

**Friday, May 9, 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 87)

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 9th 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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Western District of Oklahoma, 210 West Park Avenue, Suite 400,  
Oklahoma City, Oklahoma, 73102, appearing for the plaintiff.

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STEPHEN JONES, ROBERT NIGH, JR., AMBER McLAUGHLIN,  
and  
ROBERT WARREN, Attorneys at Law, Jones, Wyatt & Roberts, 999  
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RAMSEY, Attorney at Law, Szlichta and Ramsey, 8 Main Place,  
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for Defendant McVeigh.

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PROCEEDINGS

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

THE COURT: You may be seated.

Good morning. Are we ready for the jury?

MR. HARTZLER: We are.

MR. JONES: Yes, your Honor.

THE COURT: All right.

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

THE COURT: Members of the jury, good morning.

We're

ready to resume and call the next witness.

MR. HARTZLER: Government calls Yuhua Bai.

THE COURT: All right.

MR. HARTZLER: Ms. Wilkinson will question.

THE COURT: Thank you.

(Yuhua Bai 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 last name is B-A-I.

THE COURTROOM DEPUTY: And your first name?

THE WITNESS: My first name is Y-U-H-U-A.

THE COURTROOM DEPUTY: Thank you.

MS. WILKINSON: Your Honor, may I approach?

THE COURT: Yes.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Ms. Bai, if you would just put those exhibits in front of  
you for right now, and we'll be using them in a moment. Thank  
you.

Ms. Bai, could you tell the jury where you live?

A. I live in Junction City, Kansas.

Q. How long have you lived in Junction City, Kansas?

A. I live in Junction City almost four years.

Q. And how long have you lived in the United States?

Yuhua Bai - Direct

A. Almost 11 years.

Q. Where were you born?

A. China.

Q. And how long did you live in China?

A. Since -- how long? 31 years.

Q. Did you attend school there?

A. Yes.

Q. What was your educational background? What did you study  
in school?

A. My major is physics.

Q. And did you complete your degree in China?

A. Yes, I do -- I did.

Q. Are you married?

A. Yes.

Q. Do you have children?

A. Yes.

Q. How many children do you have?

A. I have two boys.

Q. How old are they?

A. My older one is 14 years old. My younger is 7 years.

Q. Can you tell us a little bit about what you do in Junction

City, Kansas. Do you own a business?

A. Yes, I do.

Q. What business do you own?

A. I own a Chinese restaurant. Name --

Yuhua Bai - Direct

Q. Go ahead. I'm sorry.

A. Name is Hunam Palace.

Q. How long have you owned the Hunam Palace?

A. Almost four years.

Q. Is that located in Junction City, Kansas?

A. Yes.

Q. And what type of restaurant -- what type of service do you provide at Hunam Palace?

A. Most of our business, up to 80 percent is delivery.

Q. And where do you normally deliver your food to?

A. To the Fort Riley soldiers.

Q. Fort Riley soldiers?

A. Yes.

Q. Is Fort Riley the Army base nearby?

A. Yes.

Q. How far is it from your restaurant, approximately?

A. From my restaurant, drive to main post --

Q. I'm sorry. I didn't understand. About what?

A. Usually, I deliver to main post and the barracks. You know --

Q. The barracks?

A. Yes.

Q. And main post?

A. Yeah. About 10 minutes' or about 5 minutes' drive.

Q. Okay. I'm going to show you Government's Exhibit 274, if

Yuhua Bai - Direct

you can look on your screen, please. It has not yet been entered into evidence. Do you see that up on the upper right-hand corner?

A. Yes, I did.

Q. Is that the correct location for your business, Hunam Palace?

A. Yes, it is.

Q. And do you recognize the other businesses here that are noted on this map?

A. Yes.

Q. Okay.

MS. WILKINSON: Your Honor, Government offers 274 into evidence.

MR. JONES: No objection, your Honor.

THE COURT: All right. It's received. 274.

MS. WILKINSON: May we publish?

THE COURT: Yes.

MS. WILKINSON: Thank you.

BY MS. WILKINSON:

Q. Hold on. Let me take it out of the plastic so it's a

Q. hold on. let me take it out of the plastic so it's a little easier for you to see.

Do you see that, Ms. Bai? Now, do you see the pen you have right up there in front of you? Do you see that black -

Ms. -- Mrs. Bai?

A. Huh?

Yuhua Bai - Direct

Q. Do you see the black pen that's right there on the desk?

A. This one? Yes.

Q. Yes. Can you go underneath to the computer screen and just

point out where your restaurant is. Just put a little X. No, you have to go underneath. There you go. Just press and --

A. Sorry. Here.

Q. Okay. And show us where Fort Riley is.

A. Fort Riley is over here.

Q. Okay. Thank you. Now, let's talk about your business a little bit. How many employees do you have?

A. I have five employees.

Q. How many of those employees make deliveries for you?

A. Three.

Q. All right. And do you have a regular procedure you follow when you get a takeout order over the telephone?

A. Yes, I do.

Q. Okay. Generally, tell us what you do when someone calls to

order a takeout order from your restaurant.

A. Okay.

Q. Start with do you have a record that you keep of the order that someone makes?

A. Yes.

Q. And what information do you ask the customer for?

A. So generally, when phone is ringing, we pick up the phone and then we say, "This is Hunam Palace, Chinese restaurant.

Yuhua Bai - Direct

May I help you?" so the customer may order some food. Then we write down on the sheet.

Q. You write down the order of the food that they want?

A. Yeah.

Q. Then what do you do?

A. After that, we ask them going to pay cash or check.

Q. And why do you ask them whether they are going to pay cash or check?

A. Because we -- we deal a lot of soldiers and we handle a lot

of checks. We lost a lot of money by checks; so by the check,

we charge 50 cents.

Q. So you charge extra if someone wants to pay by check for

-  
their food?

A. Yes, we do.

Q. Okay. After you determine that they want to pay cash or check --

A. Yes.

Q. -- what do you do?

A. We give them a total cost; and after that, we ask them last

name, address, and telephone number.

Q. And how do you determine whether you're getting the correct last name of the person?

A. We usually ask they spell last name for us.

Q. Why do you ask them to spell their last name?

A. We want to send the food to right person. We don't want to

Yuhua Bai - Direct

lose money.

Q. And is there any other reason why you -- do you personally ask them to spell the name when you take the order?

A. Yes, I do.

Q. Why do you do that?

A. My English not so good. I don't familiar with last name so

I would want -- even now, I take an order, I ask last name spell for me.

Q. Okay. Now, after the bombing in Oklahoma City, after April 19, 1995, did the FBI come to visit you?

A. Yes.

Q. And did they ask you for some records?

A. Yes.

Q. Do you keep records of the takeout orders in the ordinary course of your business?

A. Yes.

Q. Let's talk a little bit about that. After someone makes an order and you deliver the food, do you keep a record of their order?

A. Yes.

Q. And do you keep a record of every order that comes into your business each day?

A. Yes.

Q. Do you also keep a log of all the orders for each day?

A. Yes.

Yuhua Bai - Direct

Q. What do you do at the end of the day with all the receipts

you have, the tickets for the orders and that daily log?

A. We put them together into a little sack and then write down

the date and --

Q. You put them in a sack, a paper sack?

A. Yeah.

Q. You put all those receipts from that day --

A. Yeah.

Q. -- in there?

Did you also put the daily log in there?

A. Yes.

Q. And how do you mark the paper bag?

A. We just put a date, the month and date.

Q. And do you do that for each day of the week?

A. Every date.

Q. Every day. And what do you do with those paper bags with your business records in them?

A. After I close, I take home.

Q. You keep those at your home?

A. Yeah.

Q. How long do you keep those records?

A. About a couple months.

Q. And what is the purpose of maintaining those records? Why do you keep them?

A. We just don't want to make mistake in case customer call

Yuhua Bai - Direct

back or in case the driver said is -- just want to make correct money.

Q. So you keep them in case the driver -- there is any discrepancy with him over the amount of money he pays you for the food? Is that right?

A. Correct. Yeah.

Q. Okay. Now, when the FBI came to see you after April 19th, 1995, did you retrieve certain records from --

A. Yes.

Q. -- the paper bags?

Do you remember which paper bag you retrieved records from?

A. April 15, 1995.

Q. And was the paper bag marked April 19 -- April 15, 1995?

A. Yes.

Q. And did you take two records out from that day?

A. Yes.

Q. Okay. Now, were you working on April 15, 1995, yourself?

A. Yes, I did.

Q. And did you take an order on that day?

A. Yes, I did.

Q. Let me show you Government's Exhibit 299, which hasn't been entered into evidence yet. Now, you should have a copy of this

up there. Can you see it on your computer screen?

A. Yes, I did.

Yuhua Bai - Direct

Q. Okay. Hold on one second. Do you recognize that record?

A. Yes. It's my handwriting.

Q. Okay. And is that one of the documents that you turned over to the FBI when they came to see you after the bombing?

A. Yes.

MS. WILKINSON: Your Honor, Government offers 299.

MR. JONES: Your Honor, if the Court please, we object to this because the information on the -- the exhibit, the handwriting is hearsay in that it allegedly was provided by a third person.

THE COURT: What is your purpose in the offer?

MS. WILKINSON: In establishing the information that she received over the telephone for the order, your Honor. Excuse me.

THE COURT: Well, the objection will be sustained if that's the purpose.

MS. WILKINSON: Excuse me. Your Honor, as Mr. Hartzler reminds me, we're not offering this information for the truth of the matter. We're asserting the fact for just the opposite.

MR. JONES: Your Honor, I disagree. I think, clearly, the bottom portion of it is being offered for the truth of the matter, and if the --

THE COURT: Well, the truth of the matter is the identification of the person whose name is written on there,

Yuhua Bai - Direct

and it can't be received for that purpose. It'll be received for the purpose of what this witness wrote in response to a telephone call and only for that purpose. So it's received with that limitation. And I think the jury understands the difference here; that this witness, as she has just testified with respect to the routine of ordering, puts down whatever a person on the phone says in response to her questions.

You may proceed.

MS. WILKINSON: Your Honor, for purposes of the jury being able to read the exhibit, because it has some of the fingerprint smudges, may I put a copy of the document up? I'll show it to Mr. Jones before I do so.

THE COURT: Yes.

MR. JONES: I don't have a problem with the copy being substituted as long as -- I just want to be sure that I understand the Court's ruling that it's not being admitted for the truth of the matter asserted.

THE COURT: That's correct.

BY MS. WILKINSON:

BY MS. WILKINSON:

Q. Do you recognize this receipt, Mrs. Bai?

A. Yes, I did.

Q. Did you take this order on April 15, 1995?

A. Yes, I did.

Q. Now, tell us what happened. Do you recall what time you received the call for this order?

Yuhua Bai - Direct

A. Yes.

Q. What time was it, approximately?

A. I think it was around 5:00 and the phone is ringing.

Q. And that was on -- April 15 was a Saturday in 1995?

A. Yes. Saturday.

Q. It was approximately 5 p.m. that evening?

A. Around, yeah.

Q. Okay. Now, tell us what happened when the phone rang. What did you do?

A. The phone ring. I take the phone. I said, "Hunam Palace, Chinese restaurant." And the voice is a man. He said he wanted to place Chinese food. Then I asked, "What do you like to have?" He said he like moo --

MR. JONES: Your Honor, please, I object as hearsay.

THE COURT: Overruled. Again, this is being

received

just for what was said, regardless of who it was who was on the

phone on the other end.

Proceed.

THE WITNESS: Then I said, "What you like to have?"

And he said he like to have moo goo gai pan.

BY MS. WILKINSON:

Q. Okay. Let's stop right there. Did you write that down on the order form, what he wanted to eat?

A. Yes.

Q. Okay. Let me point out to you right there on the top, is

Yuhua Bai - Direct

that what you're talking about?

A. Yeah.

Q. And that's MGGP?

A. Yeah.

Q. Is that your abbreviation for moo goo gai pan?

A. Yes.

Q. All right. And over there on the left where it says --

A. It's one order moo goo gai pan.

Q. What's the -- what's down here, the next entry?

A. The next order is for one order egg rolls.

Q. Is that all the food that the caller ordered?

A. Yes.

Q. Just one order of moo goo gai pan and one egg roll?

A. Yeah.

Q. All right. Then what happened after you took his food



order?

A. Then I asked he going to pay cash or check, and he said he going to pay cash.

Q. And that's indicated right down here in the lower --

A. And I make a mark -- I make a mark on the -- by cash order,

so I gave him a total is \$9.65. And after that, I ask him, "What's your last name?"

He said Kling.

And I said, "Pretty like Chinese name. Could you spell for me?"

Yuhua Bai - Direct

Q. You said what about it being like a Chinese name?

A. Yeah. Because Kling like Ling, like -- spell like -- spelled like Chinese.

Q. So Kling sounded a little bit to you --

A. Yeah.

Q. -- like a Chinese name?

A. Yeah. And I said, "Could you spell for me?" And he spell for me is K-L-I-N-G.

Q. And you're sure that's the name that he spelled for you?

A. Yes. And I write down right away.

Q. And then what did he tell you about where he wanted the food delivered?

A. Yeah. He told me in Dreamland Motel, Room 25.

Q. Now, you know -- you're familiar with the Dreamland Motel; is that correct?

A. Yes, I do.

Q. And you know where it is in Junction City?

A. Yes, I do.

Q. Is there only one Dreamland Motel in Junction City?

A. Yes, it is.

Q. All right. So you -- you knew the address of the Dreamland

Motel once he told you the name; is that correct?

A. Yes.

Q. And then what did he tell you about where in the Dreamland Motel he was staying?

Yuhua Bai - Direct

A. He told me is Room 25.

Q. Okay. Did he give you a phone number of how you could contact him?

A. Yes. I asked him for number. He told me is 238-1108.

Q. Now, here you've just written 8-1108. Why did you write those five numbers?

A. Yes. We receive town order -- the phone in Junction City is by town -- my English. So town is 238 and the Fort Riley troops is 239.

Q. So you only have two prefixes in Fort Riley; is that right?

A. Yes.  
Q. I mean, in Junction City?  
A. Yes.  
Q. And you're familiar with those prefixes?  
A. Yes. 8 is means Junction City.  
Q. All right. So for you and your delivery people, you know that the 8 means the 238 exchange?  
A. Yes.  
Q. Okay. Now, down here at the left-hand corner, you have a log number, No. 23. What does that mean?  
A. That mean is from we open -- we open at 11. By that time is 23 order from morning to that time we took order.  
Q. So when you take an order, you put down the number in the order that it comes in that day?  
A. Yes.

Yuhua Bai - Direct

Q. That would have been your 23d order of the day?  
A. Yes.  
Q. On April 15, 1995?  
A. Yes.  
Q. All right. Did you say anything else to the caller?  
A. I told him food going to be there about 35 to 45 minutes.  
Q. Is that what you always tell your customers?  
A. Yes.  
Q. Is that -- is that always what happens?  
A. Yes.  
Q. Is it sometimes --  
A. Sometimes --  
Q. -- a little longer?  
A. Sometimes late.  
Q. And do customers sometimes call and check on their food again?  
A. Yes, they do.  
Q. All right. Now, let's go back up to the top here where you have the name of your restaurant; right?  
A. Yes.  
Q. And what is listed there under your restaurant?  
A. Lists our address.  
Q. And is it 1230 Grant Avenue, Junction City?  
A. Yes.  
Q. And these phone numbers here, 238-888 (sic) or 238-889

Yuhua Bai - Direct

(sic), were those the working telephone numbers for Hunan Palace on April 15, 1995?  
A. Yes.  
Q. All right. Now, after you took the order from the caller, what did you do with Government's Exhibit No. 299?  
A. We send this receipt to the kitchen.  
Q. Okay.  
A. And the cook cook the food

A. And the COOK COOK THE FOOD.

Q. Okay.

A. And bring the -- the order sheet and the food together in a package. Then the delivery people send the food to such address.

MS. WILKINSON: Your Honor, I recognize that we have Government's Exhibit 299A marked, which is the copy; and I'd also like to offer that just for the record.

THE COURT: Yeah. That's what's just been published; right?

MS. WILKINSON: Yes. I just didn't have it marked.

THE COURT: All right. Received in the record.

