

**Friday, May 2, 1997 (morning)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,

Defendant.

REPORTER'S TRANSCRIPT  
(Trial to Jury - Volume 75)

Proceedings before the HONORABLE RICHARD P. MATSCH,  
Judge, United States District Court for the District of  
Colorado, commencing at 9:00 a.m., on the 2d day of May, 1997,  
in Courtroom C-204, United States Courthouse, Denver,  
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription  
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APPEARANCES

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Defendant McVeigh.

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PROCEEDINGS

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

THE COURT: Be seated, please.

Good morning. We ready for our jury?

MR. HARTZLER: We are.

THE COURT: All right.

(Jury in at 9:00 a.m.)

THE COURT: Members of the jury, good morning.

You'll

recall when we recessed yesterday afternoon, we were hearing testimony from Sharri Furman, and Ms. Furman is here now to continue with her testimony.

If you'll please resume the stand.

(Sharri Furman was recalled to the stand.)

THE COURT: Mr. Mendeloff, you may continue.

MR. MENDELOFF: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. MENDELOFF:

Q. Good morning, Miss Furman.

A. Good morning.

Q. When we broke yesterday, you testified that you handled or that the Council Groves storage facility had handled two rentals, one Shed 40 and one Shed 37; right?

A. Yes.

Q. And the Shed 40 was the one to Joe Kyle that you did not handle but was in your files and was rented out on October 17; is that right?

A. Yes.

Q. Now, one point of clarification on that Joe Kyle one. I believe you were asked yesterday how long the shed was rented for?

A. Yes.

Sharri Furman - Direct

Q. Let me show you what's been marked Government Exhibit 114. Ask you to look at that, please.

A. Okay.

Q. Do you have it?

A. Uh-huh.

Q. What is Government Exhibit 114?

A. It's a computer printout of our customer files.

Q. And was that made and maintained in the normal and ordinary course of your business at the Council Groves storage facility?

A. Yes, it is.

MR. MENDELOFF: We move the admission of Government Exhibit 114, your Honor.

MS. MERRITT: No objection.

THE COURT: 114 is received.

MR. MENDELOFF: Thank you, your Honor.

BY MR. MENDELOFF:

Q. What is 114?

A. It's a computer printout from our storage-unit files.

Q. For which storage shed?

A. Oh, I'm sorry. Unit No. 40.

Q. And that's in the name of Joe Kyle?

A. Joe Kyle, uh-huh.

Q. And what does 114 reflect in terms of the rental payment history in terms of Shed No. 40?

A. It gives me the date of the last sale and the last payment.

Sharri Furman - Direct

Q. And what day was that?

A. 3/15/95.

Q. So if -- there was a payment for how much money on that day, excuse me?

A. \$30.

Q. So if there's a payment for \$30 on March 15, 1995, what does that indicate about how long the Kyle shed was rented for?

A. Through the month of March, 1995.

Q. So if it's -- payment on the 15th would extend the rental into how far, into April?

A. The 1st.

Q. Accordingly, if the shed was rented on the 17th of October,

what was the total rental period for that shed?

A. Through April 1, 1995.

Q. Of 1995?

A. 1995.

Q. All right. Now, I believe you also testified yesterday about a second rental, Shed 37, to Ted Parker; right?

A. Yes.

Q. And yesterday you testified that you identified Ted Parker as Terry Nichols; is that correct?

A. Yes.

Q. And I believe you also testified that the shed was originally rented on November 7?

A. Yes.

Sharri Furman - Direct

Q. And there was a payment for \$90 for a three-month period extending into February?

A. Yes.

Q. Now, let me ask you to look at Government Exhibit 110.

A. Okay.

Q. What is that?

A. It's a deposit slip for the storage units.

Q. All right. And was that made and maintained in the normal and ordinary course of your business at the Council Groves storage facility?

A. Yes.

MR. MENDELOFF: We'd move the admission of Government Exhibit 110, your Honor.

MS. MERRITT: No objection.

THE COURT: Received, 110.

MR. MENDELOFF: Your Honor, if I could publish this

MR. MENDELOFF: YOUR HONOR, IF I COULD PUBLISH THIS,  
please.

THE COURT: Yes.

BY MR. MENDELOFF:

Q. Let me just ask you a question about these deposit tickets.

I'm showing you the face of the deposit tickets. Does the deposit ticket indicate that it is for the Council Grove storage facility?

A. No, it does not.

Q. What is the reason that you used Council Grove Propane

Sharri Furman - Direct

Service for your deposits for the Council Grove storage facility?

A. Mr. Hager also owned the propane service when I started, and he in the course of the year sold that. But he kept the same account number for his storage units because they were both on the same thing, so he just continued to use this deposit slip.

Q. So when we see Council Grove Propane Service, that's actually deposits for the storage facility?

A. Yes, it is.

Q. And on the reverse side of this Exhibit 110, is there a list of the individual checks that were deposited?

A. Yes, there is.

Q. Let me direct your attention to line 6 on the reverse side.

What is that?

A. That shows that Unit No. 37, Ted Parker, made a payment of \$90.

Q. All right. And that would have been Terry Nichols?

A. Yes.

Q. And does it indicate based on -- does it indicate for which unit the payment was made?

A. Yes. 37. It's over on the left-hand side.

Q. Talking about this number right here?

A. Uh-huh.

Q. Based on a payment on the date of February 3, 1990 (sic),

Sharri Furman - Direct

for \$90, what would extend the rental term for -- for Shed No. 37?

A. That would carry it through to the 1st of May.

Q. So the total rental period for Shed No. 37 began on November 7 and extended until when?

A. The 1st of May, 1995.

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

THE COURT: Yes.

MR. MENDELOFF: Nothing further, your Honor. Thank you.

THE COURT: All right. Ms. Merritt.

CROSS-EXAMINATION

BY MS. MERRITT:

Q. Good morning, Mrs. Furman.

A. Good morning.

Q. With respect to Ted Parker, I believe you said that he called you first on the phone and told you he was interested in

renting a storage locker; is that correct?

A. Yes.

Q. And then he came out and met with you; right?

A. Yes.

Q. And you later said that the FBI interviewed you concerning this transaction; correct?

A. Yes.

Q. And you provided the FBI with a description of Ted Parker,

Sharri Furman - Cross

did you not?

A. Yes.

Q. And the description you gave was that he was a white male between 5' 11" and 6' 1", with brown hair and glasses, fairly thin, about 180 pounds; correct?

A. Yes.

Q. They didn't show you any photographs on this date; is that right?

A. No, they did not.

Q. And in fact, one of the agents told you that the description that you just gave fit Terry Nichols; correct?

A. They told me it possibly would be close, yes.

Q. But they mentioned Terry Nichols; right?

A. Yes, they did.

Q. Now, you mentioned also -- or maybe you didn't mention, but

let me just ask you. Is it true that the FBI took all your records as to this transaction?

A. As far as I know, yes, they did.

Q. Okay. And you have personal knowledge that these units were searched; they request permission to search them?

A. Yes.

Q. And that they were fingerprinted and cleaned out?

A. I'm not sure what all they did.

Q. Okay.

MS. MERRITT: I have nothing further.

Sharri Furman - Cross

MR. MENDELOFF: Just one question, your Honor.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Miss Furman, about when you identified Terry Nichols as Ted

Parker: Is that because the FBI told you to say that, or

that's because that was your identification?

A. That was what my identification.

Q. And that is based on what?

A. Actually, when I saw him on TV.

Q. Thank you.

MR. MENDELOFF: Nothing further, your Honor.

MS. MERRITT: Nothing, your Honor.

THE COURT: Is this witness now excused?

MR. MENDELOFF: She is, your Honor.

THE COURT: Agreed?

MS. MERRITT: Yes, she is.

THE COURT: You're excused, you can go home.

Next, please.

MR. HARTZLER: Government calls Tim Donahue.

Mr. Mackey will question him.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Timothy Donahue 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: Timothy Patrick Donahue, D-O-N-A-H-U-E.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mackey.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MACKEY:

Q. Good morning, Mr. Donahue.

A. Good morning.

Q. Would you tell the jury, please, where you live.

A. I live rural country around Marion, Kansas, about 15 miles from Marion, Kansas.

Q. How old are you?

A. I'm 38.

Q. Are you married?

A. Yes.

Q. Children?

A. Two.

Q. And how old are they?

A. I've got a boy that's nine and a girl that's 16 -- or 13, excuse me.

Q. Don't make that mistake.

A. Yeah; right.

Q. How far did you go in school?

Timothy Donahue - Direct

A. High school graduate.

Q. And how have you made your living over the years?

A. Farming and ranching.

Q. In Marion, Kansas, area?

A. Yes.

Q. Timothy Donahue, you are a resident of Marion, Kansas, is that correct?

Q. Is it a family ranch?  
A. Yes. I'm partnership with my father and my brother.  
Q. What's the name of that ranch?  
A. Donahue Hayhook Ranch.  
Q. Hayhook is one word?  
A. Yes.  
Q. For a hayhook?  
A. Right.  
Q. And did your father start that ranch?  
A. Yes.  
Q. How long ago?  
A. Oh, it was about 1964.  
Q. And how much acreage did he have in the Donahue ranch 30-plus years ago?  
A. Well, we started with a quarter section. That's 160 acres.  
Q. What is it today?  
A. It's about 15,000.  
Q. Where do your parents reside?  
A. Same location as me, just couple hundred yards from me.  
Q. And you have brothers and sisters?

Timothy Donahue - Direct

A. I've got two brothers and a sister.  
Q. And are any of your siblings involved in the farming operation?  
A. Yes, my brother.  
Q. And by name?  
A. Dudley.  
Q. You've lived your entire life, then, in central Kansas?  
A. Yes.  
Q. And are you familiar, then, with the location of cities like Marion, Herington, Council Grove, McPherson, and Junction City?  
A. Yes.  
Q. Been to all those places?  
A. Yes.  
Q. Know where they are?  
A. Yes.

MR. MACKEY: Your Honor, I'd like to publish an exhibit already in evidence, No. 47, on the ELMO.

THE COURT: You may.

BY MR. MACKEY:

Q. Do you find that exhibit in the materials in front of you; pull out of the packet?  
A. Yes.  
Q. Does Exhibit 47 accurately show where these various cities are in relation to each other in central Kansas?

Timothy Donahue - Direct

A. Yes.  
Q. Now, there's a legend on the left-hand side of your exhibit. Do you see that. reflecting mileage?

Q. ... do you see that, following mileage.

A. Yes.

Q. Tell the jury what the distance is between McPherson, Kansas, and Herington, Kansas.

A. 58 miles.

Q. And how far is it from McPherson to Marion?

A. 37 miles.

Q. And how far is it from Herington to Junction City?

A. 25 miles.

Q. And how far is it from Herington to Marion?

A. 24 miles.

Q. How about east/west from Herington to Council Grove?

A. 24 miles.

Q. And from Junction City to Manhattan?

A. 18 miles.

Q. Thank you. Are you familiar with Highway 77?

A. Yes.

Q. Traveled it a few times?

A. Oh, yes.

Q. Does it run north/south?

A. Yes.

Q. And what interstates does it intersect?

A. Interstate 70 and 35.

Timothy Donahue - Direct

Q. And 70 would be north up at Junction City?

A. That's correct.

Q. And 35 would be south?

A. Right.

Q. Let's talk a little bit more about the ranching operation, Mr. Donahue. Where is this 15,000 acres?

A. Well, we're spread out over Marion and Chase Counties.

Oh,

it's 50 miles from one end to the other, spots here and there.

Q. And do you raise crops?

A. Yes.

Q. What?

A. Oh, a lot of hay for our cow herd, and then we do raise some wheat and milo.

Q. And in your farming operations, do you use ammonium nitrate

as a fertilizer?

A. No.

Q. Have you ever?

A. No.

Q. Are you a member of the Mid-Kansas Cooperative?

A. No.

Q. Have you ever been?

A. No.

Q. You mentioned cattle.

A. Uh-huh.

Q. How many head do you have now?



Timothy Donahue - Direct

A. Oh, we run a thousand head of cows and then background all of our own calves, so we usually have a couple of thousand head around.

Q. And what is your busy season when it comes to your cattle business?

A. Pretty much year around.

Q. Did you just finish calving?

A. Yes. Early spring; late winter, early spring.

Q. Do you and your family also have other business interests outside of ranching and --

A. Yeah, we're in the -- my father's a trailer manufacturing business and they also run a bed and breakfast.

Q. What's the name of the trailer business?

A. Donahue Corporation.

Q. Something clever.

A. Yeah.

Q. Where's it situated?

A. It's a little town of Durham, Kansas. It's about 30 miles from where me and my father actually live.

Q. So small it didn't even make our map.

A. No.

Q. All right. What sort of range of trailers does Donahue trailers manufacture?

A. Oh, various farm-implement trailers that haul livestock, various implements, small utility trailers, grain trailers.

Timothy Donahue - Direct

Q. And how far are they distributed outside of Durham, Kansas?

A. Oh, it's nationwide.

Q. Nationwide?

A. Yes.

Q. Do you in your operation there at the Donahue Hayhook Ranch

use or own any of those Donahue trailers?

A. Yes.

Q. What kind?

A. Oh, livestock trailers, about all of them, grain trailers, utility trailers.

Q. And did you do so in 1994?

A. Yes.

Q. Look in your packet, please, for Government Exhibits 54 and 55.

A. Yes.

Q. What are those, please.

A. That's a little utility trailer that we've got on our farm.

Q. And are they of the kind that you owned and used in your farming and ranching operations in the fall of 1994?

A. Yes.

Q. How many utility trailers did Donahue Hayhook Ranch use,

then?

A. Three of them.

Q. And do these accurately depict those utility trailers used for that purpose?

Timothy Donahue - Direct

A. Yes.

MR. MACKEY: We move to admit Exhibits 54 and 55.

MS. MERRITT: Your Honor, we'd object on grounds of relevancy.

THE COURT: Overruled. Received.

BY MR. MACKEY:

Q. Tell the jury what they're seeing on Government Exhibit 54.

A. That would be the back end of the trailer.

Q. Is that a utility trailer of the kind that you've been referring to?

A. Yes, uh-huh.

Q. And is 55 the same trailer from another vantage point?

A. Yes.

Q. In the fall of 1994, approximately how many of these utility trailers did you have spread out over the ranch?

A. Three of them.

Q. And where on the Donahue Ranch were they located in the fall of 1994?

A. Oh, they could have been anywhere. Clover Cliff, there's usually one down there; and at least one down there and usually one at our place.

Q. Now, are they locked up every night?

A. No, no. They're just setting (sic) out.

Q. Now, what is Clover Cliff? You mentioned that.

A. It's the name of one of our ranches.

Timothy Donahue - Direct

Q. Mr. Donahue, do you hire help?

A. Yes.

Q. And who makes those hiring decisions for the ranch operations?

A. Well, I have one man that usually works with me, and my brother has a man that works for him; so both of us hire our own workers.

