

A. Just the price -- or the types of fuels.

Q. And everything that's listed there are different types of fuels; is that right?

A. Yes.

Q. May I ask you to direct your attention to the line marked "Nitromethane."

A. Uh-huh.

Q. Do you see the price listed there?

A. Yes.

Q. What price is that?

A. \$1200.

Q. And what price did you quote Defendant McVeigh at the racetrack?

A. \$1200.

Q. Now, did the person you saw at the racetrack that day fit in with the surroundings?

A. No, it didn't seem to.

Q. Tell us how he did not fit in.

A. Usually when you're talking to somebody that's involved in racing, they seem to be real interested in it. This, you know -- or talking to them about racing fuel, they seem to be real interested in as application, how to use it for their application. This person did not seem to have any type of

Glynn Tipton - Direct

application, was just more concerned about the chemical.

Q. And did you have any impression of the background of the person from talking to him?

A. The impression I got, that there was some type of military background.

Q. During the course of the conversation, how far away were you from the man that you say looked like Defendant McVeigh?

A. Throughout the conversation, I was various different distances; but I would say anywhere from 3 feet being the closest to 8 feet as the furthest.

Q. And when you were 3 feet away, where were you standing?

A. I was standing on the steps.

Q. All right. And when you were 8 feet away?

A. I was inside the truck.

Q. Now, when you initially were interviewed by the FBI, did you give an estimate of the height of the person you saw?

A. Yes, I did.

Q. And what was your initial estimate of the height?

A. My initial estimate was about my height, which is 5' 8".

Q. And shortly thereafter in that same interview, did you change your estimate?

A. Yes, I did.

Q. What was the reason you changed your estimate?

A. Realized that I had never been on the same level with the person and that I was actually standing on the steps.

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Q. And as a result of the fact that you had never been standing on the same level with the person, were you able to give an estimate of height?

A. Yes. Standing on the lower step, he was about my height.

Q. And that step was -- that was the lowest step of the steps going into the trailer?

A. Yes.

Q. What was the lighting at the time that you saw Defendant McVeigh out at the racetrack?

A. It was sunny.

Q. During this conversation, did you pay attention to the man who asked for -- for this fuel?

A. Yes, I did.

Q. Where did you direct your eyes?

A. At his face.

A. At his place.

Q. What was the reason you did that?

A. Just a general sales practice, to look at your customer.

Q. Now, after this conversation on Saturday, October 1, 1994, did you take any steps to determine whether you could obtain anhydrous hydrazine?

A. Yes, I did.

Q. What did you do?

A. I called Wade Gray at Texas Allied Chemical.

Q. And he is who?

A. He's the chemical agent for VP Racing Fuels.

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Q. Now, without getting into your conversation with Wade Gray, can you tell the ladies and gentlemen of the jury whether you were able to get anhydrous hydrazine?

A. No, we were not able.

Q. And did you at some point learn what anhydrous hydrazine was?

A. Yes, I did.

Q. In addition to discussing anhydrous hydrazine with Wade Gray, did you discuss any other fuel with him?

A. Yes, we did.

Q. What fuel was that?

A. We discussed nitromethane.

Q. And again without getting into the conversation, based on the conversation, what was your understanding of what would happen if you mixed the two fuels?

A. You would have a bomb.

Q. At some point after the conversation at the racetrack, did you learn -- pardon me, let me withdraw that.

Did you have occasion to receive a telephone call later that week?

A. Yes, I did.

Q. And where were you when you received the call?

A. In my office.

Q. What time of day was it?

A. It was afternoon.

Glynn Tipton - Direct

Q. Do you remember the precise day?

A. No, I do not.

Q. Was anyone else on the phone other than you and the caller?

A. No.

Q. And can you please tell the ladies and gentlemen of the jury what your office phone was at VP Racing in 1994?

A. The phone number?

Q. Yes.

A. It was (913)539-2700.

Q. Can you tell us what happened in this conversation?

A. The person identified themselves with a different name than what I had originally thought it was, which was John.

O. All right.

2. ---- --g---

A. But they identified that they were the ones looking for the anhydrous hydrazine.

Q. Did you recognize the voice?

A. I don't recall whether I did or not.

Q. All right. Go ahead. When the person used a name different than the name John, did you say anything?

A. I think I mentioned something, "Oh, I thought your name was John."

Q. And what was the response?

A. There was basically no response.

Q. All right.

A. Just asked whether I had any luck in securing the

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hydrazine.

Q. And what did you say?

A. I said that -- that we were unable to do it through the source that I had talked to but that if he wanted to leave a phone number, that I would continue to try.

Q. And what did he say?

A. He said he still did not have a phone number.

Q. All right. Did you ask him any questions at that point?

A. I asked him whether he had any intent of mixing the hydrazine with the nitromethane.

Q. And what was his response?

A. He said no.

Q. Did you say anything else?

A. I told him, well, that the two mixtures would be explosive.

Q. Did you get any response to that?

A. He basically just said that that was not his intent.

Q. All right. At that point what happened in the conversation?

A. At that point there was no more conversation, I don't believe.

Q. All right. Did you ever hear from the man again?

A. No, I did not.

Q. Did you ever sell him any fuel?

A. No.

Q. Now, during your tenure, the 10 years you worked in the

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racing fuel industry, have you become familiar with other major suppliers of racing fuel?

A. Yes.

Q. In addition to your company, VP Racing, what are the names of the other suppliers that work at racetracks throughout the country selling racing fuel?

A. There would be Larry Coogle Racing and Worldwide Racing Fuels.

Q. Does Larry Coogle sell nitromethane?

A. Yes.

Q. Does Worldwide Racing Fuels sell nitromethane?

A. Yes.

Q. Were representatives of the Larry Coogle Racing present at the Sears Craftsman Nationals that weekend?

A. Yes.

Q. Were representatives of Worldwide Racing present at that race that weekend?

A. Yes.

Q. What is the primary sales territory of VP Racing Heartland, your office?

A. It's western Missouri, Nebraska, Kansas, and Colorado.

Q. And have you frequently traveled the highways of central Kansas?

A. Yes.

Q. Where do you live?

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A. Live in Manhattan.

Q. Where is your business?

A. In Manhattan.

Q. Are you familiar with the roads because of both of those reasons?

A. Yes.

Q. Now, let me show you Government Exhibit 47. Why don't you check your file and see if there's one in there. I don't believe there is, though.

A. No.

THE WITNESS: Thank you.

BY MR. MENDELOFF:

Q. Do you have it before you?

A. Yes, I do.

Q. And does that fairly and accurately depict the geography of central Kansas?

A. Yes.

Q. And does it accurately depict distances?

A. Yes, it appears to.

MR. MENDELOFF: Move the admission of Government Exhibit 47, your Honor.

MS. MERRITT: No objection.

THE COURT: 47 is received.

MR. MENDELOFF: May I publish it, Judge?

THE COURT: Yes.

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BY MR. MENDELOFF:

Q. All right. Now, with your pen there, would you indicate for the jury where the Sears Craftsman race is held.

A. Just outside of Topeka on Highway 75, approximately out -- that's not what I wanted it to do. It's just a little further up.

Q. This is Topeka right there; is that right?

A. Yes.

Q. And it's in Pauline; is that right?

- ..

A. Yes.

Q. Is that depicted on the map?

A. Yes.

Q. All right. Now, let me just ask you, do you see Marion, Kansas, on the map?

A. Yes, I do.

Q. And where is that located?

A. It's right there.

Q. Marion is right there?

A. Uh-huh.

Q. Pauline is right there. Is that right?

A. Yes.

Q. Now, if you were at the Sears Craftsman drag race and you wanted to drive to Marion, Kansas, would that route take you through Wamego, Kansas?

A. No.

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Q. Would there be any circumstance if you were in Pauline and you wanted to drive to Marion that would take you on Highway 24?

A. Unless you wanted to stop by someplace on the way.

MS. MERRITT: Objection, your Honor: It calls for speculation.

THE COURT: Well, I don't really understand the question.

MR. MENDELOFF: Well, I think we're going to button it up with the next question, Judge.

THE COURT: All right.

BY MR. MENDELOFF:

Q. Now, did the business card that you gave to Defendant McVeigh at the racetrack have your address on it?

A. Yes, it did.

Q. And what address is that?

A. It is 5880 Tuttle Creek Boulevard.

Q. And where is that located?

A. On Highway 24.

Q. How many years have you been selling racing fuel at the drag races?

A. 10 years.

Q. And over the past 10 years, how many races have you worked selling racing fuel?

A. In the neighborhood of 30 to 40.

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Q. Over all those years and all those races, how many times has a customer come up to you and ask you for anhydrous hydrazine?

A. Only once.

Q. And during all these years and all those races, how many customers have asked you to sell rocket fuel of any kind?

A. Only once.

A. Only once.

Q. And during all those years and all those races, how many times has a customer come up to you to sell them two substances that when mixed together you learned would create a bomb?

A. It would be only once.

MR. MENDELOFF: One moment, please, your Honor.

Nothing further.

THE COURT: Ms. Merritt.

CROSS-EXAMINATION

BY MS. MERRITT:

Q. Good afternoon, Mr. Tipton.

A. Good afternoon.

Q. The weekend that you believe you encountered Mr. McVeigh was September 29, October 1, 1994; is that correct?

A. The Sears Craftsman run, I believe it's the 29th through the 2d.

Q. So the answer to my question is yes, September 29, October, through October 1st or 2d?

A. Yes.

Glynn Tipton - Cross

Q. Now, the first time you talked to the FBI in this case was on May 1, 1995; is that correct?

A. I believe that was the date.

Q. That's approximately 11 days . . . 20 days after the bombing?

A. Yes.

Q. Now, when they contacted -- did you contact the FBI, or did the FBI contact you?

A. No, they came to see me.

Q. And when they came to see you, did they tell you that the reason that they were coming to see you was to inquire about a telephone call that had been made to your business?

A. Yes, they did.

Q. And did they tell you that this phone call had been made back in October of 1994?

A. I don't recall whether they told me when it was made.

Q. Do you recall that you told them in May of 1995 that you remembered this particular phone call from, that they had been inquiring about?

A. Yes.

Q. Now, you said that on October 1 of 1994, you were working at the Sears dragway; correct?

A. Yes.

Q. And you say that an individual came up to you who identified himself as John; correct?

Glynn Tipton - Cross

A. Yes.

Q. And he asked for a chemical called anhydrous hydrazine; correct?

A. Yes.

Q. And isn't it true that you told him that you would have to check on the availability or price of anhydrous hydrazine and get back to him that Monday because there was nobody else you could ask right then?

A. That is correct.

Q. And on Monday, October 3, 1994, was when you called an individual named Wade Gray who was a supplier and told him of the encounter with John?

A. Yes.

Q. And it was at that time you learned from Mr. Gray that anhydrous hydrazine was not something that you sold?

MR. MENDELOFF: Objection, your Honor. Calls for hearsay.

THE COURT: Overruled.

You may answer.

THE WITNESS: Okay.

Repeat the question one more time, please.

BY MS. MERRITT:

Q. It was at that time on October 3, 1994, when you spoke with

Mr. Gray, that you learned that your company didn't sell anhydrous hydrazine?

Glynn Tipton - Cross

A. That is correct.

Q. And on Saturday, when you encountered John, at that time you didn't know that VP Racing Fuels did not handle or sell anhydrous hydrazine; correct?

A. Yes, that is correct.

Q. And in fact, had VP Racing Fuels sold anhydrous hydrazine, you would have wanted to make the sale; correct?

A. That is correct.

Q. Now, you gave a description of this person named John to the agent who interviewed you on May 1, 1995; correct?

A. Yes, I did.

Q. And the first description you gave of this person was that it was 5 foot 8, approximately, inches tall; correct?

A. That is correct.

Q. You also told them that he had a slender build?

A. Yes.

Q. That he had brown hair?

A. Yes.

Q. And you were standing approximately 3 feet from him at various times; correct?

A. Yes.

Q. And do you remember the name of the agent who interviewed you on May 1?

A. No, I do not.

Q. Does the name Stuart Doyle sound familiar to you?

Glynn Tipton - Cross

A. No, it doesn't.

Q. Do you recall that the agent who interviewed you on May 1 showed you two photographs?

A. Yes, I do.

Q. And the two photographs that were shown to you were of persons that you were asked if you had ever seen before or if either one of those people might be John; right?

A. Yes.

Q. Now, can you tell me what the agent said to you as he was showing you the photographs?

A. He just asked me to look at them and tell me whether either one of them resembled the guy that I had talked to at the races.

Q. Did he tell you that the person you -- that you knew as John might or might not be one of those two photographs, or was he silent on that point?

A. He just asked me to look at those two photographs, the best I remember.

Q. So he didn't tell you that the person you knew as John might or might not be among those photographs?

A. I don't recall exactly what he said there.

Q. Do you recall whether he told you to base your selection, should you make one, upon your own memory and not upon anything you may have seen or heard in the media?

A. I don't recall what he said at that point in time.

Glynn Tipton - Cross

Q. Now, at the time that the agent came to VP Racing Fuels on May 1, 1995, and interviewed you, you had already -- you were aware that Timothy McVeigh had been arrested and charged with the Oklahoma City bombing; correct?

A. I believe I might have been, yes.

Q. And in fact, you had seen his picture on television a few times prior to the time you were interviewed on May 1; isn't that true?

A. I believe that probably would have been correct.

Q. And in fact, about a week after the bombing, you telephoned Wade Gray and told him that you thought the person you saw on television, Mr. McVeigh, looked like John, the person who had approached you the fall before to -- about buying anhydrous hydrazine?

A. I don't recall any conversation like that.

Q. You don't recall telephoning Wade Gray to tell him about your having seen Mr. McVeigh on television?

A. No.

Q. Have you been interviewed by any news organizations concerning Mr. McVeigh?

A. No.

Q. And so there's been no television interviews that were supposed to air or that aired on television about your encounter with the person named John?

A. Yes, there has been.

Glynn Tipton - Cross

Q. Okay. What was that?

A. I believe NBC interviewed me at one point in time.

Q. Do you know when that was?

A. I don't recall. It was sometime after the point where the FBI had contacted me.

Q. Do you recall what you told them in the interview?

A. Oh, basically I told them pretty much the same thing that I had told the FBI agents.

Q. Did that interview ever air?

A. To the best of my knowledge, it did.

Q. Did you get upset with NBC during the course of that interview?

A. Yes, I did.

Q. And you got upset because it seemed to you they were more interested in finding out about the ATF than what you saw?

A. I thought that possibly the press was looking to find a scapegoat for some, you know, reason why this happened or something like that.

Q. Well, directing your attention back to October 3, 1994, which is the day you say that you called Wade Gray to inquire about whether VP Racing Fuels sold anhydrous hydrazine, you recall that day?