BY MS. WILKINSON:

Q. Mrs. Bai, before you send this receipt into the kitchen for them to cook the food, do you record this receipt on your daily log?

A. Yes, I did.

Q. Okay. Let me show you Government's Exhibit 298. There's

Yuhua Bai - Direct

the top half. Do you see that?

A. Yes.

Q. Let me show you -- keep going down. See the rest of it there?

A. Yes.

Q. Do you recognize that?

A. Yes.

Q. Whose handwriting is this?

A. You -- what do you want me to say? Whole -- whole line?

Q. No. I want you to tell me, do you recognize this handwriting?

A. 23? No. 23?

Q. No. 23 and the rest of the document. Is most of this your handwriting?

A. No.

Q. Is some of it your handwriting?

A. Yeah. Some is my handwriting and then some is not.

Q. Okay. Go down to No. 23 there. Is that your handwriting?

A. The first one is not. First one is the delivery people --

Q. Right.

A. -- who sign the name.

Q. I'm sorry. But the rest -- why don't you start with No. 23

there and go down --

A. Yes. The rest is my handwriting.

Q. Okay. And do you recognize this as your log from April 15,

Yuhua Bai - Direct

1995?

A. Yes.

MS. WILKINSON: All right. Government offers 298, your Honor.

MR. JONES: No objection, your Honor.

THE COURT: All right. 298 is received.

MS. WILKINSON: May I publish, your Honor?

THE COURT: Yes.

BY MS. WILKINSON:

Q. All right. Let's look at No. 23 here. Let me see if I -  
-

do you see that there?

A. Yes. I did.

Q. All right. Let's start on the left-hand side of the document. I want to take it down just to the top so you can tell everyone what the categories are there. The driver is listed in the first category; is that right?

A. Yes.

Q. And that's the person who delivers the food?

A. Yes.

Q. The next category are the numbers; is that right?

A. That's right.

Q. That you were telling us, you number each food order as it comes in?

A. Yes.

Q. Is that correct?

Yuhua Bai - Direct

And then you have the dollar amount?

A. Yes.

Q. And you also record the time that the order comes in?

A. Yes.

Q. The address where it's supposed to be delivered?

A. Yes.

Q. And the phone number of the customer; right?

A. Yes.

Q. Okay. Let's go back to 23. Now, looking -- starting in the left-hand category, where it says driver, there's just a little mark there. What does that mean?

A. This our driver Jeff Davis.

Q. Is that how he signs his name?

A. Yes.

Q. And 23 indicates that that's the 23d food order that you got that day; correct?

A. Yes.

Q. Tell us then what's written next to that.

A. \$9.65.

Q. And that was the total?

A. Yes.

Q. Are you sure you're looking at 22? Maybe I'm -- I'm pointing to 23. 22, I mean 23. Do you see it right there?

A. Yeah. It's \$9.65.

Q. \$9.65, so that's the total for that food order; correct?

Yuhua Bai - Direct

A. Yes.

Q. And is that the same as you have marked on Government's Exhibit 299?

A. Yes.

Q. Now, going across, what does this indicate as to the time you received the food order?

A. 5:00.

Q. All right. Now, is that exact?

A. Sometimes not. It's just a little bit, maybe five minutes different, but no bigger than five minutes. I just --

Q. How -- go ahead.

A. I just write down 5:00. Maybe it's a little bit early, maybe it's a little bit later so ...

Q. Do you have -- you have a clock in your business?

A. Yeah, we do.

Q. Do you know if it's calculated to the right -- exact right time?

A. I -- we're not -- we don't check so -- but no big difference.

Q. So it's an approximate time. Don't tell Judge Matsch that.

Okay. You think you received a call sometime around 5:00; right?

A. Yes.

Q. Okay. Now, next, tell us what's written here about the address of the customer.

Yuhua Bai - Direct

A. Dreamland Motel, Room 25.

Q. Now, you don't have the word "motel" there, but you understand that to mean Dreamland Motel; correct?

A. Yes.

Q. The last set of numbers you have here, what does that tell you? Hold on. You can't see it. There you go. Right there.

A. It's 238-1108.

Q. And that's what you explained to us about the telephone number using the -- just the five numbers?

A. Yes.

Q. Okay. Now, after you recorded on your log sheet, the food was made by the chef; is that right?

A. Yes.

Q. And then what happens to the food and the receipt, Government's Exhibit 299, the one that you filled out? What happens to this receipt and the food after it's fixed?

A. We put the order sheet in the -- in the delivery bag, and the driver take the bag to the customer.

Q. Okay. Now, do you know anything about whether this food actually got delivered?

A. I think they got it because I got money back at night.

Q. Okay. That's a good indicator. You don't know who the food was delivered to, do you?

food was delivered to, do you?

A. The driver didn't told me. I suppose they deliver it to right --

Yuhua Bai - Direct

MR. JONES: We object, your Honor. Hearsay.

THE COURT: Sustained. Just a moment.

THE WITNESS: I sorry.

THE COURT: Just a moment.

MS. WILKINSON: Let me rephrase the question.

THE COURT: All right.

BY MS. WILKINSON:

Q. You don't personally know who received the food, do you?

A. I don't know.

Q. You didn't see it delivered?

A. No.

Q. Okay. So you don't know anything about the person who received it?

A. No. I just got money. I don't know.

Q. Good. Okay. Now, when you got the money, did you also get

the receipt back?

A. Yes.

Q. And you kept that receipt and put it in the bag like you told us?

A. Yes, I did.

Q. Correct?

Did you ever discuss with the delivery man who he delivered the food to?

A. No. No.

MS. WILKINSON: No further questions. Oh, I do have

Yuhua Bai - Direct

one further question. I'm sorry.

BY MS. WILKINSON:

Q. Let me show you another exhibit that's been previously admitted into evidence, Mrs. Bai, Government's Exhibit 295. I'm going to turn to one of the pages. Now, let me show you these telephone records that were introduced previously and ask

you to look at this -- that line. Do you see that, April 15?

A. Yes, I see it.

Q. At 1713.

A. Yes.

Q. See this number, 238-8888?

A. Yes.

Q. Do you recognize that number?

A. It is our telephone number.

Q. Okay. That's your telephone number at Hunam restaurant?

A. Yes.

Q. And this says Room 25 here and 1 minute and 42 seconds.

Do

you recall how long your conversation was with Mr. Kling?

A. I don't remember. Just finished.  
Q. Okay. Now, look at the line right below that. April 15, do you see that?  
A. Yes. I did.  
Q. At 1801?  
A. Yes.  
Q. There's another call to 238-8888. That's also your

Yuhua Bai - Direct

restaurant, isn't it?  
A. Yes.  
Q. And that's from Room 25, and that was for just 30 seconds. Do you see that?  
A. Yes, I see it.  
Q. Do you remember getting a second telephone call about this food order?  
A. I don't remember.  
Q. Do you know whether you got one or not or you just can't recall?  
A. I don't remember really.

MS. WILKINSON: No further questions, your Honor.

THE COURT: All right. Mr. Jones.

MR. JONES: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. JONES:

Q. Mrs. Bai, perhaps I misunderstood, but did you say you had a son 40 and then one 7?  
A. I said 14.  
Q. Oh, 14.  
A. I'm only 40.  
Q. Well, I'm only 56, so -- where in China were you born?  
A. 1955. March 3.  
Q. And where? What city or province?  
A. Zhejiang.

Yuhua Bai - Cross

Q. And where did you go to school? Did you say you got a degree in physics?  
A. Yes.  
Q. And where did you go to school?  
A. University of Zhangping.  
Q. All right. Is your husband also from the People's Republic of China?  
A. Yes.  
Q. Yes. Now, you said that you had five employees. Is that true for April of 1995?  
A. Yes.  
Q. And do you remember the names of the employees that you had working for you in April of 1995?  
A. I'm not for sure because the drivers are changed, so --

the  
drivers usually come from Army people. They -- I'm not for  
sure, but I try.

Q. Do you remember Jeff Davis?

A. Yes.

Q. So that would be one?

A. For sure. Yeah. Yeah. Uh-huh.

Q. And then there was an exhibit put up with the names of  
various drivers, and let me look at that just a moment. I  
remember one of them was named Sam.

A. Yes.

Q. Does that refresh your memory?

Yuhua Bai - Cross

A. Yes.

Q. And what was Sam's last name? Do you recall?

A. Fox. No Fox. Cox, C-O-X, I guess.

Q. And then you had -- did you have a Joe?

A. That's my husband.

Q. Okay. So he makes deliveries, too?

A. Yes.

Q. And when you were counting the employees, did you count  
him

as one of the five?

A. No.

Q. Did you count yourself?

A. No.

Q. All right. So we know you had Sam and we know you had  
Jeff

Davis, and you can't recall the others?

A. Maybe I see the log -- daily log, I will remember; but I  
don't remember now.

Q. Okay. Sure. Let me just put it up here and start it at  
the top here, and -- can you see it?

A. Yeah. The --

Q. There's a W, it looks like.

A. That I believe is -- I think his name is Bill William.

Q. All right. And then it looks like PU. Must be a pickup  
or --

A. Yes. You're right.

Q. Here's the first page. Is this your husband right here,

Yuhua Bai - Cross

No. 19?

A. I don't see No. 19. I'm sorry.

Q. Right here.

A. The signature is my son. Kyle is sign. I think he's  
here.

Because my husband deliver, but he didn't sign. He forgot.

My

son sign for him.

Q. And then No. 20, who is that?

- - -



A. No. 20?  
Q. Yes.  
A. It's my name. Bai, B-a-i.  
Q. You made the delivery?  
A. Yes. Like sometimes late, bars close, I do.  
Q. Now, this -- these are the orders for the delivery and the pickups, not the orders inside for people that come in and sit down in the restaurant; is that correct?  
A. Yes.  
Q. So in addition to the pickup and takeout service and the delivery service, you also have a restaurant?  
A. Yes.  
Q. All right. Now, do you specifically remember this transaction or are you relying upon the notes that you made at the time?  
A. I -- I beg your pardon?  
Q. Do you remember this specific transaction? This specific order?

Yuhua Bai - Cross

A. Uh-huh.  
Q. Do you remember it?  
A. Yeah.  
Q. Okay. Do your records that you kept help you remember it?  
A. I remember because I have a restaurant for so many -- so many time -- so long. It's never happened like this big case.  
Q. Okay. So that helps you remember it.  
A. Yeah.  
Q. Okay. Have you had more business since this case?  
A. Yes. I try, but I --  
Q. I understand.  
A. I didn't make it.  
Q. Now, you still have the restaurant now?  
A. Yes.  
Q. Now, did you originally think you had lost the receipts?  
A. Yes. But --  
Q. You found them?  
A. What do you mean?  
Q. You originally thought you had lost the receipts, didn't you?  
A. Lost what?  
Q. The receipts.  
A. Which one?  
Q. Well, the ones for April of '95.  
A. I don't know. I don't remember. What do you mean?

Yuhua Bai - Cross

Q. Well, you keep the receipts, as I understand it, at your residence; is that correct?  
A. Yeah.  
Q. Okay. Let me ask it another way: When the FBI came to interview you in June, did you think that your mother had inadvertently thrown the receipts out?

inadvertently thrown the receipts out.

A. So after that bombing, only three days.

Q. Uh-huh.

A. So the FBI come to me, ask the receipt. I said, "I'm sure I have it in the home." Then I pay him -- I just pick up from the sack, I give him right away. I think it's three or four days. It's Monday or Tuesday after bombing. Not in June. I think it is not in June.

Q. You don't think it was on June 17?

A. No. I don't think so. Is it that long? No.

Q. Well, let's leave aside for a moment the question of the date. What I want to ask you is was there a time when you thought you had thrown away the receipts or someone else had thrown them away and you found them?

A. How you get the idea I throw it away? Threw away? I don't know.

Q. Because I'm reading it. That's how I got it. I'm just asking you what your memory is.

A. I don't remember. I'm sorry.

Q. Okay. Fair enough. In any event, you think that this

Yuhua Bai - Cross

Receipt No. 299 that was shown to you -- and let me just show it to you one more time -- is a copy of the original?

A. Yes.

Q. All right. Now, pardon my ignorance, but could you tell me

what moo gai pan is or moo gai pan is?

A. Maybe you never eat Chinese food. Ask him.

Q. That's why I'm asking first. I want to know whether I should.

A. Okay. Moo goo gai pan is mushroom. Moo goo is Chinese for

--

Q. Wait a second. Not so fast. What?

A. So Chinese food is -- it's a Cantonese name.

Q. Okay.

A. Moo goo is mushroom. Gai is chicken. Pan is a cut and slice. So it's sliced chicken, stir-fried with mushroom. We call moo goo gai pan. A lot of people eat it, I think. It's popular food.

Q. This is a Cantonese dish?

A. Every restaurant have it.

Q. Okay. You vouch for the mushrooms?

A. I beg pardon?

Q. Now, let's talk about this case. You don't know the true identity of the person that called and ordered the food; is that correct? You just know the name that was given to you?

A. Yes.

Yuhua Bai - Cross

Q. All right. And you don't know for sure whether the person

that it was delivered to is the person that called; is that right?

A. Yes.

Q. Okay. Now, you indicated in response to a question from Ms. Wilkinson that sometimes when customers call a second time,

it's because there's been a delay in their food being delivered. Do you remember that?

A. The reason for the callback first is they didn't receive the order.

Q. Uh-huh.

A. The second is something wrong with the food.

Q. All right. Well, I take it that they don't call back and complain they didn't get the food if they already have the food, do they?

A. I -- I guess.

Q. Okay. Do you recall that this individual who identified himself as Kling called back to complain about the food?

A. I don't remember.

Q. Okay. How long, ordinarily, would it take to prepare this dish and deliver it to the Dreamland Motel?

A. See, our business, most of it delivery. We don't only take

one order to downtown -- to -- it may take us three or maybe take four, maybe take two at the same time. So we said about 35 to 45 minutes. Sometimes we count for the customer, but

#### Yuhua Bai - Cross

sometimes we're late.

Q. Okay. Now, on this particular order, is there any way from

looking at your records to tell how many deliveries Mr. Davis had to make before he got to the Dreamland?

A. I don't -- could I see it?

Q. Sure.

A. I see, I can tell, but I don't --

Q. Well, while she's pulling it up, let me ask you this: Ordinarily, when did he come to work? Or let me rephrase that.

When did he come to work on April the 19th -- or April the 15th?

A. I don't remember, but I remember he late.

Q. Okay. I'm sure you do. What time was he supposed to be there?

A. Supposed to be 5.

Q. All right. And do you remember when he did come in?

A. He did come because he deliver the food.

Q. Sure.

A. But I'm not sure exactly what time he sign in.

Q. Okay. Do you have a time clock there where they punch in a

card?

A. No.

Q. All right.

- A. I trust the employee. They just sign.  
Q. And so they just sign Jeff Davis, 5:15, 5:35, 45, whatever

Yuhua Bai - Cross

time it is?

- A. Yes.  
Q. Okay. And that day, you remember he was late?  
A. Yes.  
Q. All right. Now, let me put 298 back up. And we're looking at No. 23 right here. Do you see it?  
A. Yes.  
Q. Now, as I understand it, No. 22 was made by Sam.  
A. You're right.  
Q. And I don't see Mr. Davis's initials on this page before No. 23; is that correct?  
A. Yes.  
Q. And then it shows that he made delivery No. 24. Is that correct?  
A. Yeah. He delivered 23 and 24 same time.  
Q. All right. And then No. 25 was delivered by someone else.  
A. You're right.  
Q. Is that correct?  
A. Yeah.  
Q. And 26 was delivered by Sam.  
A. You're right.  
Q. Correct? And 27, this is your husband?  
A. Yes.  
Q. And then is 28 Davis again?  
A. Right.