Q. Usually one hired hand per Donahue brother?

A. Right.

Q. What sort of compensation package do you have for your hired hand? What do you pay them?

A. Salary, we provide housing and utilities.

Q. Do you know an individual named Terry Nichols?

A. Yes.

Q. And how do you know him?

A. He worked for me for six months.

Q. And do you remember when he first came to be your hired hand at the Donahue Ranch?

hand at the Donahue Ranch:

A. Been right around the first of March of '94.

Q. And when did he leave?

A. Been September 30 of '94.

Q. And during his employment with you, did he live in the housing that you referred to?

A. Yes.

Q. And do you remember when he moved out of that house?

Timothy Donahue - Direct

A. It been Sunday, the 2d of October.

Q. Tell the jury where the Nichols residence or the hired hand

house is in relationship to where you and your family reside.

A. It's 2 miles south of us.

Q. Take a look, please, Mr. Donahue, at Government Exhibit 40.

A. Okay.

Q. Tell his Honor and the jury what that appears to be.

A. In the foreground would be -- the stream bottom would be Terry's residence.

Q. Is that Mr. Nichols'?

A. Yes. And clear up at the top is where me and my father lived.

Q. Is that an aerial view of part of Donahue Ranch and shows the sites of your home and the Nichols residence?

A. Yes.

MR. MACKEY: Would move to admit Government Exhibit 40.

MS. MERRITT: No objection, your Honor.

THE COURT: 40 is received.

BY MR. MACKEY:

Q. Mr. Donahue, with the pen that's to your left there, can you get the jury oriented just a little bit on north/south first?

A. Just --

Q. The road that divides the photograph that runs from the top

Timothy Donahue - Direct

to the bottom, is that running north/south?

A. Yes.

Q. Just mark that on the --

A. Just draw a line on that road?

Q. Yeah, on that road.

All right. That's fine.

Okay. Now, let me zoom in if I can -- you can take that off. Just click the pen.

Top portion of Government Exhibit 40, there appear to

be some structures. Can you circle those and tell the jury what those are.

A. That would be the ranch houses where my father and myself

live.

Q. So there are a number of ranch houses in a cluster, yours and your parents'?

A. Yeah.

Q. And at the bottom of Exhibit 40, circle the Nichols residence.

And the distance between that residence and your home, again, is approximately how long?

A. 2 miles.

Q. Describe that road that connects the two of you.

A. It's just a gravel road. Dirt, country road.

Q. There's a couple creek beds run through there?

A. Yes, uh-huh.

Timothy Donahue - Direct

Q. Is it a heavily traveled road?

A. No.

Q. Does it dead-end at your property?

A. Yes.

Q. Let me show you at this time, Mr. Donahue, what's been previously admitted into evidence as Government Exhibit 42.

And what does that show, please.

A. That shows the house we provide for our hired help.

Q. And is that the house that Mr. Nichols lived in between March and late September, 1994?

A. Yes.

Q. The road that appears in the foreground, is that the same road that you drew a line for us just earlier?

A. That's correct.

Q. Take a look, please, at Government Exhibit 43 in your packet.

You see that?

A. Uh-huh.

Q. What is that, please.

A. That's the house.

Q. Is that a closer shot of the Nichols residence?

A. Yes.

MR. MACKEY: We'd move to admit Government Exhibit 43.

MS. MERRITT: No objection.

THE COURT: 43 received.

Timothy Donahue - Direct

BY MR. MACKEY:

Q. Could you -- let me ask you, have you been in that house a number of times over the years?

A. Oh, yes.

Q. Could you describe it to the jury, what kind of house is it?

A. It's a three-bedroom house. It's pretty nice house.

Q. And the door that appears in the far left-hand corner of

Exhibit 43, what is that, please.

A. The walk-in door?

Q. No, this door right here.

A. That's the garage door, yes.

Q. It's a single-car garage?

A. Yes.

Q. Thank you. What is the mailing address for that residence?

A. It's Route 3, Box 83, Marion, Kansas.

Q. Mr. Donahue, you should find in front of you Government Exhibit 88.

A. Okay.

Q. Without describing the document, can you compare the address that appears on Government Exhibit 88 with what you know to be the mailing address of the Nichols residence?

A. Yes, that's the address of that house.

Q. Thank you.

Did Mr. Nichols have any family members reside with

Timothy Donahue - Direct

him during the time that he worked for you?

A. Yeah, he had his wife and infant daughter.

Q. Do you know his wife's name?

A. Marife.

Q. And his daughter's name?

A. Nicole, I believe.

Q. Were they with Mr. Nichols when he first came to work for you?

A. No.

Q. And were they with him when he last left your employment?

A. No.

Q. But resided with him for periods in between?

A. That's correct.

Q. Give the jury an overview of what the workweek was for you and Mr. Nichols during the spring, summer, and fall of 1994.

A. Well, we'd work basically a six-day workweek, Monday through Saturday. Whenever possible we like to take Saturday afternoons off; probably 50 percent of the time, we wouldn't work Saturday afternoon. But it was long days. Typically worked 7 to 8 in the evening. Start 7, 7:30 in the morning.

Q. And how would you start the day? How would you and Mr. Nichols link up for the day's work?

A. Well, it was his responsibility to drive up to the ranch house, his personal vehicle, and we'd get together there.

Q. And where would Mr. Nichols' vehicle be, then, during the

Timothy Donahue - Direct

workday, most often?

A. Most often it would be parked there.

Q. And then the two of you would drive out to the fields, whenever you were planning on working --

A. That's correct.

Q. Together in the ranch vehicle?

Q. -- together in the ranch vehicle?

A. That's correct.

Q. So I take it you got to know what Mr. Nichols' vehicle looked like?

A. Yes.

Q. What was it?

A. It was a blue GMC pickup.

Q. Tell the jury a little bit about the routine during the lunch hour. What did you and Mr. Nichols do in terms of your lunch breaks?

A. Well, most of the time, we'd go home our separate houses and eat dinner.

Q. So there would be a period of time during the middle of the

day where he would be at his residence and you would be at yours?

A. Yeah.

Q. Did there come a time where you learned that Mr. Nichols intended to leave, depart, terminate his employment with you?

A. Yeah. It would have been right at the last of August.

Q. Tell the jury what happened.

Timothy Donahue - Direct

A. Well, he just -- when I hired him, I requested a month's notice when he quit; and he fulfilled that and give me a month's notice, told me that he'd be quitting in a month. And he said a friend of his had offered him a job going to gun trade shows; and he could make twice -- twice what I was paying

him. So I asked him if there was anything I could do to keep him, and he said that he was offered twice what I was paying him; so I couldn't afford to do that.

Q. Did he name the person that he intended to go in the gun show business with --

A. No.

Q. -- to you?

During the six months or so that he worked for you and

lived down the road, did you ever see him have visitors?

A. Yes.

Q. In the company of other people?

A. Yes.

Q. When was the first such occasion that you recall?

A. Well, it was down at Clover Cliff, and I was -- it was in the morning, and I was preparing a tractor, an implement to work in the field. And Terry was on the other side of the highway, working in a another tractor; and a silver car pulled up and asked me -- Marife got out and asked me where Terry was.

Q. Let me back up just a little bit. Do you remember approximately when date-wise this incident took place, in

Timothy Donahue - Direct

-----, -----  
relationship to the end of his employment, for example?

A. Yeah. It was towards the end of his employment.

Q. Have you seen Government Exhibits 44 and 45? They should be photographs in front of you.

A. Yes. Yes.

Q. And what do each of those photographs depict?

A. That's Clover Cliff Ranch.

Q. Same Clover Cliff you mentioned already in your testimony?

A. Yes.

Q. Do they accurately depict that scene?

A. Yes.

MR. MACKEY: Would offer both Exhibits 44 and 45 into evidence, please.

MS. MERRITT: No objection.

THE COURT: Received.

BY MR. MACKEY:

Q. What is shown here, please.

A. That's the main ranch house.

Q. And what's the history -- I'm just curious -- about this structure here?

A. Oh, it's a -- it's an old ranch house was started in the 1860's.

Q. You mentioned your folks also have a bed and breakfast.

Is

this it?

A. Yes.

Timothy Donahue - Direct

Q. So you've renovated it and --

A. That's correct.

Q. All right. But you have fields around this old ranch house?

A. Yes.

Q. Let me show you Government Exhibit 44. And the structure is much smaller now that appears in the middle of that photo. Are those the Clover Cliff Ranch house --

A. Yes.

Q. -- that you described? And what is the highway that runs across the top of that photograph?

A. That's U.S. 50.

Q. And in the fall of 1994, did the Donahue Ranch own property on both sides of that highway?

A. Yes.

Q. Take us back to the story, then. Where were you working on that morning?

A. Want me to draw it on the --

Q. Yeah, if you can, please.

Thank you.

A. Well, I would have been up over in this area.

Q. Okay.

A. And you can't see -- it was a little further up than that.

Q. But in that general direction?

A. In that general direction.

Timothy Donahue - Direct

Q. How far off the highway were you, Mr. Donahue?

A. Oh, 2-, 300 yards.

Q. And did you notice the car approaching you?

A. Yes.

Q. And so you saw it before it came to a full stop?

A. Yes.

Q. Were you paying attention to that --

A. Yes.

Q. -- event? Tell the jury what happened.

A. Well, the car pulled up just short distance from me, and a lady get -- got out and walked over to me and asked me --

MS. MERRITT: Your Honor, I'm going to object on hearsay grounds.

THE COURT: Overruled.

You're not doing it --

MR. MACKEY: It's not offered for the truth of the conversation.

THE COURT: Okay.

BY MR. MACKEY:

Q. Go ahead, please.

A. A lady got out and asked me where Terry was. And she was a little hard to understand for me, and I didn't really recognize

her immediately. And then I realized it was Marife. And rather than try and explain it to her, I walked over to the driver of the car and started to explain it to him and then

Timothy Donahue - Direct

just told him to follow me over there; I'd lead him over to where Terry was working.

Q. And so you had a conversation with the person who was in the car, the driver's seat?

A. That's correct.

Q. Male, or female?

A. Male.

Q. Did you get a good look at that person who was driving the car?

A. Yes.

Q. How long a conversation did you have with that person?

A. Oh, just 30 seconds to a minute at that time.

Q. And what did you tell him?

A. Well, tried -- I started to explain to him how to get over

to where he was, but it's a little difficult to do that; so I just told him to follow me; I'd just lead him with my pickup and he could follow me over to where he was.

Q. And is that what you did?

- ..



A. Yes.

Q. Go back to Exhibit 44 and show the jury what route the two vehicles then took.

A. Okay. Well, we come down on the highway here, come up the driveway, and then down this road. This is just a lane road, going down to the fields down there.

Q. And what happened when you got to the other side of the

Timothy Donahue - Direct

highway? What did you do?

A. Well, I stopped, and Terry got out of the tractor; and the driver of the car got out and started to talk. And I just turned around and drove back past them over to the other side of the highway.

Q. Now, when the driver of the car got out, was that your first opportunity to see the stature, how tall he was?

A. Uh-huh.

Q. And did you notice it?

A. Yes.

Q. And then you drove past that person as they spoke to Mr. Nichols?

A. That's correct.

Q. Did you get a good look at that individual on that day in both those stops that's depicted?

A. Yes.

Q. Did you ever see that person again?

A. Yes.

Q. Do you want to clear the screen, please.

A. Yeah.

Q. Thanks. And when was that?

A. It would have been Friday, September 30.

Q. Let me start by asking you: The day before, had you or your wife noticed an ad for the sale of items in a local newspaper?

Timothy Donahue - Direct

A. Uh-huh. Yes.

Q. What paper did you and your wife take?

A. That was the local Marion Record.

Q. Previously admitted into evidence, Mr. Donahue, and before you should be Government Exhibit 56.

A. Okay.

Q. Do you see that?

A. Yes.

Q. And do you see the ad that you noticed in late September of 1994?

A. Yes.

Q. Where does it appear?

A. On the right-hand -- extreme right-hand column, middle of the page.

Q. Is that it?

A. Yes.

44. 103.

Q. Titled "Moving Sale"?

A. That's correct.

Q. And what caught your eye about this particular ad?

A. The waterbed.

Q. Interested in buying one?

A. Yes.

Q. And you notice that there's a phone number listed there, 382-3535?

A. Yes.

Timothy Donahue - Direct

Q. Do you recognize that phone number?

A. Yes.

Q. Whose phone number was that in September of 1994?

A. That was Terry Nichols'.

Q. On Friday morning, September 30 -- that was the last day of

Mr. Nichols' employ?

A. Yes.

Q. Did the two of you talk about the waterbed?

A. Yes.

Q. Tell the jury what that conversation was about.

A. Well, I just made arrangements for that evening to go over and look at the waterbed.

Q. In the course of that same morning, Friday, the 30th, did Mr. Nichols tell you of his -- the time that he intended to leave that day?

A. Well, he asked me, yes, if he could --

Q. Tell the jury about the conversation.

MS. MERRITT: Your Honor, I'm going to object on hearsay grounds as to what Terry told him.

THE COURT: Overruled.

THE WITNESS: He asked me if he could take off early.

BY MR. MACKEY:

Q. And what did you say to that?

A. Well, I reluctantly agreed to it. You know, he was leaving; and I just kind of hated to let him off the last day,

Timothy Donahue - Direct

just to tie up loose ends and get everything done as much as we

could, because I was going to be without a hired man for a while, and I just hated to see him take the last afternoon off.

Q. Did that catch you by surprise?

A. Yeah.

Q. You hadn't known of his plans to request that --

A. No.

Q. -- before that day?

A. No.

Q. Or that time of day?

A. No.  
Q. But you agreed?  
A. Yes.  
Q. What time did Mr. Nichols leave work on Friday, September 30?  
A. I would say it was noon, or shortly after.  
Q. How long did you work that day?  
A. Oh, 7, probably.  
Q. And what did you do after you finished your job that day?  
A. I don't remember specifically what I was doing.  
Q. But when your job was done, what did you do?  
A. Then I went over to Terry's house and looked at the waterbed.  
Q. Approximately what time did you arrive?  
A. Oh, I would say it was between 7 and 7:30.

Timothy Donahue - Direct

Q. And when you drove into the driveway, did you notice any vehicles?  
A. Yeah. There was a little silver car there, and Terry's pickup was there.  
Q. The silver car: Is that the same silver car you had seen before out in the field at Clover Cliff?  
A. Yes.  
Q. Had you seen that same silver car any other occasions at the Nichols residence?  
A. Yeah, I had seen it parked there before, also.  
Q. Turn your attention, Mr. Donahue, to Government's Exhibit 271.  
A. Okay.  
Q. You see that?  
A. Yes.  
Q. And how does the vehicle that is depicted in that photograph compare to the silver car that you've described in your testimony today?  
A. Looks like it could be it.

MR. MACKEY: Your Honor, I'd move to admit Government's Exhibit 271.

MS. MERRITT: No objection.

THE COURT: Received.

BY MR. MACKEY:

Q. Does that have the general configuration of what you recall

Timothy Donahue - Direct

this vehicle being, small, box-like, gray or silver in color?  
A. Yes.  
Q. Look at Government Exhibit 272.  
A. Okay.  
Q. And is that an enlargement of Government Exhibit 271?  
A. Yes.  
Q. And with the enlargement, can you read the license plate?

Don't read it out yet, but can you read it by looking at the enlargement?

A. Yes, uh-huh.

MR. MACKEY: Would move to admit Government Exhibit 272.