A. Yes.

Q. During the course of that conversation, isn't it true that Mr. Gray and you discussed the fact that or the possibility

Glynn Tipton - Cross

that anhydrous -- John, who wanted to purchase anhydrous hydrazine, might be doing it for illegal purposes such as making a bomb?

A. Yes, that is correct.

Q. And didn't you and Mr. Gray, while you were together on the

telephone, try and call the ATF to report this?

A. Yes, we did.

Q. And did you ever speak to anyone at ATF?

MR. MENDELOFF: Objection, your Honor.

THE COURT: What's the objection?

MR. MENDELOFF: Hearsay.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MS. MERRITT:

Q. And did ATF ever follow up -- or were you ever contacted by ATF?

A. No, basically we didn't have enough information to follow up on.

Q. In fact, what happened is you were directed from calling ATF in New Orleans to calling ATF in another city; correct?

A. Yes, I believe it was Kansas City.

Q. And then you did make a call to ATF in Kansas City; is

-
that
correct?

A. Yes, we did.

Q. But those people never followed up with you, either, did

Glynn Tipton - Cross

they?

A. No, they did not.

Q. And in fact the first time you had any contact which you were able to tell what happened and what you observed was on May 1 when the FBI came to interview you; correct?

A. I believe at the time we called the ATF, I did give a description of the person; but I don't recall that for sure.

Q. But you said nobody at ATF ever got back to you to follow up on that, correct?

A. That is correct.

Q. And the first time someone contacted you willing to or eager to follow up on it was on May 1?

A. That is correct.

Q. And that was the FBI, not the ATF; correct?

A. That is correct.

Q. Now, VP -- in your experience working for VP Racing Fuels, it's not uncommon to sell nitromethane; correct?

A. No.

Q. And it's not uncommon to sell it in 55-gallon drums; correct?

A. No.

Q. And in fact, when John asked you how much the nitromethane was cost -- would cost, you had a price readily available for him, didn't you?

A. Yes, I did.

Glynn Tipton - Cross

Q. Now, you were interviewed again by the FBI on June 29, 1995; do you remember that?

A. I don't recall the exact date, but I do remember being interviewed several times.

Q. Okay. And during one of these interviews, do you recall discussing racing fuels and nitromethane and how they're sold?

A. Yes.

Q. And do you recall telling the FBI that it is quite common for someone to buy 1 to 55 gallons of racing fuels and nitromethane and that names are rarely put on sales invoices?

A. That is true.

Q. Now, did you also describe this person named John as having a medium complexion?

A. I don't recall that.

Q. Do you recall saying that he had a two-day whisker growth?

A. Yes.

Q. Do you recall saying that he was wearing a fitted ball cap?

A. I remember saying some type of cap, yes.

Q. And do you recall saying that he might have been wearing a

black T-shirt with writing on it?

A. It had, it was a dark-colored T-shirt with some type of screening.

Q. And you also recalled that he'd been wearing a lightweight jacket?

A. I was unsure about the jacket.

Glynn Tipton - Cross

Q. Do you recall mentioning a lightweight jacket?

A. Yes, I do.

Q. And do you recall telling the agent on May 1, 1995, that the pictures -- two pictures you looked at -- one of them the person's face was thin like John's but that you could not be positive that McVeigh was the subject known to you as John?

A. That is correct.

Q. And subsequent to that, you have changed your opinion to now say that you believe you are 90 percent certain that the individual you knew as John was Mr. McVeigh.

MR. MENDELOFF: Objection, your Honor:

Mischaracterization of testimony.

THE COURT: Overruled.

THE WITNESS: No.

BY MS. MERRITT:

Q. Okay. What about that statement is incorrect?

A. I never changed my statement there. I basically just put a percentage point to that statement.

Q. So on May 1, 1995, you never told the FBI agent that you were 90 percent sure the person you saw was Timothy McVeigh; correct?

A. That is correct.

Q. And it was sometime later when you described yourself as being 90 percent sure; correct?

A. Yes.

Glynn Tipton - Cross

Q. Who did you make that description to, of 90 percent certain?

A. It was Scott Mendeloff and Jon Hersley.

Q. So it was during a meeting with the prosecutor and an agent

sometime later that you decided you were 90 percent sure that the person you saw was Timothy McVeigh?

A. Yes, that is correct.

Q. Now, between April 19 and May 1 of 1995, you watched television coverage concerning the Oklahoma City bombing case, didn't you?

A. What were those dates, again?

Q. April 19, which is the day of the bombing, and May 1, which

is the date that you were interviewed by the FBI.

A. Yes, I seen some of the TV coverage of the --

Q. What television stations did you watch during that time?

Q. What television stations did you watch; do you remember?
A. I do not recall.
Q. Do you recall if it was network or local?
A. I'm sure it was maybe possibly both.
Q. You also read news accounts of the Oklahoma City bombing, didn't you? In the --
A. I don't recall.
Q. You don't recall whether you read any newspaper articles during that period of time?
A. I don't read a whole lot, and don't have the time to generally watch TV or read.

Glynn Tipton - Cross

Q. Did you see Mr. McVeigh's arrest on television and when he was led out of the Noble County Jail in the orange jumpsuit?
A. I believe at one point in time I might have seen him in the orange jumpsuit.
Q. Now, when you saw him in the orange jumpsuit, did you assume at that time that that was the person you knew as John?
A. No.
Q. And you're saying that you don't recall calling Mr. Gray and telling him that you thought John might be Mr. McVeigh, who you saw in the orange jumpsuit?
A. No, I don't recall that.
Q. Okay. Did you ever see the depictions of John Doe 2 or John Doe 1 prior to May 1, 1995, a composite sketch?
A. I believe I remember seeing some, yes.
Q. And at any time prior to May 1, 1995, did you call the FBI to tell them that you thought the person that you were viewing on television as Timothy McVeigh might be the person you had encountered in October named John?
A. No, I did not call anybody.
Q. Now, when you were viewing the photographs that the agent showed you, one photograph was of Terry Nichols and one photograph was of Timothy McVeigh; is that correct?
A. I believe those were the two, yes.
Q. And you selected the photograph of Mr. McVeigh at that time; is that correct?

Glynn Tipton - Cross

A. I looked at the photograph, and I told them that it looked like the person that I had described to them, but I wasn't certain.
Q. Okay. What did the agent say to you after you told him that?
A. I don't recall what he said.
Q. Did he say anything?
A. I do not recall.
Q. Now, did you -- is it your testimony that you immediately recognized the photograph of Timothy McVeigh when it was displayed to you on May 1?

unemployed as you on May 1.

A. It had some resemblances, yes, to the person that I had seen at the racetrack.

Q. So you had to think about it pretty much, you just didn't immediately point to the person and select him?

A. No.

Q. Now, you were interviewed by the FBI on May 1, 1995; correct?

A. Yes.

Q. And you were interviewed again sometime in June; right?

A. Yes.

Q. And were you also interviewed again at the end of June?

A. I don't recall.

Q. Do you recall being interviewed in July?

A. I don't recall that, either. I don't know.

Glynn Tipton - Cross

Q. Do you recall how many times altogether you've been interviewed by FBI agents?

A. No.

Q. Do you recall how many times you've met with prosecutors in this case concerning your testimony or concerning what you saw back in October of 1994?

A. I believe it would be about three or four times possibly.

Q. When was the last time you met with the prosecutors?

A. It would have been last night.

Q. How long did you meet with them for?

A. Probably an hour.

Q. Did you review what your testimony might be today?

A. We went over testimony, yes.

Q. Did you prepare at all for being cross-examined?

A. Not really.

Q. What do you mean not really? A little bit?

A. Yeah, maybe a little.

Q. Can you tell me what was said?

A. Basically just asked -- or was trying to tell me what questions that I might be asked.

Q. What did they say you might be asked?

A. Just some various different questions about my testimony.

Q. Can you think of a specific question they told you?

A. They said they might ask about the height.

Q. Okay. And did they tell you -- and then what -- did they

Glynn Tipton - Cross

suggest any answer to you?

A. No.

Q. Did they suggest any way to explain the fact that you gave differing heights to the agent when you were first interviewed?

A. No. All the testimony is my own testimony.

Q. Before last night, when was the last time you met with the prosecutors or agents in this case?

A. It would have been probably sometime in April.

Q. April of 1997?

A. '7, yes.

Q. When in April? We're still in April. Today is April 30.

THE COURT: No. Today is May.

MS. MERRITT: Today is May 1, okay.

BY MS. MERRITT:

Q. When in April?

A. It would have been the early part of April.

Q. Was that meeting in Denver?

A. Yes, it was.

Q. Did they pay for you to fly in?

A. Yes, they did.

Q. And how long did you stay in Denver on that trip?

A. Just basically the day I flew in, and I flew out the next day.

Q. And how long did you meet with the agents on that occasion?

A. I would guess a couple hours.

Glynn Tipton - Cross

Q. And what did you review on that occasion?

A. I just wanted to go over what kind of questions he would be asking me.

Q. And did he want to go over the answers that you would be telling the Court?

A. He just asked me questions, and I answered them.

Q. Did you prepare at all for any cross-examination on that day?

A. I believe we might have; I don't recall.

Q. Did he ask you questions as if he was the one cross-examining you?

A. I don't recall.

Q. So you don't recall this, and this was just in the last 30 days; right?

A. Yes.

Q. But you're certain that you remember -- you remembered in May of 1995 about a telephone call you received by the telephone number alone back in October of 1994?

You want me rephrase that? That wasn't phrased very well.

A. Yes.

Q. You stated earlier on May 1, 1995, you were visited by an FBI agent; correct?

A. Yes.

Q. And on May 1, 1995, the FBI agent asked you about a

Glynn Tipton - Cross

telephone call you had received back in October of 1994; correct?

A. Yes.

Q. And that's approximately six months ago from the time --

A. Yes.

Q. -- you were being interviewed; right?

A. Yes.

Q. And at that time you were able to tell the FBI agent that you remembered the call; right?

A. It was what I would call unusual enough that it kind of burned an image into my mind.

Q. But you can't recall the -- what questions the prosecutor told you or asked you less than 30 days ago; correct?

A. That is correct.

Q. Now, is October 7 the last time you ever heard from this particular caller?

A. Yes.

Q. How many minutes did you speak with him on the phone on October 7?

A. Oh, I would guess it was in the neighborhood of about five minutes.

Q. And how many -- and how many minutes would you say you spoke with him on October 1 at the raceway?

A. Oh, about five to ten minutes there.

Q. Do you recall being interviewed by a man named H. C. Bodley

Glynn Tipton - Cross

who is an investigator for Terry Nichols on about November 6 of 1995?

A. Yes.

Q. Do you recall giving a description to Mr. Bodley of what John looked like, the person you encountered on October 1, 1994?

A. Yes.

Q. Do you recall telling him that -- that John was wearing a T-shirt that did not have any kind of racing logo or advertisement on it?

A. I believe the description I gave was the same one that I gave the FBI on May the 1st.

Q. On May the 1st, didn't you tell the person you knew as John was wearing a T-shirt that had some writing on it?

A. Yes.

Q. So are you saying that it was writing, just not racing writing?

A. It was some type of a screening. I can't tell you what, but I do recall that it was not any type of racing or motor-sports-type screening.

Q. Do you recall telling Mr. Bodley that John didn't even ask you about the nitromethane until he was leaving and then he turned around and at the very end just say, "Hey, could you sell me some nitromethane," or something like that?

A. At the end he turned around and asked me a price of a drum

Glynn Tipton - Cross

of nitromethane.

Q. And you were able to quote it for him right away; correct?

A. Yes.

Q. Now, do you recall telling Mr. Bodley that this person

Q. Now, do you recall telling Mr. Bodley that this person John -- you think the person gave you the name John, but you're not even sure about that?

A. Well, at the time that the person called me back, I got a different name. It was either James or Jim or something along that line. It was something close to John; and I thought maybe

I had just made a mistake when I wrote down the name.

Q. So the answer to my question was yes, you told Mr. Bodley that you weren't sure the person you encountered on October 1, gave you the name of John?

A. No, I'm sure of the name John.

Q. No, I didn't ask you if you're sure now. I'm asking you if you told Mr. Bodley on November 6, 1995, that you weren't sure the individual's name was John.

A. I don't recall saying that, no.

Q. Now, these photographs that you examined that were of Mr. McVeigh and Mr. Nichols, they weren't in a photo spread, they were two individual photos; is that correct?

A. That is correct.

MS. MERRITT: Your Honor, may I have a moment?

THE COURT: Yes.

MS. MERRITT: No further questions.

Glynn Tipton - Cross

THE COURT: Mr. Mendeloff.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Now, you remember being asked on cross-examination about your call to the ATF with Mr. Gray?

A. Yes.

Q. Do you remember testifying that you tried to tell them about your experience but you didn't have enough information?

A. Yes.

Q. What information did you have to be able to identify the person who came up to you and gave his name as John? Did you have his last name?

A. No.

Q. Did you have his phone number?

A. No.

Q. Did you have a license plate?

A. No.

Q. Did you have a social security number?

A. No.

Q. Did you tell the ATF what you knew?

A. Yes, we did.

Q. That is that the man's name was John and you gave a description?

A. Yes.

Q. Now, you remember being asked on cross-examination about

Glynn Tipton - Redirect

your initial interview with the FBI in which you stated that

-
you thought the person you had encountered at the racetrack was the defendant, McVeigh, but you couldn't be certain?

A. That is correct.

Q. And now your testimony is that you are about 90 percent sure?

A. That is correct.

Q. Do you remember being asked on cross-examination by Ms. Merritt questions regarding when you first said 90 percent?

A. Yes.

Q. And do you remember being -- you remember responding that you first said that when you met with Agent Hersely and myself?

A. Yes.

Q. Can you tell the ladies and gentlemen of the jury how it was that you came to that 90 percent figure.

A. I received a phone call prior to that meeting from the FBI explaining that they were going to come out and meet with me with a prosecutor. And at that point in time I felt like that was going to be one of the questions, because I could not say with a hundred percent certainty that that was McVeigh that -- the person I met with was McVeigh; that they were going to ask me that question again. And I wanted to be able to answer that question prior to that, so I gave that some thought and decided that I could be 90 percent certain that that was indeed the two people were the same.

Glynn Tipton - Redirect

Q. And that was before you ever met with Agent Hersely and myself and you came to that conclusion; is that correct?

A. That is correct.

Q. Finally, you were asked questions on cross-examination of an interview you had with H. C. Bodley, who is a criminal defense investigator for Terry Nichols.