Yuhua Bai - Cross

- Q. So No. 28, the order came in at 6:20; is that correct?  
A. Yes.  
Q. And then No. 25, the order came in at 5:30?  
A. Right.  
Q. Do you --  
A. No. No. 5:00. What do you mean?  
Q. I'm sorry. Excuse me. You're right. I was talking about number -- yes. Order No. 25: Didn't that come in at 5:30?  
A. Yes.  
Q. All right. And that's the one that was delivered by someone else?  
A. William, yeah.  
Q. William. Now, how long does it take to fix moo goo gai pan?  
A. Five minutes.  
Q. All right. So -- and you've already said he was late; correct? He was late coming to work?  
A. Yes.  
Q. He was supposed to be there at 5?  
A. Yes.  
Q. And it only takes five minutes to fix it, and you don't

Q. And it only takes five minutes to fix it, and you don't think he was there at 5:05, do you?

A. What do you mean?

Q. Well, did he come in just a few minutes late, or was he like 20 minutes late?

Yuhua Bai - Cross

A. I don't remember.

Q. Well, let me ask you this: Do you remember whether he delivered 23 and 24 together?

A. Yes.

Q. All right. Now, are you satisfied that he didn't deliver anything else on that run but 23 and 24?

A. Yes.

Q. Okay. Now, this address here for No. 24: Can you see that?

A. Yes.

Q. What is that, ma'am?

A. It's 220 Grant Avenue, Lot 19.

Q. All right. And do you know where that is?

A. Yes.

Q. All right. Well, let's go back just a moment to the map, which is Government Exhibit No. 274. Do you see that?

A. Yes.

Q. And as I understand it, you're up here?

A. Yes.

Q. And the Dreamland is here?

A. Yes.

Q. All right. Where is Grant?

A. Grant Avenue is from my -- my place -- from my place to here is Grant Avenue.

Q. All right. So like maybe a couple of streets above

Yuhua Bai - Cross

Firestone Tire and Service Center's sign there; is that right?

A. No. It's very close to us.

Q. Okay.

A. Maybe just three minutes, three -- three minutes to drive from my place to there.

Q. Three minutes?

A. Uh-huh.

Q. And then that time of day, how long would it take to drive from Grant to the Dreamland Motel?

A. I don't understand. What do you mean?

Q. How long would it take someone in an automobile to drive from where the order was delivered on Grant to the Dreamland Motel?

A. How long?

Q. About how long?

A. I think about ten minutes.

Q. Ten minutes.

A. Around. I'm not for sure.

Q. Now, in your experience, would the driver ordinarily go to

Grant first instead of Dreamland?

A. I don't know how -- how --

Q. Well, let me ask it this way: Do they usually go to the place closest to where you are first?

A. I prefer they do that.

Q. Okay. So if the driver followed your usual practice, he

Yuhua Bai - Cross

would have gone to Grant first?

A. Yes.

Q. And then to Dreamland?

A. Yes.

Q. And then back?

A. What?

Q. Back to your restaurant.

A. Yes.

Q. All right.

MR. JONES: I don't believe I have anything further. Thank you, ma'am.

THE COURT: Ms. Wilkinson, any other questions?

MS. WILKINSON: No, your Honor. She may be excused.

THE COURT: Agree to excuse the witness, Mr. Jones?

MR. JONES: Yes, your Honor.

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

THE WITNESS: Thank you, sir.

THE COURT: Next, please.

MR. HARTZLER: Call Marife Nichols.

THE COURT: All right.

(Marife Nichols affirmed.)

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

THE WITNESS: Thank you.

THE COURTROOM DEPUTY: Would you state your full name

Yuhua Bai - Cross

for the record and spell your last name.

THE WITNESS: Marife Nichols, N-i-c-h-o-l-s.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Hartzler.

MR. HARTZLER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. HARTZLER:

Q. Mrs. Nichols, are you married?

A. Yes.

Q. And what is your husband's name?

A. Terry Lynn Nichols.

Q. He is a defendant in the same indictment as Mr. McVeigh; is that correct?

A. Yes.

Q. Obviously, he's not on trial now.

A. Yes.

Q. Is that your understanding?

Mrs. Nichols, you understand, do you not, that you have a right to refuse to testify against your husband?

A. Yes.

Q. And your attorney -- you have an attorney appointed for you; is that right?

A. That's correct.

Q. She's present here in the courtroom?

A. Yes.

Marife Nichols - Direct

Q. And you have just nodded to her?

A. Yes.

Q. Based on your conversations with myself and your attorney, you understand that we have agreed not to use your testimony against your husband directly. Is that your understanding?

A. Yes.

Q. We've also agreed that we will not construe your appearance here in court or your cooperation as a waiver of your privilege against testifying against your husband; is that correct?

A. Yes.

Q. Where were you born, Mrs. Nichols?

A. Philippines.

Q. And how long did you live in the Philippines? For how many years did you live in the Philippines?

A. For 17 years.

Q. And then you came to this country?

A. Yes.

Q. Are your parents still living in the Philippines?

A. Yes.

Q. What is your father's name?

A. Eduardo Torres.

Q. What year did you marry Terry Nichols?

A. 1990.

Q. And when did you come to this country?

A. 1991.

Marife Nichols - Direct

Q. I'm going to direct your attention to two time periods. I'm going to ask you specific questions addressed to those two narrow time periods. I'm not interested in eliciting any conversations you had with your husband. I merely want to ask you about your observations. Do you understand?

A. Yes.

Q. First of all, did there come a time in the year 1994 when you left this country and returned to the Philippines?

A. Yes.

Q. What was that?

Q. When was that?  
A. The month of September.  
Q. Prior to your departure to the Philippines, where were you living?  
A. In Marion, Kansas.  
Q. Marion, Kansas?  
A. Yes.  
Q. And who did you live there with?  
A. My husband, Terry, and my daughter.  
Q. Your daughter's name is?  
A. Nicole.  
Q. You have another child now; right?  
A. Yes.  
Q. What's that child's name?  
A. Hans Christian.  
Q. And how old is Nicole now?

Marife Nichols - Direct

A. Three years old.  
Q. So she was essentially a toddler back in September of 1994;  
is that right?  
A. Yes.  
Q. Do you recall approximately the time that you left for the Philippines in September of 1994? Do you recall the incident?  
A. No, I don't recall.  
Q. Well, let me ask you this: Did you have any visitors at your home in Marion, Kansas, in or around that time?  
A. Yes.  
Q. Who?  
A. Tim McVeigh.  
Q. How long did Mr. McVeigh visit prior to your departure for the Philippines in September of 1994?  
A. Well, more than a day. Less than a week.  
Q. And was he still there in the area when you left?  
A. Yes.  
Q. Who went with you to the Philippines in September of '94 when you left Marion, Kansas?  
A. My daughter, Nicole.  
Q. And what about your husband? Did he remain in Kansas?  
A. Yes.  
Q. When you left, Mr. McVeigh was still visiting your home;  
is  
that correct?  
A. That's correct.

Marife Nichols - Direct

Q. Now, I want to move to another time period and direct your attention to Easter Sunday of the following year, 1995. Do you recall that time period?  
A. Yes.  
Q. Were you home on Easter Sunday of 1995?



Q. Were you home on Easter Sunday of 1995?

A. Yes.

Q. And where then was your home?

A. In Herington, Kansas.

Q. So you obviously had returned from the Philippines and you were now living in a different address in Kansas; is that correct?

A. That's correct.

Q. Who lived with you at that residence in Herington, Kansas, on Easter Sunday of 1995?

A. My husband, Terry, and my daughter, Nicole.

Q. And at that time, did you have any visitors?

A. Yes. His son, Joshua.

Q. And when you say "his son," you mean Terry Nichols' son?

A. Terry Nichols' son with his previous wife, Lana Padilla.

Q. His son from a previous marriage?

A. Uh-huh.

Q. Is that right?

You have to answer out loud.

A. Yes. I'm sorry.

Q. Thank you.

Marife Nichols - Direct

How old was Josh Nichols then?

A. 12 or 13 years old. I'm not sure.

Q. Do you recall cooking, preparing Easter dinner?

A. Yes.

Q. And did the family sit down for Easter dinner?

A. Yes.

Q. Approximately when on Easter Sunday did the family sit down

for Easter supper or dinner?

A. Somewhere between 3 or 4:00.

Q. And that was the four of you?

A. Yes.

Q. Yourself, Mr. Nichols, Josh Nichols, and Nicole?

A. Yes.

Q. Were you interrupted that afternoon?

A. Yes.

Q. What caused the interruption?

A. The phone rang.

Q. Who answered the phone?

A. Terry.

Q. What room were you in at the time the phone rang?

A. I was in the dining room, sitting on (sic) the table.

Q. And where was the phone?

A. In the kitchen.

Q. How far away?

A. I don't know. But it's about -- I'd say 10 yards.

Marife Nichols - Direct

Q. Okay. Is it the next room, or several rooms away adjacent --

A. Next room.

Q. Very well.

When Mr. Nichols answered the phone, did you hear any part of the conversation that he had with the caller on the phone? Did you hear anything that he said into the telephone?

A. Just the last --

MR. JONES: Court please, I object to this as hearsay.

THE COURT: Sustained.

MR. HARTZLER: Fine, your Honor. I was not introducing it for the truth, but I will continue. Thank you.

THE COURT: All right.

BY MR. HARTZLER:

Q. After Mr. -- first of all, tell me approximately how long did that telephone (sic) last?

A. Five minutes.

Q. And after that telephone conversation, did your husband speak to you?

A. Yes.

Q. Don't tell us what he said to you; but as a result of that conversation, did you understand he was going to do something?

A. Yes.

Q. After your conversation with your husband, what happened?

A. He left.

Marife Nichols - Direct

Q. And did you observe him leaving?

A. Yes.

Q. How did he leave?

A. Get out of the house, talked to Josh a little bit, and get into his pickup truck and left.

Q. And you saw his pickup truck and he drive away?

A. Drive off, yes.

Q. Approximately how long after he finished his telephone conversation did he leave?

A. 15 or 20 minutes.

Q. And did you have an understanding of where he was going and

who he might be -- what he might be doing?

MR. JONES: Court please, I object to this, as it's based on hearsay.

MR. HARTZLER: I'm not going to elicit it, I'm just asking if she understood it.

THE COURT: Her understanding would be from what he told her.

MR. HARTZLER: I'm just trying to elicit her state of

mind at the time. I'll move on.

THE COURT: All right.

BY MR. HARTZLER:

Q. Mrs. Nichols, after your husband left, did you see him again that day?

A. No.

Marife Nichols - Direct

- Q. When did you next see your husband?  
A. The following morning.  
Q. And where was that?  
A. In our house.  
Q. What time did you go to bed that Easter Sunday, approximately?  
A. About 12 or 1:00.  
Q. So fairly late?  
A. Yes.  
Q. And your husband had not returned by that time?  
A. Yes.  
Q. What time did you get up the next morning?  
A. 10.  
Q. And was Mr. Nichols back in the house by that time?  
A. Yes.  
Q. You said that Josh Nichols was visiting you; is that right?  
A. Yes.  
Q. And why was he visiting?  
A. Because he has an Easter break and he wants to see us.  
Q. And do you recall how long he remained in Herington, Kansas?  
A. Maybe for a week. I'm not sure.  
Q. Do you recall -- do you recall when he left?  
A. Yes.  
Q. When did he leave?

Marife Nichols - Direct

- A. The day after Easter.  
Q. And where was he going?  
A. To Las Vegas, Nevada.  
Q. And why would he -- why would he go to Las Vegas?  
A. That's where his mother live.  
Q. And he -- that's his permanent residence?  
A. Yes.  
Q. Was at the time? And how did Josh Nichols return to Las Vegas on that day after Easter?  
A. We took him to the airport and dropped him off there.  
I'm  
sorry.  
Q. When you say you took him to the airport, the "we" -- pardon me. You were about to say ...  
A. He has a flight from Kansas City --  
Q. Right.  
A. -- to Las Vegas.  
Q. Who all went to the airport other than yourself and Josh Nichols?  
A. My daughter.  
Q. Did Mr. --  
A. And Mr. Nichols.  
Q. Do you recall approximately what time of day or night you

Q. Do you recall approximately what time of day or night you arrived at the airport?

A. Somewhere 9 or 10:00.

Q. So it was definitely evening?

Marife Nichols - Direct

A. Yes.

Q. Later -- and while you were in the airport, did you observe your husband use the telephone?

A. Yes.

Q. And that airport was the Kansas City International Airport?

A. Yes.

MR. HARTZLER: Could I have just a moment, your Honor?

THE COURT: Yes.

MR. HARTZLER: Nothing further. Thank you.

THE COURT: Mr. Jones?

MR. JONES: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. JONES:

Q. Mrs. Nichols, when you married Mr. Nichols, could you tell me, please, how old you were?

A. Excuse me? I don't understand.

Q. How old were you when you married Mr. Nichols?

A. Oh, 17 years old.

Q. 17. And how old were you when you came to the United States?

A. 19.

Q. You indicated in response to a question from my colleague, Mr. Hartzler, that there was a time when Mr. McVeigh lived with

you and Mr. Nichols for more than a day but less than a week.

A. Yes.

Marife Nichols - Cross

Q. Would you tell me, please, the best memory and recollection

you have of when that was.

A. September 1994.

Q. Do you remember when in September?

A. I don't remember. I'm sorry.

Q. Sure. Do you remember where you were living?

A. Marion, Kansas.

Q. All right. And where was your husband working?

A. At the Donahue ranch. On a farm.

Q. At the Donahue ranch?

A. Yes.

Q. Was this the only time during your married life that Mr. McVeigh came and stayed with you and your husband in your house for more than a day?

A. No.

Q. When was the time before that?

A. I don't remember the year. It's probably somewhere in 1992 or '93.

Q. You were not living then in Marion?

A. No.

Q. After this occasion in September, when Mr. McVeigh came to your house and stayed with you, did he stay in the same house with you and your husband again before April 19, 1995?

A. No.

Q. So from 1992 or so, until April the 19th, 1995, your memory

Marife Nichols - Cross

is that while you and Mr. Nichols were living together, Mr. McVeigh only stayed in your house one time?

A. I'm not sure.

Q. Could it have been more than one time?

A. Yes.

Q. Now, on this event, if you could focus in on your memory in

September for a moment, you said that he stayed more than a day.

A. Yes.

Q. But less than a week.

A. Yes.

Q. Can you give us a better approximation? Two days? Four days? Five days?

A. Probably five or six days.

Q. And did he stay there in the house?

A. Yes.

Q. And did he sleep in the house?

A. Yes.

Q. Did he eat in the house?

A. Yes.

Q. Did he move freely in and about the house?

A. Yes.

Q. Was he ever in the garage?

A. I don't remember.

Q. Was he in your automobile?

Marife Nichols - Cross

A. Yes.

Q. So for a period of, as you say, approximately five days in September of 1994, Mr. McVeigh was in and about your house all day; is that correct?

A. Probably. I'm not sure.

Q. This may seem an unusual question, but tell me, did he wear

gloves the entire time he was in your house?

A. I don't remember.

Q. Okay. Did he just move around normally?

A. Yes.  
Q. Did he shower there or take a bath?  
A. Yes.  
Q. He ate with you?  
A. Yes.  
Q. He touched things?  
A. Yes.  
Q. He picked up things?  
A. Yes.  
Q. He moved things?  
A. Yes.  
Q. He used utensils?  
A. Yes.  
Q. Plates?  
A. Uh-huh.  
Q. The phone?

Marife Nichols - Cross

A. Yes.  
Q. Towels?  
A. I don't know.  
Q. All right. Well, I take that back. I apologize.  
Now, when he was there, it was during the period of time that you lived in the house at the Donahue ranch; is that correct?  
A. Yes.  
Q. Now, did your husband or yourself have any other houseguest during that period of time other than Mr. McVeigh?  
A. No.  
Q. Now, after your husband moved from the house and he was no longer working at Donahue's, where did he go next?  
A. I don't know because I already left.  
Q. All right. So what day did you go back to the Philippines?  
A. I'm not sure exactly.  
Q. Would you recognize the date if I gave it to you?  
A. Sure.

MR. JONES: May I have just a moment, your Honor.

THE COURT: Yes.

MR. JONES: Let me talk to my lawyer a minute.

BY MR. JONES:

Q. September the 20th, 1994?  
A. That could be. I -- it's been a long time, and I'm not accurate in dates and time.

Marife Nichols - Cross

Q. All right. But it was before your husband quit working?  
A. Yes.  
Q. And by "quit working," I mean quit working at Donahue's.  
A. Yes.  
Q. So sometime before he quit working, Mr. McVeigh was a  
guest?

guest:

A. Yes.

Q. Now, when you left in September of 1994 to go to the Philippines, how long were you there?

A. Five, six months.

Q. And you returned to the United States of America when?

A. March.

Q. Of 1995?

A. 1995.

Q. All right. Now, do you know if your husband and Mr. McVeigh shared quarters at any time from September after you left until March when you returned?