MS. MERRITT: No objection.

THE COURT: Received, 272.

BY MR. MACKEY:

Q. Do you see the license number there now, Mr. Donahue?

A. Yes.

Q. And what are the letters and numbers that appear on that license?

A. GRY034.

MR. MACKEY: Your Honor, at this time I'd move to admit Government Exhibit 223, a certified copy of the title for

a 1987 Chevrolet Spectrum in the name of Timothy McVeigh, bearing the same license number.

MS. MERRITT: No objection.

Timothy Donahue - Direct

THE COURT: What's the number?

MR. MACKEY: 223.

THE COURT: Thank you. 223 is received.

MR. MACKEY: Thank you.

BY MR. MACKEY:

Q. In the six months that Mr. Nichols lived at your hired-hand

house, did you see any other vehicle there?

A. No.

Q. In addition to the silver car, silver-gray car you've just described, what other cars did you see in the driveway on Friday, September 30?

A. Terry's blue pickup.

Q. And that -- earlier that day, noonish or thereafter, when Mr. Nichols left your employ, what did that truck look like?

A. Just blue, fleetside pickup.

Q. And had anything changed in the four or five hours that had

transpired that same afternoon as to that vehicle?

A. Yes. He had a topper on it that evening.

Q. Take a look at Exhibit 51 previously admitted into evidence.

A. Okay.

Q. And what is that?

A. That looks like Terry's pickup.

Q. The way it looked around 7:00 on Friday, September 30?

A. Yes, that's correct.

Timothy Donahue - Direct

MR. MACKEY: One moment, your Honor.

BY MR. MACKEY:

Q. Mr. Donahue, tell us what happened when you arrived and

Q. Mr. Donahue, tell us what happened when you arrived and saw the two vehicles at the Nichols' house on that Friday afternoon.

A. That Friday evening, when I was there?

Q. Friday evening. That's more correct, yes.

A. Well, I pulled up 30 feet from the door, front door of the house, and I got out of my pickup and walked up to the front door and met Terry there.

Q. Now, where exactly was the pickup truck parked when you got to the front door?

A. It was backed up towards the garage door of the house.

Q. The same garage door you've shown the jury earlier?

A. Yes.

Q. And what happened next?

A. Me and Terry talked for a short time; and I mean just -- I just told him I'd like to see the waterbed. And then we stepped into the house, looked at the waterbed.

Q. All right. Let me return your attention to Government Exhibit 43.

You mentioned that you stepped up on the porch. Is this the porch you're referring to?

A. Yes.

Q. And where was the pickup truck parked, as shown on this

Timothy Donahue - Direct  
photograph? If you could mark that on your screen.

A. Well, it would have been right -- whoops. It would have been over there.

Q. Over there?

A. Wherever that is.

Q. Why don't you clear that and start again.

A. Over here.

Q. Why don't you clear that and let me point.

Right here?

A. Yes.

Q. Okay, good enough. Did you see anyone around that pickup truck on Friday evening as you stood there on the step?

A. Yes.

Q. And describe that person that you saw.

A. Well, he was a tall, thin man -- extremely tall, thin man.

Q. You noticed him?

A. Oh, yes.

Q. What did it appear he was doing?

A. Well, he was working on the back of the pickup there. I don't know exactly what he was doing, but he was behind the pickup there.

Q. That's where you saw him?

A. Yes.

Q. After you talked briefly with Mr. Nichols on the front porch, did you go inside the house?

Timothy Donahue - Direct

A. Yes.

Q. And what did you do?

A. Oh, we just walked into the first bedroom there and looked at the waterbed and -- just for five minutes and then walked back out onto the front porch.

Q. You and Mr. Nichols standing together on the same front porch?

A. Yes.

Q. And at that point in time, what did the two of you talk about?

A. I just told him I'd take the waterbed. And I wrote him a personal check for the amount for the waterbed, and then I also decided to give him his final paycheck at that time and presented that to him and just explained to him I appreciated if he'd leave the house in good order when he left.

Q. So these are all business transactions and conversations that you had with Mr. Nichols while standing on the front porch of that house?

A. Yes.

Q. And where was the second individual during this time?

A. He was still back there behind the pickup.

Q. What's the approximate distance between the front porch and the garage door of that house?

A. Oh, 15, 20 feet.

Q. Anything that would obstruct your view from the front porch

Timothy Donahue - Direct

to the garage door?

A. No.

Q. Did you get a good look at the man?

A. Yes.

Q. Take a look, please, at Government Exhibits 49 and 50.

A. Okay.

Q. And what is Government Exhibit 49?

A. That's the personal check I give him for the waterbed.

Q. That's a check that you prepared while standing on the porch?

A. Yes.

MR. MACKEY: Would move to admit Government Exhibit 49.

MS. MERRITT: No objection.

THE COURT: Received.

BY MR. MACKEY:

Q. Describe to the jury what's written on the face of that check, please, to whom is it paid.

A. Terry Nichols.

Q. In what amount?

A. \$125.

Q. And who signed that check?

A. I did.

Q. And that was to pay for the waterbed?

A. That's correct.

Timothy Donahue - Direct

Q. And did you date that check accurately? Was that the day?

A. Yes.

Q. Take a look at Government Exhibit 50, then, and tell his Honor and the jury what that is.

A. That would have been Terry's final paycheck.

Q. And what did you do with that?

A. I also handed that to him at that time.

MR. MACKEY: We'd move to admit Government Exhibit 50, five oh.

MS. MERRITT: No objection.

THE COURT: 50 received.

BY MR. MACKEY:

Q. Describe what appears on that check.

A. It was also made out to Terry Nichols, September 30, \$592.59. And it was made out by my mother.

Q. Her first name being Joan?

A. Joanne.

Q. Oh, excuse me. And she's the bookkeeper for the company?

A. Yes.

Q. Did you know or plan to have her prepare Mr. Nichols' final

paycheck for that Friday, September 30?

A. Yes.

Q. Did you make arrangements earlier that day to get that paycheck?

A. Yes.

Timothy Donahue - Direct

Q. And is it accurately dated on the date that you delivered it to Mr. Nichols?

A. Yes.

Q. Mr. Donahue, if the person who you saw in the field earlier

and who you later saw at the Nichols residence on Friday, September 30, were in this courtroom at this time, could you identify him?

A. Yes.

Q. Would you do so at this time.

MS. MERRITT: Your Honor, I'm going to object based upon the reasons that we set forth at our pretrial motion to suppress in-court identification.

THE COURT: Overruled.

BY MR. MACKEY:

Q. Would you do so at this time.

A. It's the gentleman over there in the green shirt.

MR. MACKEY: Let the record reflect the witness has

identified Mr. McVeigh.

THE COURT: Yes.

BY MR. MACKEY:

Q. Thank you, Mr. Donahue.

A. Yes.

Q. I want to hand you at this time Government Exhibit 52. Would you study that photograph for a moment, please.

A. Okay.

Timothy Donahue - Direct

Q. You recognize the person shown in that photograph?

A. Yes.

Q. As who?

MS. MERRITT: Same objection, your Honor.

THE WITNESS: Same gentleman I just pointed to.

THE COURT: All right. Quick on the draw there.

THE WITNESS: Oh.

THE COURT: The objection is overruled.

When there is an objection --

THE WITNESS: Okay.

THE COURT: -- wait a little, will you?

THE WITNESS: Okay.

BY MR. MACKEY:

Q. Mr. Donahue, is the person that you see in Government Exhibit 52 the same person you just moments ago identified as Timothy McVeigh?

A. Yes.

Q. Had you seen that photograph before I just handed it to you?

A. No.

Q. Do you recognize the background that's shown in that photograph? Study it.

A. Well, it looks like it's -- could be Terry's house.

Q. All right.

A. Yes.

Timothy Donahue - Direct

Q. Terry's house, as in the same house that you saw Mr. McVeigh on Friday, September 30?

A. It's the house we provide for our employees.

Q. Now, after you left that evening on Friday, September 30, did you make it a point to stay around or drive around the Nichols residence?

A. Yes.

Q. Why?

A. Well, I was just hoping he'd get moved out so I could check

the house over. I'd given him his final paycheck and was kind of anxious for him to move.

Q. Is it usually your policy to hold onto the check until you inspected the property?

A. I like to, yes.

Q. And so how many times did you pass by the Nichols



Q. And so how many times did you pass by the Nichols residence

that weekend in early October, 1994?

A. Oh, I'm sure three, four, maybe more than that. At least three or four times.

Q. And turning your attention, then, to Sunday -- it would be October 2, 1994 -- what did you observe?

A. In the evening there, I seen the blue pickup going south down that country road, about a half mile south of the house.

Q. And approximately what time of day, if you recall?

A. Oh, it would have been probably around 7 in the evening.

Q. Did you recognize the vehicle that you saw?

Timothy Donahue - Direct

A. Yes.

Q. As?

A. Terry's pickup.

Q. After you saw that, what did you do?

A. I was coming from the west, and then I turned north to go right by Terry's house or the rental house; and then I stopped there at the house. My waterbed was still in there, too; and I

took some of that, loaded it up that evening, and went home. Looked at the house a little bit.

Q. When you went into the house shortly after Mr. Nichols' departure, what was in there?

A. Just the waterbed.

Q. All right. All the other furnishings had been removed?

A. Yes.

Q. When Mr. Nichols left your employ, did he leave a forwarding address?

A. No.

Q. Now, the last time that you saw Terry Nichols was in the company of Mr. McVeigh on Friday, September 30?

A. That's correct.

Q. Is that correct? Now, based upon years of living in the Marion, Kansas area, are you familiar with the existence of a rock quarry outside of the city of Marion, Kansas?

A. Yes.

Q. Take a look, please, at Government Exhibit 46A.

Timothy Donahue - Direct

A. Okay.

Q. And what is that, please.

A. That's a map of the area, area around where I live, around Marion.

Q. Including Marion and your residence and Mr. Nichols' residence?

A. Yes.

Q. Does it show the county roads in that same area?

A. Yes.

Q. Does it show it accurately?

A. Yes, I believe so.

MR. MACKEY: We'd move to admit Government Exhibit 46A.

MS. MERRITT: No objection.

THE COURT: Received.

BY MR. MACKEY:

Q. Tell the ladies and gentlemen of the jury, Mr. Donahue, what the -- each of these squares represent.

A. That would be a one square mile.

Q. And the city of Marion is where, please.

A. Right there.

Q. And the rock quarry?

A. The rock quarry. It's kind of hard to see on there.

Would

be right here.

Q. And would you mark in the same fashion where Mr. Nichols'

Timothy Donahue - Direct

house was in September, 1994.

A. Right there.

Q. Now, this dark line that runs across Exhibit 46A: What highway is that, please.

A. That's Highway 150.

Q. And the lighter colored lines that make up the rest of the map: What are those, please.

A. That would be dirt or gravel, country roads.

Q. Can you travel by country road from Mr. Nichols' residence to the rock quarry?

A. Yes.

MR. MACKEY: Your Honor, with the Court's permission, we'd like to have printed this particular exhibit with the witness' notations.

THE COURT: All right.

Did it work?

THE COURTROOM DEPUTY: I don't know. It takes a little while. It's doing it's thing, so it should be okay.

MR. MACKEY: Should I leave it there?

THE COURTROOM DEPUTY: Why don't you leave it there.

BY MR. MACKEY:

Q. Tell you what, Mr. Donahue: Just for safety's sake, Government Exhibit 46A, and with an ink pen that you have in your pocket, make the same-type notations.

A. Okay. Just X the stuff?

Timothy Donahue - Direct

Q. Please.

On the notation, please, Mr. Donahue, put Q by the location of the quarry and TN for the location of Mr. Nichols' residence.

Thank you.

MR. MACKEY: If you could clear that, please.

THE COURTROOM DEPUTY: It worked.

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BY MR. MACKEY:

Q. All right. Let me return your attention, Mr. Donahue, to the photograph marked Exhibit 52 that you previously identified. Is it your testimony that the person that's depicted in Exhibit 52 is the same person that you saw at the Nichols residence on Friday evening, September 30, 1994?

A. Yes.

Q. And is it your testimony that that person in that photo is in this courtroom today?

A. Yes.

Q. How certain, Mr. Donahue, are you of that identification?

A. Oh, I'm positive.

MR. MACKEY: Nothing else.

THE COURT: Ms. Merritt.

CROSS-EXAMINATION

BY MS. MERRITT:

Q. Good morning, Mr. Donahue.

A. Good morning.

Timothy Donahue - Cross

Q. Let's start at the beginning. You say that you ran an ad the first week in March for a farmhand; is that correct?

A. Yeah. It might have been the middle of February, sometime in that period.

Q. Approximately around then; right?

A. Right.

Q. And you work on your dad's ranch, taking care of the day-to-day operation?

A. That's correct.

Q. And you were offering \$300 a week for this job plus use of the house and utilities?

A. Yes, among a few other things.

Q. And Terry Nichols took the job; right?

A. That's correct.

Q. And he worked for you approximately six months and quit the first week in October?

A. Yes.

Q. And he lived in the house which was owned by you, which house was about 2 miles from your ranch?

A. Yeah, it's rented by us.

Q. Uh-huh.

A. Okay. Yes.

Q. He furnished his -- he purchased his furniture locally -- correct -- and then he sold it?

A. That's correct.

Timothy Donahue - Cross

Q. Marife came about one month after Terry Nichols started to work?

A. Sometime in there, yes.

Q. How many times would you say you saw Marife altogether?

A. Oh, two or three

A. Oh, two or three.

Q. Two or three times?

A. That's correct.

Q. Does that include the time that you talked about that she drove up to the ranch looking for Terry?

A. Yes.

Q. And by the way, on that occasion, when she and another individual drove up to the ranch, they told you they were looking for Terry so they could get the car seat for the baby to drive -- 'cause they were driving to Wichita; right?

A. I believe that's correct, yes.

Q. Now, you were first interviewed by the FBI in this case on April 21, 1995; is that correct?

A. Yes.

Q. And at that time, and at the time of the interview, it was before you had seen any news coverage of the arrest of Mr. McVeigh; correct?

A. Yes.

Q. Okay. And you described for the FBI the individual that you saw at Terry Nichols' house in October on this first occasion; right?

Timothy Donahue - Cross

Let me rephrase that. That wasn't very artful.

At the time of your first interview on April 21, 1995, you described for the FBI the person you encountered at Terry Nichols' in October -- correct -- or September 30?

A. Yes; correct.

Q. That's as opposed to the individual you saw at the ranch earlier?

A. Correct.

Q. And you described this person as being approximately 35 years old?

A. That's correct.

Q. You described him as having a height of approximately 5-foot-11?

A. Yes.

Q. You said he had a thin build?

A. Correct.

Q. You said he had dark hair?

A. Yes.

Q. You said his hair was mid-ear length?

A. Yes.

Q. You said he had a scraggly brown beard.

A. Yes.

Q. And you said that he did not have eyeglasses.

A. Correct.

Q. But that he was sloppy in appearance?

Timothy Donahue - Cross

A. Yes.

Q. You were again interviewed by the FBI on May 1 of 1995;

right?

A. Yes.

Q. And by this time you had seen the arrest of Timothy McVeigh from the Noble County Courthouse and him being led out; correct?