A. Yes.

Q. Was there an agent -- FBI agent there during that interview?

A. No.

Q. Was there a prosecutor there during that interview?

A. No.

Q. You were being interviewed by the defense?

A. That is correct.

Q. Do you remember telling Mr. Bodley that other than the unknown height, the person that you saw at the racetrack was Tim McVeigh?

A. I don't recall the exact words there. I believe that I said that I was not certain, but I thought that that was the person, yes.

Q. Thank you.

MR. MENDELOFF: Nothing further, your Honor.

MS. MERRITT: Just one question, your Honor.

THE COURT: All right.

RE CROSS-EXAMINATION

Glynn Tipton - Recross

BY MS. MERRITT:

Q. Do you recall -- well, strike that.

When you called the ATF on October 3, 1994, with Wade Gray, you weren't told that you didn't have enough information to interest them; you were told that it wasn't their jurisdiction in Louisiana, you should call Kansas City?

A. Yes.

THE COURT: Is this witness to be excused?

MR. MENDELOFF: Yes, your Honor.

MS. MERRITT: Your Honor, we don't want to release this witness.

THE COURT: Well, you won't be needing him tomorrow.

MS. MERRITT: That's correct.

THE COURT: You can return. We'll give you notice when to return.

THE WITNESS: Okay.

THE COURT: Remember, though, that you're under a order of sequestration with regard to your testimony, so you may not discuss it with any other witness. Do you understand that?

THE WITNESS: I understand that.

THE COURT: Next witness, please.

MR. HARTZLER: The Government calls David Pinnell. Mr. Mackey will question him.

THE COURT: Thank you.

Glynn Tipton - Recross

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

(David Pinnell affirmed.)

THE COURTROOM DEPUTY: Have a seat, please.

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

THE WITNESS: David Pinnell, P-I-N-N-E-L-L.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed, Mr. Mackey.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MACKEY:

Q. Good afternoon, Mr. Pinnell. How are you?

A. Good.

Q. Tell the jury where you live.

A. Alamogordo, New Mexico.

Q. Where about is that?

A. Southern New Mexico, about 70 miles above El Paso and 60 miles east of Las Cruces.

Q. How long have you lived in that city or that area?

A. Almost 10 years.

Q. Where did you grow up?

A. Atlanta, Georgia.

Q. What do you do for a living right now?

A. Right now, I'm an electronic technologist for Johnson

David Pinnell - Direct

Controls Worldwide Services.

Q. How long have you had that job?

A. For two years.

Q. Do you have any military background?

A. Yes, I was in the Air Force for six years.

Q. What was your field of specialty?

A. Electronics.

Q. Any particular field of electronics?

A. Satellite communications.

Q. Since -- well, let me ask you. When did you get out of the

Air Force?

A. Be in October, 1985.

Q. And with that experience and background, did you work for a series of employers in that same field?

A. Yes.

Q. Let me direct your attention to a company called Active Technologies, Inc. Did you ever work for that company?

A. Yes.

Q. And where were they located?

A. They were located in Alamogordo.

Q. Are they currently in business?

A. No, they have since gone out of business.

Q. What time period did you work for Active Technologies?

A. From May of 1994 till February of 1996.

Q. So you were employed there, then, on October 7, 1994?

David Pinnell - Direct

A. Yes.

Q. Tell the ladies and gentlemen of the jury what your job was when you worked for that company.

A. I worked as a sales manager, taking inside sales calls.

Q. And what product did Active Technologies offer?

A. We offered the Lightning Charger, a mini generator.

Q. And was that its principal product for sale?

A. Yes.

Q. How did you go about carrying out your job? What did you do?

A. For the most part, we -- I answered telephone calls on the product and I made phone calls to our -- the people that we supplied, our wholesalers and a few of our retailers.

Q. Did you on behalf of your company take any steps to get this generator well known in the community?

A. Yes, I handled a great deal of the advertising.

Q. What sort of advertising did you do for the generator?

A. Mostly seeking editorials and new-product releases through magazines.

Q. And how specifically would you acquaint a magazine with

your product?

A. First up would be to send them a press release or a press

packet on the product; and then if they showed interested --
interest in the product after that, many times we would
provide
them with a generator to test.

David Pinnell - Direct

Q. And was it your experience some of the magazines would then
write an article about pros and cons of your product?

A. Yes, absolutely. That was what we were hoping for.

Q. In the fall of 1994, did Soldier of Fortune magazine
feature your product?

A. Yes, they did.

Q. Describe that article.

A. They did take one of our generators, they did some fairly
extensive testing with it and then wrote a very favorable
editorial, a good probably page in their magazine on our
Lightning Charger.

Q. And shortly after the release of that article, did you
begin in your capacity at ATI to receive phone calls from
interested purchasers?

A. Yes.

Q. What was your practice in keeping track of inquiries,
people who might be interested in selling -- or purchasing
this
generator?

A. With any telephone call that we received, almost regardless
of whether it was for just interest in the product or
potential

dealer or distributor, we filled out a form that listed the
person's name, address, phone number, and . . . basically we
find out where they were, where they got the information from.

Q. Would you write that information down on a form and keep it
in the records of Active Technologies?

David Pinnell - Direct

A. Yes, we had a standard form that we used.

Q. Was that your practice in October of 1994?

A. Yes.

Q. Mr. Pinnell, from your family past, did you recognize the
name Tuttle, T-U-T-T-L-E?

A. Yes.

Q. And how do you recognize the name Tuttle?

A. That we have family friends, actually my mother's employer,
has been her employer for probably about the last 15 years,
that is their name, and I grew up with their sons.

Q. Directing your attention to October 7, 1994, do you
remember receiving a phone call from a person using the last
name Tuttle?

A. Yes.

Q. Tell the members of the jury what you recall of that
conversation.

A. We had a call from a -- it was a Tim Tuttle, on the

Lightning Charger. It was basically just seeking standard information concerning the product. We talked for probably about three to five minutes on what the generator was used for, how loud it was, and then we did talk a little bit about pricing.

Q. On October 7, what was the telephone number for Active Technologies?

A. It's (505)437-0021.

David Pinnell - Direct

Q. And do you recognize the name Arctic Traveler?

A. Yes.

Q. And Arctic Travelers was?

A. Arctic Travelers was our sister company, manufactured air -- small air conditioners for like buses and delivery vehicles.

Q. Did it operate from the same premises as Active Technologies?

A. Yes.

Q. Owned by the same person?

A. Yes.

Q. And did it use, to your knowledge, the same telephone number?

A. Yes.

Q. Turn your attention, please, Mr. Pinnell, to Government's Exhibit 186. Should be in front of you. Do you recognize what that is?

A. Yes, it's our -- the form that we use to document telephone solicitations.

Q. And the handwriting that fills out the entries for name and address, so on: Is that yours?

A. Yes, it is.

Q. When did you make those entries?

A. It would have been October 7 of 1994.

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

David Pinnell - Direct

Exhibit 186.

MS. RAMSEY: No objection, your Honor.

THE COURT: Received, 186. You may publish it.

MR. MACKEY: Thank you, your Honor.

BY MR. MACKEY:

Q. The upper right-hand corner shows a date of October 7, '94;

is that correct?

A. Yes.

Q. And would you simply read into the record what information you took from this caller on this date?

A. Name of Tim Tuttle; address of 1711 Stockton Hill Road, No.

206, Kingman, Arizona, 86401; no phone number, no fax. Source

of lead was SOF, which we use as just an acronym for Soldier of Fortune magazine. I've circled the regular Lightning Charger information, which means that just our standard packet and to send along a retail price list.

Q. There's a blank there for phone. Was it your routine to get the phone number of an interested purchaser?

A. Yes.

Q. Why is it blank?

A. With the Soldier of Fortune magazine, many of the callers that called in response to that ad would not leave phone numbers.

Q. Mr. Pinnell, what did you do after receiving this phone call and writing down this information with respect to this

David Pinnell - Direct

order?

A. With this, I would have given this form to our secretary; and she would have inputted the information into our computer database and mailed the required information.

Q. Do you know from searching the records whether Tim Tuttle of Kingman, Arizona, ever bought one of your generators?

A. We do not believe that there was one purchased from us.

Q. Thank you, Mr. Pinnell.

MR. MACKEY: Nothing else, your Honor.

THE COURT: Ms. Ramsey.

CROSS-EXAMINATION

BY MS. RAMSEY:

Q. Did Mr. Tuttle ask you any questions that were out of the order when he was asking questions about the Lightning Charger, I believe is what you called it?

A. Yes.

No.

Q. Nothing out of the ordinary about the call?

A. No.

Q. Is the only reason you remember it because of the name Tuttle being a name that you associated with your family?

A. Yes. And the Soldier of Fortune calls were rather unique for themselves.

Q. Okay. But there wasn't anything out of the ordinary about this one?

David Pinnell - Cross

A. No.

Q. Did -- how many calls did you receive about this piece of equipment?

A. Oh, I received probably about 30 to 40 a day.

Q. For what period of time?

A. About a year and a half.

Q. Seven days a week or five days a week?

A. Five days a week.

Q. Okay. So you got a lot of interest in it?

A. Yes.

44. 105.

Q. Did the FBI, when they talked to you, have you run a check of your records to see if you sold any of these Lightning Chargers or any products to Timothy McVeigh?

A. Yes.

Q. And what was your response after checking your records?

A. There was nothing sold.

Q. And did they also have you check the name of Terry Nichols?

A. Yes.

Q. And what was the response after checking the records?

A. There was nothing sold under those names.

Q. And to Tim Tuttle?

A. Same: Nothing sold.

Q. And to Robert Kling?

A. Nothing sold.

Q. Did the FBI also have you check Terry Tuttle?

David Pinnell - Cross

A. I don't have the list. There was a list of names that we did check.

Q. All right. If the FBI report says that they had you check also the names of Terry Tuttle, Kenneth Parker, Ted Parker, Jim

Kyle, Joe Kyle, Joe Rivers, Shawn Rivers, and Darrell Bridges, do you think that would be a correct list?

A. Yes.

Q. And did you find anything in your records to indicate that you had made any calls to any of those names?

A. No.

MS. RAMSEY: No further questions, your Honor.

MR. MACKEY: Nothing, your Honor.

THE COURT: You'll be excusing him?

MR. MACKEY: Yes, your Honor.

THE COURT: You agree, Ms. Ramsey?

MS. RAMSEY: Yes, your Honor.

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

Next witness, please.

MR. HARTZLER: The Government will call Linda Juhl.

Mr. Goelman will do the questioning.

THE COURT: All right.

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

(Linda Juhl affirmed.)

THE COURTROOM DEPUTY: Have a seat, please.

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

THE WITNESS: It's Linda May Juhl, and it's J-U-H-L.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed, Mr. Goelman.

MR. GOELMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. GOELMAN:

Q. Miss Juhl, where are you from?

A. Oklahoma City, Oklahoma.

Q. How long have you lived in Oklahoma City?

A. Since 1976.
Q. Where do you work?
A. It's Mid-America Chemical.
Q. How long have you worked at Mid-America?
A. Since March of 1993.
Q. What's your position at Mid-America?
A. I'm currently the office manager.
Q. How long have you been office manager?
A. Since August of 1995.
Q. What was your position at Mid-America before that?
A. Customer service.
Q. So you were customer service from about 1993 till August 1995?
A. Yes, sir.

Linda Juhl - Direct

Q. What were your responsibilities as office clerk?
A. I answered the phones, took customer orders, entered the invoices, things like that.
Q. And what kind of company is Mid-America?
A. We're a chemical distributor, wholesale and retail.
Q. What kind of chemicals do you sell?
A. It's a pretty wide variety. We deal with water treatment plants, plating companies; and we also special order for schools or individuals who have a special project.
Q. Where is Mid-America based?
A. It's in Oklahoma City.
Q. And what other parts of the country does it service?
A. We do regional. We do Oklahoma, Missouri, Kansas, Arkansas, and Texas; and then we ship to different states, if it's possible.
Q. Miss Juhl, how, if at all, does Mid-America advertise in the surrounding states, particularly in Kansas?
A. We use the Yellow Pages quite a bit.
Q. Do you know what category Mid-America is listed under in the Yellow Pages?
A. I think some were under laboratory supplies, and then most of them were under chemicals.
Q. Do you know what Mid-America Chemical's main telephone number was in the fall of 1994?
A. It's (405)232-6331.

Linda Juhl - Direct

Q. Was that Mid-America's only phone number?
A. No. We have a toll-free number also.
Q. And did you at that time?
A. Yes, sir.
Q. Miss Juhl, are you familiar with the chemical anhydrous hydrazine?
A. A little bit.
Q. Do you remember when you first heard of this chemical?
A. I got a phone call from a customer asking for that

chemical.

Q. A customer that you knew?

A. No. It was just someone calling over the phone.

Q. Do you remember when this was?

A. It was the fall of '94 -- 1994.

Q. And who answered the phone call?

A. It was myself.

Q. Can you describe for the jury the content of the phone call, as best as you remember?

A. The gentleman called and asked if I had hydrazine; and I told him it was something I didn't stock, but I could possibly order it. And we have a Fisher Chemical catalog that we order some of the special items from; and while I was flipping the pages, I asked him how much he wanted, and he was not sure.

He asked me what size I could get it in. And while I was looking it up, I couldn't find it; and so that was pretty

Linda Juhl - Direct

much the end of the phone call.

I did ask him if he wanted me to see if one of the salesmen for the company could find it and call him back, but he didn't choose to leave his name for that.

Q. Miss Juhl, was it your usual practice to take name and number from callers when you couldn't find a chemical?

A. We usually try to because we have salesmen that are a lot more knowledgeable in that area that are usually out in the field; and when they come in the office, we'll have them call the customers back that want a call returned.

Q. And did this customer ever indicate his name to you?

A. No, he didn't.

Q. About how long did this telephone call last?

A. Probably less than five minutes.

Q. And did you ever speak to that caller again after that?

A. We received a call after that -- excuse me -- and it was the same gentleman, because I took --

MS. RAMSEY: We object to hearsay.

THE COURT: For the purpose of what was said? That's all?

MR. GOELMAN: Yes. It's not the for the truth.

BY MR. GOELMAN:

Q. Did you receive the call, Miss Juhl?

A. Yes, I did.

Q. Can you describe what you heard?

Linda Juhl - Direct

A. The gentleman asked if we had hydrazine. And he explained that he had called before, and I passed the phone call on to the salesman that was there and told him what the gentleman was wanting.

Q. Do you remember what that salesman's name was?

A. It was Steve Boyd.

Q. And did you ever speak to the caller again, Miss Juhl?

A. Not that I know of.

A. NOT THAT I KNOW OF.

Q. Miss Juhl, as a clerk at Mid-America Chemical, did you take a lot of different phone calls?

A. Yes, I did.

Q. So how is it that you remember this particular phone call?

A. Well, on that particular item, because I couldn't find it -- I pride myself on being able to find stuff and do my job well -- excuse me -- and since I couldn't, when the second call came in and I passed it on to Steve, he teased me because he found it really fast and made me feel pretty ignorant over it.