A. I don't know.

Q. And you don't know where your husband moved to after he moved out of the Donahue house?

A. Yes.

Q. Yes, you do not know?

A. Yes, I do not know.

Q. Now, during the period of time that Mr. McVeigh was visiting you there at the home that you and your husband

Marife Nichols - Cross

maintained on the Donahue ranch, was there a telephone?

A. Yes.

Q. And did you ever see Mr. McVeigh use the telephone?

A. I don't remember.

Q. You indicated that in April of 1995, that Josh came for a visit?

A. Yes.

Q. Do you remember when he arrived?

A. Not exactly.

Q. About how long was he there?

A. A week.

Q. And he left on Monday?

A. Yes.

Q. So could he have arrived, say, Monday or Tuesday of the preceding week?

A. Somewhere Tuesday.

Q. And he stayed there with you and your husband this time in Herington?

A. Yes.

Q. And that address, please, ma'am?

A. Pardon?

Q. The address you lived in in Herington?

A. In Herington.

Q. Yes.

A. 109 2d Street South.

Marife Nichols - Cross

Q. And then on Monday after Easter, you and Mr. Nichols took Josh to the airport?

A. Yes.

O. Okav. And you said that you saw Mr. Nichols use a

telephone?

A. Yes.

Q. A pay telephone?

A. In the airport, yes.

Q. Yes. Did you see him put any coins into it?

A. Yes.

Q. Do you know how much?

A. Oh, I'm sorry. I'm not sure.

Q. Okay. You're not sure how much, or you're not sure whether

you saw --

A. I'm not sure if I saw him use coins.

Q. All right. So you're not sure of that. Do you know how many calls he made?

A. One.

Q. How long was he on the phone?

A. Five minutes or so.

Q. Was it ever Mr. Nichols' practice, when Josh was returning, to call his former wife, Josh's mother, and say that Josh was

on the plane or they were at the airport?

A. Yes.

Q. And was it also the practice that after Josh returned to

Marife Nichols - Cross

Las Vegas, that he or Mrs. Padilla would call and say he had arrived safely?

A. Yes.

Q. And you only saw Mr. Nichols place one call?

A. Yes.

Q. Now, you indicated that on Sunday, which was Easter Sunday, that you prepared a Sunday meal.

A. Yes.

Q. And what was that meal?

A. Ham.

Q. Ham. And the people that were there at the dining table were yourself, Josh, and Mr. Nichols?

A. Yes.

Q. And you think you set (sic) down to eat sometime between 3

and 4?

A. Yes.

Q. How long had you been into the meal when the telephone rang?

A. I don't remember.

Q. All right. So you don't know whether the phone came just -- sorry. The phone call came just as you were sitting down, or eating dessert, or maybe at the end of the meal?

A. Yeah. At the end of the meal.

Q. It came towards the end of the meal?

A. Yes.



Marife Nichols - Cross

Q. All right. And about how long did it take to eat this ham dinner on Sunday that you had fixed?

A. I don't remember.

Q. But can you fix the time any better than from 3 to 4?

A. No.

Q. So -- I didn't mean to interrupt you.

A. Go ahead.

Q. You set (sic) down to eat sometime between 3:00 and 4:00.

A. Yes.

Q. And then towards the end of the meal, Mr. Nichols received this phone call?

A. Yes.

Q. And then left?

A. Yes.

Q. But between the time he received the telephone call and the

time he left, how much time did you say passed?

A. Somewhere 15 or 20 minutes.

Q. 15 or 20 minutes. Is that correct?

A. Yes.

Q. All right. Now, you did not see your husband come in that night; is that correct?

A. That's correct.

Q. And what time did you retire for the evening?

A. 12 or 1:00.

Q. And what time did you wake up the next morning?

Marife Nichols - Cross

A. 10.

Q. 10?

A. Yes.

Q. So at 12:00 or 1:00, Mr. Nichols was not home?

A. Yes.

Q. Yes, he was not?

A. Yes, he was not.

Q. The next morning, when you woke up and looked around the house, was there something in the house that had not been there

the day before?

A. Yes.

Q. What was that?

A. A TV.

Q. Who did the TV belong to?

A. Terry.

MR. JONES: Nothing further.

THE COURT: Any other questions, Mr. Hartzler?

MR. HARTZLER: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. HARTZLER:

Q. Ms. Nichols, I want to clear up one point. You were asked some questions about the time period when Mr. McVeigh visited

in Marion, Kansas, prior to your departure for the Philippines;  
and there was some question about what Mr. McVeigh did in the house all day long. Did you mean to suggest that he stayed in

Marife Nichols - Redirect

the house all day, every day he was there?

A. I don't remember.

Q. Did he leave sometimes and do things with you or your husband during that period of time?

A. I don't know. I just don't remember. It's quite some time.

Q. Just let me make sure. You didn't mean to suggest that he remained from --

A. He remained in the house, but I cannot exactly remember what his activities whole day --

Q. In or out of the house, you mean?

A. Yes.

Q. Okay. But you do recall, I take it, that when you departed and left for the Philippines, Mr. McVeigh was still visiting Marion, Kansas?

A. Yes.

Q. He and your husband remained behind, in effect, as you and

Nicole left for the Philippines?

A. Yes.

Q. And you do not, of course, then know how long Mr. McVeigh stayed in Marion, Kansas?

A. Yes, I don't know.

Q. In response to Mr. Jones' questions, you recalled an approximate time that you sat down for Easter dinner; is that right?

Marife Nichols - Redirect

A. Yes.

Q. Okay. How good is your memory about those times?

A. Well, not really accurate. I'm sure I -- it's 3 or 4.

Q. Do you recall going to church that day?

A. Yes.

Q. And then when you left church, you made a stop someplace?

A. Yes.

Q. Where was that?

A. McDonald's.

Q. You got home and began cooking?

A. Yes.

Q. What time did you arrive home from church, approximately?

A. Might be 1:00 or 2.

Q. And you started cooking as soon as you got home?

A. Yes.

Q. So the time that you finished and the time that this call came in -- maybe -- let me start again.

Did the call come in as you finished your meal and

Did the call come in as you finished your meal and were still sitting at the table?

A. We were still sitting on (sic) the table.

Q. So if you were to approximate the time of that call, it would be based on your memory; is that right?

A. Yes.

Q. Okay. The phone records might better reflect the actual time of the call?

Marife Nichols - Redirect

A. Maybe.

Q. Has anybody shown you those phone records?

A. No.

Q. Do you know if the phone call -- it wouldn't be reflected on your phone records, anyway. Forget it.

The phone records would reflect the time of the call better than your memory; is that fair?

A. Yes.

Q. You said that you saw your husband make one phone call at the airport.

A. Yes.

Q. Was there a period of time when he was out of your sight?

A. Yes. I went to the bathroom.

Q. Did you take Nicole with you or did you take Nicole to the rest room at all?

A. Yes.

Q. Mrs. Nichols, tell us when was the last time you saw Mr. McVeigh outside the courtroom.

A. September 1994.

Q. Prior to your departure to the Philippines?

A. Yes.

Q. So you did not see him in and around Herington, Kansas, in April of 1995?

A. Yes, I did not see him.

MR. HARTZLER: Nothing further.

Marife Nichols - Redirect

THE COURT: Mr. Jones?

RECROSS-EXAMINATION

BY MR. JONES:

Q. Mrs. Nichols, you said that the phone records might be better than your memory; is that correct?

A. Yes.

Q. Of course, that would be true only if the phone records were accurate, wouldn't it?

A. Yes.

Q. Do you recall whether Mr. McVeigh helped Mr. Nichols pack up to move his belongings from Marion?

A. No.

Q. You indicated a moment ago that -- well, let me rephrase that.

Are you a citizen of the United States or a citizen of

the Philippines?

A. Citizens of Philippines.

Q. So in order to come to the United States, your passport would be issued by the Republic of the Philippines?

A. Yes.

MR. JONES: If I may hand a document to the witness, your Honor, and ask if she can identify it.

THE COURT: Yes.

BY MR. JONES:

Q. I've handed you a document consisting of several pages.

Marife Nichols - Recross

Would you look at it carefully, please.

Do you recognize what that is a copy of?

A. It's a copy of my passport.

Q. All right. Issued by the Republic of the Philippines?

A. Yes.

Q. All right.

MR. JONES: Your Honor -- well, I haven't marked it.

BY MR. JONES:

Q. If I may have it back.

Thank you.

This document that you just returned to me, I've marked as Defendant's Exhibit Number 1. Would you tell me, please, again what this is.

A. A copy of my passport.

Q. All right.

MR. JONES: Your Honor, I move the admission of Defendant's Exhibit Number 1.

MR. HARTZLER: No objection.

THE COURT: 1 is received. We'll have to renumber it later.

MR. JONES: Yes.

THE COURT: But we'll take it now as 1.

BY MR. JONES:

Q. One other question, Ms. Nichols. Did you and your husband go to McDonald's to get something for Josh on Easter Sunday?

Marife Nichols - Recross

A. No.

Q. You don't recall?

A. I don't think we went to McDonald's to get something for Josh on that Easter Sunday.

Q. Did you go to McDonald's for any reason on Easter Sunday?

A. The reason is I'm hungry and Nicole is hungry.

Q. All right. So when did you go to McDonald's?

A. Excuse me?

Q. When did you go to McDonald's on Sunday?

A. After the church mass.

Q. And the church mass was over at what time?

A. 12:00. I'm not sure.

Q. And was this the Catholic Church in Junction City?

A. Yes.

Q. And the McDonald's in Junction City?

A. Yes.

Q. I believe there are two McDonald's in Junction City. Do you remember which one you went to?

A. I don't. I don't even know the area of Junction City.

MR. JONES: All right. Thank you, very much.

Nothing

further, your Honor.

MR. HARTZLER: Nothing further.

THE COURT: All right. Is she to be excused?

MR. HARTZLER: We'd like to make her available for recall, if necessary.

THE COURT: All right.

MR. JONES: Yes, your Honor, please.

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

THE WITNESS: Thank you, your Honor.

THE COURT: And you'll be notified if you're to return.

THE WITNESS: Thank you.

THE COURT: Members of the jury, I think we'll take our morning break at this time for the usual 20-minute period with the customary cautions, of course, of continuing to avoid any discussion among yourselves and with all others on anything

about the case and avoid anything outside the evidence.

You're excused now, 20 minutes.

(Jury out at 10:15 a.m.)

THE COURT: 20-minute recess.

(Recess at 10:16 a.m.)

(Reconvened at 10:35 a.m.)

THE COURT: Be seated, please.

MR. HARTZLER: You don't mind my remaining at the podium?

THE COURT: No, that's fine.

(Jury in at 10:36 a.m.)

THE COURT: Next, please, Mr. Hartzler.

MR. HARTZLER: We call Ann Puett.

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

(Ann Puett 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: Name is Ann J. Puett, P-U-E-T-T.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed.

MR. HARTZLER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. HARTZLER:

Q. Good morning, Ms. Puett.

A. Good morning.

Q. How are you?

A. Fine, thank you.

Q. Will you tell the Court and the ladies and gentlemen of

Q. Will you tell the Court and the ladies and gentlemen of the

jury where you're employed.

A. I'm employed by Bell Taxi Transportation Company in Junction City, Kansas.

Q. Are you married?

A. Yes, I am.

Q. Does your husband live with you in Junction City?

A. No, he lives with me in Ogden.

Q. That gives you some indication how long you and I have spent together.

Ann Puett - Direct

Well, are you in the same business as he's in?

A. Yes, I am.

Q. Mrs. Puett, who owns Bell Taxi?

A. My husband and I.

Q. And what is your position in that company?

A. I'm vice president.

Q. How long have you owned or been employed by Bell Taxi?

A. Since 1972.

Q. 25 years?

A. Yes.

Q. Your position is?

A. Vice president.

Q. And the responsibilities are what?

A. I do the books and I do the payrolls and I check the drivers' trip sheets.

Q. And do you keep the records as well?

A. Yes, I do.

Q. About how many employees are there for Bell Taxi in Junction City?

A. About 20 employees.

Q. And approximately how many of those are taxi drivers?

A. Approximately 10.

Q. How many drivers do you have out on the streets of Junction

City every day on average?

A. On average, 10.

Ann Puett - Direct

Q. What is a trip sheet?

A. A trip sheet is a record of what the cab drivers -- each run they make each day, where they take the person to, where they pick them up at, how much they charge. And they keep it there with them the whole time on their shift.

Q. The information that's recorded on a trip sheet is what? Can you detail it for us?

A. That's on the trip sheet?

Q. Right.

A. Well, the driver puts his name, puts his date, puts his starting mileage, puts the number of passengers he takes from Point A to Point B and the amount that fare was. Then he

totals up his amount at the end of the day.

Q. Passenger names are not listed. Is that right?

A. Passengers' names are what?

Q. Passenger names are not listed?

A. No.

Q. You don't even need to have a passenger's name --

A. No.

Q. -- when you carry a fare?

But the location of the pickup and the location of the drop-off is listed on the trip sheet?

A. Yes, it is.

Q. And when does the driver fill out the trip sheet?

A. He fills out the trip sheet when he first starts as far as

Ann Puett - Direct

his name and the date and his car number. And then it's filled out as he goes from trip to trip to trip.

Q. Mrs. Puett, why do drivers keep a trip sheet?

A. Because it's our policy, for one thing. And you also have to keep one for the city of Junction City.

Q. What happens to drivers' trip sheets at the end of the day?

A. They're deposited in a safe.

Q. I take it that each driver keeps a -- one trip sheet for each day?

A. Uh-huh.

Q. Or each shift that he or she works. Is that right?

A. Yes, uh-huh.

Q. And so all the drivers at the end of their shifts would come back to the office and drop off their trip sheets; is that right?

A. Yes, they do.

Q. And they go into a safe?

A. In the dispatcher's office, yes.

Q. And that's not because these things are so valuable, I'm sure. Why is that?

A. Well, for one thing -- well, they're not so valuable. They have a little bit of money in them.

Q. The trip sheet accompanies the fares?

A. Uh-huh.

Q. How are they packaged when they're dropped off?

Ann Puett - Direct

A. When they're put in the safe they're put in a plastic Ziploc bag.

Q. Does each driver drop it off in the safe with the plastic Ziploc bag?

A. Yes.

Q. What happens to those trip sheets after the drivers drop them off and they're put in the safe?

A. They stay in the safe till the next morning, and either my husband or myself or the office manager goes up and brings them

down to our office.

Q. What do you do with the trip sheets in the office?

A. We check the trip sheets against the dispatcher's amount of

what they've run, and then we check it against their money that

they've turned in.

Q. And what happens to the trip sheet after you've done that checking?

A. That trip sheet is then -- well, the information is put in the computer, and then the trip sheet is put in a box.

Q. Just an ordinary cardboard box?

A. Uh-huh.

Q. Where is that kept?

A. In our -- our shelves.

Q. Okay. Ms. Puett, how are the trip sheets organized in the box?

A. Day by day.

Ann Puett - Direct

Q. So all the trip sheets on a particular day are put in the box in order?

A. Uh-huh.

Q. You have to answer out loud.

A. Yes.

Q. Okay. And how long do you keep trip sheets?

A. For a year.

Q. One year?

A. Uh-huh.

Q. Then you discard them?

A. Yes, we do.

Q. Why do you keep them for a year?

A. Because it's the law of Junction City.

Q. So it's the regular practice of Bell Taxi to make trip sheets and maintain them in the ordinary course of your business. Is that correct?

A. Yes.

Q. Were you present following the Oklahoma City bombing when the FBI visited your office and requested some trip sheets?

A. Yes, I was.

Q. And could you then -- could you now today identify trip sheets as being the records of Bell Taxi, if I showed one to you?

A. Yes, I could.

Q. I want to show you an original exhibit, Government's

Ann Puett - Direct



EXHIBIT 339.

MR. HARTZLER: And, your Honor, may we approach with the original?

THE COURT: Yes.

MR. HARTZLER: We're going to have to retrieve the original to use it on the ELMO then.

THE COURT: All right.