A. Yes.

Q. And you would agree somewhat that the description that you gave of Timothy McVeigh on April 21 does not match the depiction of Mr. McVeigh on television coming out of the Noble County Jail; correct?

A. Some things are different, yes.

Q. You said somewhat; you know, you agree somewhat that your description was different?

A. Yes.

Q. Okay. You said that the hair didn't match?

A. Yes.

Q. And you said that he doesn't have dark brown hair?

A. I don't believe I ever said that.

Q. Okay.

Q. And he doesn't have a beard?

A. No.

Q. But you still think you were pretty close on a lot of the description; right?

Timothy Donahue - Cross

A. Yes.

Q. Now, let's go back to sometime in August of 1994. You don't recall the exact date you say that you first saw the individual you now identify as Mr. McVeigh; is that correct?

A. That's correct.

Q. And you believe it was towards the end of Mr. Nichols' employment?

A. Yes.

Q. When you first met with the FBI agents on April 21, you didn't even remember that first occasion in August to tell them about; is that right?

A. That's correct.

Q. And again, the description that you gave the agents on April 21 was of the individual you saw at Terry Nichols' house, not the individual you saw at the ranch?

A. That's correct.

Q. And it wasn't until after you saw Mr. McVeigh on television being arrested that you even recalled that first meeting.

A. Yes.

Q. Now, during this first visit at the ranch, when you say that you saw Marife and Mr. McVeigh, you only had a brief visit with this individual; right?

A. Yes.

Q. And it was just a minute to tell them to follow you so you

could take them to Terry, which was why they had come?

Timothy Donahue - Cross

A. Yes, and then driving back past them later.

Q. Okay. And the automobile followed you over to where Terry was?

A. Yes.

Q. And then when you showed them where Terry was, you turned your car around and came back; right?

A. Yes.

Q. You didn't get out of your vehicle?

A. No.

Q. Not even momentarily?

A. No.

Q. And would you say you were over 20 feet from the other car?

A. When we drove over to the other side of the highway? Oh, probably a little closer than that, but 10 to 20 feet.

Q. Okay. Okay. Now, you testified in front of the grand jury

in this case, didn't you?

A. Yes.

Q. And isn't it true that when you testified to the grand jury, you didn't even mention that Marife and the other individual followed you in your car?

A. I don't recall if I did or not, no.

Q. In fact, didn't you tell the grand jury that Terry was working on the other side of the highway?

A. That's correct.

Q. And that you explained how to find Terry?

Timothy Donahue - Cross

A. I don't recall exactly how I explained that at the grand jury, no.

Q. Now, the second time that you claim to have seen this individual was on September 30, 1994; correct?

A. Yes.

Q. And you know this because it was Terry Nichols' last day of work?

A. Yes.

Q. Now, did he tell you on Thursday evening that he wanted to take off early on Friday?

A. I believe it was Friday morning.

Q. Do you recall -- and again you recall testifying in front of the grand jury in this case?

A. Yes.

Q. Isn't it true that you told the grand jury that you thought

Thursday evening he asked if he would like to get off early the

next day?

A. That's possible. I don't remember exactly.

A. That's possible. I don't remember exactly.

Q. Okay. And it kind of irritated you a little bit that he would ask to get off early on his last day.

A. Yes.

Q. And it was the description of -- on February 21, when you gave a description to the FBI, it was this meeting; correct?

A. Repeat that please. I didn't --

Q. Okay. It was your sighting or your viewing of the person

Timothy Donahue - Cross

you believe to be Timothy McVeigh on September 30, 1994, that you described to the FBI on April 21, 1995?

A. Yes.

Q. Now, when you went to Terry Nichols' house on September 30,

it was after work; correct?

A. That's correct.

Q. It was about 7, 7:30 in the evening; correct?

A. Some -- yes.

Q. And it wasn't daylight, was it?

A. Oh, it was pretty light yet, yes.

Q. How light was it?

A. Oh, it's -- you can see pretty good by then yet.

Q. Okay. Now, where was Mr. Nichols' friend when you were talking to Mr. Nichols on September 30 at his house?

A. He was around the back of the pickup.

Q. Okay. And the person was working on the truck, putting on the topper; right?

A. Well, I think I stated that before. He was working behind the pickup. What he was doing, I really don't know.

Q. So now you're saying that when you were there at 7:30 on September 30, the topper was not in the process of being mounted onto the vehicle?

A. I don't know. I guess I assumed that they was mounting it because I had never seen it on there before, earlier in the day, and I drive up here now and there's a topper setting (sic)

Timothy Donahue - Cross

on there and somebody's -- they're both behind the vehicle when

I drive up, so . . .

Q. Now, when you described to the FBI on April 21 the friend of Terry Nichols that you had seen, you didn't recall his name;

is that correct?

A. That's correct.

Q. And it wasn't until later after you saw the depiction of Mr. McVeigh on television that you remembered that Terry Nichols' friend's name was Tim; isn't that right?

A. That's a separate -- that's a separate story there, the name Tim.

O. Okay. Let me ask it this way. You didn't tell the FBI

that you remembered that Mr. Nichols' friend was named Tim until after you had seen the depiction of Mr. McVeigh on television; is that correct?

A. I believe I told the FBI that Terry had a friend named Tim and Terry told me a story about his friend named Tim.

Q. Okay. Now, what date do you recall telling the FBI that Terry had a friend named Tim?

A. I don't recall which time it was.

Q. Isn't it true that it was after -- it was not at the April 21 meeting, that it was May 1 meeting, after you had seen

Mr. McVeigh's picture on television?

A. Probably, yes.

Q. And you had never seen a camper on Mr. Nichols' vehicle

Timothy Donahue - Cross

prior to September 30 -- a topper on Mr. Nichols' vehicle prior

to September 30; is that correct?

A. Yes.

Q. Now, it's your belief, is it not, that when you first saw the depiction of Mr. McVeigh on television on April 21, that you instantly recognized him as the person that you had encountered with Terry Nichols? Is that true?

A. Yes.

Q. How long would you say that you saw the individual you believed to be Timothy McVeigh on September 30, 1994?

A. Oh, we was on the porch 5, 10 minutes discussing business with Terry, and he was there the whole time.

Q. Now, you recall being interviewed by Mr. Nichols' investigators, don't you?

A. Yes.

Q. And you advised them, did you not, that Mr. Nichols had trouble getting the phone hooked up at the farmhouse because he didn't have established credit?

A. I don't recall being a credit problem. I believe he wanted a private line.

Q. Okay. So you do not recall telling Mr. Nichols' investigators that?

A. A credit problem? No, I do not recall telling them that.

Q. Did you check Mr. Nichols' credit before you accepted him as an employee and let him use the house?

Timothy Donahue - Cross

A. No, I did not.

Q. How many times have you been interviewed by the FBI concerning this?

A. Oh, half a dozen.

Q. Okay. And in fact, you already have a collection of FBI agent business cards, don't you?



A. I've got a few, yes.  
Q. You have Charles Pritchett?  
A. I believe, yes.  
Q. You have Larry Tongate?  
A. Yes.  
Q. You have Leslie Earl?  
A. I believe, yes.  
Q. You have the business card of Christopher Budke?  
A. If you say so. I don't remember that.  
Q. Well, I'm asking you. I don't want to testify for you.  
A. I don't recall that one, no.  
Q. Stuart Doyle?  
A. I believe so.  
Q. And Kenneth Coffey?  
A. I believe so. I don't recall for sure on that.  
Q. Have you spoken with all of the individuals whose cards you have?  
A. I think so. I think one or two of them might have talked to my wife.

Timothy Donahue - Cross

Q. You were also visited by Assistant United States Attorney Vicki Behenna, were you not?  
A. Yes.  
Q. Now, you had also seen the composite sketches on television after Mr. -- or around the time of Mr. McVeigh's arrest, didn't you?  
A. Yes.  
Q. And didn't you tell the FBI that you did not believe that Nichols' friend looked like John Doe No. 2?  
A. That's correct.  
Q. And didn't you also tell the FBI that if you put glasses on the composite sketch of John Doe No. 1 and changed the hair, it looked like Terry Nichols to you?  
A. Somewhat, yes.  
Q. Now, isn't it true that you told the grand jury that when you were at Terry Nichols' house on September 30, 1994, that they were in the process of installing the topper camper shell on the vehicle when you were there?  
A. I believe I did say that, yes.  
Q. Now, when you were interviewed on May 1, 1995, by the FBI, didn't you tell the FBI you never saw Mr. Nichols pulling a trailer?  
A. That's correct.  
Q. Now, when you were interviewed by the FBI on April 21, you did not give the FBI a description of Mr. McVeigh's vehicle,

Timothy Donahue - Cross

did you, or the friend, the person that you now believe to be Mr. McVeigh?

A. I don't believe so.

Q. And in fact --

A. No, excuse me. I believe I did, didn't I?

Q. On April 21, the very first time you spoke with them?

A. I believe I did.

Q. Okay. The friend -- the visit -- the vehicle of the person

you now believe to be Mr. McVeigh. Did I say -- at least I hope I didn't say the vehicle of Terry Nichols.

A. I thought on the 21st I did describe a silver car, but I could be mistaken.

MS. MERRITT: Your Honor, may I have the witness read

the FBI 302 to see if it refreshes his recollection?

THE COURT: Yes.

BY MS. MERRITT:

Q. Mr. Donahue, can you just read that document to yourself, silently, and see if it refreshes your recollection.

A. Okay.

THE COURT: How long is it?

MS. MERRITT: Three pages.

MR. MACKEY: Excuse me, your Honor. I'd object. I think she's handed him the wrong document. The April 21 302 is five pages in length, and I would direct the witness's attention --

Timothy Donahue - Cross

MS. MERRITT: It is five pages.

THE COURT: We'll take the recess and he can read it during the recess --

MS. MERRITT: Okay. I'll move on.

THE COURT: -- rather than sit here.

MS. MERRITT: I'll move on.

THE COURT: Okay.

THE WITNESS: I found the part right here.

BY MS. MERRITT:

Q. Okay.

Q. Right here. "The friend drove a small, silver, import vehicle."

Q. Okay. But you didn't describe it -- that was the total of the description; right?

A. Yes.

Q. Okay.

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

Your Honor, I believe that's all I have.

THE COURT: All right. Mr. Mackey, do you have any follow-up questions?

MR. MACKEY: Please.

THE COURT: Give that 302 back.

REDIRECT EXAMINATION

BY MR. MACKEY:

Q. Mr. Donahue, just a few follow-up questions, if you don't

Timothy Donahue - Redirect

mind --

A. Okay.

Q. -- in terms of the timing of the first encounter with Mr. McVeigh out in the field at Clover Cliff.

You remember testifying that Mr. Nichols had given you a full 30 days' notice before his intent to leave, so that would be on or about August 30.

A. That's correct.

Q. Using that as a point of reference, do you remember whether

the encounter in the field was before or after Mr. Nichols had told you of his intent to leave?

A. I would say it was after that.

Q. Ms. Merritt asked you some questions about a problem with the phone. Tell the jury what you know about that.

A. As I recall, the problem with the phone was Terry was having trouble getting it hooked up, and we asked to help him. And he -- he -- the house was on a party-line system along with

at least one other residence, and he wanted a private line.

Q. Party line, of course, is more than one user has access, they can pick up in the middle of somebody else's conversation?

A. That's correct.

Q. And what Mr. Nichols wanted was his own private line?

A. That's right.

Q. And that eventually got done?

A. That's right.

Timothy Donahue - Redirect

Q. The bombing went off on April 19, 1995. You remember learning about it that day?

A. Yes.

Q. And two days later, a couple FBI agents show up?

A. Yes.

Q. That's the first time you had ever met an FBI agent?

A. Oh, yes.

Q. And what were they interested in learning from you?

A. Well, my -- the association with Terry Nichols, his employment with me, and any background on him I could tell them.

Q. And in the course of asking about Mr. Nichols, did they ask: Do you know whether he ever had visitors?

A. Yes.

Q. And that was the context for the first opportunity for you to describe any other visitor?

A. Yes.

Q. What came to mind when first asked by the FBI two days after the bombing in a interview focusing on Mr. Nichols?

A. Well, I just immediately remembered the last meeting I had -- or the last sighting I had of Terry, and that was the only thing that came to mind at that time. I didn't have time to set (sic) there and think about it, really. It was just kind of a split second.

Q. And on that first occasion, that first interview by the

Timothy Donahue - Redirect

FBI, you told the agents, did you not, that that visitor had been there more than once?

A. Yes.

Q. What was most vivid in your memory about the description you gave to the FBI on April 21 about that visitor and his --

A. Oh, the body type. The tall, thin.

Q. Precisely what do you mean?

A. The tall thinness of his build.

Q. And in the course of that description, you told the FBI he -- this man was sloppy in appearance?

A. Yeah.

Q. Why did you use that term?

A. Well, Terry told me that he was going to work for a friend.

I asked him if there was anything I could do to keep him as an employee, and he said he was going to work for a friend and was

going to make twice what I could pay him. And the friend I seen helping him move that night didn't appear to me that he could pay twice what I was, the way he was dressed.

Q. That was rolling through your mind as you saw this guy?

A. It come to mind.

Q. Taking your employee away?

A. Yes.

Q. On that occasion, on September 30, did Mr. Nichols stop and

introduce you to the man standing behind that blue pickup truck?

Timothy Donahue - Redirect

A. No.

Q. On the occasion out in the field, did Mr. Nichols or Ms. Marife Nichols stop and introduce you by name to the person?

A. No.

Q. In conversations with Mr. Nichols, nonetheless you learned of an individual by the name of Tim?

A. Yes.

Q. Totally unrelated to these observations, though?

A. That's correct.

Q. Tell the jury what Mr. Nichols said about his friend when he talked in terms of the name Tim.

MS. MERRITT: Objection, hearsay.

THE COURT: Sustained.

BY MR. MACKEY:

Q. Mr. Donahue, on Friday, September 30, the person you saw at the back of the pickup truck at the Nichols residence you said had mid-ear-length hair?

A. Yes.

Q. And had a growth?

A. Yes.

Q. Facial growth?

A. Yes.

Q. I don't mean to be this facetious, but I need to ask this for the record. It doesn't take very long to get a haircut or

Timothy Donahue - Redirect

a shave?

A. Oh, no.

Q. Ms. Merritt asked you about a collection of FBI cards that you have.

A. Yes.

Q. Are you collecting them for the value of having FBI agent cards?

A. No. No.

Q. Or because they have contacted you more than once in the course of this investigation?

A. Yes.

Q. And you've been available to the defense, have you not?

A. Oh, yes.

Q. Talked to representatives from both the McVeigh and Nichols defense teams?

A. Yes, I have.

Q. Went to the grand jury, testified under oath?

A. Yes.

Q. And before his Honor in a previous hearing?

A. Yes.

Q. And on each and every one of those occasions, Mr. Donahue, have you attempted to be as truthful as possible?

A. Yes.

Q. And have you done so today?

A. Yes.

MR. MACKEY: Thank you, Mr. Donahue.

MS. MERRITT: Nothing further.

THE COURT: Witness excused now?

MR. MACKEY: Yes, your Honor.