Q. After the bombing in Oklahoma City, Ms. Juhl, did the FBI come out and talk to you?

A. Yes, they did.

Q. And when was that?

A. The first time was like a week after the bombing. It was pretty soon after it occurred.

Q. Did you tell the FBI about the phone call that you'd

received about anhydrous hydrazine at that point?

Linda Juhl - Direct

A. No, I didn't.

Q. Why not?

A. I didn't know it was important, because I didn't know what hydrazine was used for or that it tied in any way to what they were asking me about.

Q. What were they asking you about?

A. Ammonium nitrate, if we had sold or gotten any calls about it.

Q. Did there come a time that you told the FBI about the call you'd received relating to anhydrous hydrazine?

A. Yes, sir.

Q. And between the phone call from the caller about anhydrous hydrazine and when you told the FBI about it, had you received any other calls about anhydrous hydrazine?

A. I had not.

Q. Had anyone mentioned anhydrous hydrazine between those two times?

A. No, sir.

MR. GOELMAN: One moment, your Honor.

THE COURT: Yes.

MR. GOELMAN: Nothing further.

THE COURT: Any questions?

MS. RAMSEY: Yes, just a couple, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

Linda Juhl - Cross

BY MS. RAMSEY:

Q. The phone call that you were discussing just a few moments ago occurred in the fall of 1994; is that correct?

A. Yes, ma'am.

Q. And you don't have any idea who you were talking to, do

you?

A. He just said that he was calling from Kansas.

Q. My question is you don't have any idea who you were talking to, do you?

A. Not his name, no.

Q. Or who it was at all?

A. I know it was a gentleman who said he was in Kansas.

Q. You did not recognize the voice?

A. No.

Q. And you don't have any name?

A. No.

MS. RAMSEY: Nothing further, your Honor.

THE COURT: Excusing this witness?

MR. GOELMAN: Yes, your Honor.

MS. RAMSEY: Yes, your Honor.

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

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. HARTZLER: Marion Ogden. Mr. Goelman will do the questioning.

THE COURT: Thank you.

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

(Marion Ogden 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 Marion Charles Ogden,
O-G-D-E-N.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Goelman.

MR. GOELMAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. GOELMAN:

Q. Good afternoon, Mr. Ogden.

A. Good afternoon.

Q. Where do you live?

A. I live in Marion, Kansas.

Q. And how long have you lived there?

A. 23 years.

Q. Are you married, sir?

A. Yes, sir.

Q. Do you have any children?

A. Two daughters.

Q. What are their ages?

Marion Ogden - Direct

A. 29 and 27.

Q. How big is Marion, Kansas?

A. 2,000.

Q. Where do you work in Marion?

A. USD 408. I'm a school teacher. I teach health and physical education.

Q. How long have you taught there?

A. 24 years.

Q. Do you do anything to supplement your income, sir?

A. Yes, I do. I have an antique store downtown.

Q. What's the name of your store?

A. Bearly Makin' It Antiques.

Q. And do you mind explaining to us what the source of that name is?

A. There was an advertisement out years ago of a Bear alignment sign, and I happened to own a Bear alignment sign and decided to keep it until I got a store and painted it up. And I painted it the same way that the advertisement was, only I put my name on it, which was Bearly Makin' It Antiques.

Q. Are you the sole proprietor of Bearly Makin' It Antiques?

A. No. I have half interest in with another gentleman.

Q. Where do you buy the items that you sell at Bearly Makin' It?

A. Auctions, garage sales, moving sales, flea market, private individuals, estate sales.

Marion Ogden - Direct

Q. How do you find out about the garage sales and moving sales that you go to?

A. Most of them are in the newspaper advertised.

Q. And did you have occasion in the fall of 1994 to go to a moving sale at the Donahue farm?

A. Yes, I did.

Q. Where is that located?

A. 3 miles east, a mile north, approximately 5 miles east and somewhere around 2 to 3 miles north from Marion.

Q. And those are directions from Marion?

A. That's as close as I can come right now.

Q. How did you hear about the sale?

A. It was advertised in the Marion County Record.

Q. Mr. Ogden, do you see a lot of ads for moving sales, garage sales, in the Record?

A. During the season, yes. In the spring and in the fall, there are quite a few.

Q. So why do you remember this particular ad?

A. Because it had -- did not have an address. All it had was listed the items, and it had a telephone number.

Q. Is that unusual?

A. Yes.

Q. How unusual?

A. Most of your garage sales have an address, and they put a time and a date. And this had no time or date.

Marion Ogden - Direct

Q. So what did you do when you read this ad?

A. I called.

Q. Did you get an answer?

A. Yes, I did.

Q. Can you tell the jury and the Court about that

Q. Can you tell the jury and the Court about that conversation?

A. I called the number. A male answered the phone. I asked if this was the right place for the sale that was advertised in the paper.

They said yes, it was.

And I said, "Can I come out?"

And they said yes, I can.

And I asked directions, and they gave me directions; and I went right out.

Q. About what time did you arrive there?

A. I get out of school at 4:00. I came home, made the call, changed clothes; so I got out there somewhere between 4:30 and quarter to 5.

Q. How light was it then?

A. Very light. No clouds in the sky.

Q. And what did you see when you got there?

A. I assumed I was at the correct place. I pulled in the drive. There were no cars in the drive. The front door was open, but the screen was shut; so I went up to knock on the door to see if I had the right place.

Marion Ogden - Direct

MR. GOELMAN: Your Honor, may I approach?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Mr. Ogden, I ask you to take a look at Government Exhibit 42.

Do you recognize that?

A. That looks like the house where I went.

Q. And does this picture fairly and accurately depict the way the house looked when you got there?

A. Other than the vehicles, yes.

MR. GOELMAN: Your Honor, I move to admit Exhibit 42.

MS. MERRITT: No objection.

THE COURT: 42 received.

MR. GOELMAN: May I publish, your Honor?

THE COURT: Yes.

BY MR. GOELMAN:

Q. What did you do when you got there, Mr. Ogden?

A. Got out of my pickup, walked to the door, knocked on the door; and a man come to the door, and I asked if it was the right place for the sale. He said yes, and we went in the house.

Q. And how long did you spend inside that house?

A. Probably no more than 15 minutes.

Q. How much of that 15 minutes were you in the company of the man who answered the door?

Marion Ogden - Direct

A. The whole time.

Q. And during these 15 minutes, did you have a chance to look at the man?

to the man.

A. Yes.

Q. Do you remember what the lighting conditions were like inside the house?

A. Good. There were no curtains on the windows.

Q. Mr. Ogden, I'm going to ask you to take a look around this courtroom and see if there's anyone that you recognize from that day.

A. Yes.

MS. MERRITT: Your Honor, I'm going to object on the same grounds that were made in our pretrial motion to suppress the identification in court.

THE COURT: Overruled.

You may respond.

THE WITNESS: Yes.

BY MR. GOELMAN:

Q. And can you identify that person by where he is and what he's wearing?

A. Yes.

Q. Please do.

A. The gentleman over there in the plaid shirt.

MR. GOELMAN: Your Honor, may the record reflect that the witness has identified the defendant?

Marion Ogden - Direct

THE COURT: Yes.

BY MR. GOELMAN:

Q. What did you do when you went inside the house, Mr. Ogden?

A. I took a look around to see what there was to purchase and happened to notice that there were some guns behind the couch, and I asked if the guns were for sale. And he said, "No, because I just got out of the service and I'm on my way back to

Michigan. I'm going to keep the guns." And I proceeded through the house with him and asked him questions about different items.

Q. Were the items in the house marked for sale?

A. No.

Q. How were you able to determine what was for sale and what wasn't?

A. I had to ask.

Q. And what about prices?

A. I had to ask the price.

Q. What types of things did you see in that house, sir?

A. Well, other than the guns and a couch, there were some knickknacks on a shelf between the living room and the dining room. There was a dining room table and chairs. We walked out

in the kitchen, and there were some kitchen items around. He also said that there were some utensils, showed me the utensils.

Q. What kind of utensils were they?

Marion Ogden - Direct

A. Eating utensils.

Q. Do you remember what the source was?

A. Knives, forks, spoons.

Q. Do you remember where the source was, what kind of --

A. They were in a drawer, and I asked him how much they were, and he said \$20, and I said no, I wasn't interested. They were -- I noticed that they were all marked U.S. Most of all of them were marked U.S. on them, so I knew they were military.

Q. Did you buy anything at all while you were in the house?

A. Yes, I did. I eventually purchased a lamp.

Q. How much did you pay for that lamp?

A. \$2.

Q. Do you remember what kind of lamp it was?

A. It was a little bedside lamp. It was a shiny pottery lamp.

Q. Do you still have that lamp, Mr. Ogden?

A. No, sir.

Q. What did you do with it?

A. I sold it.

Q. How much did you sell it for?

A. I sold it for \$40.

Q. Some profit margin. How did you come up with that price?

A. After I left the residence, I went back and I checked my source guide for shiny pottery, and the exact lamp was in the source guide for a book price of \$40. I put down \$40 on it.

Q. And when did you put that price on it?

Marion Ogden - Direct

A. That same evening.

Q. When did you sell the lamp?

A. Somewhere in the vicinity of a year later.

Q. And when you sold it, did you inform the buyer that you had purchased the lamp from the defendant?

A. Yes, I did.

Q. At that point were you aware that the defendant had been charged with the Oklahoma City bombing?

A. Yes, I was.

Q. So did you call the FBI and tell them about seeing the defendant at the house?

A. No, I didn't.

Q. Why didn't you do that?

A. I didn't think it was material enough to make any impact on the trial in any way or conviction. And I just thought that if the FBI knew what they were doing and they thought it was important enough, they could find me.

Q. And did they eventually find you?

A. They did. They did.

Q. Did you tell them about buying the lamp from the defendant at that point?

A. Yes, I did.

Q. Mr. Ogden, during the 15 minutes that you spent with the defendant, did you see anyone else at the house?

A. No.

Marion Ogden - Direct

Q. Did you see anyone on the property before you went in or after you came out?

A. No.

Q. Mr. Ogden, you indicated that you read about that particular moving sale in the Marion County Record; is that right?

A. Yes.

Q. What kind of paper is that?

A. It's a weekly paper put out by Marion. There are five small towns in Marion County, and each one of them have a weekly paper. And this one comes out for the city of Marion.

Q. Do you have a subscription to the Record?

A. To the Marion Record, I do, yes.

Q. And did you at the time that you --

A. Yes.

Q. -- read the ad?

What day of the week does the Marion Record come out?

A. It comes out in city mailboxes and through the paper and stores there in town, it's delivered on a Wednesday. Comes out

in -- in the mail, delivered in the mail on Thursday.

Q. What day of the week do you usually read the ads for the garage sales and the moving sales?

A. Thursday.

Q. Do you specifically remember the exact day of the week that you read this particular ad?

Marion Ogden - Direct

A. No, I don't.

Q. You indicated that it was sometime in the fall of 1994?

A. Yes.

Q. Do you remember the exact date of the ad or the sale?

A. It was immaterial to me at the time. I could probably quote it to you now, but at that time I didn't remember.

Q. And how could you quote it to me now?

A. Because I've been asked the question three or four times.

Q. And has any -- have you used anything to refresh your recollection?

A. I did see a clipping of the paper.

Q. Do you know how many weeks this particular ad ran in the Marion Record?

A. I think it only ran one week.

Q. And how do you know how many weeks the ad ran?

A. Because I read the paper every week, and I don't remember it being in there over once.

Q. What was the date that this ad appeared in the Marion Record?

A. To my recollection, I think it was September 28. I'm not sure. I think that's what it was.

Q. 1994:

A. 1994.

MR. GOELMAN: Your Honor, may I approach?

THE COURT: Yes.

Marion Ogden - Direct

MS. MERRITT: No objection.

THE COURT: Thank you for your offer.

MR. GOELMAN: I'm not going to offer it now. We'll relabel it a defense exhibit.

MS. MERRITT: He was whispering.

BY MR. GOELMAN:

Q. Can you take a look at Government Exhibit 56, please.

A. Okay.

All right.

Q. Do you recognize that?

A. Yes.

Q. What is it?

A. It's a Marion County Record classified. It has the advertisement for the moving sale, and the date on it is September 28, 1994.

Q. Does that advertisement indicate an address for the moving sale, sir?

A. No, sir. It has a phone number, and it says "anytime."

MR. GOELMAN: Your Honor, may I publish this to the jury?

THE COURT: Yes. It's admitted without objection.

BY MR. GOELMAN:

Q. You see that pen up there, Mr. Ogden? It should be on your left.

A. The what?

Marion Ogden - Direct

Q. The pen, the light pen.

A. Oh, yeah.

Q. Would you please circle the ad that you're talking about.

THE COURTROOM DEPUTY: Underneath.

THE WITNESS: I go under.

THE COURTROOM DEPUTY: Underneath, yes.

BY MR. GOELMAN:

Q. On the screen, itself.

A. It's not on the screen. You're going to have to move it around.

Now, well, yeah, okay. There it is. I'm sorry. I'm sorry. I see it.

I was looking in the wrong area.

Q. Could you please read the telephone number on that ad into the record.

A. 382-3535.

Q. You click and get the circle off, please.

Can you please read the date of the newspaper into the

record.

A. September 28, 1994.

Q. Mr. Ogden, how sure are you that it was the defendant, Timothy McVeigh, that sold you the lamp at that sale?

A. Positive.

MR. GOELMAN: Court's indulgence.

THE COURT: Yes.

Marion Ogden - Direct

MR. GOELMAN: Nothing further.

THE COURT: Will you have more than a couple of questions?

MS. MERRITT: I may. Not a whole lot. But more than a couple.

THE COURT: Well, we'll take the recess now. You may step down, sir. We'll have you back shortly.

Members of the jury, we'll take our usual midafternoon rest stop, 20 minutes in duration, same cautionary instructions, please avoid discussion or mentioning anything about the case. You're excused.

(Jury out at 3:21 p.m.)

THE COURT: Recess, 20 minutes.

(Recess at 3:21 p.m.)

(Reconvened at 3:41 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:42 p.m.)

THE COURT: Please resume the stand.

Ms. Merritt?

CROSS-EXAMINATION

BY MS. MERRITT:

Q. Good afternoon, Mr. Ogden.

A. Good afternoon.

Q. We were all spending the recess trying to figure out what the markup was from the \$2 to the \$40, and I think we came up

Marion Ogden - Cross

with 1900 percent; so we were kind of wondering, are you sorry you didn't buy the spoons now?