BY MR. HARTZLER:

Q. Can you identify that document?

A. Yes, I can.

Q. Is that one of the trip sheets that your business keeps in the ordinary course of its business?

A. Yes, it is.

MR. HARTZLER: I move the admission of Government's Exhibit 339.

MR. JONES: Your Honor, we object. It may be in the ordinary course of business, but it also contains hearsay information.

THE COURT: Overruled. 339 is received.

MR. HARTZLER: May we retrieve that then and show it on the ELMO?

THE COURT: Yes.

BY MR. HARTZLER:

Q. As soon as we get ready here -- okay. Mrs. Puett, do you see the document in front of you on the screen?

Ann Puett - Direct

A. Yes, I do.

Q. Let's first of all -- show the top. First of all, can you identify whose handwriting this is on this trip sheet?

A. Yes.

Q. Whose is that?

A. David Ferris's.

Q. And who is David Ferris?

A. He's a cab driver.

Q. He's been working with you for how long?

A. Oh, a little over 20 years.

Q. Start at the very top left-hand corner. And you see the handwritten date. Can you read that for us?

A. Yes.

Q. What's the date?

A. 4-17-95.

Q. And can you verify the accuracy of that date somehow?

A. Yes, I can.

Q. How?

A. Because the dispatcher stamps the sheet before it's ever given to the driver and it's stamped April 17, and he came to work at 6:23 a.m.

Q. Now, could you use -- on your left is a little pen. Do you see that black pen with a wire cord on it?

No -- oh. You got it there, I think.

That's it. Reach underneath the glass onto the screen

Ann Puett - Direct

and circle the area that you're pointing to that contains the date stamping.

A. I didn't do that very good.

Q. No, you just obliterated it all.

If you push the button on the pen twice, it will clear

it up. You got the idea of where you're pointing to.

There we go.

A. All right.

Q. I suspect it's a little difficult for you to read on the screen, or can you? Can you read from the screen from having seen this document before?

Well, let me ask you, the numbers look like they're upside down to me.

A. They are.

Q. But you've looked at this before and you've been able to figure out -- pick out what it says?

A. Yes.

Q. Reading across the first -- now, I'm reading from right to left: That is an A in front of a 6?

A. Yes.

Q. The A represents?

A. A.M.

Q. 6 represents the hour?

A. Yes.

Q. And then it gives the minutes.

Ann Puett - Direct

A. 29.

Q. And then there is something very faintly there. You've seen this document before and you know what's there.

A. It's AP.

Q. AP standing for April?

A. Uh-huh.

Q. And then beside that is the date?

A. 7, yes.

MR. HARTZLER: We're going to try to focus in on this, if we can, but I'm not confident we're going to be able to tell.

Bring it lower -- lower it -- you're focusing. I want to -- just bring it right down there, so it's the center of the page.

There we go. Whoa. Okay. Now focus it. Aha.

BY MR. HARTZLER:

Q. There you see -- AP is actually sideways, is it not?

A. Yes.

Q. And the 17 is upside down next to the AP?

A. Yes.

Q. That was a lot of work to confirm the date. But you're confident this is April 17; right?

A. Yes, sir.

Q. Let's back up, stay at the top of the document, and read across. After the date and -- handwritten date is some

Ann Puett - Direct

handwriting. Can you read that?

A. Dave Ferris.

Q. And his cab number is listed as Cab Number what?

A. 14.

Q. It looks like somebody else's handwriting in a different-colored pen, 98.50. What's that?

A. That's when it was checked by one of us because sometimes, as you can see, David's writing is not real legible; so we do that so we put it in the computer, we know exactly what it is.

Q. No offense to your company, but we're not too interested in

the actual amounts of money here; so I would like to move down to line 20 on this trip sheet. Okay. Do you see -- do you know what the first column next to the 20 reports?

A. "1," for passenger.

Q. That's a number "1" indicating there is only one passenger?

A. Yes, sir.

Q. And the next line indicates what?

A. He's added his total as he goes down.

Q. Sort of a running gross of fares he's gotten that day?

A. Uh-huh.

Q. Then there is a word written in the next column. What is that?

A. "Plaza."

Q. What does "plaza" mean?

A. Grandview Plaza. It's just like a little suburb of

Ann Puett - Direct

Junction City.

Q. So it's a location.

A. Uh-huh.

Q. And that Grandview Plaza location is what on this trip sheet?

A. It's where he picked up this person.

Q. Very well. The next column says what?

A. McDonald's South. It says "McD South," but McDonald's South.

Q. And McDonald's South is what on this trip sheet?

A. It's -- well, that's where he took the person to.

Q. That was the drop-off location?

A. Yes.

Q. And then finally, past the McDonald's in the far column,

365. That's what?

A. The amount of the fare.

Q. All right. Now that we've gotten the information, why don't you interpret it and tell us what this line 20 means?

A. It means he picked up one person on the plaza and took them

to McDonald's South and he collected \$3.65 from them.

Q. Very well. Now, I'd like to show you a map that we've previously introduced. This is Government's Exhibit 274. And you've seen this map before, haven't you?

A. Yes, I have.

Q. Can you use that little pen again and show us where the

Ann Puett - Direct

plaza is?

A. Okay. Maybe I'll do better this time.

Q. All right. That's an area just across the river from Junction City?

A. Yes.

Q. And it includes the Dreamland Motel, obviously.

A. Yes, it does.

Q. And then show us where McDonald's South is.

There is no legend on this map, so we don't know how far apart those are. And I don't mean to press your geography,

but could you estimate approximately how far McDonald's restaurant is from the plaza area?

A. Oh, probably 5 miles, 4 or 5 miles.

Q. And do you know where Elliott's Body Shop is?

A. Yes, I do.

Q. Where is that?

Well, you've circled the sign that says Elliott's Body Shop?

A. Okay.

Q. Where is the actual shop?

A. Right there -- there I go again.

Q. The sign is pointing to a red spot. You are outside the city limits, I think.

A. Oh, I know. Right here. Okay.

Q. Okay. That's where Elliott's Body Shop is?

Ann Puett - Direct

A. Yes.

Q. And you're familiar with these locations because of the years you've lived in the city and being in the taxi business. Is that right?

A. Yes.

Q. Now, I'd like to go back to that trip sheet and ask if there is any way that you can tell from looking at the trip sheet how that cab driver knew to make a pickup at the plaza area. Do you know?

A. He was given a call through the dispatcher

A. He was given a call through the dispatcher.  
Q. How do you know that?  
A. Because the cab driver goes out and cruises at like grocery stores, but you don't go cruising the plaza to try to pick up a fare. Calls like that are dispatched over the radio.  
Q. How does the dispatcher get information for a pickup?  
A. Over the telephone.  
Q. In April of 1995, what was the telephone for Bell Taxi in Junction City, Kansas?  
A. 238-6161.  
Q. And that's still the telephone number today?  
A. Yes, it is.  
Q. Was your company, Bell Taxi, listed in the Junction City Yellow Pages?  
A. Yes.  
Q. In April of 1995?

Ann Puett - Direct

A. Yes.  
Q. Do you occasionally work as a dispatcher?  
A. Yes, I do.  
Q. And did you occasionally work as a dispatcher in the year 1995?  
A. Yes.  
Q. Do you know from that experience if Bell Taxi back in 1995 had certain regular customers?  
A. Yes, we did.  
Q. And a regular customer is what?  
A. It's a person we pick up at the same time every day, or in the approximate same time.  
Q. Did you have a regular customer that you picked up every day at Westwood School during 1995, or the school year of 1995?  
A. Yes, we did.  
Q. And do you know that passenger's name?  
A. No, we don't.  
Q. Approximately what time of day was that passenger supposed to be picked up?  
A. Between 3:30 and 4.  
Q. And where was the regular passenger who was picked up at Westwood School dropped off?  
A. 313 West 16th.  
Q. Do you know what driver picked that passenger up on April 17, 1995?

Ann Puett - Direct

A. Yes, I do. Yes.  
Q. Who was that?  
A. Davey Ferris.  
Q. And how do you know that?  
A. Because it's listed on his trip sheet.

Q. Okay. Let's go back to the trip sheet.

You're going to have to punch your pen about four times to get rid of some of these marks.

There you go. Thank you.

We've got back on our screen -- we're back on Government's Exhibit 339. And you said that you know that David Ferris picked up his regular passenger at Westwood School

that was dropped off at 313 West 16th. How do you know that?

A. Because it's listed on his trip sheet on line 21.

Q. Okay. Could you use your pen and just underline your reference?

A. I don't do real good with this pen.

Q. Well, third time is a charm. Here we go. Look at this.

A. All the way across.

Q. That's good. We'll stick with what we got.

Now, could you please read across; and as you do, interpret that line, because I think some of us probably can't read that handwriting.

A. Okay. He had one passenger. The next figure is his running total, and it says "WW School."

Ann Puett - Direct

Q. What's that mean, WW School?

A. Westwood.

Q. Westwood School is WW, just an abbreviation that drivers would use?

A. Uh-huh.

Q. Go ahead.

A. 313 West 16th -- West 16th.

Q. I just didn't hear -- understand you. What did you say?

A. 313 West 16th.

Q. That's where the passenger was dropped off?

A. Passenger went.

Q. That's -- this is the regular passenger that was picked up sometime between approximately 3:30 and 4?

A. Yes.

Q. And I take it that's because Westwood School let out about that time?

A. Uh-huh.

Q. Tell me a little bit about David Ferris.

A. Davey Ferris is a very quiet, alone person. He's a very nervous person, and he's -- just -- he's just kind of a loner, really.

Q. Does he have some difficulty communicating?

A. Yes, he does. He has something -- a speech defect. And when you do -- when he does talk to you, he talks very, very low and he just mumbles, so you have a hard time of ever

Ann Puett - Direct

interpreting what he says.

Q. And does he have a favorite subject or topic?

A. John Wayne.

Q. John Wayne. Okay.

MR. HARTZLER: I have nothing further. Thank you.

THE COURT: Mr. Jones?

MR. JONES: Your Honor, may I have just one second, please?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. JONES:

Q. In April of 1995, how many taxis did Bell Taxi service have in full-time operation?

A. In full-time operation, we probably had -- probably eight.

Q. By full-time, I mean that's all they did was work as a taxi service.

A. Well, as full-time, I would interpret meaning a person that

worked a whole shift, because we do have some GIs that we call part-time drivers because they only work like a half a shift.

Q. Sure. Well, then, let me get on the same page with you on the definition. So you had eight taxis that worked a full shift. And what is a full shift?

A. From 6 to 6 or 4 to 4, 12-hour shift.

Q. All right. So they didn't all necessarily work at the same time, but it was a 12-hour shift?

Ann Puett - Cross

A. Well, we have what you call day drivers and we have what you call night drivers. Sometimes we might have five day drivers and five night drivers, sometimes we might have four day drivers and six day drivers. It just depends.

Q. But my point is -- and I think we're together on it -- is that the shifts didn't all start at 6 and end at 6. Two might start at 6 and work 12 hours and two more might start at 8 and one at 9 and so forth?

A. Not really, but some were like that, you know.

Q. Then you said you had some part-time drivers? These are folks out at Fort Riley?

A. Yes.

Q. And when would they usually work?

A. They would come in like at 6 in the evening and work maybe till 11 or 12 at night.

Q. All right. So during the normal weekday in the afternoon, how many taxis ordinarily would Bell have on the road?

A. Well, ordinarily, we would probably have around 10. I can't say specifically because I don't really know, but this is an average.

Q. All right. So in April of 1995, during a weekday in the afternoon, you might have 8 or 9 or 10 or 11 taxis available?

A. Yes.

Q. Now, you had a number of drivers that worked regularly; that is, worked the 12-hour shifts in April of 1995. Is that

THAT IS, WORKED THE 12-HOUR SHIFTS IN APRIL OF 1995. IS THAT

Ann Puett - Cross

correct?

A. Yes.

Q. And besides Mr. Ferris, do you remember the others?

A. Well, we had Don Lape, Francis Shin, David Peacock, Chester

Menn, Ernest Patrick. That's --

Q. Now, is Mr. Ferris still employed with Bell Taxi?

A. Yes, he is.

Q. And still working his shift?

A. Yes.

Q. And still lives in Junction City?

A. Yes.

Q. Same place he lived in April of '95?

A. I think so.

Q. All right. Now, do you have a Betty Kell that's on your employment?

A. She works for the Roadrunner.

Q. All right. In April of 1995, did she work for Bell Taxi?

A. Yes.

Q. And she was a dispatcher?

A. No, she's a telephone operator.

Q. All right. So as a telephone operator, what would she do?

A. She answers the telephones and gives the messages, the list

of the calls to the dispatcher.

Q. And then the dispatcher arranges for the taxis to go wherever the person that called in wanted them to go?

Ann Puett - Cross

A. Yes.

Q. So in your company, the telephone operator and dispatcher are two different positions, at least during the day?

A. Yes.

Q. Now, does Ms. Kell still work for Bell Taxi?

A. She works for the Roadrunner.

Q. I'm not familiar with Roadrunner, but it doesn't sound like Bell Taxi.

A. Okay. We have a shuttle service, also. She is employed by the shuttle service, but she does take calls for Bell Taxi, also, yes.

Q. Is the Roadrunner the shuttle service?

A. It's just -- yes, it's a sister company.

Q. Owned by you and your husband?

A. Yes.

Q. And she's still there working for the Roadrunner and still lives in Junction City?

A. Yes.

O. Now, was she the person that actually handled the



telephone

call to pick up this party at the plaza and take them to McDonald's on the 19th?

A. I don't know about the 19th.

Q. Well, when I say -- I'm sorry. I've misconfused (sic) you there, misconfused myself.

On the 7th?

Ann Puett - Cross

A. I can't actually say she was because sometimes if she was busy with doing something else, the dispatcher would also answer the phone.

Q. All right. In any event, you didn't answer the phone for the call.

A. No, I did not.

Q. Nor did you dispatch the taxi.

A. No.

Q. Nor did you drive the taxi.

A. No.

Q. But the people that did are still in the employment of your company?

A. Yes.

Q. All right. Well, so what you're testifying then today is basically from records that other people that still work for you create?

A. Yes.

Q. All right. Well, let's go first to the map of Junction City that Mr. Hartzler showed you.

Do you have that in front of you? That's Government's Exhibit 274.

A. Yes, I do.

Q. Now, first of all, would you take your pen, please, and show me where Bell Taxi is?

A. Well, the bus depot sets (sic) on the corner of 8th and --

Ann Puett - Cross

8th and Jefferson -- 9th and Jefferson. Firestone sets on the corner of 8th and Jefferson. And the way -- we set -- well, this is not going to be very good, but we set approximately right -- well, shoot, see, I did that again.

Let me just tell you. We set two blocks, on the corner of 10th and Washington, from the Firestone.

Q. All right. West, or east?

A. East.

Q. All right. So you're somewhere right here?

A. Uh-huh.

Q. All right. And then you identified something called the Westwood School.

A. Okay. The Westwood School -- I can't see what the roads are, but it's probably at the end of maybe where the sign is

where it says J & K Bus Depot, because it's out towards west -  
-  
it's 14th and Westwood Boulevard, so -- but I can't read --  
Q. Is it over this way?  
A. Uh-huh.  
Q. All right. About where I'm pointing?  
A. Well, probably not. Probably more to the north.  
Q. Up this way?  
A. Uh-huh. Yes.  
Q. That is about right?  
A. Well, it's -- I don't know because I don't know any of  
these streets.

Ann Puett - Cross

Q. Sure.  
A. You know.  
Q. Now, this address -- 313 West 16th, is it?  
A. Yes.  
Q. Where is that?  
A. Well, that's 300 block of West 16th, which is 300 block --  
it's the third block from the main street of Junction City, so  
it's down towards the north probably a little bit this side of  
going into Fort Riley.  
Q. All right. So it's up here somewhere?  
A. Back towards this way some, toward the south more.  
Q. This way?  
A. Uh-huh.  
Q. All right. Now, you circled this area right here as the  
plaza.  
A. Yes.  
Q. What is the plaza?  
A. It's little town, Grandview Plaza, that's just right  
outside of Junction City.  
Q. Now, is it a separate community, separate city?  
A. Well, I know they have their own court and they have their  
own policemen, but service -- it's not a city. I don't know  
about a township or anything. I don't really know.  
Q. Now, is the plaza this area here that's in pink?  
A. Yes, and where the Dreamland is, also.