THE COURT: Agreed, Ms. Merritt?

MS. MERRITT: Yes.

THE COURT: Okay. Mr. Donahue, you may step down.

You can go back to the ranch.

THE WITNESS: Thank you.

THE COURT: We'll take a 20-minute recess.

(Jury out at 10:22 a.m.)

(Recess at 10:22 a.m.)

(Resumed at 10:41 a.m.)

(reconvened at 10:41 a.m.)

THE COURT: Be seated, please.

Bring in the jury.

(Jury in at 10:42 a.m.)

THE COURT: Members of the jury, sorry for the quick exit. Sometimes even judges get distracted and forget about their routine. I'm sure you followed my cautions about not discussing the case during the time of the recess.

Next witness, please.

MR. HARTZLER: Government calls Robert Nattier; and Mr. Mendeloff will do the questioning.

THE COURT: Thank you.

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

(Robert Nattier affirmed.)

THE COURTROOM DEPUTY: Thank you.

Would you have a seat, please.

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

THE WITNESS: Robert D. Nattier, N-A-T-T-I-E-R.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Move the microphone a little, will you? There.

Thank you.

Mr. Mendeloff.

MR. MENDELOFF: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Sir, where do you live?

A. 740 Park Lane, in Moundridge, Kansas.

Q. Where in Kansas is Moundridge located?

A. North of Wichita about 40 miles.

Q. Is that central Kansas?

A. Central Kansas.

Q. How long have you lived in central Kansas?

A. All my life.

Q. What is your education?

A. I graduated from high school and attended one year at

Robert Nattier - Direct

Kansas State University.

Q. And what employment do you have at this time?

A. I'm president and general manager of Mid-Kansas Co-op in Moundridge.

Q. I'm sorry. I need you to speak up a little bit.

A. Okay. I'm president and general manager of Mid-Kansas Co-op at Moundridge, Kansas.

Q. What is Mid-Kansas Co-op?

A. It's a large farm-supply and grain cooperative.

Q. What is the business of Mid-Kansas Co-op? What kinds of things does Mid-Kansas Co-op sell?

A. We handle grain hauled in from our producers, and we also sell farm-supply items, such as petroleum, fertilizer, crop supply -- or crop insecticides, herbicides, tires, batteries. That sort of thing.

Q. In addition to farm-supply goods, do you sell any other kinds of goods?

A. Yeah, we sell some lawn-and-garden-type products to urban markets.

Q. In addition to the lawn-and-garden products that you sell and farm-supply products that you sell, do you also handle any kind of fertilizer application?

A. Yes, we do.

Q. Tell us about that.

A. We do custom application of fertilizer for our customers.

Robert Nattier - Direct

Q. What kinds of fertilizers are we talking about?

A. That's usually dry, liquid, and anhydrous ammonium.

Q. All right. Now, in 1994, did the Mid-Kansas Co-op have a single store, or did you have a series of branches?

A. No, we have multiple stores. We had a total of 19 locations.

Q. Where were those branches located generally?

A. All through the central part of Kansas, generally from Salina to the north or near Interstate 70 all the way south to -- further south location in '94 would have be around Highway 50.

Q. We'll get to that in a second. How many employees did you have at those branches?

A. About a hundred full-time.

Q. Let me ask you to look in your file there and see if you can find Government's Exhibit 47.

Actually, I have a better idea. Let me try to pull it up for you on the computer.

All right. Do you see that?

A. Yes.

Q. Now, with your light pen there, would you just draw a circle around the general area that your branches are located.

And what highway does that run along?

A. That runs along I-35, Interstate 35.

Q. Will you point out where I-35 is?

Robert Nattier - Direct

A. That's this road running right here.

Q. And that runs south all the way down to Oklahoma City?

A. Yes, north and south.

Q. Where does the Mid-Kansas Co-op rank in terms of size among businesses of your type in Kansas?

A. We're currently the largest co-op in the state of Kansas.

Q. What is the total number of customers that you have on account at Mid-Kansas Co-op?

A. We have total accounts of around 9,000. That's charge accounts.

Q. All right.

A. Total customer base in a year's time would probably run around 10,000.

Q. And of those 9,000 customers, do you know what businesses those customers are primarily in?

A. The majority are agriculture producers.

Q. So the bulk of your customers are that type?

A. Yes.

Q. Now, as president and general manager of the Mid-Kansas Co-op, what are your responsibilities?

A. In general, working with the board of directors, financial planning, budgeting, general coordination of the different facilities.

Q. The different branches and the location we just identified?

A. Yes.

Robert Nattier - Direct

Q. In 1994, were your branches, the 19 branches you referred to, located primarily in cities or in the countryside?

A. Mixed. We have some in urban areas as well as some just strictly rural areas.

Q. And does the location of the branches affect the type of business that they do?

A. Yes, it does somewhat.

Q. Explain to us what kinds of products are primarily sold in your countryside locations.

A. Basically, the country locations primarily are just strictly fertilizers the producers are using: petroleum, feed, probably some oil and grease. In the urban -- more urban markets we sell those products, plus we get into the lawn and garden, probably more of the petroleum and oil there also, miscellaneous filters.

Q. Now, do the various Mid-Kansas locations in your business have any particular way of documenting sales transactions?

A. Yes, we do. We use a sales ticket on every transaction.

Q. And is that a single ticket or some sort of form setup?

A. It's a form set up in triplicate.

Q. And how is that arranged, the form setup in triplicate?

A. It has three copies. There is a white copy, a yellow copy,

and pink copy with carbons in between. And they're distributed -- the white copy is kept as a permanent record with the company, the yellow copy is kept at the branch

Robert Nattier - Direct

location, and the pink copy is handed to the customer.

Q. So when a sale occurs -- sale occurs at a branch location, the pink copy goes to the customer, the yellow copy stays at the branch; and what happens to the white copy?

A. The white copy goes into the main office.

Q. And where is that located?

A. That's in Moundridge.

Q. That is how you would



Q. That is where you are?

A. Yes.

Q. Did you use these forms in 1994?

A. Yes, we did.

Q. Let me ask you to look at the sheaf of papers in front of you and look for Government's Exhibit 72.

What is that?

A. That's a copy of our sales tickets.

Q. All right. Do you use these sales tickets in the normal and ordinary course of your business?

A. Yes, we do.

Q. And this is a blank copy?

A. Yes, this is a blank copy.

MR. MENDELOFF: Judge, we move the admission of Government's Exhibit 72.

MR. JONES: No objection.

THE COURT: 72 received.

BY MR. MENDELOFF:

Robert Nattier - Direct

Q. I'm going to hold up Government's Exhibit 72 and ask you what is on the top page of this exhibit?

A. The very top is all of our locations and phone numbers. Then you get into the detailed information that's filled out at the time of the sale.

Q. We'll get to that in a minute. You mentioned a white sheet?

A. Yes, I'm sorry. White is the top copy, yes.

Q. Then we have a carbon, and underneath that is the yellow copy?

A. Yellow, yes.

Q. And that's the one you said stays at the branch location?

A. That is correct.

Q. And the pink copy goes where?

A. Goes to the customer.

Q. Now, let me show you one -- if you would take that pen and click it several times, it will clear the . . .

Good.

Let me ask you whether there is anything on these tickets that indicate which location, which branch, the ticket came from.

A. Yes. The initial prior -- right beside the number indicates the location that it comes from.

Q. Okay. Would you circle that, the initial we're talking about.

Robert Nattier - Direct

Okay. That's okay. We get the idea.

You can remove that.

A. Okay.

Q. Does that initial change depending on the branch?

2. Does that interest change depending on the branch?

A. Yes, it does.

Q. This ticket, Government's Exhibit 72: Which branch did that come from?

A. That would have come from our McPherson location.

Q. Do you have a company policy regarding filling out these sales tickets?

A. Yes, we do.

Q. And what is that?

A. Very strict policy that every transaction requires a sales ticket.

Q. Over the years, has your company experienced -- ever experienced any problems with employees not filling out these tickets?

A. No, we have not.

Q. If there is a sale, will there be a form?

A. Yes, there will.

Q. Now, do some Mid-Kansas Co-op customers receive some special tax treatment for the purchases they make?

A. Yes, they do.

Q. Can you explain what that is?

A. Agriculture producers are allowed to purchase some of their

Robert Nattier - Direct

inputs tax-free, sales-tax-free.

Q. What is the reason for that?

A. Because they're agricultural producers.

Q. That is a Kansas state law?

A. That's Kansas law, yes.

Q. And was this law in effect in the fall of 1994?

A. Yes, it was.

Q. Now, was there some particular procedure by which customers

could obtain this favorable tax treatment?

A. Yes, there is.

Q. What procedure was that?

A. There was a form that they have to fill out.

Q. Let me show you Government's Exhibit 71. I ask you to look

at Government's Exhibit 71, please.

What is that?

A. That's a Kansas Department of Revenue Agriculture Exemption Certificate.

Q. And let me ask you, is this the certificate that's used to obtain the favorable tax treatment?

A. Yes, it is.

MR. MENDELOFF: Move the admission of Government's Exhibit 71.

MR. JONES: No objection.

THE COURT: 71 received.

BY MR. MENDELOFF:

Robert Nattier - Direct

Q. When a customer fills out this ticket, what is the purpose of that action?

A. The action would be to then buy whatever products he's certifying are tax-free.

Q. And he's certifying that he's going to be using them in what way?

A. For agricultural purposes.

Q. When a customer fills out this ticket to save on sales tax, what information does he have to provide?

A. He has to provide his name and address and his signature.

MR. MENDELOFF: May I publish, your Honor?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. On this form, where would the customer fill his name and address in?

A. At the bottom.

Q. And then where is this form maintained?

A. That's maintained at our main office in Moundridge.

Q. Now, when a Mid-Kansas employee has a customer fill out one

of these forms, is there any notation on the sales slip that indicates that one of these forms was used?

A. Yes, there would be.

Q. And what notation would that be?

A. If there has not been a form filled out, there would be sales tax put on the bottom of the ticket.

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Q. By what means can customers pay for their purchases at each of the Mid-Kansas locations?

A. Either charge or cash or check.

Q. Do you have locations that typically have more cash transactions than others?

A. Yes, we do.

Q. Which locations would those be?

A. Those typically are more of the urban locations that we have.

Q. Now, of the 19 branches that you had in existence in 1994, which are the ones -- were the highest volume in terms of cash transactions?

A. Probably would be like Moundridge at our station locations,

McPherson, Lindsborg. Those are the more urban markets.

Q. I ask you to look again at Government's Exhibit 47. Can you point out where the McPherson location is.

And if you'd remove that dot, please.

By the way, you mentioned a highway as I-35. Is that, in fact, Highway 135, an offshoot of 35?

A. Yes, I think it is.

Q. How big a town is McPherson, Kansas?

A. About 15,000.

Q. In the fall of 1994, how many employees were employed at your McPherson location?

A. Five.

Robert Nattier - Direct

Q. Let me ask you to look at Government's Exhibit 64 to 68 in your sheaf of papers there.

What are those?

A. Those are various shots of our location at McPherson, aerial shots and pictures.

Q. Aerial shots and internal and external photos?

A. Yes.

Q. Do they fairly and accurately depict the way that location appeared in the fall of 1994?

A. Yes, they would.

MR. MENDELOFF: We move the admission of Government's Exhibits 64 and 68, your Honor.

MR. JONES: No objection.

THE COURT: They are received.

BY MR. MENDELOFF:

Q. Let me ask you to look first at Government's Exhibit 64. And with your light pen there, if you would point out for us the various components of your operation at McPherson, Kansas.

A. This building here is our main office. That's where basically all sales transactions would take place. The other building over to the side of that is the warehouse area.

Q. And is there a farm-implement repairs area?

A. Yes. It would be in the back of this building here.

Q. Now, if you'll remove those circles, please.

And if a customer came in to purchase ammonium nitrate

Robert Nattier - Direct

in 1994, where would that ammonium nitrate have been stored?

A. It would have been stored in this warehouse here.

Q. Why don't you just -- and is there an entryway that the customer would have entered into to pick up that ammonium nitrate?

A. Yes. It would have been right through this door right there.

Q. Now, let me direct your attention next to Government's Exhibit 65. What is that?

A. That's a shot of our main office, front view of our main office.

Q. 66.

I'm sorry.

A. It's an angle view.

Q. Hold on. I showed you the wrong one.

67.

Wrong again. I'll get this right

wrong again. I'll get this right.

Now, the easiest way for me to do this is to show --  
I'm sorry.

And what is that?

A. That's a shot of our counter area in the main office area of that location.

Q. Okay.

THE COURT: What's the exhibit number?

MR. MENDELOFF: I'm sorry, Judge. 68. I apologize.

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BY MR. MENDELOFF:

Q. Government's Exhibit 68: That is the --

A. That is the counter area of our main office location.

Q. And if a -- when a customer came to purchase ammonium nitrate back in 1994, where would the actual transaction take place?

A. That would take place right here.

Q. After the transaction, the customer would go to pick up that ammonium nitrate, I believe you testified that that occurred at the shed next door?

A. Yes.

Q. Let me show you Government's Exhibit 66. What is that?

A. That would be the warehouse area that the fertilizer would have been stored in.

Q. And the entryway was -- is plainly visible there?

A. Yes. It's the dark area there in the center.

Q. Now, in the fall of 1994, did the McPherson branch sell ammonium nitrate fertilizer?

A. Yes, it did.

Q. Who was the manufacturer of that fertilizer?

A. ICI.

Q. What different types of ammonium nitrate prills did Mid-Kansas Co-op sell in the fall of 1994?

A. Only that one.

Q. Which type was that?

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A. 34-0-0.

Q. What does the name 34-0-0 signify?

A. 34 indicates the amount of nitrogen. 0 is phosphate, and the other zero is potash.

Q. Now, was the 34-0-0 ammonium nitrate fertilizer that you sold that fall of 1994 low-density, or high-density ammonium nitrate fertilizer?

A. Low-density.

Q. Let me ask you to direct your attention to Government's Exhibit 70.

What is that?

A. That's a bag of 34-0-0 ammonium nitrate.

Q. And is that the type of fertilizer that you sold in the fall of 1994?

A. Yes, it is.

Q. Does that fairly and accurately depict that type of fertilizer?

A. Yes, it does.

MR. MENDELOFF: Move the admission of Government's Exhibit 70.

MR. JONES: No objection, your Honor.

THE COURT: 70 received.

BY MR. MENDELOFF:

Q. Now, let me just direct your attention to the -- to the second line underneath the top of the bag line that says

Robert Nattier - Direct

"Explosives." Did all the bags of your fertilizer have that marking, "Explosives"?

A. Yes, it does.

Q. And then at the bottom do you see a section of the bag which says "oxidizer" and has a warning?

A. Yes.

Q. Did all the bags you sell have that -- those two markings, "oxidizer" and "warning"?

A. Yes, they did.

Q. Let me ask you to direct your attention to Government's Exhibit 67 previously admitted. Is there anything in this photo that illustrates the size and packaging of the ammonium nitrate fertilizer you sold in the fall of 1994?