A. I was thinking more like 2,000. Okay.

No, I'm not.

Q. Now, I think you told -- you said on direct examination that the first time you were interviewed by the FBI in this case was around November, 1995. Is that about right?

A. Possibly.

Q. It was about a year after the time that you went to the garage sale?

A. Probably.

Q. Okay. And when you were interviewed by the FBI agent, did you tell him that the person that you saw on television being arrested for the Oklahoma bombing was the same person that you bought the lamp from?

A. I think I might have.

Q. Okay. And you did see some news accounts after the bombing, didn't you?

A. Yes.

Q. Okay. And did you see Mr. McVeigh being arrested and led out of the Noble County Jail?

A. Yes.

Q. Okay. And you saw some composite sketches of some suspects with respect to the Oklahoma bombing after the bombing, didn't you?

Marion Ogden - Cross

A. Yes.

Q. And you read some newspaper accounts of the bombing after it occurred?

A. Yes.

Q. And you recall that the person that you saw on television, Mr. McVeigh, was in custody, in handcuffs?

A. I recall -- would you repeat that, please.

Q. Do you remember that the person you saw on television who was Mr. McVeigh, who was arrested, being led out of the Noble County Jail, was in handcuffs?

A. I didn't recognize him at the time as the person that I bought the lamp from.

Q. No, but he had been identified on television as Timothy McVeigh.

A. He had been identified as Timothy McVeigh, yes.

Q. Right. So I'm talking about when you saw Timothy McVeigh being led out of the Noble County Jail on television, do you recall that he was in handcuffs?

A. I think so.

Q. And he was wearing an orange jumpsuit?

A. I think so.

Q. And did you mention to your wife after seeing the depiction of Mr. McVeigh on television that you thought he was the person

that you bought the lamp from?

A. No.

Marion Ogden - Cross

Q. Did you ever mention it to your wife?

A. Yes.

Q. And when was that?

A. After I saw the picture of the house where -- where supposedly he lived.

Q. And did you see that on television, also?

A. Yes, I did.

Q. In other words, you didn't go driving back to the house to look for it again; right?

A. Wasn't anything for sale.

Q. And was this fairly soon after the bombing?

A. I think it was

A. I THINK IT WAS.

Q. Okay. Now, do you recall when you were in Terry Nichols' house seeing a bed and couch and table?

A. Yes.

MS. MERRITT: I have no further questions.

THE COURT: Anything else of this witness?

MR. GOELMAN: No, your Honor.

THE COURT: Is he excused?

MR. GOELMAN: Yes.

THE COURT: Agreed?

MS. MERRITT: Yes.

THE COURT: You may step down.

You're excused.

Next, please.

MR. HARTZLER: Special Agent Joanne Thomas -- I'm wrong.

Bill Nellis. Special Agent Bill Nellis.

THE COURT: All right.

MR. HARTZLER: Mr. Mendeloff will question him.

I've got to get the correct list.

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

(G. William Nellis 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: G. William Nellis, N-E-L-L-I-S.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mackey?

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MACKEY:

Q. Sir, would you tell the jury where you work.

A. I am a special agent of the FBI with the Omaha division.

Q. How long have you worked for the FBI?

A. 12 years.

Q. Where have you been stationed during those 12 years?

A. One year at FBI headquarters, two years at the Washington field office, and nine years at the Omaha office.

G. William Nellis - Direct

Q. What's your educational background, Agent Nellis?

A. I have a bachelor's degree in criminal justice from the University of Scranton, in Scranton, Pennsylvania.

Q. Mr. Nellis, in responding this afternoon, could you direct your answers to me?

A. Yes, sir.

Q. All right. Thank you.

In April of 1995, were you assigned to the Omaha FBI division?

A. Yes, I was.

Q. All right. And what were your duties at that time?

A. At that time, I was assigned to a Drug Gang Task Force.

Q. In the course of your experience to that date in April of '95, had you participated on behalf of the FBI in the execution

of federal search warrants?

A. Yes, I did.

Q. And on approximately how many prior occasions?

A. Oh, at least 50.

Q. Let me turn your attention to April 19, 1995; and on that date, did you learn of the bombing that took place in Oklahoma City?

A. Yes, I did.

Q. And after learning of that fact, were you assigned certain duties to assist in that investigation?

A. Yes, I was.

G. William Nellis - Direct

Q. Did that involve coming to the state of Kansas?

A. Yes, it did.

Q. When did you do so?

A. On April 21, 1995.

Q. Was that a Friday, to your recollection?

A. Yes, sir.

Q. In the course of carrying out those duties, did you assist with other FBI agents the execution of a search warrant on the residence of Terry Nichols in the city of Herington, Kansas?

A. Yes.

Q. What date did that search begin?

A. April 22.

Q. And would you describe to the jury your role in that particular search, just in general terms at this time.

A. I was assigned as a -- just to search, on the search team.

Q. Approximately how many FBI agents were part of that search team?

A. I believe approximately 20.

Q. And how was it organized?

A. There was a team leader, who made assignments as to what rooms and what locations were to be searched by which individuals.

Q. And who was that by name?

A. Special -- Supervisory Special Agent Mary Jasnowski.

Q. Was she an agent as well from Omaha?

G. William Nellis - Direct

A. Yes, sir.

Q. Approximately what time did you enter the Nichols residence on the 22nd?

A. 7:05 p.m.

Q. And would you describe for the jury what search you initiated in that residence on that day?

A. The first place I went to was the dining room area and searched that location.

Q. In the course of carrying out those duties, did you become familiar with what the Nichols residence looked like?

A. Yes.

Q. And do you have in front of you Government's Exhibits 58,

59 and 60?

A. Yes, sir.

Q. What do each of those exhibits depict?

A. The front, the rear, and a garage area of that house.

Q. As it appeared on April 22, 1995?

A. Yes, sir.

Q. Do they fairly and accurately depict it?

A. Yes, they do.

MR. MACKEY: Would move to admit Government's Exhibits 58, 59 and 60.

MR. TRITICO: Your Honor, may I take a moment to review those?

THE COURT: Yes.

G. William Nellis - Direct

MR. TRITICO: No objection.

THE COURT: They're received.

MR. MACKEY: May I publish, your Honor?

THE COURT: Yes. Excuse me.

MR. MACKEY: Excuse me, your Honor.

BY MR. MACKEY:

Q. I direct your attention to Government's Exhibit 58. Tell the jury what we're looking at.

A. Looking at the front of Mr. Nichols' house in Herington, Kansas.

Q. And the street that appears at the bottom of this particular exhibit: What street is that to your knowledge?

A. South 2d Street.

Q. I show you at this time Government's Exhibit 59. Could you orient the jury as to the vantage point of that photo?

A. This is the rear of the same address. The rear and side, I should say.

Q. The structure that appears on the left portion of that exhibit: What is that?

A. That's the garage.

Q. And Exhibit No. 60: What is that, please?

A. The garage.

Q. Taken from what vantage point?

A. From under this awning in Exhibit 59, right near there, in the photo, from the back of the house.

G. William Nellis - Direct

Q. Thank you.

Agent Nellis, let's return now to the execution of the warrant itself. What system was set up to keep track of items that would be seized pursuant to that search warrant on that day?

A. Each item would be -- would be assigned a number, and the room or location that that item was found was assigned a

letter. Every item seized was then initialed and dated by the seizing agent.

Q. In the course of keeping track of the items that were seized and the location from which they were seized, was any schematic made of the interior of the first floor of that residence?

A. Yes.

Q. Do you have before you Government's Exhibit 87?

A. No, sir.

MR. MACKEY: All right.

BY MR. MACKEY:

Q. What is Exhibit 87, please?

A. That is a sketch or a schematic of the residence.

Q. Does it accurately depict the layout, physical layout of that residence on that date?

A. Yes, sir.

MR. MACKEY: Would move to admit Government's Exhibit 87.

G. William Nellis - Direct

MR. TRITICO: No objection.

THE COURT: Received.

BY MR. MACKEY:

Q. Could you describe to the jury what they're seeing now?

A. That is the schematic, Exhibit 87.

Q. Is that part of the FBI file made as a result of the search at the Nichols residence?

A. Yes.

Q. Tell the jury what the letters represent in each of the several rooms.

A. Each -- as I explained earlier, each room and location was assigned a letter so that it would be marked on that piece of evidence what was found where, so we knew.

Q. For example, if an item were seized from the bedroom, how would the letter B be used in the evidence log?

A. It would be B1, B2, B3, as the items that were found.

Q. And what record would be made of the seizing agent?

A. That agent's initials and the date and the filing number, I believe, too, was on there.

Q. In the course of that search, you seized a number of agents -- excuse me -- a number of items of evidence; correct?

A. Yes.

Q. I just want to ask you this afternoon about one of those. Do you see before you Government's Exhibit 52A?

A. Yes, sir.

G. William Nellis - Direct

Q. And do you recognize it?

A. Yes, I do.

Q. What is it?

A. It is a photo album.

Q. And how do you recognize it?

Q. And how do you recognize it.

A. I seized this photo album from the search at Mr. Nichols' house.

Q. And when doing so, did you date and initial it?

A. Yes, I did.

Q. And does that appear on Exhibit 52A?

A. Yes, it does.

Q. On the reverse side?

A. Yes.

MR. MACKEY: Your Honor, we do not intend to offer this exhibit in its whole; but there is a particular photo from the photo album that I'd like to ask the witness questions about.

THE COURT: Has it been separately marked?

MR. MACKEY: I'm going to do so, yes, your Honor.

THE COURT: All right.

BY MR. MACKEY:

Q. Let me turn your attention, Agent Nellis, to the blue tab that is in the photo album, 52A; and directing your attention to a single photo, or a photo among others on the right-hand page of that photo album, do you see that?

G. William Nellis - Direct

A. Yes, I do.

Q. Now, compare, if you would for a moment, a photograph that's been marked Government's Exhibit 52. Do you find that before you?

A. Yes, I do.

Q. How does that compare with the photo that is found in the photo album, 52A?

A. It is a cropped and enlarged portion of the photo -- from the photo album.

Q. Does Exhibit 52 accurately depict the photo of the male shown in the photograph in the photo album?

A. Yes, sir.

MR. MACKEY: Your Honor, we'd move to admit Government's Exhibit 52.

MR. TRITICO: Your Honor, I object to the introduction of this photograph under Rule 402 in the Federal Rules of Evidence. There is no time frame for when the photograph was taken. It's not relevant to this case.

THE COURT: Overruled. Received.

MR. MACKEY: Thank you.

BY MR. MACKEY:

Q. Sir, what is Exhibit 52 that we're displaying to the jury at this time?

A. That's Exhibit No. 52, the cropped and enlarged photograph taken from this photo album.

G. William Nellis - Direct

Q. Have you examined that photo before coming to court today?

A. Yes.

Q. And what appears on the face of the individual depicted in Government's Exhibit 52?

A. A small amount or -- facial hair, a few days' growth of facial hair.

MR. MACKEY: Agent Nellis, thank you.

I have nothing else, your Honor.

THE COURT: Mr. Tritico?

MR. TRITICO: Yes, your Honor. Thank you.

CROSS-EXAMINATION

BY MR. TRITICO:

Q. Good afternoon, Agent Nellis.

A. Good afternoon, sir.

Q. My name is Christopher Tritico. I'm one of the attorneys that represents Timothy McVeigh. You and I have never met before, have we?

A. No.

Q. I've never had the privilege of sitting down with you and discussing what you did in the course of your investigation and activities in this case, have I?

A. No, sir.

Q. Were you present at the time that the search began at Terry Nichols' home?

A. Yes, I was.

G. William Nellis - Cross

Q. What time did the agents arrive to begin the search?

A. The agents that began searching arrived at 7:05.

Q. And you stated on direct examination that there were -- there were 20 FBI agents. Is that right?

A. That's my best recollection without counting the persons in the reports.

Q. Sure. There were other people present that also assisted in the search; is that correct?

A. Yes, sir.

Q. ATF?

A. Yes.

Q. U.S. Army?

A. Yes.

Q. Local law enforcement?

A. I don't recall local law enforcement, sir.

Q. But more than 20 people participated in the search of Mr. Nichols' home; is that right?

A. I would say approximately 20.

Q. Okay. So when you said 20, were you including the ATF and the U.S. Army?

A. No, sir.

Q. Okay. The first people to enter the home were not FBI agents conducting the search. Isn't that correct?

A. Yes.

Q. First people to enter the home were people from the U.S.

G. William Nellis - Cross

Army, and they conducted a -- I guess, if you will, a search to see if there was any explosives in the house. Is that right?

A. Yes.

Q. They wore the -- I don't know what they call them, but the bomb uniforms that people in that line of business wear. Is that right?

A. Yeah. Yes, sir. A bomb suit.

Q. A bomb suit? Is that what it's called?

A. I believe so.

Q. Prior to the time that the people wearing the bomb suit entered the home, no one swabbed them to see if they had any bomb residue on their clothes, did they, on their bomb suit?

A. I don't know, sir.

Q. You were present when they put the bomb suits on?

A. No, sir.

Q. Okay. You were present when they went in?

A. No, I was not.

Q. Oh, you weren't. What time did you get there?

A. Excuse me?

Q. What time did you arrive at Mr. Nichols' home?

A. Approximately 7:00.

Q. And they had already gone in and done their job?

A. Yes.

Q. Okay. After the search of Mr. Nichols' home, were you present when the items that were seized from the home were

G. William Nellis - Cross

placed into the Army truck?

A. Yes.

Q. Did you see them placed in?

A. Yes, I did.

Q. Nobody swabbed the Army truck to see if it had any traces of ammonium nitrate or anything else in it prior to placing those items in the truck, did they?

A. I don't know.

Q. When you were searching the -- did you do it?

A. Excuse me?

Q. Did you swab the truck?

A. No, sir.

Q. Okay. When you entered the home, did you wear gloves?

A. Yes.

Q. Did you wear a protective suit to ensure that you didn't have any traces of nitroglycerin, or anything that may have been on your body was not transferred to the home?

A. No, I did not.

Q. Nobody did, did they?

A. The bomb technicians did.

Q. When they went in?

A. When they entered the home, yes.

Q. They were wearing bomb suits; right?

A. The -- excuse me. The laboratory people from the FBI wore suits when they first entered the home.

G. William Nellis - Cross

Q. Well, the only one that wore a laboratory suit was Mr. Burmeister; right?

A. I believe he and whoever was with him wore those suits.

Q. Are you sure?

A. Yes.

Q. Okay. And you wore gloves when you went in?

A. Yes.

Q. How many times did you change gloves while you were in the home?

A. I don't recall, sir.

Q. Didn't change them every time you picked up a different piece of evidence, did you?

A. No.

Q. The other agents that were with you -- the other 20 or so people that were in the home with you did not change gloves every time they picked up a piece of evidence, did they?