Ann Puett - Cross

Q. So all of this is Grandview Plaza?  
A. Yes.  
Q. Now, if you got a call to go to Grandview Plaza, where  
would you know where to go?  
A. Because the dispatcher would tell you exactly what the  
address is. A lot of our cab drivers do not write down the  
complete address.  
Q. Okay. And the complete address isn't here; so we don't  
know where in this several-block area this cab driver went to  
pick up this fare.  
A. Yes.

Q. And as I understand it, what you're telling me is that the record that you produced here, it could have been anywhere in this area. Is that correct?

A. Yes.

Q. Now, wherever the cab driver picked the individual up, he then took the fare to McDonald's South.

A. Yes.

Q. Now, is the plaza, Grandview Plaza, a fairly common destination to pick people up from?

A. No, it's not.

Q. Is it a fairly common destination to take people to?

A. Well, not really. They have several motels. You do a business from the motels; not too many residents, but some.

Q. Are there any business establishments or commercial

Ann Puett - Cross

establishments other than the motels in Grandview Plaza?

A. There is a couple gas stations and a drugstore.

Q. What's the population of Grandview Plaza?

A. I have no idea.

Q. Couldn't be more than 2- or 300, could it?

A. I doubt very seriously.

Q. All right. Now, let me ask you a little bit about this regular fare. As I understand it, this individual -- and incidentally, it's a teacher's aide, isn't it?

A. I don't really know.

Q. Okay. But you know that the individual wants to be picked up every day between 3:30 and 4.

A. Yes.

Q. Now, does the same driver pick her up every day?

A. No.

Q. How do you know which driver will go?

A. Because it depends upon who is the closest to the call.

Q. All right. So do you have kind of a prearranged time that you get on the radio or you get the dispatcher on the radio and

say, "We're supposed to pick up fare X at the Westwood School. Who is closest?"

A. No, the dispatchers know who is closest.

Q. All right. So he or she has got it in his or her head where your various units are?

A. Yes.

Ann Puett - Cross

Q. Now, do you have a fixed pattern as to when the dispatcher tells whoever is closest to Westwood School to pick up this fare?

A. Fixed pattern as to what?

Q. As to the time.

A. Well, he knows what -- he'll send the cab when he can -- as

close to the time that they wish it as he can.

Q. So he tries to send the taxi based upon the availability

Q. So he tries to send the taxi based upon the availability and where the taxis are.

A. Yes.

Q. To get there somewhere between 3:30 and 4?

A. Yes.

Q. Monday through Friday?

A. Yes.

Q. So he could actually on some occasions do it a few minutes before 3:30 if a taxi is close by?

A. He could.

Q. All right. Now, with respect to the particular exhibit that's Mr. Ferris' sheet, which is right here: Do you see that?

A. Yes.

Q. Now, as I understand it, MD means McDonald's?

A. Yes.

Q. Now, that's a fairly common destination, one of the McDonald's restaurants, isn't it?

Ann Puett - Cross

A. Yes.

Q. Because, I mean, just here on his sheet, there are three trips to McDonald's, aren't there? Do you see there No. 2?

Is

that McDonald's?

A. It says, "Main post to Custer Hill."

Q. So what does that say there now?

A. "Main post to Custer Hill."

Q. Main post. So that's an M and a P?

A. Yes.

Q. All right. Well, No. 12: What is that?

A. That's "Main post to 202 East Vine."

Q. And then No. 19?

A. That's "Main post to Custer Hill."

Q. All right. And now we're interested in No. 20.

A. Yes.

Q. What is Custer Hill?

A. That's Fort Riley.

Q. All right. Now, here, on the 2 column of No. 20, that's McDonald's, and that other figure is south?

A. It's an S, yes.

Q. And that's to distinguish it from what, McDonald's North?

A. No. We have a McDonald's on West 6th.

Q. West 6th. How far away is that?

A. How far away is the McDonald's on West 6th?

Q. Right.

Ann Puett - Cross

A. Well, probably 14 blocks. I'm not real good with -- probably between 10, 14.

Q. And if it's a call or destination to the McDonald's on West

6th, how is that identified in the sheets?

A. They just usually write McDonald's. No S or anything.

Q. If you see MD or something like that without an S, it means

the one on 6th Street?

A. Yes.

Q. Now, you're very familiar with Mr. Ferris' writing, aren't you?

A. Yes.

Q. Do you see that on that day around 3:00, he picked up a fare at the Total station?

A. He picked up a fare at the Total station?

Q. Yes. I'm just asking you if the sheet reflects that.

A. Well, I'd almost say it would be line 14, but then I'm not real sure. It looks like a TOL, but -- no, no, no, that's not it. Because I see what that says now.

No, I sure don't.

Q. Now, what do you have here, if anything, that would show the time that the call came in to pick up the passenger at Grandview Plaza?

A. Well, there is not in here.

Q. So the time that's here reflected is what time?

A. There is not a time.

Ann Puett - Cross

Q. All right. On line 20, that's the call we're talking about. Is that correct?

A. Yes.

Q. So there is a column there that says "Time Out" and "Time In."

A. I can't see the top of it, but if you're talking about where David writes his figures, that's -- he's just running a running total. We don't require cab drivers to keep a time in and time out.

Q. All right. That's a running total of what?

A. Of the money that he has run.

Q. Looking at this time sheet or rather this fare sheet, there

is no way looking at this document that you have produced that we know when the call came to dispatch the cab to the Grandview

Plaza. Is that correct?

A. That's right.

Q. Nor does it tell us what time the fare was picked up?

A. That's right.

Q. Nor does it tell us what time the fare was delivered to McDonald's?

A. Yes.

Q. Is that correct?

A. Yes, sir.

Q. Now, do you have records at your company that would tell us those times?

Ann Puett - Cross

A. No.

Q. So not even the dispatch sheet?

A. We don't keep those. We don't have to keep them, so we throw them away.

MR. JONES: Thank you. I don't have anything further.

THE COURT: Mr. Hartzler, any other questions?

MR. HARTZLER: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. HARTZLER:

Q. I'm going to show you the map again, 274.

No, you're doing fine. Thank you.

A. As long as I don't have to draw on it.

Q. Now, let me direct your attention again over to that area you referred to as the plaza. We'll move the map over. A little bit further so we can see the Dreamland Motel.

There we go.

Mrs. Puett, are you familiar with a place called the Plaza Stop?

A. Yes, I am.

Q. Where is that?

A. Well, it's probably going to be right -- whoops -- right about there.

Q. So it's on the main highway?

A. Yes, it is. It's --

Q. Go ahead.

Ann Puett - Redirect

A. It's right there as you -- it's right on the main highway, yeah, before you get down to the motels.

Q. Is it walking distance from the Dreamland?

A. Yes, it is.

Q. And what is located at the Plaza Stop?

A. That's a service station and like a little minimart or mall

like, you know, get groceries and things like that.

Q. Is that where the Total station is located?

A. To be truthful with you, I don't know what it's called now,

what kind of gas station it is. It changes a lot.

Q. Is there a pay phone in that area?

A. Yes, there is.

Q. I'd like to show you what's previously been admitted into evidence as Government's Exhibit 555. You have to click your pen to get rid of the little green line.

Okay. I want to direct your attention to this middle

line. You see where my finger is pointing?

A. Yes.

Q. And you can read across. The time is 3:29. Is that right?

A. Yes, sir.

Q. Indicates the Plaza Stop pay phone in Junction City with a

Q. Indicates the Plaza Stop pay phone in Junction City with a telephone number there. Correct?

A. Yes, sir.

Q. Now, look at the final line underneath the column that says

"Call To" and read that for us.

Ann Puett - Redirect

A. Bell Taxi Transportation, Incorporated, (913)238-6161, Junction City, Kansas.

Q. And that's your telephone number?

A. Yes, it is.

Q. And the date of this listing -- the date for this listing is April 17, 1995. Is that right?

A. Yes, sir.

Q. You have checked your other trip tickets for April 17, and I believe you found this was the only trip from the plaza to McDonald's South. Is that right?

A. Yes, sir.

Q. When I say this is the only one, I'm referring to David Ferris' trip sheet. Is that right?

A. Yes, sir.

MR. HARTZLER: Thank you. Nothing further.

RE-CROSS-EXAMINATION

BY MR. JONES:

Q. Is the address 829 Roberts Street in Grandview Plaza?

A. Yes, it is.

Q. Do you have a fare that is sometimes picked up there that works at McDonald's?

A. I don't really know.

Q. This would be a black male. Does that help you any?

A. No, because I don't dispatch a lot upstairs now.

Q. This exhibit that Mr. Hartzler showed you that's already

Ann Puett - Recross

been into evidence -- as I understand it, you don't have any records at your company that we can use to compare against that

to see if that phone call is accurate.

A. No.

MR. JONES: Nothing further. Thank you.

MR. HARTZLER: Nothing further. Thank you.

THE COURT: May she be excused now?

MR. HARTZLER: Yes.

THE COURT: Agreed, Mr. Jones?

MR. JONES: Yes, sir.

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

Next, please.

MR. HARTZLER: Government calls David D'Albini.

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

(David D'Albini affirmed.)

THE COURTROOM DEPUTY: Would you have a seat,

please.

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

THE WITNESS: David Frederick D'Albini, D apostrophe A-L-B-I-N-I.

THE COURTROOM DEPUTY: Thank you.

MR. HARTZLER: May I proceed?

THE COURT: Yes.

MR. HARTZLER: Thank you, your Honor.

David D'Albini - Direct  
DIRECT EXAMINATION

BY MR. HARTZLER:

Q. Mr. D'Albini, how are you this morning?

A. Fine.

Q. Where do you live now?

A. I live in Big Fork, Montana.

Q. Who do you live with?

A. My wife.

Q. And how long have you been living in Big Fork, Montana?

A. About a year and a half.

Q. What are you doing up there?

A. I own a restaurant.

Q. What's the name of your restaurant?

A. The Terrace Supper Club.

Q. Before you and your wife moved to Big Fork, Montana, where did you live?

A. I lived in Junction City, Kansas.

Q. Did you live in Junction City, Kansas, in April of 1995?

A. Yes, I did.

Q. Were you employed in that area?

A. Yes, I was.

Q. What was your job?

A. I was a general manager of a McDonald's.

Q. How long had you been the general manager of that McDonald's?

David D'Albini - Direct

A. I started there July, '94, and was there until November of '95.

Q. When you left to run the restaurant in Montana?

A. Right.

Q. Is there more than one, or was there then more than one McDonald's restaurants?

A. Yes. There is two McDonald's in Junction City. One is in the center of town, 6th Street, and the other one is on the south side of town, which was the one I was running. We called it I-70 -- the I-70 McDonald's.

Q. Was it also referred to as the McDonald's South?

A. Yeah.



Q. And are those restaurants -- or were they owned by your father before he died?

A. Yes, they were.

Q. So this was a family business?

A. Right.

Q. Franchise ownership and operate these McDonald's restaurants?

A. Right.

Q. The one that you were the general manager of was the one that was on the south side of Junction City?

A. Right.

Q. Just so everyone can get acquainted with the location we're

talking about, I'm going to show you a photograph and ask if

David D'Albini - Direct

you can identify it.

MR. HARTZLER: Do you have a folder up there?

THE COURTROOM DEPUTY: No.

MR. HARTZLER: We'll get it to you.

BY MR. HARTZLER:

Q. Pull out of there, if you would, Government's Exhibit 342. Do you see that?

A. Yeah.

Q. Can you identify that?

A. Yeah. That's the I-70 McDonald's.

MR. HARTZLER: Move the admission of Government's Exhibit 342.

MR. JONES: No objection, your Honor.

THE COURT: 342 received.

MR. HARTZLER: May we publish?

THE COURT: Yes.

BY MR. HARTZLER:

Q. Okay. We're seeing a lot of sky here; but in addition, this is a photograph of the McDonald's restaurant, and it -- the green sign that I'm pointing to says what? If you can't read it, tell us. Do you know what that says?

A. "Junction City City Limits."

Q. How far off of I-70 is this restaurant?

A. It sits right -- it's just maybe a block.

Q. During the entire time that you worked there, were you the

David D'Albini - Direct

restaurant manager?

A. Yes, I was.

Q. Did that restaurant have any kind of security system beyond door locks?

A. Yeah. We had a camera surveillance system.

Q. Can you -- I cut you off. Go ahead.

A. That covered different areas of the store.

Q. McDonald's different areas?

Q. Meaning different cameras?

A. Right.

Q. How many different surveillance cameras did have you inside the store?

A. We had seven.

Q. And can you tell us where those cameras were located or where they focused?

A. Yeah. One was focused into the grill area. Another one was -- we had two focused on the front counter, one pointed into the -- one at the front counter, and one is actually pointed into the drive-through area. We had one in the dining room area, to the back of the dining room, which we were blind to, unless we had that camera.

And then we had one camera into the office, one camera into the back storage room, and one camera going out to the exit door in the back.

Q. So if I understood correctly -- first of all, the exit door

on the back, is that a camera that shows a public exit?

David D'Albini - Direct

A. No, that's a private exit.

Q. Four of the cameras focused on areas that were accessible for employees?

A. Right.

Q. And three focused on areas accessible to employees and to the public?

A. Right.

Q. I'd like to show you another photograph. Pull out of your folder, if you would, Government's Exhibit 344. Should be a photograph.

A. Here it is.

Q. What is that?

A. That's the inside of the store.

Q. Okay. Before you say anything further --

MR. HARTZLER: I'd like to move the admission of Government's Exhibit 344.

THE COURT: Any objection?

MR. JONES: No, your Honor.

THE COURT: Received, 344. You may publish.

MR. HARTZLER: Thank you.

BY MR. HARTZLER:

Q. Okay. Tell us what we're looking at in this photograph, please.

A. Right there is --

Q. Well, the "right there" is not doing anything.

David D'Albini - Direct

A. I'm sorry.

Q. You've got a little pen there on your -- yeah, left-hand side. You can use that and point out what you're describing.

side. You can use that and point out what you're describing.

A. All right. All this area is the dining room, the back dining room area, actually, the side; and then it goes back this way.

Q. Just put a mark someplace where the main counter is that the public would come into and order food.

A. The main counter is right here.

Q. Okay. So it's -- most of it, I take it, is out of sight of this photograph?

A. Right.

Q. Now, I'll ask if we couldn't focus up on the ceiling area, and can you describe what is in the ceiling.

Start to the right of the photograph.

A. Okay. These are two of our surveillance cameras. There is one there and there is one there.

Q. Okay. The one that you've circled first, the one that's to the right of the photograph, that focuses on what area of the restaurant?

A. That goes into the front counter and drive-through.

Q. And the second one that's to the far left of the photo now as it's shown on the screen focuses on what area of the restaurant?

A. That focuses to the back of the store in the public seating

David D'Albini - Direct

area.

Q. Were both of these cameras operational during April of 1995?

A. Yes, they were.

Q. Was there one -- were there cameras that were not operational during the period of time --

A. Yeah, we had one that wasn't working, and that was the other front counter camera.

Q. Okay. If you press your pen, you can -- just let me ask you about the second camera, the one that you pointed to on the left.

A. This one here?

Q. Yes, that one. That focuses on the area that we can also see in the bottom of the photograph. Is that right?

A. Yeah, farther back that way. Yes.

Q. Looks like there is an aisle there between some bench seats, some seating.

A. Right.

Q. Will the camera pick up that aisle?

A. Yes, it does.

Q. So a customer leaving the restaurant would be seen by that camera?

A. Right.

Q. Could you explain for us the surveillance process that

these cameras employ?

David D'Albini - Direct

A. Yeah. They were on a -- they'd each take a picture for about 35 seconds in that section, and it would go around in a circle and continue just on the same circle, same path the whole time. They were still -- they were actually still photos, and there was about two or three per second on the tape that would take that still photo; and then it would move to the next camera.

Q. So there is no film in these cameras. They just transmit an image someplace?

A. No. We had a recorder in the back office that was under lock and key that recorded all this.

Q. Okay. Let me just go back through it so everyone understands. There are a total of seven cameras. Each camera is only on, you said, for about 5 seconds?