A. Yes.

Q. What is that?

A. The center pile.

Q. Would you circle that on the form. That's on a pallet?

A. Yes.

Q. This is the same kind of ammonium nitrate fertilizer, or a different kind?

A. No, this is different.

Q. But for demonstrative purposes, were these bags -- how did these bags compare to the ammonium nitrate fertilizer you sold back then in terms of size?

A. They would be the same size.

Robert Nattier - Direct

Q. And how about the packaging and pallet?

A. It would be the same.

Q. With the shrink-wrap?

A. Yes, they would have been shrink-wrapped.

Q. Let me direct your attention to Friday, September 30, 1994.

Did your company make a large sale of ammonium nitrate fertilizer that day?

A. Yes, we did.

Q. From which location?

A. From McPherson.

Q. Have you determined the name of the customer that purchased

that large quantity of ammonium nitrate fertilizer that day?

A. Yes.

Q. How did you do this?

A. By looking at sales tickets.

Q. For which branch?

A. For the McPherson location.

Q. And did you look at all the tickets for that -- for the sales for that day?

A. Yes, we did.

Q. What name did this customer give?

A. Mike Havens.

Q. Let me direct your attention to Government's Exhibit 73. What is that?

A. That's a copy of a sales ticket depicting that sale.

Robert Nattier - Direct

Q. All right. And does that ticket -- was that ticket made and maintained in the normal and ordinary course of your business at Mid-Kansas Co-op?

A. Yes, it was.

MR. MENDELOFF: We move the admission of Government's Exhibit 73, your Honor.

MR. JONES: No objection.

THE COURT: 73 is received.

MR. MENDELOFF: May I publish it, your Honor?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. Sir, let's start at the top of this exhibit. What is located way at the top?

A. Name of the company first.

Q. All right. And then underneath that?

A. Then all of our different locations with phone numbers.

Q. Now, underneath that, it says, "Account Number."

A. That's correct.

Q. And you've got a number 10 there?

A. Uh-huh.

Q. What does that indicate?

A. That indicates a cash sale.

Q. There is no account?

A. They do not have an account number, yes.

Q. Next to that is the date of the transaction?

Robert Nattier - Direct

A. That's correct.

Q. And what date is that?

A. 9-30 of '94.

Q. September 30?

A. September 30.

Q. What is the name of the customer?

A. Mike Havens.

Q. Let me ask you to look at the first line of the transaction. What does it indicate as to the type of product

transaction. what does it indicate as to the type of product sold?

A. Forty 50-pound bags of 34-0-0.

Q. And 34-0-0, that is ammonium nitrate that you mentioned?

A. Ammonium nitrate.

Q. Forty 50-pound bags would equal how much weight?

A. 2,000 pounds.

Q. 2,000 pounds?

A. That's correct.

Q. What is that in terms of size of sale? How is that packaged?

A. I beg your pardon? I didn't --

Q. Would that have been like a full pallet?

A. Yes. That would have been a pallet. A full pallet.

Q. Same size as the photo we saw a few minutes ago?

A. That's correct.

Q. Let me ask you to direct your attention to the bottom of

Robert Nattier - Direct

the page. What is the total amount of this transaction?

A. \$228.74.

Q. Does this transaction ticket indicate whether or not the person who purchased the ammonium nitrate in the name Mike Havens sought tax exemption for agricultural use?

A. No, they did not.

Q. How do you know that?

A. Because sales tax was charged on it.

Q. Can you point that out with your pen?

Now, again, if they had wanted to obtain that tax relief, they would have had to fill out the form and sign their name.

A. That is correct.

Q. Total amount of the sale was how much?

A. \$228.74.

Q. Now, do Mid-Kansas Co-op sales receipts distinguish between

cash sales based on actual green currency and cash sales based on checks?

A. No, they do not.

Q. Is there a way to determine whether this transaction was based on currency or check?

A. Yes.

Q. How would you determine that?

A. By going to the daily deposit slips.

Q. Let me ask you to look in your papers for Government's

Robert Nattier - Direct

Exhibit 74. What is that?

A. That's a deposit slip dated September 30, 1994.

Q. Was that made and maintained in the normal and ordinary course of your business at the Mid-Kansas Co-op?

A. Yes, it was.



--- ---, -- ----  
MR. MENDELOFF: Move the admission of Government's Exhibit 74, your Honor.

MR. JONES: No objection.

THE COURT: 74 received.

BY MR. MENDELOFF:

Q. Let me ask you to focus your attention on this form. Does it have a date for the deposit?

A. Yes, it does.

Q. What date that is?

A. September 30, 1994.

Q. Now, the top line, \$399: What does that indicate?

A. That indicates actual cash currency.

Q. And that's the amount of currency deposited?

A. That's correct.

Q. What would that reflect in terms of amount of cash that the

McPherson branch took in on September 30, 1994?

A. That would be the total amount of the cash transactions that day.

Q. And then listed beneath that is what?

A. That's all the checks that were received.

Robert Nattier - Direct

Q. Reviewing those checks, do you see a check in the name Mike

Havens?

A. No, there is not.

Q. What does that indicate about the nature of the purchase of

ammonium nitrate on September 30, 1994?

A. That it was made with cash.

Q. Do you know how many total individual sales, total sales tickets, you had at the McPherson branch on that day, September 30, 1994?

A. There was 106.

Q. And you know that by virtue of having done what?

A. Actually counted the tickets.

Q. That makes the Mike Havens sale what fraction of the total sales at McPherson that day?

A. 1/106.

Q. What percentage of the cash that came in that day was supplied by the single customer, Mike Havens?

A. 57 percent.

Q. Of the total cash that came in in that location that day?

A. That's correct.

Q. Is the McPherson location a city location, or a country location?

A. It's more of a city location.

Q. And your city locations are the ones that get more cash?

A. That's correct.

Robert Nattier - Direct

Q. Now, let me just ask you: Government's Exhibit 73 -- where

is this copy of the Mike Havens receipt maintained?

A. This yellow copy would have been maintained at the location.

Q. Now, let me ask you to look in your sheaf of papers at Government's Exhibit 62. What is Government's Exhibit 62?

A. That's a copy of a ticket made at the McPherson location for ammonium nitrate purchase.

Q. And which ticket is for that transaction?

A. I beg your pardon?

Q. 62 is which ticket for that transaction?

A. It's ticket No. 94-504.

Q. But is it the store ticket, or the customer ticket?

A. The copy I have here? The yellow copy would be the store ticket.

Q. And the pink copy would be what?

A. The pink copy would be the customer ticket.

Q. Looking at Government's Exhibit 62, how does the information on that ticket compare by virtue of the serial number to Government's Exhibit 73?

A. It would be the same.

Q. How does it compare in terms of the information written on it?

A. It would be the same.

MR. MENDELOFF: Move the admission of Government's

Robert Nattier - Direct

Exhibit 62, your Honor.

MR. JONES: I'm going to object to this because of the chain of custody. This is the customer copy.

THE COURT: Sustained.

BY MR. MENDELOFF:

Q. As a normal company practice, what happens to this ticket, to the pink copy of the ticket, at the time that it is given to

the customer -- at the time of the transaction? Excuse me.

A. It's handed to the customer.

Q. All right. And do you know based on your own independent knowledge where the Government obtained Government's Exhibit 62?

A. No, I do not.

Q. Let me ask you to turn, then, to Tuesday, October 18, 1994,

some 18 days after this first Mike Havens transaction. Did your company make another large sale of ammonium nitrate on that day?

A. Yes, we did.

Q. To whom?

A. To Mike Havens.

Q. From which location?

A. From McPherson location.

Q. And how do you determine that?

- A. By looking at sales tickets.  
Q. And the sales tickets for which location?

Robert Nattier - Direct

- A. For McPherson.  
Q. What do you physically do?  
A. I beg your pardon?  
Q. What did you physically do to accomplish this?  
A. Actually go through and look at each individual copy of sales tickets.  
Q. Let me ask you to look in your sheaf of papers at Government's Exhibit 75.  
What is that?  
A. That's a copy of a McPherson ticket made on October 18.  
Q. And was it made and maintained in the normal and ordinary course of your business at Mid-Kansas Co-op?  
A. Yes, it was.  
MR. MENDELOFF: Move the admission of Government's Exhibit 75.  
MR. JONES: No objection, your Honor.  
THE COURT: 75 is received.

BY MR. MENDELOFF:

- Q. Does this ticket have the same format as the one we just reviewed?  
A. Yes, it does.  
Q. Let me ask you to focus on the top line of the ticket. Does it indicate who the customer was?  
A. Yes, it does.  
Q. And who was it?

Robert Nattier - Direct

- A. Mike Havens.  
Q. Same name as the name of the customer on September 30?  
A. That's correct.  
Q. And does it indicate the date of the transaction?  
A. Yes, it does.  
Q. What date is that?  
A. October 18, '94.  
Q. Does it indicate the type of transaction?  
A. Yes. It's a cash transaction.  
Q. And you can see that by the number 10 and also by the marking "cash." Is that correct?  
A. That is correct.  
Q. Does it indicate the type of product purchased?  
A. Yes.  
Q. And what is that?  
A. 34-0-0, ammonium nitrate.  
Q. How much is purchased on this occasion?  
A. Forty 50-pound bags or 2,000 pounds.  
Q. Another pallet?  
A. Another pallet.  
Q. Does it indicate the total amount of the purchase?  
A \$228 74

.. 4220.71.

Q. And does it indicate whether or not this purchase was done with a tax exemption certificate?

A. Yes, it does.

Robert Nattier - Direct

Q. What does it say?

A. It was not done with tax exemption. Tax was charged.

Q. Did you determine by the same method we just went through whether or not this transaction was by personal check or by cash?

A. Yes.

Q. Let me ask you to look at Government's Exhibit 76.

What is Government's Exhibit 76?

A. That's deposit slips from the McPherson location dated 10-18 of '94.

Q. Is that made and maintained in the normal and ordinary course of your business at the Mid-Kansas Co-op?

A. Yes, it is.

MR. MENDELOFF: Move the admission of Government's Exhibit 76, your Honor.

MR. JONES: No objection.

THE COURT: 76 received.

BY MR. MENDELOFF:

Q. What does Government's Exhibit 76 indicate as to the total amount of cash you took in at the McPherson branch on October 18, 1994?

A. Indicates a total of \$403.

Q. And what is there to indicate as to Mike Havens' transaction was by personal check or by cash?

A. There was no personal check listed, so it would have been

Robert Nattier - Direct

by cash.

Q. Now, the total amount of that cash sale was what?

A. \$228.74.

Q. How many customers did you have at the McPherson branch on October 18, 1994?

A. 76.

Q. And that would have indicated that the Havens transaction was what fraction of the total?

A. 1/76.

Q. Have you figured a percentage of the total cash that you took in that the Mike Havens transaction represented?

A. About 75 percent.

Q. And finally, the exhibit that we just reviewed, the sales -- the yellow sales ticket: Where would that have been maintained?

A. The yellow sales ticket would have been maintained at the McPherson location.

Q. Let me ask you to look again at Government's Exhibit 47. See the McPherson -- let me just expand it again. Do you see the McPherson location on this map?

A. Yes, I do.

Q. And where in relation to the McPherson location is Council Grove?

A. It's to the northeast about 80 miles.

Q. Can you point out where that is on the map.

Robert Nattier - Direct

And can you point out McPherson just for ease of reference.

How far is it from McPherson to Council Grove?

A. It's about 80 miles.

Q. Now, for a customer purchasing 2,000 pounds of ammonium nitrate on the 18th of October, 1994, and transporting it by a trailer or pickup to Council Grove, based on your experience in

your industry, how long would it take to drive the normal roads

between those two locations on that day?

A. Probably a couple hours.

Q. Finally, let me direct your attention to Government's Exhibit 77A, and let me ask you some questions concerning your customers at Mid-Kansas Co-op. What are the names listed on this page?

A. You want me to read each one of them?

Q. No. What are they just in general?

A. They're customers of ours.

MR. MENDELOFF: Now, Judge, we'd like to use this for demonstrative purposes only, subject to tying it up with a witness that we're calling later this morning.

THE COURT: Well, what are you demonstrating?

MR. MENDELOFF: We're demonstrating the backgrounds of these customers, and that's going to be relevant to testimony that comes a little later today. It's just a listing of customers and the type of accounts they've got, Judge.

Robert Nattier - Direct

THE COURT: Well, Mr. Jones?

MR. JONES: That's all right.

THE COURT: All right. You may do so, then, with Mr. Jones' permission.

MR. MENDELOFF: Thank you, your Honor.

Thank you, Mr. Jones.

Excuse me. Kathi . . .

THE COURTROOM DEPUTY: Which one are you on?

BY MR. MENDELOFF:

Q. Let me ask you to go down this page and tell us what each of these customers' business is, starting with the Harvey County Experimental Field. Are you familiar with that business?

A. Yes.

Q. What is the Harvey County Experimental Field?  
A. It's an experimental field by Kansas State University in our area.  
Q. What kind of payment method do they have set up with you?  
A. They have a charge account.  
Q. What about the United School District 313?  
A. That's a local school.  
Q. And what kind of payment method do they have?  
A. They have a charge account.  
Q. What is NCRA Pipeline?  
A. That's an oil refining company in our area.

Robert Nattier - Direct

Q. And they have a --  
A. Have a charge account.  
Q. Showalter Villa? Is that the name of a person?  
A. No, it's a retirement village.  
Q. What kind of account do they have?  
A. They have a charge account also.  
Q. McPherson Country Club?  
A. It's a golf course.  
Q. What kind of account?  
A. They have a charge account.  
Q. Memorial Home?  
A. It's another retirement village.  
Q. What kind of account?  
A. They have a charge account.  
Q. Finally, James Wiens?  
A. He's a farmer/producer.  
Q. What kind of account?  
A. He has a charge account.  
Q. Now, of the names listed, is there any name there that you are not familiar with?  
A. Yes, sir, there is.  
Q. Who is that?  
A. Mike Havens.  
Q. Do you know who Mike Havens is?  
A. No, I do not.

Robert Nattier - Direct

Q. At the beginning of your testimony, I asked you about the triplicate receipt format that you used at the Mid-Kansas Co-op. Based on your 20 years' experience as president and general manager of the Mid-Kansas Co-op, what would be the best way to determine the total amount of ammonium nitrate purchases, sales, that your company made over a given period?  
A. By reviewing sales tickets.  
Q. And performing such a review, what risk would you undertake in missing transactions?  
A. Very little risk.  
Q. And the reason for that is what?

Q. And the reason for that is what?

A. Because every sales transaction has a ticket.

Q. Why does your business follow such a strict policy of maintaining these tickets?

A. Because obviously, if there is no sales ticket, we have no method to account for the -- the regular accounting practice: inventory, tax consequences -- theft, even.

Q. All right. Now, in 1994, did you customarily follow the practice of checking inventory at any given location?

A. Yes, we do.

Q. Did you maintain inventory tickets?

A. Yes, we took an actual physical count every other month.

Q. Would this inventory procedure have been an accurate way to

determine the total amount of sales that you had in ammonium nitrate?