A. I don't know what they did, sir.

Q. With respect to Government's Exhibit No. 52, you don't know when that photograph was taken, do you?

A. No, sir.

Q. Now, if I understood you correctly on direct examination, this was not your only duty with respect to this case. Is that right?

A. No, it was not.

Q. You've done other things?

G. William Nellis - Cross

A. Yes, I have.

Q. As a matter of fact, you interviewed a woman who claimed to have seen -- who was -- who was also 90 percent sure she had seen Timothy McVeigh in Omaha, Nebraska, on April 10, 1995. Isn't that right?

A. Yes, I did.

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. TRITICO:

Q. On Government's Exhibit No. 52, when you stated it was cropped and enlarged, there was some other individuals in that photograph that don't appear today; is that right?

A. Yes.

MR. TRITICO: Thank you. I pass the witness.

THE COURT: Any redirect?

MR. MACKEY: Nothing further, your Honor.

May he be excused?

MR. TRITICO: Your Honor, I'd like him subject to recall, but I don't mind if he goes back to his regular place of employment.

THE COURT: You can leave now but may be recalled, so please do not discuss your testimony with any other witnesses.

THE WITNESS: Yes, sir.

THE COURT: Next, please.

MR. HARTZLER: Your Honor, we have three more witnesses who I believe will be available. Can you indulge me for one second just so I make sure that our lists correspond?

THE COURT: Yes.

MR. HARTZLER: Pardon me, your Honor.

THE COURT: Yes.

MR. HARTZLER: I'm sorry, your Honor. Thank you.

We'll call Joanne Thomas. Thank you.

THE COURT: All right.

MR. HARTZLER: And Mr. Mackey will question her.

THE COURT: All right.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Joanne Thomas affirmed.)

THE COURTROOM DEPUTY: Have a seat, please.

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

THE WITNESS: Joanne L. Thomas, T-H-O-M-A-S.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed, Mr. Mackey.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MACKEY:

Q. Good afternoon.

A. Good afternoon.

Q. Ms. Thomas, who do you work for?

A. The FBI, Omaha division.

Joanne Thomas - Direct

Q. And how long have you worked for the FBI?

A. I entered on duty with the FBI in May of 1984.

Q. So some 13 years?

A. Correct.

Q. What's your educational background?

A. I have a B.S. degree in business management with an emphasis on accounting.

Q. What are your current duties with the FBI?

A. I'm a financial analyst in our white-collar crime squad.

Q. Tell the jury what a financial analyst for the FBI does.

A. I'm not an agent. I am a support person, and I have a background in accounting. A white-collar crime squad -- a white-collar crime squad usually has a lot of bankruptcies, check kiting, embezzlements; and my job is to collect those records and go through them and trace the money.

Q. Ms. Thomas, you indicated you're not a special agent, never have been. Right?

A. That's correct.

Q. Never been trained or sworn to enforce federal criminal laws?

A. Right.

Q. But you support others who do so?

A. Yes, sir.

Q. And I take it you haven't had as many opportunities, perhaps, as FBI special agents that testify in federal court?

Joanne Thomas - Direct

A. That's correct.

Q. All right. Do you have any other skills other than your eye for money and details that you've described already to the jury?

A. Yes. I also am an amateur photographer.

Q. And does the FBI put your photography skills to work on occasion?

A. Yes, they do. I'm the backup photographer for the Omaha division for probably 10 years. The senior photographer passed away, and her duties fell to me until they replaced her.

Q. So between the money and the photography, you've got an eye for detail?

A. I would say so, yes.

Q. Let me turn your attention now to the subject matter before this court, the Oklahoma City bombing, and ask if you assisted in any fashion in the investigation of that crime.

A. Yes. I was part of the ERT team -- that's Evidence Retrieval Team -- of the Omaha division; and we were requested to go to Herington, Kansas, to search the home of Terry Nichols.

Q. When did you go there?

A. We went down -- I believe it was April 21.

Q. 1995?

A. 1995.

Q. And did you, in fact, with others participate in the search

Joanne Thomas - Direct

of that residence in Herington, Kansas?

A. Beginning April 22 and continuing into the morning of April 23 of 1995.

Q. Did you see an agent by the name of Bill Nellis here this afternoon?

A. Yes.

Q. And was he one of the others that participated in that same search?

A. Yes.

Q. Give the jury an overview of what job fell to you in the course of executing that search warrant.

A. I was a member of the team, and I was to go through the contents of the home. We were assigned rooms and a partner, and we went through every document that we could see and every drawer and door looking for certain items that had been listed that we could take on the subpoena.

Q. Or the search warrant in this case?

A. Yes, search warrant.

Q. Let me turn your attention, Mrs. Thomas, to Government's Exhibit 87.

Ms. Thomas --

A. Uh-huh.

Q. -- look in the screen below your desk for the moment.

A. On, okay.

Q. This is already into evidence, so that's why I'm showing it

Joanne Thomas - Direct

to you now. You recognize it, don't you?

A. Yes, I do.

Q. Because?

A. I prepared it.

Q. Was that part of your after-search responsibilities of listing out items seized and their locations from which they were seized?

A. Yes.

Q. Using Government's Exhibit 87, can you tell the jury what rooms you participated in assisting in the search on Saturday, April 22?

A. Okay. I assisted in the living room, which is labeled A, and I assisted in the kitchen, which is labeled G.

Q. And when you or your team partner -- your partner would find an item that was to be seized, what process did you use?

A. We put it into a -- we all had on latex gloves so we wouldn't leave our fingerprints; and we put it into a plastic bag. And walking into the living room, at the table was a special agent who had been designated as the one to keep the evidence log. And we would one at a time sit down with him, go through the items that we had seized, put them in a plastic bag

after we had listed them all; and then he initialed it and I initialed it and we dated it.

Q. So you had a central recording site where the report of the

seizures was turned in?

Joanne Thomas - Direct

A. Right.

Q. Let me turn your attention to Government's Exhibit 61. It's a photograph, if you can find it among your materials there.

A. All right.

Q. Do you recognize that photograph?

A. Yes, I do. It's the kitchen sink.

Q. In the Nichols residence?

A. In the Nichols residence. Right.

Q. Does it accurately portray that part of the kitchen that you saw on Saturday, April 22?

A. Yes, it does.

MR. MACKEY: Move to admit Government's Exhibit 61.

MR. TRITICO: No objection.

THE COURT: Received, 61.

BY MR. MACKEY:

Q. Ms. Thomas, did you search the area shown in this photograph?

A. Yes.

Q. You personally?

x. ... personally.

A. Yes.

Q. And did you find any items that were later seized in the drawers on the right-hand side of the kitchen?

A. Yes. It was the top right-hand side drawer; and I had to pull it all the way out because the items I seized, the coins,

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was in the very, very back.

Q. Describe to his Honor and the jury exactly what you saw when you pulled out the top drawer of the kitchen cabinet.

A. In the front were dishtowels; and then I pulled the drawer all the way out. In the back were -- was a bag of commemorative and valuable coins; and I took it out.

Q. And did you take those items anywhere?

A. I took them to Scott Williams, who was the one preparing the evidence log.

Q. And did you stand there and personally work with Mr. Williams to make an accurate inventory of what you had taken from the top kitchen drawer?

A. Yes. We both verified it.

Q. Let me turn your attention now, Mrs. Thomas, to Government's Exhibit 62. Do you see that before you?

A. 62?

Q. Yes. To your left.

I'm sorry.

On the other side of the podium, please.

A. Here?

Q. Yes.

A. Oh, yes. I'm sorry.

Q. There are a lot of numbers.

A. Yeah. Labels everywhere.

Q. Do you see the Government's exhibit tag, No. 62, on that

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item of evidence?

A. Yes, I do.

Q. Do you recognize that exhibit?

A. Yes, I do. When I found the coins and we took them out to the agent who was keeping the evidence log, there was a little pink square in there. And you could see that it was wrapped around a couple coins; so we carefully opened it up. And I recognize it because it's pink, and I recognize it because it has the impressions of the coins that it was wrapped around. And I do remember the "Cooperative Association" on it.

Q. As you sit there now, are you positive that Exhibit 62 was among the materials you found in the kitchen drawer on Saturday, April 22, 1995?

A. Yes.

MR. MACKEY: Your Honor, we'd move to admit Government's Exhibit 62.

MR. TRITICO: Your Honor, may I have a few questions on voir dire?

THE COURT: You may.
VOIR DIRE EXAMINATION

BY MR. TRITICO:

Q. Good afternoon.

A. Good afternoon.

Q. With respect to Government's Exhibit 62, after you completed your portion of it, you left it in the care and

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charge of someone else; is that correct?

A. Yes, the agent who was keeping the evidence log.

Q. And who was that?

A. Scott Williams.

Q. And you don't know what happened to it after that, do you?

A. I do know that it was taken out of the evidence that was there because it was considered a valuable.

Q. Okay. And was placed in another location?

A. Yes.

Q. You were not in charge of or responsible for keeping track of this piece of evidence after you turned it over to Agent Williams; is that right?

A. That's correct.

Q. You don't know where it went from there; correct?

A. That's correct.

MR. TRITICO: Thank you.

That's all I have for the voir dire. I object to an inappropriate chain of custody at this time for the introduction of this document.

THE COURT: Well, is chain of custody the only objection?

MR. TRITICO: And relevance.

THE COURT: The relevance objection is sustained.

MR. MACKEY: Your Honor, the content of the document, I think, would address the relevancy objection.

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THE COURT: Not as it stands. You'll need some additional evidence.

MR. MACKEY: All right. We'll reoffer at a later date. Thank you, your Honor.

THE COURT: I understand.

DIRECT EXAMINATION CONTINUED

BY MR. MACKEY:

Q. One final question: As to Exhibit 62, does it appear to be

in the same condition that you saw it on Saturday, April 22?

A. Yes, sir.

Q. Thank you.

I want to turn your attention now to the envelope of a number of items that's also situated before you. Do you

recognize that?

A. Yes, I do.

Q. Before coming to court, did you examine the writing that appears on the outside of that particular envelope?

A. Yes, I did.

Q. And do you recognize the handwriting?

A. That is my handwriting.

Q. And there is an item within the package that has been marked Government's Exhibit 484 --

A. That's correct.

Q. -- for purposes of today's proceedings.

Can you remove that, please. And tell the Court, if

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you will, whether you recognize Government's Exhibit 484.

A. Yes, I do. I was searching the -- in the living room, and there were large stacks of documents on the table. And I went through them carefully; and I came across this Spotlight prepaid telephone call card. It was in the name of Darrell Bridges, which was one of the names that --

MR. TRITICO: Excuse me, your Honor. I'm going to object to the witness testifying --

THE COURT: Yes. You're testifying to something that isn't in evidence.

BY MR. MACKEY:

Q. Do you recognize it?

A. Yes, I do.

Q. As something you seized from the Nichols residence on April 22?

A. Yes, sir.

Q. And was it among the other materials that you documented as being seized from the materials also before you?

A. It's specifically written on the envelope.

Q. In your handwriting?

A. In my handwriting.

MR. MACKEY: Your Honor, I move to admit Government's Exhibit No. 484.

MR. TRITICO: I'll interpose the same two objections as the last one.

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THE COURT: Relevance is sustained.

MR. MACKEY: We'll renew it at a later time.

BY MR. MACKEY:

Q. Is Government's Exhibit 484 in the same condition as when you seized it from the Nichols residence on April 22, 1995?

A. Yes.

MR. MACKEY: I have nothing further.

MR. TRITICO: May I have just a moment?

THE COURT: Yes.

MR. TRITICO: Your Honor, I have no questions for

this
witness

witness.

THE COURT: Is she excused?

MR. MACKEY: Yes.

THE COURT: I take it you agree?

MR. TRITICO: Yes.

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

Next, please.

MR. HARTZLER: The Government will call Sharri

Furman.

Mr. Mendeloff will question.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Sharri Furman 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: Sharri Dee Ann Furman, F-U-R-M-A-N.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Ms. Furman, do you have a family?

A. Yes, I do.

Q. A husband and children?

A. A husband and three children.

Q. Where do you live?

A. I live in the Ft. Morgan area.

Q. Here in Colorado?

A. Here in Colorado.

Q. Are you employed?

A. Yes, I am.

Q. What do you do?

A. I am a manager for a local Duckwall's store there.

Q. Okay. How long have you been at that Duckwall's?

A. Since February 25.

Q. Of this year?

A. Of this year.

Q. And prior to that employment here in Colorado, did you have some other job?

A. Yes, I did.

Q. What was that?

A. I worked for Vernon Hager in Council Grove, Kansas, doing

Sharri Furman - Direct

books.

Q. Doing the books?

A. Uh-huh.

Q. Any other responsibilities for Vernon Hager?

A. I did -- some computer work and bank deposits, just general office work.

Q. Great. Now, does Vernon Hager have a nickname?

A. Yes, he does. Boots.

Q. Boots. B-O-O-T-S?

A. Uh-huh.

Q. Is that nickname used in connection with his businesses?

A. Yes, it is.

Q. Where did he get the nickname Boots?
A. His wife gave it to him the first time they met.
Q. And the reason was?
A. Because he was wearing cowboy boots.
Q. Where did they meet?
A. It was in Maryland somewhere.
Q. People don't wear cowboy boots that often in Maryland, I guess.
A. No, not in those days.
Q. What types of businesses did Mr. Hager run?
A. He's got a storage facility and he also has a gas station, convenience store.
Q. What is the name of the storage facility?

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A. Boots U-Store-It.
Q. That's from his first name?
A. Yes.
Q. U-Store-It -- how do you spell U-Store-It?
A. U, as in the letter U; Store, S-T-O-R-E; It, I-T.
Q. And the other business he has is what?
A. The Conoco deli shop.
Q. Where are these businesses located?
A. In Council Grove, Kansas.
Q. Now, when -- how long did you work for Boots Hager in Council Grove, Kansas?
A. Approximately eight years.
Q. Were you working there back in 1994?
A. Yes.
Q. Let me direct your attention to the sheaf of exhibits in front of you and ask you to look in there and see if you find an exhibit, Exhibit 487. It should be in that expandable folder.
A. Yes.
Q. Do you have the folder there?
A. Yes.
Q. And do you have 47 in front of you?
A. Yes.
Q. What is Exhibit 47?
A. It's a map of central Kansas.

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Q. And are you familiar with central Kansas?
A. Yes.
Q. And have you reviewed this map previously?
A. Yes.
Q. Is it accurate, to your knowledge?
A. Yes.