A. Right.

Q. And then they rotate in a standard programmed series?

A. Right.

Q. Going from Camera 1 for 5 seconds, Camera 2 for 5 seconds, Camera 3?

A. Right.

Q. And there is not any film in each camera, so it's recorded elsewhere through a recorder?

A. Right.

Q. Is there some way to monitor the scenes that are those five-second scenes that are shown from each camera?

David D'Albini - Direct

A. Yeah. There is a monitor in the office area for that.

Q. That's back in the back?

A. Right.

Q. And give us an estimate of the number of times that you have watched that monitor. I was going to say "monitor that monitor." How many times have you watched that monitor?

A. Thousands, easy.

Q. Okay.

A. Yeah.

Q. Is there any information displayed on the monitor other than the scene that the camera picks up?

A. Yeah. It has the time and the date.

Q. And what kind of recording equipment were you using back in April of 1995?

A. It was a Sony recorder.

Q. Did the recorder pick up the time and the date that was displayed on the monitor?

A. Yeah. Everything you saw on the monitor was recorded on that tape.

Q. You mentioned in describing the surveillance system that there was some kind of stop-action or stop-motion filming?

A. Right.

Q. Could you explain that?

A. It doesn't take a free-flowing picture. It stops every -- on every second, I believe -- there is two shots taken of it,

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and then on the next second it would take another two shots of what that camera is looking at. That way, we can make a -- they made the tape to last 24 -- make it a 24-hour tape by not using up so much of the tape.

Q. I see. If you're continuously running a tape like 6-millimeter Hollywood tape, you would generate a huge amount of footage?

A. Right.

Q. So you take those flash half-second images?

A. Right.

Q. And they're recorded?

A. Right.

Q. And on those half-second images or thereabouts, the time and the date is recorded as well?

A. Right.

Q. Can you verify the accuracy of the time and the date on those recordings?

A. Yes, I can.

Q. How?

A. I usually use that for a time on the -- just my regular timepiece in the office. That was usually what I went by for time -- time of day, and I was the one who set those times, when they were needed during Daylight Savings Times.

Q. Did you maintain the recordings at all?

A. Yeah. We had a -- 31 tapes and one -- one for each day of

David D'Albini - Direct

the month. And what we would do is in the morning, the morning manager would come in, switch the tape according to the date that was on the tape itself to the date that it actually was, and --

Q. So using an example of the 17th . . .

A. Okay. The 17th. The manager would come in, replace the 16th tape and put the 17th tape in on the 17th day.

Q. And how would the manager know what the 17th tape was?

A. All the tapes were numbered.

Q. How were they numbered?

A. Just 1 through 31. We had little adhesive stickers on them.

Q. Okay. And then what would happen at the end of the day or at the end of the use of that 17th tape, tape marked 17?

A. It was put back in the cabinet and wouldn't be used again until the next month

UNTIL THE NEXT MONTH.

Q. Do you recall when the bombing in Oklahoma City occurred?

A. Yeah.

Q. And did FBI agents contact you after that bombing?

A. Yes, they did.

Q. And as a result of that contact, did your store give up some of these surveillance tapes to the FBI?

A. Yes, we did.

Q. Do you know which tapes you gave up?

A. We gave up about a week's worth of tapes from about, I

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believe, the 14th or 15th -- through the 21st or something. I'm not sure just what the dates were.

Q. How soon after the bombing were you contacted?

A. It was within that week, right after they discovered the Ryder truck was from the -- from the Junction City area. Then they started making their investigation in that area.

Q. So the tapes that you provided still showed the images from mid-April?

A. Right. It was still on that same month.

Q. They hadn't been recorded over yet.

A. Right.

Q. Let me show you what's in front of you, I believe, as Government's Exhibit 340. That should be one of the little cassettes. Do you see that?

A. Right.

Q. Can you identify that?

A. Yeah. This is one of the tapes we used in our store.

Q. Which tape is it?

A. It's the 17th.

Q. How do you know that?

A. It's marked on there the date where we put all the dates on all the tapes.

Q. And is there some other reason you know that?

A. And I viewed it last night and initialed it myself.

Q. And your initials are on there?

David D'Albini - Direct

A. Yes.

MR. HARTZLER: I move the admission of Government's Exhibit 340.

MR. JONES: No objection.

THE COURT: 340 is received.

BY MR. HARTZLER:

Q. So you watched that little tape, which is the one that was removed from your recording surveillance system, in its entirety?

A. Right.

Q. And is there some reason that it is difficult to watch?

A. It doesn't move at real time. It moves a lot faster

than -- because of the stop motion, playing on a regular recorder now, you'll see about one full hour in 3 minutes' time.

Q. Does that tape show you?

A. Yes, it does.

Q. You worked that day?

A. Yes, I did.

Q. Worked a full day or thereabouts?

A. Yeah.

Q. And there is another exhibit in front of you, which I believe is marked 341. Do you know what that is?

A. Yeah. That's a section of the tape from about 12:00 to 6:00, which also shows me. It's a copy of the original tape.

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Q. And you verified that it contains the same images as the smaller tape?

A. Right.

Q. Why is it easier to watch?

A. It's actually slowed down a little bit from what you're seeing on the original tape. They were able to slow it down to

where you can actually not see the people jumping back and forth as it would appear.

Q. So the stop-motion images stay on the screen a little bit longer?

A. A little bit longer, yeah.

Q. In fact, would it be fair to say that all of the stop-action images for a particular 5-second segment are displayed for the full 5 seconds?

A. Yes. Right.

MR. HARTZLER: I move the admission of Government's Exhibit 341.

MR. JONES: No objection.

THE COURT: 341 received.

MR. HARTZLER: And we would like to publish a portion of this, your Honor.

THE COURT: All right.

BY MR. HARTZLER:

Q. Mr. D'Albini, I believe we have this tape cued up to -- 341, about a half, I hope, anyway. We're at 3:40:58, and we've

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paused it at 3:40:58. Tell us which camera we are looking for.

A. That's the office -- the one going to the office.

Q. And what does this image reflect?

A. It's showing the -- myself there, the office area. You can see the monitor up on top where -- you're actually seeing the

same picture that's shown right now.

Q. Before we get to the monitor, you look like you're on the telephone.

A. Right.

Q. Wearing a jacket of some sort?

A. Right.

Q. Okay. You see the little pen there to your side?

A. Uh-huh.

Q. Pick that up, reach underneath onto the screen and just point someplace where the monitor is.

A. Monitor is right there.

Q. So that monitor would reflect the same image that we are seeing, though you can't see it very well. Is that fair?

A. Right.

Q. We're going to advance the tape then, and this scene will be on for no more than 5 seconds till we shift to another camera?

A. Then we'll go to another camera.

Q. At a different location?

A. Right.

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Q. Okay. Let's pause here. We're at 3:41:03. Is that -- what do we see in this image?

A. That's the grill area.

Q. So it's yet a different camera, focussing on a different area, the employee area?

A. Right.

Q. Go ahead. Okay. Now we're -- who is that guy?

A. That's one of our managers' sons.

Q. Okay. What are we looking at here?

A. That's the back door area, where we exit the store.

Q. Again, the area accessible to employees only, I assume?

A. Right.

Q. And this would be the third camera?

A. Right.

Q. Let's advance again.

Okay. We're at 3:41:16. What are we looking at here?

A. That's the dining room area on the side to the back of the store.

Q. Okay. Public area?

A. Right.

Q. Let's advance again. Now, the screen is black.

A. That was the camera that wasn't working and would have shown the front counter area.

Q. Okay. So we'll see 5 seconds of black?

A. Right.

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Q. Click off your little arrow there.

Okay. What are we seeing now?

That's the front counter area, and it's shooting into the



A. That's the front counter area, and it's shooting into the drive-through, also.

Q. And do you know why -- why is this particular image so blurry?

A. It's just on the stop. It's hard to get them to stop precisely where the video heads are.

Q. Okay. Let's advance again. What is this area?

A. That's the back sink area and storage area.

Q. Again, a nonpublic area?

A. Right.

Q. That would be -- are we up to seven cameras yet? Have we seen all seven?

A. I believe so.

Q. We'll see. We'll be able to tell. We should be back to No. 1, if we --

A. Right.

Q. There we are, in the office. And it appears that you're no longer on the phone but standing up.

A. Right.

Q. And the monitor at the top of the screen reflects the same image we're seeing in a much smaller proportion.

A. Right.

Q. And so we saw images from six cameras and one black screen

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for the camera that was inoperable. Is that right?

A. Right.

Q. And this pattern just continues throughout, 24 hours a day?

A. Goes for 24 hours.

Q. Shifting from camera to camera every 5 seconds?

A. Yes.

Q. I'd like to fast-forward now to 3:49.

I bet you wish your employees worked this fast.

A. It would have helped.

Q. Okay. We're at 3:48. Now, you've watched this -- this film before; right?

A. Yes, I have.

Q. Why don't you tell us what we can anticipate seeing at about 3:49?

A. You're going to see the front counter area with a customer preparing to come up to the front counter to be served.

Q. Male or female?

A. Male.

Q. How soon will we see it?

A. You'll have a black screen, and it should be the next one.

Q. After the black screen?

A. Right.

Q. Okay.

A. Right there.

Q. Let it go.

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A. You see him on the side of the picture there, and that's where it goes off.

Q. Now, if that customer remained at the counter for more than 30 seconds, we would pick him up the next time the series swung

around to that camera. Is that right?

A. Right. He would have still been in the camera shot.

Q. Are there transactions at that McDonald's restaurant that can be completed within 30 seconds?

A. Yeah.

Q. What kind of things?

A. Usually, cookies or pies.

Q. Why is that?

A. They're readily available most of the time during this time

of the day. They didn't keep much food in the bin, so otherwise they would have had to wait.

Q. And obviously, we're foreshadowing here, but you know that the customer is not there in the next image of that area?

A. Right.

Q. Let's watch it ourselves.

It will be after the next screen. Right? The black screen?

A. You'll have the black screen next, and then it will be the front counter again.

Q. Okay. And it shows that the customer is no longer at the counter?

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A. Right. There is no one there.

Q. I'd like to fast-forward, then, to -- well, let's try 3:51:07. Coming up. Okay. Now, this is the area that shows the public dining area. Correct?

A. Right.

Q. So if a customer in effect finished and was leaving the restaurant, you'll see them on this --

A. They're going to come towards the camera.

Q. Well, let's watch this customer and see -- is that the same customer we saw moments ago?

A. No.

Q. That was a woman, wasn't it?

A. Right.

Q. Let's advance, then, to 3:57 exactly.

So the customer area is shown before the black screen

and the counter area is shown after. Is that correct?

A. Yeah.

Q. We're at 56 1/2. Okay. Let's pause for a second. In a moment, if we advance a few more seconds, we're going to see the customer area. Is that correct?

A. Right.

Q. You've watched this tape before?  
A. Yes, I have.  
Q. Tell us what we're going to see.  
A. You're going to see the same customer that was at the

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counter start walking towards the camera.

Q. And what time is that customer out of sight?

A. It will be 5 seconds after the camera is gone, after we go

into that camera, which would be 3:57:06, I believe.

Q. Okay. Let's go ahead and run it through.

A. Yeah. It's going to be a little bit more than 56. There.

There you see him. He checks his watch and then he walks on, 3:57:12.

Q. Now, you've reviewed the entirety of this tape?

A. Yes, I have.

Q. And the entirety of the other tape?

A. Yes.

Q. Did you see that customer any time that day elsewhere?

A. Not except for this section here.

Q. Those two, the one at the counter and the one -- the departure?

A. Right.

Q. I also would like for you to look through your folder and pick out Government's Exhibit 340B, which is a group of photographs. Small B. Do you see those?

A. Yeah.

Q. Can you describe for us what those are?

A. That's the front counter area at the time the customer is coming up to the front counter for service.

Q. So it's just a single image of the images we saw on the

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tape a moment ago?

A. Right.

MR. HARTZLER: I move the admission of Government's Exhibit 340B.

MR. JONES: No objection.

THE COURT: 340B received.

MR. HARTZLER: May we publish?

THE COURT: Yes.

BY MR. HARTZLER:

Q. This is a little dark, but you see the image. This is the first image of the customer coming to the countertop. Is that right?

A. Yes, it is.

Q. The time is 3:40 -- what is that time?

A. 3:49:01.

Q. Let's just go through the series of photographs.

Go ahead.

Okay. And the customer we're talking about -- can

we  
focus in on the customer.

Mr. D'Albini, no offense to the photographer; these  
look darker than the tape. Are they, for some reason?

A. Yeah, they look a little bit darker.

Q. Okay. Go ahead.

Now, you see one of your counter persons approaching  
the counter; is that right?

David D'Albini - Direct

A. Right.

Q. Customer appears to have his wallet out?

A. Yes.

Q. Next? Is that the last image? That's the last one?

A. Yeah.

Q. Okay. Oh, because he goes out of sight --

A. That's --

Q. Switches to the next scene?

A. Yeah.

Q. Now look at Government's Exhibit 340C.

Again, group exhibit of photographs. Do you see  
that?

It should be a plastic packet with a group of  
photographs just similar to the size of the --

A. I've got A. I don't have C.

MR. HARTZLER: May I approach?

THE WITNESS: Hold it. Just second. It's over  
here.

I've got it.

BY MR. HARTZLER:

Q. Okay. You've got it?

A. Yeah.

Q. And those are single images of the images we saw on tape  
when the customer departs?

A. Yes.

MR. HARTZLER: Your Honor, I'd move the admission of  
Government's Exhibit 340C.

David D'Albini - Direct

THE COURT: Received. You may publish.

MR. HARTZLER: Thank you.

BY MR. HARTZLER:

Q. This reflects the customer coming from what area of the  
restaurant?

A. That's the back dining room area.

Q. Okay. Let's just continue through these. It shows single  
images of the same scenes that we saw on the videotape, or on  
the tape.

A. Right.

Q. You noted previously the customer checked his watch, and  
there we see an image of him checking his watch.

Can you see what he has in his hands?

A. Yeah. It's a nice box

A. Yeah. It's a pie box.

Q. Pie box?

A. Yeah.

Q. And the last image that you pick up is at 3:57:12.

A. Right.

Q. Where you see that customer -- the top of the customer's head?

A. Uh-huh.

Q. How close is he to the exit door?

A. A couple of feet.

Q. Do you know where Elliott's Body Shop is?

A. Yes, I do.

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Q. What's between the McDonald's South, where you were the general manager and these images were taken, and Elliott's Body Shop?

A. You have a hotel and a couple more restaurants and an apartment complex.

Q. What's the roadway between the two?

A. I can't remember the name of the road, but it goes straight down to Elliott's.

Q. About how far, though?

A. It's about a mile and a quarter, mile and a half.

Q. Walking distance?

A. Yeah.

Q. I'd like to show you -- pull out from your folder, if you would, Government's Exhibit 343. It should be a photograph.

A. I think I already had that one out.

Q. Single photograph?

A. Yeah.

Q. Do you see that?

A. Yeah.

Q. Please describe it for the Court.

A. That's the parking lot looking out towards the other side of the street that McDonald's is on.

MR. HARTZLER: I move the admission of Government's Exhibit 343.

MR. JONES: No objection.

David D'Albini - Direct

THE COURT: Received. You may publish.

BY MR. HARTZLER:

Q. Now, this is a photo taken from the front of the McDonald's; is that right?

A. That's actually taken from the side.

Q. Okay. Can you see the same Junction City sign that we pointed out in the other photograph? Is that in there, or not?

A. No, I believe it's blocked.

Q. So that would be, I guess, closer to the photographer? In

other words, you're a little bit past the McDonald's taking this photograph. Is that fair?

A. Yeah.

Q. And could you use your little pen and tell us where Elliott's Body Shop would be on this photograph?

A. You go straight down this road here, and it would be over on the other side of that hill about a mile and a quarter.

Q. Mile and a quarter total?

A. Total.

Q. From the McDonald's restaurant?

A. Yeah. Right.

MR. HARTZLER: Thank you.

May I have one moment?

THE COURT: Yes.

MR. HARTZLER: Nothing further. Thank you.

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

MR. JONES: Yes, I do, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. JONES:

Q. Are you sufficiently familiar with the film to tell me when the image first appears on the film of the person that you have described as the customer?