Robert Nattier - Direct

A. Yes, it would.

Q. Does this inventory procedure, however, indicate the total amount of sales by branch?

A. No.

Q. Why not?

A. It's for the total company, because of intercompany -- or branch location transfers.

Q. Did you sell the ammonium nitrate that we've talked about today, the 34-0-0, at all of your branch locations in 1994?

A. No, we did not.

Q. Do you know which locations you sold them at?

A. Yes, I do.

Q. Let me show you Government's Exhibit 77B. What is that?

A. That would be a list of our locations where we actually sold ammonium nitrate.

MR. MENDELOFF: Your Honor, we'd like to use this for demonstrative purposes as well.

THE COURT: Agreed?

MR. JONES: I don't have any objection.

THE COURT: All right. You may do so.

What's the designation again?

MR. MENDELOFF: 77B, your Honor.

THE COURT: Thank you.

BY MR. MENDELOFF:

Q. Now, are the locations listed on 77B your only branches?

Robert Nattier - Direct

A. No, they're not.

Q. For the period January 1, 1994, to April 19, 1995, what are these -- what is listed here?

A. That would be a list of locations where we would have sold ammonium nitrate.

Q. And other than these locations, would you have sold

ammonium nitrate at the other locations?

A. No, we would not.

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

THE COURT: Yes.

MR. MENDELOFF: Nothing further, your Honor. Thank you.

THE COURT: All right. Mr. Jones?

#### CROSS-EXAMINATION

BY MR. JONES:

Q. Your co-op is not some kind of private, exclusive club, is it?

A. No, it's not.

Q. And you don't need to have a membership card to go in there

and buy something, do you?

A. No, you do not.

Q. And I take it you don't have anything against accepting cash from customers?

A. No, we don't.

Q. And in fact, with cash, you don't have to worry about

Robert Nattier - Cross

collecting. Isn't that true?

A. That's correct.

Q. You don't have to worry about a check bouncing at the bank?

A. That's right.

Q. And you're set up to handle cash transactions?

A. Yes, we are.

Q. In fact, you even have a code number for cash transactions?

A. That's correct.

Q. And on these two days that we're talking about here, on September 30 and October 18, other than this \$5,000 check you received on September 30, the cash sales were, what, about 20, 25 percent of your business that day?

A. Probably in that area, yes.

Q. Is that typical?

A. Probably.

Q. Okay. And you've lived out in the rural areas during the last 20 years, at least to the extent that your business takes you out there, haven't you?

A. That is correct.

Q. And you know there are some farmers and just rural people who just prefer to deal in cash?

A. That's correct.

Q. Put it under their pillow at night when they go to bed?

A. That's true.

Q. Don't trust banks?



Robert Nattier - Cross

A. That's true.

Q. Don't like banks?

A. That's correct.

Q. Don't want to deal with checks?

A. That's true.

Q. Either because of bad credit or because somebody might garnishee their account or maybe they got a divorce and they don't want their wife to know what the deal is?

A. That's possible.

Q. Or they don't want their husband to know what the deal is.

And so when somebody comes in and says I want to pay you \$216 worth of cash, it's not a situation where everybody's heart stops beating, is it?

A. No, it wouldn't be.

Q. All right. Nor is it necessary that you, as general manager, know every one of the customers, who are likely those that are paying cash.

A. That's true.

Q. Now, were these two transactions handled at the same location?

A. Yes, they were.

Q. Were they about the same time of day, do you know?

A. I do not know that.

Q. So what you're basically telling us is that the records at your co-op show that within a period of less than three

Robert Nattier - Cross

weeks -- that is, from September 30 to October 18 -- Mike Havens came in in broad daylight and bought two large transactions of fertilizer.

A. That is correct.

Q. Okay. Now, I take it by your statement that these are fairly -- and I qualify with "fairly" -- large transactions.

A. That is correct.

Q. Now, from your experience working in the retail business, do people tend to remember customers that engage in large transactions, or are they just part of the sea of faces?

A. I suppose that would vary. Just the transaction itself probably wouldn't create any real --

Q. You said just a moment ago, if I wrote it down correctly, that on the second day, on October 18, you had 106 customers?

A. That was the first day.

Q. I'm sorry. First day. 106 customers.

A. That's correct.

Q. Now, I looked at this bank deposit, and I didn't count 106.

Is that because you've got more than one deposit slip, or what am I missing here?

A. No, that would -- the deposit slip would cover only checks.

Q. I see.

A. And cash. Charge sales would not be listed on there.

Q. All right. So in addition to this ticket, which is checks

and currency, you also had charge.

Robert Nattier - Cross

A. That is correct.

Q. All right. So what you've done is counted up the number of tickets, then, as opposed to the deposit slips?

A. That is correct.

Q. All right. Now, you all are in the business of selling fertilizer, aren't you?

A. That is correct.

Q. 34-0-0, or "naught, naught," whatever you want to call it?

A. Yes.

Q. And I take it that you order it by the bushelful, or truckful?

A. Truckloads, yes.

Q. And in fact, this Government's Exhibit No. 67, this pallet -- this is even from a different company than the one that Mike Havens purchased from?

A. That is correct.

Q. Now, if Mr. Havens paid -- what was it -- \$216 before taxes?

A. Yes.

Q. I think that was what you said. Then he bought these bags, 50-pound bags, at about \$5 a bag.

A. That's correct.

Q. Okay. Now, if somebody turned around and said they bought some fertilizer, there is not anything in your dealings with them that prevents them from reselling it, is there?

Robert Nattier - Cross

A. No.

Q. So if they want to open the bag, split it open and put it in little, small sacks and then sell it themselves for whatever purpose, they can do that?

A. Sure.

Q. All right. And if somebody, for example, bought 2,000 pounds of this fertilizer from you at \$5 a bag, \$216, and

they turned around and sold it in 2-pound bags, they'd sell 1,000 of them for \$5,000, wouldn't they?

A. I think that's right, yeah.

Q. Which would be a pretty nice little business?

A. It sure would.

Q. Now, from your experience going around in the rural areas, are you familiar with these gun shows?

A. No, I'm not.

Q. Ever been to one?

A. No.

Q. So you don't know, I take it, then, whether people sell these little bags of fertilizer at gun shows?

these people says or remember as you shows.

A. No, I do not.

Q. All right. Now, you remember that chart that you were shown of -- I'll get it here in just a second. Oh, yes.

This is Government's Exhibit 77 and, I believe, Government's Exhibit 77A.

MR. JONES: Put that up there, please.

Robert Nattier - Cross

Let's look at 77A.

THE COURTROOM DEPUTY: 77A and or B?

MR. JONES: A.

THE COURTROOM DEPUTY: He has A.

MR. JONES: I have A.

THE COURTROOM DEPUTY: Oh, okay.

MR. JONES: Okay.

BY MR. JONES:

Q. Now, all these other customers here besides Mr. Havens are -- with the exception of Mr. Wiens down at the end -- those

are all institutions and corporations, aren't they?

A. That is correct.

Q. And presumably some of these have fairly extensive accounts with you?

A. That is correct.

Q. I mean this United School District 313 -- I would think that's probably a pretty good customer?

A. Yes, it is.

Q. All right. And the Harvey County Experimental Field: That's probably a good customer?

A. Yes, it is.

Q. And Mr. Wiens, just looking here -- he's not bad, either, is he?

A. No.

Q. Okay. So these are people that deal with you on a

Robert Nattier - Cross

day-in/day-out, year-in/year-out basis?

A. That is correct.

Q. Now, this list of 77B, which Mid-Kansas location selling this ammonium nitrate -- which of these is closest to Junction City?

A. Probably -- to Junction City? Probably would be Lindsborg.

Q. All right. Which one is closest to Herington?

A. Probably would be the McPherson or Lindsborg. Maybe Goessel.

Q. I'm sorry?

A. And possibly Goessel.

Q. They're all kind of located there together?

A. Yes.

Q. In fact, Lindsborg -- that's that Swedish community just

up  
the road from you?  
A. That's right.  
Q. Between McPherson and Salina?  
A. That's right.  
Q. All right. Now, are there other co-ops between you and Herington?  
A. I believe there is.  
Q. Is there one in Marion?  
A. Yes, there is.  
Q. Is there one at Herington?  
A. Yes, I think there is.

Robert Nattier - Cross

Q. Do you know whether they sell this kind of fertilizer?  
A. No, I do not.  
Q. And so I take it then you don't know whether they had any fertilizer to sell on the days in question?  
A. No, I do not.  
Q. Now, is there any kind of limit on how much fertilizer you can sell to a customer on any given occasion?  
A. No, sir.  
Q. In fact, you want to sell all you can every day, don't you?  
A. That's right.  
Q. Have you ever seen Tim McVeigh before?  
A. No, I have not.

MR. JONES: Nothing further. Thank you.

THE COURT: Any other questions?

MR. MENDELOFF: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. MENDELOFF:

Q. You were being asked a minute ago about Government's Exhibit 77A. Remember being asked about this --

A. Yes, sir.

Q. -- a minute ago?

And Mr. Jones pointed out that most of the entities

on  
this list are large institutions and municipalities and corporations.

A. That is correct.

Robert Nattier - Redirect

Q. Harvey County Field, United School District, NCRA Pipeline,  
Showalter Villa, McPherson Country Club, and Memorial Home are all big businesses or even municipalities?  
A. That is correct.  
Q. Mike Havens isn't?  
A. No, sir.  
Q. And you testified you never heard of Mike Havens?  
A. That's right.

Q. Now, you remember being asked on cross-examination about the fact that the two transactions, one on September 30 and the

other on October 18, both took place at the same location?

A. That is correct.

Q. And that was the McPherson location. Remember being asked whether they took place in broad daylight?

A. Yes.

Q. And the purchase was a large purchase for your company. The sale was a large sale for your company on each occasion?

A. Yes.

Q. At the time of these transactions in the fall of 1994, had the Oklahoma City bombing taken place?

A. No, it had not.

Q. At the time of these transactions in 1994, what was the state of your company's awareness of the potential danger in this kind of ammonium nitrate?

A. Very little. We never considered it.

Robert Nattier - Redirect

Q. After the Oklahoma City bombing, did your company change its policy regarding the sale of this ammonium nitrate?

A. Yes, we did.

MR. JONES: If the Court please, I object to this as irrelevant.

THE COURT: Sustained.

MR. MENDELOFF: Nothing further, your Honor. Thank you.

RE-CROSS-EXAMINATION

BY MR. JONES:

Q. Exhibit 70: Do you see that?

A. Yes, I do.

Q. And that's, I believe, previously -- you testified that's a

50-pound bag of ammonium nitrate --

A. That is correct.

Q. -- fertilizer?

A. Yes.

Q. And it does say "explosives" on there, doesn't it?

A. That's correct.

Q. Now, prior to the Oklahoma City bombing in 1995, are you familiar with the Texas City disaster?

A. No, I'm not.

Q. So you don't know whether that was caused by a ship bearing

ammonium nitrate that blew up?

MR. MENDELOFF: Objection.

Robert Nattier - Recross

THE COURT: Overruled.

THE WITNESS: No, I do not.

MR. JONES: Nothing further.

THE COURT: Excusing the witness now?

THE COURT: Excusing the witness now:

MR. MENDELOFF: Yes.

THE COURT: Agreed, Mr. Jones?

MR. JONES: Yes.

THE COURT: You may step down.

You're excused.

Next, please.

MR. HARTZLER: Government calls Minaxi Bhakta.

Mr. Goelman will question.

THE COURT: Thank you.

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

(Minaxi Bhakta affirmed.)

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

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

THE WITNESS: B-H-A-T-K-A.

THE COURTROOM DEPUTY: What is your first name?

THE WITNESS: Minaxi, M-I-N-A-X-I.

THE COURT: Mr. Goelman.

MR. GOELMAN: Thank you, your Honor.

DIRECT EXAMINATION

Minaxi Bhakta - Direct

BY MR. GOELMAN:

Q. Good morning, Mrs. Bhakta.

A. Good morning.

Q. Where do you live?

A. Salina, Kansas.

Q. And where were you born?

A. India.

Q. Whereabouts in India?

A. Gujarat.

Q. Is that near any big city in India?

A. Yeah.

Q. Which one?

A. Surat.

Q. When did you move to this country?

A. 1987.

Q. Did you move here by yourself?

A. Yeah.

Q. Did your husband move here, too?

A. Yes.

Q. And do you have any children?

A. Yeah, I got one daughters.

Q. How old is she?

A. Eight years old.

Q. In the fall of 1994, did you, along with your husband, own and manage the Starlight Motel in Salina, Kansas?

Minaxi Bhakta - Direct

A. Yeah.

Q. And was one of your duties to act as desk clerk?  
A. Yeah.  
Q. When a guest would come into the Starlight Motel and want to rent a room, would you have that guest fill anything out?  
A. Yeah. He just filled out registration card.  
Q. Registration card?  
A. Yeah.  
Q. And what would you do with that registration card after the guest filled it out?  
A. I just fill it out, date and amount.  
Q. What would you do with the card after that?  
A. I just put it on a card box.  
Q. And after the guest checked out, would you put that card somewhere else?  
A. Yes.  
Q. Where is that?  
A. In our drawers after people check out.  
Q. How were these registration cards organized? Was it month by month?  
A. Month by month, yes.  
Q. And how long did you keep them for?  
A. Five years.  
Q. Mrs. Bhakta, after the bombing in Oklahoma City, did the FBI come to see you and give you a subpoena?

Minaxi Bhakta - Direct

A. Yeah.  
Q. And did they take a registration card of yours?  
A. Yeah.

MR. GOELMAN: Your Honor, may I approach?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Mrs. Bhakta, I'm going to ask you to look inside that folder and see if you can find Government's Exhibit 83.  
A. Yes.  
Q. Do you recognize that?  
A. Yeah.  
Q. What is it?  
A. Terry Havens.  
Q. What kind of document? Is that one of the registration cards from the Starlight Motel?  
A. Uh-huh.  
Q. Is this a document that you would make for every guest?  
A. Yes.  
Q. And would you keep it in the regular course of business?  
A. Yeah.

MR. GOELMAN: Your Honor, Government moves to admit Exhibit 83.

MR. JONES: May I voir dire the witness?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION

Minaxi Bhakta - Voir Dire

BY MR. JONES:

Q. Did you give this Exhibit 83 to the Government, or your husband?

A. I think my husband.

MR. JONES: I object.

THE COURT: What's the ground of the objection?

MR. JONES: Incomplete chain of custody, your Honor.

THE COURT: Overruled. 83 is received.

MR. GOELMAN: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. GOELMAN:

Q. Can you look at Government's Exhibit 83A, Mrs. Bhakta.

A. Yes.

Q. Is that just a clean copy of Government's Exhibit 83?

A. Yeah.

MR. GOELMAN: Move to admit this, your Honor.

THE COURT: Same objection, of course.

MR. JONES: Yes.

THE COURT: And same ruling. 83A is received.

As I understand, it's just as a copy.

MR. GOELMAN: Yes, your Honor.

THE COURT: When you said a "clean copy," I'm not

sure

what you mean.

MR. GOELMAN: Just more legible.

THE COURT: Oh. All right.

Minaxi Bhakta - Direct

Everything is the same on the copy and the exhibit,

I

take it.

MR. GOELMAN: Yes, your Honor.

THE COURT: Well, that's all right. I was just questioning.

MR. GOELMAN: May I publish?