MR. MENDELOFF: Your Honor, may I publish this?

We've already previously admitted this.

THE COURT: Yes.

MR. MENDELOFF: I'm going to need to take this out of the plastic, your Honor. Sorry.

BY MR. MENDELOFF:

Q. Can you show the ladies and gentlemen of the jury on this map where Council Grove, Kansas, is located? And there is a little pen next to you attached to a cord. There you go.

If you draw right on the screen, you'll be able to show us.

A. Didn't do that --

Q. Right next to the name Council Grove.

A. Right there.

Q. Now, you can get rid of that mark by just pressing the button on the pen a couple of times. One more.

There you go.

A. Right there.

Q. What sort of business is Boots U-Store-It?

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A. It's a storage-unit facility where people can store their things.

Q. All right. And when you say a storage-unit facility, what is it made up of?

A. They're just Butler buildings, metal.

Q. And people rent space in those units?

A. Units, uh-huh.

Q. Let me ask you to look through the sheaf of paper in front of you for Government's Exhibits 100 to 105.

A. Okay.

Q. Do you have them?

A. Uh-huh.

Q. Please look through those and tell us when you've reviewed them.

A. Okay.

Q. And those are photos of the storage facility in Council Grove, Kansas; is that right?

A. Yes.

Q. Do they fairly and accurately depict various things that are shown in those photos?

A. Yes.

MR. MENDELOFF: Move the admission of Government's Exhibits 100 to 105, your Honor.

MS. MERRITT: One moment, your Honor.

THE COURT: Is there any objection?

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MS. MERRITT: No, your Honor.

THE COURT: Thank you. Received. 100 to 105. You may publish.

MR. MENDELOFF: May I publish them throughout the course of the next few questions?

THE COURT: Yes.

MR. MENDELOFF: Thank you, Judge.

BY MR. MENDELOFF:

BY MR. MENDELLOFF:

Q. Let me ask you first to look at Government's Exhibit 102.

What is Government's Exhibit 102?

A. That's a picture of the storage units.

Q. The Boots U-Store-It facility?

A. The Boots U-Store-It.

Q. In Council Grove?

A. In Council Grove.

Q. How many sheds are located at that storage facility in Council Grove?

A. There is a total of 47.

Q. What was the size range of those sheds?

A. All the way from 10-by-5 to a 10-by-24.

Q. All right. And with your light pen again, would you tell us what is the name of the street right in front there, in front of the storage facility?

A. This is 177 Highway.

Q. And drawing on the map, would you draw an arrow toward the

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direction of downtown Council Grove.

Very good. And then if you would remove that arrow and tell us the other direction, going the other way: Is there

anything past that storage facility?

A. No.

Q. It's on the edge of town?

A. Yes.

Q. This is Government's Exhibit 103. Can you tell us what we're looking at in this photo?

A. This is also the storage units. It's just from the back side.

Q. The other side --

A. The other end, uh-huh.

Q. And the highway there that we see in the background is the one that you just pointed out?

A. Right.

Q. And which way is downtown from there?

A. It's this way.

Q. All right. Thank you.

If you would remove the --

A. Okay.

Q. This is Government's Exhibit 100. Can you tell the ladies and gentlemen of the jury what that is?

A. That's an aerial view of Council Grove.

Q. Okay. And in that aerial view, can you point out the

Sharri Furman - Direct

storage facility?

A. Can't see the whole thing.

Can I look at this one?

Q. Sure. Go ahead.

A. That's 100?

--- -----
Q. 100. Right.

A. Okay. It's right up here.

Q. All right. And that's the edge of town that you mentioned?

A. Yes.

Q. Now, going down the road there, when do you begin to get to the main part of town?

A. When do you get?

Q. The main part of town.

A. This is the main street right down here.

Q. And does Council Grove go either direction along that main street?

A. Yes.

Q. All right. I'm showing you Government's Exhibit 101. That is an aerial view going from the other direction with the storage sheds in the foreground?

A. Yeah, right down here.

Q. And the downtown is in the other direction; is that right?

A. This way.

Q. Going back to Government's Exhibit 100, let me just ask you to point out one thing on this drawing: You've already pointed

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out where the storage sheds are. Can you point out where the Coastal Mart gas station is?

A. Yes. It's down here.

Q. And would you mind circling where the sheds are again?

A. They're up here.

Q. All right. Now, if you're starting at the storage sheds and you're moving downtown toward the downtown main street, where in 1994 was the closest outdoor pay phone to the storage sheds?

A. It was here at the Coastal Mart.

Q. Remove those marks for us.

Let me show you Government's Exhibit 106. What is Government's Exhibit 106?

A. It's the front of the Coastal Mart in Council Grove.

Q. Does that fairly and accurately depict the way in which this appeared in 1994?

A. Yes.

MR. MENDELOFF: Your Honor, I'm sorry. I move this into evidence. I put this up first. I apologize.

MS. MERRITT: Your Honor, I'm going to object on relevancy grounds.

THE COURT: Overruled. Excuse me. Overruled.

BY MR. MENDELOFF:

Q. What was your job title at Boots U-Store-It?

A. Boots usually called me his secretary; but I did a lot of

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bookkeeping and I did some data entry on the computer and that kind of thing.

Q. All right. In addition to bookkeeping and data entry on the computer, did you do anything else regarding the rental-shed business?

A. Yes. I went -- I had them fill out contracts, paperwork for that kind of stuff. I also did some deposits when Boots wasn't there and did some banking, that kind of stuff.

Q. And in terms of running the actual rental of the sheds, did you handle that?

A. Yes, I did.

Q. And what about monthly statements? Did members of the -- did people who rented sheds from Boots U-Store-It have monthly statements sent to them?

A. Yes.

Q. Did you have any responsibility with respect to that?

A. I did all of that.

Q. Now, step by step, what procedures did you follow when you rented out sheds? Start with the customer calling you.

A. The customer would usually call. I would set up a time to go out and meet them there, because our offices weren't right there. I would take the contract with me and have them sign it and collect the first month's rent.

Q. All right. Now, when you had the agreements signed and you collected the first month's rent, did you return to the office?

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A. Yes.

Q. And when you did, what did you do with that rent?

A. First of all, I usually entered it in computer, so I established them; and then we had a -- I'd either bank -- I mean just keep it there, or if we had other moneys to go to the bank, I would take those and make a deposit.

Q. We'll get to that in a minute.

If you're starting a new account for a new customer, you said you'd enter it in the computer?

A. Yes.

Q. Would you have to make a file for that customer in your computer?

A. Yes.

Q. How were those files set up?

A. I had them set up by unit number, and I would go in and enter the customer's name, address, phone number, if I got one, and how much they gave me.

Q. All right. And you'd keep track month by month that way; is that right?

A. Yes.

Q. Now, were rental agreements always completed for every rental of a storage shed for the storage facility that you worked at?

A. No.

Q. Under what circumstances were rental agreements not

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completed?

A. Usually if Boots did it, then -- I mean not always, but sometimes he wouldn't have -- he wouldn't fill one out.

Q. And he was the owner?

A. Right.

Q. That was his prerogative, I take it?

A. Yes.

Q. When you handled rentals, did you always fill out a rental form?

A. Yes.

Q. Was it always the case that you personally received the customers' rental payments?

A. No.

Q. How were rental payments made?

A. They could be made, of course, and also, they could leave them out at the service station, the Conoco station.

Q. Where is that located in relation to the Coastal Mart that you pointed out on the --

A. It is east of there, about two blocks.

Q. So if a customer didn't want to mail it in, they could just

stop over at Boots' gas station?

A. Right.

Q. Now, when a customer made payments at the Conoco station, what kind of paperwork was done?

A. Conoco has a credit-card sheet that they used for receipts.

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They filled them out with the unit number and how much cash or check they'd give them, so they would have a receipt for us and the customer, if they wanted it.

Q. Now, these credit-card receipts that they had at the Conoco: What do those look like?

A. They're probably 3 1/2-by-5 -- or 4 maybe.

Q. Normal gas-card receipts?

A. Right. Uh-huh.

Q. Could a customer pay rent in advance for the sheds?

A. Sure.

Q. Now, you testified a few minutes ago that as part of your job, you were responsible for making bank deposits for the business. Did you follow any set procedure when you would make those bank deposits?

A. The only set procedure we would have is if we had like \$500

or more maybe, we would go to the bank with it.

Q. So you'd save your money up until 500 and then deposit it?

A. Right.

Q. Were customers' shed rentals due on any particular day of the month in 1994?

A. No.

Q. What determined what date the customers' shed payments would come due in 1994?

A. The day that they rented it

A. The day that they rented it.

Q. So if a customer rented on, for example, October 18 or

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October 17, then when would the next payment be due?

A. November 17.

Q. All right. Were customers required to rent sheds on any set day of the month, or were they random?

A. They were random.

Q. Accordingly, did you receive monthly shed-rental payments throughout the month, or any particular day of the month?

A. They were throughout the month.

Q. You testified previously that during the time you worked at Boots U-Store-It, you and Boots each handled the task of leasing out sheds.

A. Yes.

Q. When Boots leased -- rented out sheds, you said that he didn't always have a customer sign a rental agreement?

A. Correct.

Q. How would the rentals take place, if there was no rental agreement?

A. He always knew what was available out there; so if they would call him on the phone, ask a size or whatever, he would tell them the number of the unit that he had available and then ask them to take their money to the deli shop and leave it there.

Q. Without a rental agreement, how did you complete your computer file for that particular rental?

A. Usually, the receipts that were sent over from the deli

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shop.

Q. And you'd use that to start your rental?

A. My file, uh-huh.

Q. Did Boots even meet -- even as a general matter always meet the customers that would rent the sheds?

A. No.

Q. How did he rent a shed without meeting the customer?

A. Just over the phone.

Q. How would that work?

A. They would call and give him the information that he asked for as far as size and that kind of stuff; and then he would just let them know what the unit was and the number and they could go out and do their -- put their things in and then take their payment to the Conoco station.

Q. And that would be recorded with the number of the unit, usually?

A. Yes.

Q. And the customer's name; right?

And then when you would get that in the office, that would enable you to open up a file?

A. Right.

Q. Now, let me direct your attention to mid October, 1994.

During approximately that time, was a new shed rented in the Council Groves storage facility?

A. Yes.

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Q. What was the name of the new customer?

A. Joe Kyle.

Q. What shed did the customer using the name Joe Kyle rent?

A. 40.

Q. Did you handle any computer work relating to Shed No. 40 in Council Grove?

A. Yes.

Q. What did you do?

A. I went into the Unit 40 file and entered the name and the cash received for that month.

Q. All right. And was there a rental agreement for this shed?

A. No.

Q. How do you know how to create that file?

A. I just know that they received money for it, so I need to put it somewhere.

Q. And you got the receipt?

A. And I had the receipt, yes.

Q. Now, based on your work with the books and records of Council Grove's storage sheds, did you know what happened to the Joe Kyle rental payment that month?

A. Yes.

Q. What happened?

A. It was deposited in the bank.

Q. And the monthly rental rate for Shed No. 40 under the name Joe Kyle was how much?

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A. \$30.

Q. Did you ever meet the man who rented the Council Groves Shed No. 40 in the name Joe Kyle?

A. No, I did not.

Q. Have you been able to determine the rental history of Shed No. 40?

A. Yes.

Q. How were you able to do that?

A. By our computer files and the receipts that we have.

Q. Is it part of your regular duties at the Council Groves sheds to handle and process those records?

A. Yes.

Q. Let me ask you to look at Government's Exhibits 107, 107A, 108, 109 -- I'll take it slow. 107, 107A, 108, 109, 111, 111A, and 112.

Do you have those?

A. Uh-huh.

Q. And can you tell us what are those as a general -- in a general matter?

A. These are receipts and deposit slips for the storage unit.

Q. And have you reviewed those previously?

A. Yes.

Q. Were they made and maintained in the normal and ordinary course of Vernon Hager's business?

A. Yes.

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MR. MENDELOFF: Move the admission of those exhibits, your Honor.

MS. MERRITT: Your Honor, we would object. They have no relevance to Mr. McVeigh.

THE COURT: Well, I'll receive them subject to connection on condition that they be connected.

MR. MENDELOFF: Yes, they will --

THE COURT: So she doesn't have to come back.

MR. MENDELOFF: They will be, your Honor.

THE COURT: All right.

MR. MENDELOFF: Thank you.

BY MR. MENDELOFF:

Q. Have you reviewed those exhibits and compared them to the information on the computer of Boots U-Store-It?

A. Yes.

Q. And based on your review of the sheets and the information in the computer, can you tell us what date the Shed No. 40 was first rented to the man giving his name as Joe Kyle?

A. 10-17-94.

Q. October 17, 1994?

A. Uh-huh.

Q. Based on this starting date, have you been able to determine how long the man using the name Joe Kyle continued to make rental payments on Council Grove Shed No. 40?

A. The last one would have been approximately February 17.

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Q. All right. And that was for how much?

A. \$30.

Q. So that would have taken us to the middle of March?

THE COURT: I don't think she's given a year.

MR. MENDELOFF: I'm sorry.

THE WITNESS: I'm sorry. February 17, 1995.

BY MR. MENDELOFF:

Q. All right. Now, from your review of these receipts, can you determine the way in which the man renting Shed No. 40 in the name Joe Kyle made his various rental payments?

A. Yes.

Q. Let me ask you to look first at the first receipt, October 17, which is Government's Exhibit 107.

A. Okay.

Q. And you may look at 107A as well. What does that indicate as to the way in which those transactions were done?

A. He paid them at the deli shop and he paid \$30 cash.

Q. All right. Let me ask you to look at the receipt for -- marked Government's Exhibit 111 and 111A

MARKED GOVERNMENT'S EXHIBIT 111 AND 111A.

How were those receipts paid -- how was that date paid?

A. The date of pay was February 9, 1995.

Q. All right.

A. And it was also \$30.

Q. Paid where?

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A. At the deli shop.

Q. All right. In cash; is that right?

A. In cash, yes.

Q. Now, from your prior review of these records for the Joe Kyle shed, do you know whether or not there was ever a particular month or portion of a month in which Joe Kyle did not make a payment?

A. I don't know what you're asking me.

Q. Let me ask the question in a different way: Do you remember whether Boots U-Store-It changed their bookkeeping procedures in January of 1995?

A. Yes, we did.

Q. What happened in that regard?

A. We changed all of our procedures over to payments from the 1st to the 10th. We made everything come due at that time; so if a unit was rented after the 15th, we prorated. And in January, anyone who already had an existing unit, if they rented it after the 15th, we give them till the 1st. In other words, those 15 days for the month of January were nonexistent.