A. Yeah, I believe so.

Q. And what time is that?

A. That was 3:49, I believe.

Q. All right. So -- and that is when the customer first appears on the edge there where the three employees are talking?

A. Right.

Q. The cookie counter, as you called it?

A. Well, front counter, yeah.

Q. Front counter. All right.

And are you satisfied that your timing on the clock on the film is accurate?

A. Yes, I am.

Q. What would you say would be the most deviation? 5 seconds?

30 seconds? A minute? What?

A. At the most, maybe 1 minute to 2 minutes.

Q. So when it says 3:57, it could actually be 3:59?

A. It could have.

David D'Albini - Cross

Q. Or it could mean 3:55?

A. Yeah. Like I said, it could have.

Q. When was the last time before April 17 that you checked the timing mechanism on the camera and film with Standard Time?

A. I usually check it -- not mentally check it, but I look at -- up at it every day and use that for my time in the

office. There is also a computer there that was on the same time.

Q. Well, I understand that. But my question is how often do you check or adjust the timing on the camera?

A. About the only time I really adjust the time is during Daylight Savings Time and going back to Standard Time.

Q. Is this something that's powered by electricity?

A. It's powered by electricity and also has a battery backup.

Q. Well, when was the last time that you personally checked to know what the time actually was, as opposed to the time being recorded on the camera?

A. I couldn't really tell you. The last time I changed it was during the time change.

Q. From Daylight to Standard Time?

A. Right.

Q. Or to Daylight Savings Time.

Now, when you changed it, did you just advance it an hour, or did you call time and temperature and find out the precise time and adjust it?

David D'Albini - Cross

A. We changed it at the same time we did the computer clock, and -- well, not the same time. The manager changed all the computer clocks that night. She usually changed -- would call time and temperature just to make the correct time adjustment; and then when I went in there the next morning, then I would change the film clock.

Q. All right. So do you know that she did that, or are you relying upon what you think she did?

A. I'd rely on what she -- what I would expect her to do.

Q. All right. So you think if Daylight Savings Time changed in early April of 1995 that at that time she may have called time and temperature and gotten the precise time?

A. Right.

Q. But you don't know that she did that?

A. No, because I wasn't there.

Q. Well, let's assume for a moment that she did. Then it's your estimation that the time shown for whatever reason, maybe a power surge or some other anomaly, is within 2 minutes either way?

A. Yeah.

Q. So we've got a 4-minute window of possible time, 2 minutes before whatever time is shown, and 2 minutes after?

A. It could, but power outages didn't affect that camera.

Q. Well, I understand. But there must be some reason why you thought it would be plus or minus 2 minutes.

David D'Albini - Cross

A. There can always be, like anything else, increase or decrease in time

decrease in time.

Q. Okay. Now, I noticed that you said that Elliott's was 1 -

-

a quarter of a mile away?

A. About 1 1/2, 1 1/4, something like that.

Q. You're estimating?

A. Yeah.

Q. You also said it was over the hill?

A. Yeah. It goes over a little hill. It's not --

Q. And is that the hill that we see in the photograph? Let me

get it for you here.

Yes. Government's 343. Do you see that?

A. Uh-huh.

Q. Now, is this the hill you're talking about?

A. Well, it's over that, but the road itself runs kind of around that hill.

Q. All right. Then there seems to be some rise back here.

Do

you see that?

A. Right.

Q. Now, is Elliott's on the other side of that, or before we get there?

A. Let me see this one.

It's going to be before you get there, I believe.

What you're seeing there is actually I-70, and Elliott's goes -- kind of runs perpendicular to that and then kind of

David D'Albini - Cross

goes away from that.

Q. Well, actually Elliott's sits kind of up on a hill, doesn't

it?

A. Yeah, it does.

Q. So you have to walk up that hill to get there, if you're walking?

A. You've got to walk up and down, yeah.

Q. Now, is this a four-lane road here all the way to Elliott's, or just a two-lane?

A. Just a two-lane.

Q. So at some point -- well, let me ask you: Is that -- oh, I

see. That's two different roads?

A. Right.

Q. This road right here is the access road?

A. Yeah. That's your entrance ramp onto I-70.

Q. And this is the road that goes to Elliott's?

A. Yeah.

Q. Now, is there a sidewalk there?

A. No.

Q. You said there were a couple of motels somewhere along there?

A. You've got a motel right in front, the Comfort Inn. Then you've got a couple of restaurants and a -- the white buildings



right towards the back of the picture is an apartment complex.

Q. So to walk from the McDonald's to Elliott's, you have to

David D'Albini - Cross

walk past or you would walk past the Comfort Inn; right?

A. Right.

Q. And then walk past -- did you say a couple of other businesses?

A. Yeah. There is a couple of restaurants right there.

Q. And what are those?

A. One is a Country Kitchen and one is a Sirloin Stockade.

Q. And you can see the signs there, can't you?

A. Yes, you can.

Q. And then you walk past some apartments?

A. Yeah.

Q. Now, this road there: Where does that road ultimately lead to?

A. It leads to Highway 77.

Q. And Highway 77 leads to where?

A. Depends on which way you want to go.

Q. So for people that don't want to get on the interstate, they just go down this road till it connects to Highway 77?

A. Right. And you can also get on the interstate there, too.

Q. Right. Now, there is actually three interstate exits off I-70 into Junction City, aren't there?

A. Yeah.

Q. There is one up there by Grandview Plaza and the Dreamland?

A. Right.

Q. And then there is one where your McDonald's restaurant was?

David D'Albini - Cross

A. Right.

Q. And then the third one is where Elliott's is?

A. Right.

Q. All right. Now, I noticed that -- now, this is a picture that's been introduced, which is 342. Do you see that?

A. Uh-huh.

Q. Let me kind of get it here a little better.

Now, this off to the left here, right where I'm pointing --

A. Uh-huh.

Q. -- do you see it?

A. Yeah.

Q. That looks like an old Howard Johnson's. Is that what that is?

A. I believe that was part of the Liberty Inn.

Q. Is that now the Comfort Inn?

A. No, uh-uh. The Liberty Inn is right behind the

McDonald's.

Q. I see. Is it also on this road that leads to Elliott's?

A. No. It's on the road going into Junction City.

Q. Now, you have a flagpole, I notice.

A. Yeah.

Q. How many flagpoles do you have?

A. That's the only flagpole.

Q. And do you fly the flag every day?

MR. HARTZLER: Judge, I object to the relevance.

David D'Albini - Cross

MR. JONES: I'm coming to it.

THE COURT: All right.

BY MR. JONES:

Q. You fly the flag every day?

A. Most of the time. It depends on the weather in the morning

and if they just forgot to get it up.

Q. But you make a habit of trying to fly it?

A. We try to fly it every day.

Q. If it's raining, do you fly it?

A. No, we don't fly it during rain.

Q. Do you recognize this -- and I believe there is a Government's Exhibit number -- 348 -- 340A. Do you see this?

A. Yes.

Q. Is that the flag right there?

A. Yes, it is.

Q. So on the afternoon of April 17, 1995, you were not flying the flag on that flagpole?

A. No, we weren't.

Q. Was it rainy that afternoon?

A. I couldn't tell you.

Q. Now, the Government has furnished me -- and I think you have it, but I don't believe it's been marked and introduced in

evidence, so I want to ask you to look at it. There is a floor

plan, is there not, of the McDonald's? Maybe you do have it.

A. Yeah.

David D'Albini - Cross

Q. Do you see something that says Government's Exhibit 345?

A. Yes.

Q. What is that?

A. That's the floor plan of the -- that McDonald's.

MR. JONES: Your Honor, I move the admission of Government's Exhibit 345.

MR. HARTZLER: Judge, I have no objection. I think Mr. D'Albini will point out that there are some inaccuracies. The plan was done and then the restaurant was built a little bit differently, but I have no objection to using it for

demonstrative purposes.

THE COURT: 345 is received.

MR. JONES: Right, and I'm just using it for demonstrative purposes.

BY MR. JONES:

Q. Now, you have that pen with you there?

A. Yes, I do.

Q. And I recognize -- and I appreciate Mr. Hartzler's statement; but this is basically the layout as it existed in April, wasn't it?

A. Right.

Q. Would you take your pen, and then I want to print this once you get it on and show based upon the video -- would you retrace how the customer entered, where he went, and where he left?

David D'Albini - Cross

A. Yeah.

THE COURT: Put it on the monitor.

THE WITNESS: They don't have it on that monitor.

THE COURT: They do now.

THE WITNESS: Okay.

Let's see.

The customer would have entered through either one of two doors. I'm trying to see -- he could have either entered here, or he could have entered through this door here.

BY MR. JONES:

Q. All right.

A. But looking at a video, he came through this door here.

Q. Which door? Where you put the little --

A. Right.

Q. Okay. That's your best estimate based upon your familiarity?

A. Right.

Q. All right. Now, show me where the customer went, please.

A. First he would have gone to the front counter area here.

Q. All right.

A. And then into the back dining room seating area somewhere in this area.

Q. Uh-huh. And then what?

A. And then after that, he got up to leave; and that's where we see him on the videotape. And he disappears out of sight

David D'Albini - Cross

right here. So we don't know where he went after that.

Q. Is there a door there?

A. There is a door right here. He could have gone out this door or he could have come back across this way and gone out this door.

Q. All right.

MR. JONES: I move to print that, your Honor.

MR. JONES: I move to bring case, your honor.

THE COURT: All right.

MR. JONES: Is it okay, Kathi?

THE COURTROOM DEPUTY: Yes.

BY MR. JONES:

Q. Now, you were shown a series of photographs, and I don't believe mine -- that I have the numbers.

MR. JONES: Could I just borrow yours?

BY MR. JONES:

Q. Now, this is 340C, and we see the customer coming around, do we not?

A. Yes, we do.

Q. And he has his hand up maybe by his face. Do you see that?

A. Looks like it, yeah.

Q. All right. And then the next one in the sequence, he's advanced a little bit further and he still has his hand up. Right?

A. Right.

Q. And he's looking down towards where the camera is, isn't

David D'Albini - Cross

he?

A. Yeah.

Q. And then we see the customer here beginning to -- looks like make a turn.

A. Right.

Q. And he's still looking?

A. Yeah.

Q. And his hand is now down about maybe to his belt line. Do you see that?

A. Yeah.

Q. Now, in this picture, at 3:57 -- maybe looks like 01, he's made the turn and one arm is kind of slightly raised and out and the other one is by his side, isn't it?

A. Yeah.

Q. Now, in this one, the customer is in mid stride, isn't he?

A. Yes, he is.

Q. At 3:57:06 or 08, looks like?

A. Yeah, 08.

Q. But now the customer has looked down, hasn't he?

A. Yeah.

Q. And both hands are about in the same position by his side?

A. Yeah.

Q. He's walking, isn't he?

A. Yes, he is.

Q. You can tell he's walking because he's in mid stride?

David D'Albini - Cross

A. Right.

Q. But he's clearly looking at something, isn't he?

A. He looks like he's starting to look at something, yeah.

Q. Or looking at it now?

A. Yeah. It's hard to tell.  
Q. Now, here, the hand with the watch at 3:57:08 has come up --  
A. Right.  
Q. -- there, isn't it?  
A. Yes, it has.  
Q. And he's still looking down, isn't he?  
A. Yes, he is.  
Q. Incidentally, does this customer appear to be wearing footwear?  
A. Yes, he does.  
Q. Can you tell what kind of footwear it is?  
A. No, I can't.  
Q. All right. Does he have his shirttail out, or in?  
A. Appears to be out.  
Q. Now, the next shot is at 3:57:09 and the customer still has his arms up.  
A. Right.  
Q. Is that right?  
A. Yes.  
Q. And he's looking ahead?

David D'Albini - Cross

A. Yes, he is.  
Q. And at 3:57:09, the customer still has his arms up in front of him, doesn't he, about even with his belt line?  
A. Yes, he does.  
Q. And at 3:57:10, the arms appear to have parted and dropped slightly, do they not?  
A. Yes, they do.  
Q. And at 3:57:10, they've dropped further, have they not?  
A. Yes.  
Q. He's looking off to the side?  
A. Yes.  
Q. And at 3:57:11, the arms are still not by his side and they appear to have dropped even more slightly. Is that correct?  
A. Yes.  
Q. Now, you're familiar with what's known as military camouflage or military fatigues, are you not?  
A. Yes.  
Q. You've seen a lot of soldiers from Fort Riley in your restaurant?  
A. Yes, quite a few.  
Q. Does this customer have on military fatigues or camouflage?  
A. Doesn't appear so, no.  
Q. Now, are you able to make an identification, sir, that the person that's in that photograph is the same person that's sitting over here, Mr. McVeigh? And I'll be glad to have him

David D'Albini - Cross

stand up, if that would help you.

A. Taking a look at the pictures, I'd say yes.

Q. It's him, isn't it?

A. Yes.

Q. No doubt in your mind?

A. No.

Q. And so we know from your camera that possibly as late as 3:59 on April 17, he was in the McDonald's restaurant wearing those clothes and seen at that time, wasn't he?

A. Yes.

MR. JONES: Nothing further. Thank you.

THE COURT: Any other questions?

MR. HARTZLER: Could I ask one question from here?

Do  
you mind.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. HARTZLER:

Q. You saw on the tape that some of the cameras focus on scenes outside a little bit?

A. Yes.

Q. You sort of see outside?

A. Uh-huh.

Q. And could you detect the weather that day?

A. During the time that camera was, it looks like it was a pretty clear day.

David D'Albini - Redirect

MR. HARTZLER: Nothing further.

RE-CROSS-EXAMINATION

BY MR. JONES:

Q. Are you telling us that from this video and looking at it, you can tell what the weather is like outside, sir?

A. Yeah, a little bit. You can usually see sunshine.

Q. You think this picks up raindrops?

A. It would show the cement wet.

Q. Well, did it pick up raindrops?

A. No.

Q. Does it show the cement outside?

A. Yeah. You can see the cement from some of the windows.

Q. And this camera is not designed to record the weather, is it?

A. No, sir.

Q. It's designed to show what's going on inside your store?

A. Right.

Q. And the fact is, most of the people that were shown that were customers had coats on, didn't they?

A. Most of them.

Q. And you didn't have the flag up, did you?

A. No, but that could have been from this morning -- from the morning.

Q. I appreciate the contribution, but you hadn't raised it that afternoon, had you?

that afternoon, had you:

David D'Albini - Recross

A. No, usually -- if it rains in the morning, we don't put it up at all.

MR. JONES: If I may, your Honor, I forgot a question to ask earlier, if I may just . . .

BY MR. JONES:

Q. Did you have an employee working there in April of '95 that lived in Grandview Plaza, on Roberts Street?

A. I might have.

Q. Black male?

A. I had a lot of employees.

Q. You still have the records, or you think they still have the records of who worked there in April of '95?

A. Yeah, they're in storage.

Q. And who would be the custodian of those?

A. That would be my brother.

Q. And his name?

A. Dan.

Q. Dan?

A. Yeah.

Q. Is he there in Junction City?

A. No.

Q. Where is he?

A. He's in Hillsboro.

Q. Hillsboro, Kansas?

A. Yeah.

MR. JONES: Thank you.

MR. HARTZLER: Nothing further.

THE COURT: Are we excusing --

MR. HARTZLER: Yes, sir.

THE COURT: -- this witness?

MR. JONES: Yes, your Honor.

THE COURT: All right. You may step down and go back to Montana.

We'll take our noon recess at this time; and of course, as usual, members of the jury, you're excused now for our hour-and-a-half period. And as usual, of course, I must caution you about keeping open minds and avoiding discussion of the case and avoiding anything outside the evidence here that could influence you.

You're excused till 1:45.

(Jury out at 12:15 p.m.)

THE COURT: Recess, 1:45.

(Recess at 12:16 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
274	7806	7806			
298	7821	7821			
299	7812	7812			
299A	7819	78192			
339	7875	7875			
340	7915	7915			
340B	7924	7924			

PLAINTIFF'S EXHIBITS (continued)

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
340C	7925	7926			
341	7916	7916			
342	7905	7905			
343	7927	7928			
344	7907	7907			
345	7937	7937			

DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
1	7866	7866			

\* \* \* \* \*

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 9th day of May, 1997.

\_\_\_\_\_  
Paul Zuckerman

\_\_\_\_\_  
Bonnie Carpenter