THE COURT: Which one?

MR. GOELMAN: 83A, your Honor.

THE COURT: All right.

BY MR. GOELMAN:

Q. Ms. Bhakta, can you look down at the screen underneath the desk that you have right there.

A. Yeah.

Q. And could you please read that registration card?

A. Okay. "Terry Havens, Route 2, Box 28, Hillsboro, Kansas."

Q. Does it have a car license, too?

A. WY167 -- 70, I guess.

Q. That is 40?

A. Oh, 40. Sorry.

Q. And does it indicate a state?

A. Michigan.

Q. What about make of car?

A. Pickup.

Q. And what about number in picture?



Q. And what about number in party?

A. One person.

Minaxi Bhakta - Direct

Q. Who would have filled this out? The desk clerk, or the guest?

A. The guest.

Q. Ms. Bhakta, if you look at the car license again, is that second letter a Y, or is that an X?

A. A Y.

Q. Are you sure about that, Mrs. Bhakta?

A. Excuse me.

Q. Are you sure? Will you look closely at that letter, please.

THE COURT: Well, it speaks for itself, doesn't it?

MR. GOELMAN: I'll move on, your Honor.

BY MR. GOELMAN:

Q. What about the part below the part that you just read?

Who

would fill that out?

A. Which part?

Q. The part that says, "Date," "Total," "Tax."

A. I did.

Q. And what's the price for a one-person bedroom?

A. \$20 plus tax.

Q. And that's if there is one person in the party?

A. Yeah, one person.

Q. What's the price for two people staying in that same bedroom?

A. \$28 plus tax.

Minaxi Bhakta - Direct

Q. And turning your attention to the upper part of that registration card, does that indicate a room number?

A. Room No. 15.

Q. You mentioned it was the guest who filled out the number that was in the party.

A. No.

Q. The guest would fill out number in party?

A. Yeah.

Q. And Room 15 in the fall of 1994: How many beds were in that room?

A. Two beds in the room.

Q. What kind of beds?

A. Regular beds. Two double beds.

Q. Two double beds?

A. Yeah.

MR. GOELMAN: I have nothing further, your Honor.

THE COURT: Mr. Jones?

CROSS-EXAMINATION

BY MR. JONES:

Q. This gentleman over here in the green shirt next to this lady, Ms. Merritt: Do you see him?

A. No.  
Q. Right here?  
A. Yeah. Sorry about that.  
Q. I'm pointing to Mr. McVeigh. Has this gentleman ever been

Minaxi Bhakta - Cross

a guest in your hotel or motel?  
A. No.  
Q. Have you ever seen him before in person prior to today?  
A. No.  
Q. Okay. Now, at your motel, is the office right there in front where somebody has to pull in?  
A. Yeah.  
Q. And can you see out into their car?  
A. Yeah.  
Q. Where they walk up?  
A. Yeah, they just walk.  
Q. Now, was this fellow Havens by himself?  
A. Yeah.  
Q. There was nobody else with him?  
A. Nobody.  
Q. Okay. So he shows up, you give him a room?  
A. Yeah.

MR. JONES: That's all. Thank you.

MR. GOELMAN: Briefly, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. GOELMAN:  
Q. Do you remember Terry Havens?  
A. No.  
Q. Do you have any idea if he was by himself?

Minaxi Bhakta - Redirect

A. He just himself, but I don't remember.  
Q. You don't remember him?  
A. No.  
Q. Do you remember all the guests who ever stayed in the Starlight Motel?  
A. No. Sometimes is -- or sometimes not, because there is a lot of people came every day; so I don't remember, so . . .  
Q. So if Mr. McVeigh stayed in your motel, you might not remember him?  
A. No.

MR. GOELMAN: Nothing further.

RE-CROSS-EXAMINATION

BY MR. JONES:  
Q. As I understand it, to stay in your motel for two people, it costs more than one?  
A. Uh-huh.  
Q. Is that right?  
A. (Witness nods head.)  
Q. One person is \$20?

A. Yeah, one person \$20.  
Q. Two people are \$28?  
A. Yeah.  
Q. So when somebody is registering, do you try to see if there is more than one person?  
A. Yeah. We charge for two peoples for more than --

Minaxi Bhakta - Recross

Q. If you see two people, you charge for two people?  
A. Yeah.  
Q. If you see one person, you charge for one person?  
A. For one person, yeah.  
MR. JONES: That's all. Thank you.  
THE COURT: Witness excused?  
MR. GOELMAN: Yes, your Honor.  
THE COURT: Agreed?  
MR. JONES: Yes.  
THE COURT: You may step down. You're excused now.

You can leave.

THE WITNESS: Okay. Thank you.

THE COURT: Next witness.

MR. HARTZLER: We'll call Special Agent Lou

Michalko,

and Mr. Mendeloff will question him.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Louis Michalko 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 full name is Louis Charles Michalko, M-I-C-H-A-L-K-O.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Mendeloff?

MR. MENDELOFF: Thank you, your Honor.

Louis Michalko - Direct

DIRECT EXAMINATION

BY MR. MENDELOFF:

Q. Mr. Michalko, where do you live?  
A. I have a residence in Oklahoma City, Oklahoma.  
Q. Where do you live right now?  
A. Right now, I live in a hotel in Denver.  
Q. Are you employed?  
A. Yes.  
Q. What do you do?  
A. I'm a special agent with the FBI.  
Q. How long have you been a special agent with the FBI?  
A. 13 years.

Q. What are your responsibilities?

A. Generally, my responsibilities are to investigate and gather evidence in cases where violations of federal law may have occurred.

Q. Where are you assigned right now?

A. Right now, I'm assigned to Denver.

Q. To --

A. Working on the Oklahoma City bombing investigation.

Q. What is your education?

A. I received a bachelor of science degree in accounting from LeMoyne College in Syracuse, New York, in 1981.

Q. Prior to joining the FBI, did you have some other kind of work?

Louis Michalko - Direct

A. Yes, I did.

Q. What was that?

A. From 1981 through 1983, I was employed in the cost accounting department of a glass corporation, Thatcher Glass Corporation, in Elmira, New York.

Q. Then you joined the FBI?

A. Yes.

Q. Do you have occasion to use your accounting background in your work in the FBI?

A. Yes.

Q. As part of your work in this case, have you performed an analysis of the sales receipts from the Mid-Kansas Co-op?

A. Yes, I have.

Q. And what was that analysis?

A. The analysis involved me reviewing all the sales tickets at

the Mid-Kansas Co-op in McPherson that would have any possibility of showing ammonium nitrate sales from any of their

branches for a period of time spanning from January 1, 1994, through the date of the bombing, April 19, 1995.

Q. All right. Now, you just indicated two different things, so let me just clarify. Did you review the receipts only for -- for McPherson, or for more than McPherson?

A. More than McPherson.

Q. You reviewed the receipts from multiple branches?

A. Yes.

Louis Michalko - Direct

Q. To identify what?

A. To identify all of the sales or any transaction involving ammonium nitrate fertilizer from that company.

Q. And in reviewing those ammonium nitrate receipts, what kinds of tabulations were you trying -- were you intending to make?

A. Well, on the receipts that I reviewed, there is basically seven types of information that I gathered; and I wanted to be able to sort that information in different ways to evaluate

ABLE TO SORT THAT INFORMATION IN DIFFERENT WAYS TO EVALUATE  
the

types of sales of ammonium nitrate that that company had.

Q. And this was over the period January 1, 1994, to April 19, 1995?

A. That's correct.

Q. What was the purpose of this analysis?

A. Well, the purpose of the analysis was to determine exactly how the ammonium nitrate sales to Mike Havens compared with ammonium nitrate -- other ammonium nitrate sales that Mid-Kansas Co-op had made not only from the McPherson branch, which is where the two sales to Mike Havens occurred, but also in any other branch of that company that sold ammonium nitrate.

Q. What was the first step you took in performing this analysis?

A. The first step I took was to travel to Moundridge, Kansas, where all the -- the corporate records for the company are kept and to contact the people there to arrange for review of their

Louis Michalko - Direct

tickets.

Q. And did you do that?

A. Yes.

Q. Once you got to Moundridge, did you obtain access to any types of sales tickets?

A. Yes.

Q. What were those?

A. The company keeps three copies of every sales ticket, or they have three copies of every sales ticket that they generate. The pink copy goes to the customer, the yellow copy stays in the branch where the sale was made, and the white copy

of each ticket is forwarded to Moundridge, Kansas, and stored. And it's those white copies of the tickets that I reviewed.

Q. Now, how -- Did you determine which branches sold ammonium nitrate?

A. Yes, I did.

Q. How did you do that?

A. I asked the accounting manager at the corporate headquarters to identify for me all the branches that may have sold ammonium nitrate during that period of time.

Q. Let me show you Government's Exhibit 787B.

THE COURTROOM DEPUTY: D, as in dog?

MR. MENDELOFF: B, as in boy.

THE COURTROOM DEPUTY: B, as in boy.

BY MR. MENDELOFF:

Louis Michalko - Direct

Q. What is listed on Government's Exhibit 77B?

A. This is the list of the 10 branches of Mid-Kansas Co-op that sold ammonium nitrate for this period of time.

Q. All right.

A. January, '94 through April 19, 1995.

Q. And were these the branches -- branch locations whose receipts you examined?

A. Yes.

Q. Now, after you determined that those branch locations were the ones that sold ammonium nitrate, what did you do next?

A. I again enlisted the help of the accounting manager at the office, and I told him that I would like to see all the receipts that were generated from each of these 10 branches for

this period of time and I'd like to review them one by one.

Q. When you received access to those receipts, what did you do?

A. I sat down at a table in their back room and I reviewed them one by one.

Q. What did you cull out?

A. I culled out any receipt that had anything to do with a transaction involving ammonium nitrate.

Q. Once you culled out all the ammonium nitrate receipts, what did you do next?

A. Well, when my review at Moundridge was complete, I took a number of original receipts that involved ammonium nitrate and

Louis Michalko - Direct

I left them with copies; and then I also -- then I returned to Denver and completed my review by reviewing the tickets from the McPherson branch, which we had earlier obtained.

Q. All right. So when you did your review in Moundridge, you reviewed all the branches on 77B except one; is that right?

A. That's right.

Q. And the one branch you didn't review in Kansas was which one?

A. McPherson.

Q. And the reason for that was?

A. Because they no longer had those tickets. The FBI had previously obtained those tickets; and they were in Denver, Colorado, at that time.

Q. All right. And as a result, when you finished your review in Moundridge, you came to Denver and completed your analysis?

A. That's correct.

Q. What did you do in Denver?

A. I recorded the information from the sales tickets that I had identified as relating to ammonium nitrate, and I entered that information into a computer database so I could sort it and analyze it.

Q. So you had a stack of all the company's receipts involving ammonium nitrate from all the branches that sold ammonium nitrate; is that right?

A. Yes.

Louis Michalko - Direct

Q. And then you reviewed those receipts and took information off each one; is that right?

A. That's right.

Q. What kinds of information did you take off of each receipt?

A. I recorded the receipt number from each receipt. And as part of that receipt number, there would be a letter; and that's an indicator of which branch had made the sale.

Q. All right.

A. I recorded the quantity of ammonium nitrate that was involved in the transaction, the name of the person that was involved in the transaction, if there was a name on the ticket.

Q. That would be a customer?

A. Yes. The date of the transaction, the method of payment, whether the payment was made in cash or on account --

Q. All right.

A. -- the dollar amount of the sale, and I also recorded whether there was a tax exemption that was sought during the course of the transaction.

Q. All right. Now, why didn't you limit your analysis to the branch of the Mid-Kansas Co-op at McPherson, where the two Havens transactions took place?

A. Because the two Havens tickets were from the McPherson branch, and we wanted to determine if these were normal sales or not normal sales; so I wanted to review all the branches of Mid-Kansas Co-op sales just in case the McPherson branch

Louis Michalko - Direct

somehow didn't fairly represent what kind of sales were made of this product from the other branches.

Q. All right. Now, in performing this review of all of the sales tickets from the Mid-Kansas Co-op branches that sold ammonium nitrate in the period January 1, 1994, to October -- excuse me -- April 19, 1995, did you -- how many total sales tickets did you review?

A. In excess of 132,000.

Q. Did you do this by yourself?

A. Yes.

Q. No help?

A. No help.

Q. Get any paper cuts?

A. No. I wore a rubber thumb.

Q. Out of those 132,000 tickets you reviewed, how many tickets

did you find reflecting ammonium nitrate transactions during the period January 1, 1994, to April 19, 1995?

A. 520.

Q. After you culled out these tickets, what did you do with them?

A. I entered the information from the tickets into the database.

Q. All right. After you did this review, were you able to

Q. All right. After you did this review, were you able to determine where in the universe of all the tickets or all the sales at the Mid-Kansas Co-op branches, all 132,000 sales, the

Louis Michalko - Direct

Mike Havens transactions fit in?

A. Yes, I was.

Q. Using the information you developed from your computer analysis, did you determine -- did you prepare any charts summarizing your review of the sales receipts?

A. Yes.

Q. Let me ask to you look in the expandable folder in front of

you and direct your attention to Government's Exhibits 77, 77A,

78, 79, 80, 81 and 82.

A. Yes.

Q. Do you have those?

Did you use anything in performing this analysis as raw information except the business records from the Mid-Kansas Co-op?

A. No.

Q. And did your analysis basically involve just reviewing those records and then sorting them and engaging in certain arithmetic?

A. Yes.

MR. MENDELOFF: Move the admission of Government's Exhibits 77, 77A, 78, 79, 80, 81 and 82, your Honor.

MR. JONES: Your Honor, I wonder if the Court could reserve ruling on that until complete cross-examination, if these are the summary charts we're talking about.

THE COURT: Well, I assume he wants to use them in direct.

MR. JONES: I see. Well -- could we take a break?

THE COURT: Do you need to review them before?

MR. JONES: Yes, sir, I would.

THE COURT: Okay. Well, we're at noon anyway, so it's a reasonable request.

MR. JONES: Judge, I was reasonable earlier. Remember?

THE COURT: You may step down now.

Members of the jury, we will take our noon recess now; and of course, you're excused from the courtroom during our usual hour-and-a-half break. And of course, continue to follow the cautions given at all recesses, except one, which I'll remind you of again is to, of course, keep open minds, avoid discussion about the case, recognizing that you've heard a lot, but there is a lot more to hear. Avoid anything outside of our evidence in the case which could in any way influence you in



your judgment.

You're excused now till 1:30.

(Jury out at 12:01 p.m.)

THE COURT: All right. Recess, 1:30.

(Recess at 12:01 p.m.)

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#### PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
40	6461	6461			
43	6463	6463			
44 & 45	6468	6468			
46A	6488	6488			
49	6482	6482			
50	6483	6483			
54 - 55	6459	6459			
62	6533				
64	6522	6522			
68	6522	6522			
70	6525	6525			
71	6519	6519			
72	6516	6516			
73	6528	6528			
74	6531	6531			
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Exhibit	Offered	Received	Refused	Reserved	Withdrawn
223	6477	6478			
271	6476	6476			
272	6477	6477			

\* \* \* \* \*

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 2d day of May, 1997.

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Paul Zuckerman

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Kara Spitler