Q. Free?

A. Yeah, free.

Q. And the Joe Kyle shed was rented on the 17th?

A. Yes.

Q. So what happened with respect to his payments for the second half of that month?

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A. It was free. We just didn't worry about it.

Q. Now, could customers at Boots' Council Grove sheds make more than one rental -- month's rental payment at a time?

A. Oh, yes.

Q. And other than this free January period, how long were the rental payments on the Joe Kyle shed for Council Grove Shed 40? And if you need to look through the receipts, go ahead.

A. We had --

Q. Did you have any two-month payments there?

A. Yes.

Q. To assist you, let me direct your attention to Government's Exhibit 109. Do you have that?

A. 109, yes.

Q. What does that indicate?

A. It indicated that he paid \$60 -- well, or about 11-10-94.

Q. So in November, there is a double payment?

A. Right.

Q. All right. And the rest of them were all single payments?

A. Yes.

MR. MENDELOFF: Your Honor, what we have next is a summary chart that we're going to try to introduce at different stages throughout the trial, if that would be possible, so that we go through the summary chart with this witness as to two of the sheds and seek to introduce only the portion of the charts -- the chart that she lays a foundation for and then go

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forward from there, if that would be appropriate. Otherwise, we can do it later in summary.

THE COURT: I think you better do it later in a summary.

MR. MENDELOFF: Thank you, your Honor.

BY MR. MENDELOFF:

Q. Now, who was it that received these Joe Kyle payments in their office?

A. Boots got them before I did.

Q. And then when you got them, what did you do with them?

A. I would enter them in the computer as to what months they took care of.

Q. Now, let me ask you to shift from Shed No. 40 to a different Council Groves storage shed, and I direct your attention specifically to November 7, 1994. Okay? Now, because of that, I'd ask you to take the exhibits you've got there and put them to one side.

A. Okay.

Q. On that date, November 7, 1994, did you have occasion to receive a telephone call in relation to the rental of a different storage shed?

A. Yes, I did.

Q. And where were you when you received this call?

A. In the office.

Q. What were you doing in the office on November 7?

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A. Working.

Q. And where was the office located?

A. In the basement of Mr. Hager's house.

Q. Do you remember the time of day that this call came in?

A. Not really, no.

Q. Did you have -- when you had the conversation on the phone with the caller, was anyone else on the phone?

A. No.

Q. What name did the caller give?

A. Ted Parker.

Q. What did the man say to you and what did you say to him in this call?

A. He asked if we had any storage units available.

Q. All right.

A. Yes, we did; and I made arrangements to meet him out there

to rent him one.

Q. Now, when you told him -- before we go into the conversation, after he asked you if you had any storage units available and you said you did, did you explain to him over the phone based on your records what you had for him?

A. I can't be positive, but yes, more than likely.

Q. All right. And after you said -- agreed to meet him out at

the storage facility, did you arrange a time?

A. Yes.

Q. And what did the man say?

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A. That was fine.

You know, I'm not really sure.

Q. Do you remember him talking to you about where he was from and when he needed to handle this?

A. Yeah. He was from out of town and he wanted to take care of this as soon as possible.

Q. All right. Did you handle it that day?

A. Yes.

Q. Do you recall how long after the call you went out to the storage-shed facility?

A. No, I do not; but it was probably -- I mean right away.

Q. All right. Now, do you recall in this phone call whether or not you gave the man directions to get to the facility?

A. I don't believe so. I think he already knew where it was at.

Q. And when you arrived at the facility, was anyone there to meet you?

A. Yes.

Q. Who was that?

A. I'm assuming that it was Ted Parker, because it was just a man.

Q. The person that was there --

A. -- was -- yeah.

Q. At some point following your dealings with this man who gave his name as Ted Parker, did you have occasion to see

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photographs of this person in the media?

A. I saw him on TV.

Q. All right. And when you saw -- when roughly did you see these photographs?

A. It was probably in middle May to first of June.

Q. Of what year?

A. Of '94.

Q. What was the name of the man depicted in the photographs?

A. Terry Nichols.

Q. Did Terry Nichols ever use his real name with you?

A. No, he did not.

Q. What was the name of the person who

Q. What was the name he always used?

A. Ted Parker.

Q. Did you observe whether Terry Nichols had a vehicle with him at the Council Grove sheds the day you met him there, November 7, 1994?

A. Yes.

Q. Describe, if you will, what that vehicle looked like.

A. It was a blue pickup with a white camper shell on the back.

THE COURT: What year did you say you saw the television picture?

THE WITNESS: It would have been mid May to first of June of '95.

MR. MENDELOFF: Thank you, your Honor.

BY MR. MENDELOFF:

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Q. Let me ask you to look through the papers you have in front

of you and ask you to look at Government's Exhibit 51.

A. Okay.

Q. Was this photo -- is this photo familiar to you?

A. Yes.

Q. Tell us how.

A. This is the pickup that was out there.

Q. Sorry?

A. This is the picture that I saw.

Q. Now, when you originally were interviewed by the FBI, I believe you indicated that you thought the pickup was a Chevrolet?

A. Yes.

Q. Are you well steeped in automobiles?

A. No, not really.

Q. Do you recognize this photo as being the photo of the vehicle you saw?

A. Yes.

Q. Does it fairly and accurately depict the pickup that Terry Nichols drove when he met you at the sheds on November 7, 1994?

A. Yes.

MR. MENDELOFF: We move the admission of Government's Exhibit 51, your Honor.

MS. MERRITT: I'd object, your Honor: Relevancy grounds.

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THE COURT: Overruled. 51 is received.

BY MR. MENDELOFF:

Q. When you first met Terry Nichols out at the sheds on November 7, 1994, did you have occasion to have a conversation with him?

A. Yes.

Q. Was anyone else present?

A. No.

... ..

Q. And do you recall the time of day, other than that it was on the 7th?

A. No, not really.

Q. When you came out, how did the conversation begin?

MS. MERRITT: Your Honor, I'm going to object as hearsay.

THE COURT: Overruled.

BY MR. MENDELOFF:

Q. How did the conversation begin?

A. I asked him his name, and we started filling out the paperwork that I had.

Q. What name did he give you?

A. Ted Parker.

Q. What did he tell you when he saw you after he gave you his name? Did he tell you what he wanted?

A. Yeah.

Q. What did he tell you he wanted?

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A. I assigned him a storage unit.

Q. Did you have to decide on a unit?

A. No. We already had that.

Q. All right. Well, what unit did he want?

A. I give him Unit No. 37.

Q. So you had a unit in mind when you went out to the facility?

A. Yes.

Q. All right. Let me ask you to -- excuse me -- direct your attention to Government's Exhibits 103 and 105, which are already in evidence.

First, Government's Exhibit 105.

A. Okay.

Q. Is Unit 37 depicted in that photograph?

A. Yes.

Q. Can you tell us where?

A. It's the center one right here.

Q. After Terry Nichols received Unit 37, did you do anything to complete the rental agreement?

A. I took his name and an address and had him sign it.

Q. Sign what?

A. The rental agreement.

Q. You had a blank agreement?

A. I had the top filled out, yeah.

Q. And then you asked him to sign it. Is that right?

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A. Right, uh-huh.

Q. Now, in addition to the name you requested, did you obtain any other information from him to fill it out?

A. I also got a phone number, I think.

Q. When he signed it, what name did he sign?

A. Ted Parker.

Q. Let me ask you to look at Government's Exhibit 113.
A. I already have that now.
Q. Ms. Furman, do you need a little water? Your voice sounds like it's cracking. There is some right in front of you there.
A. Okay.
Q. And let me ask you what Government's Exhibit 113 is.
A. It's our rental agreement for the Boots U-Store-It.
Q. Does that agreement before you fairly and accurately depict what you completed with Terry Nichols that day?
A. Yes.
Q. Did you make and maintain this agreement in the normal and ordinary course of your business at Boots U-Store-It?
A. Yes, I did.
MR. MENDELOFF: We move the admission of 113, Judge.
MS. MERRITT: Same objection.
THE COURT: Overruled. 113 is received.
MR. MENDELOFF: May we publish, your Honor?
THE COURT: Yes.
BY MR. MENDELOFF:

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Q. Let me ask you to go through this agreement very briefly. At the top of the page, there is an area with red pen writing. Do you see that?
A. Yes. Uh-huh.
Q. Who filled that in?
A. I did.
Q. Is that your handwriting?
A. Yes, it is.
Q. And the information that is listed there: Who -- from where did you get that information?
A. From Ted Parker.
Q. That was Terry Nichols?
A. Terry Nichols.
Q. What address did he give you?
A. He gave me 3616 North Van Dyke, Decker, Michigan.
Q. Did he give you a telephone number?
A. Yes, he did.
Q. What number was that?
A. (517)872-4108.
Q. And the agreement indicates 11-7-94, and that is because that is the date -- original date of the rental. Is that right?
A. Right.
Q. I believe you testified that you asked Mr. Nichols to sign this agreement.

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A. Uh-huh.
Q. Did he sign it?
A. Pardon me?

Q. Did he sign it?
A. Yes.
Q. And do you see that on this document?
A. Yes. It's at the bottom.
Q. Also in red pen?
A. Uh-huh.
Q. And did he borrow your pen that day?
A. Yeah.
Q. After Terry Nichols signed the rental agreement using the name Ted Parker, did the issue of rental payments come up?
A. Yes.
Q. How much did Unit 37, the unit that Mr. Nichols rented out in the name Ted Parker, rent for per month?
A. \$30.
Q. How much did he pay?
A. He paid me \$90.
Q. And that would have rented the unit through how long?
A. Be November --
Q. Of what year?
A. Of '94 --
Q. This was '94, so --
A. Okay. To -- for three months, so it would have been

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November 7 to December 7 and then January 7, February 7.

Q. Are you a little nervous, Ms. Furman?
A. Yes.
Q. Did you have any further discussion with Terry Nichols that day?
A. No.
Q. Where did you go after receiving the three months' rental payment from Terry Nichols?
A. Back to the office.
Q. At some point did you deposit that rental payment?
A. Yes.
Q. Let me ask you to look at Government's Exhibit 109.
A. Okay.
Q. Do you have it?
A. Uh-huh.
Q. And what is that?
A. It's a deposit slip for the storage units.
Q. Is Joe Kyle -- I'm sorry -- is the Ted Parker rental payment for that month located on that deposit ticket?
A. Yes, it is.
Q. In fact, is the Joe Kyle payment also located on that deposit ticket?
A. Yes, it is.
Q. This has already been admitted into evidence.
Let me just show you the back of that deposit ticket,

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and let me direct your attention to Line No. 2 on the back of that deposit ticket. Do you see T. Parker?

that deposit ticket. Do you see it, Barker?

A. Yes.

Q. What is listed next to that?

A. The unit number, 37.

Q. Okay.

A. And then I noted that it was three months at \$90.

Q. Now, below that is Joe Kyle. See that?

A. Uh-huh.

Q. Line No. 5. And that indicates the unit number next to that.

A. Right.

Q. And that was the multiple-month payment that was made on that unit?

A. Yeah, two months.

Q. Did you ever receive that payment personally from Joe Kyle?

A. No, I did not.

Q. Did you ever even meet Joe Kyle?

A. No, I did not.

THE COURT: The Joe Kyle portion here is admitted only conditionally.

MR. MENDELOFF: I understand, your Honor.

BY MR. MENDELOFF:

Q. Let me direct your attention to February of 1995. Did you have occasion to receive any rental payment for Council Grove

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Unit 37 at about that time?

THE COURT: Well, we're at 5:00.

MR. MENDELOFF: All right.

THE COURT: So we'll have to recess. You'll be back tomorrow.

THE WITNESS: Okay.

THE COURT: Like it or not. Sorry about that.

So you may step down now.

THE WITNESS: Okay.

THE COURT: Members of the jury, I hope you'll be back

tomorrow as well. We'll excuse you for now, of course, with the usual cautions of continuing to recognize that we receive evidence in this case bits -- in bits and pieces. And that's one of the reasons we ask you to keep open minds, because some of this evidence is not so clear when it comes in; so wait till

you've heard it all before even in your own minds you make any conclusions or draw any inferences about the evidence.

And, of course, continue to be careful about what you read, see, and hear in any form of communication or publication. Stay away from anything that could relate to the issues that are here on trial.

You're excused now until 9:00 tomorrow morning.

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

THE COURT: Recess. 9:00.

(Recess at 5:02 p.m.)

Item

Page

WITNESSES

Glynn Tipton

Direct Examination by Mr. Mendeloff

Cross-examination by Ms. Merritt

Redirect Examination by Mr. Mendeloff

Recross-examination by Ms. Merritt

David Pinnell

Direct Examination by Mr. Mackey

Cross-examination by Ms. Ramsey

Linda Juhl

Direct Examination by Mr. Goelman

Cross-examination by Ms. Ramsey

Marion Ogden

Direct Examination by Mr. Goelman

Cross-examination by Ms. Merritt

G. William Nellis

Direct Examination by Mr. Mackey

Cross-examination by Mr. Tritico

Joanne Thomas

Direct Examination by Mr. Mackey

Voir Dire Examination by Mr. Tritico

Direct Examination Continued by Mr. Mackey 6375

WITNESSES (continued)

Sharri Furman

Direct Examination by Mr. Mendeloff

PLAINTIFF'S EXHIBITS

| Exhibit | Offered | Received | Refused | Reserved | Withdrawn |
|---------|---------|----------|---------|----------|-----------|
| 42 | 6338 | 6338 | | | |
| 47 | 6290 | 6290 | | | |
| 51 | 6403 | 6404 | | | |
| 52 | 6359 | 6359 | | | |
| 56 | | | | | |
| 58 - 60 | 6354 | 6355 | | | |
| 61 | 6371 | 6371 | | | |
| 62 | 6373 | | | | |

| | | |
|-----------|------|------|
| 87 | 6356 | 6357 |
| 100 - 105 | 6382 | 6383 |
| 106 | 6386 | 6386 |
| 107 | | |
| 107A | 6395 | 6395 |
| 107A | | |
| 108 | 6395 | 6395 |
| 109 | 6395 | 6395 |
| 111 | | |
| 111A | 6395 | 6395 |
| 111A | | |
| 112 | 6395 | 6395 |

PLAINTIFF'S EXHIBITS (continued)

| Exhibit | Offered | Received | Refused | Reserved | Withdrawn |
|---------|---------|----------|---------|----------|-----------|
| 113 | 6406 | 6406 | | | |
| 146 | 6281 | 6281 | | | |
| 182 | 6272 | 6272 | | | |
| 183 | 6274 | 6274 | | | |
| 184 | 6282 | 6282 | | | |
| 186 | 6322 | 6323 | | | |
| 484 | 6376 | | | | |

* * * * *

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