

Friday, June 6, 1997 (afternoon)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,
Defendant.

REPORTER'S TRANSCRIPT
(Trial to Jury - Volume 137)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:00 p.m., on the 6th day of June,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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PROCEEDINGS

(Reconvened at 1:00 p.m.)

THE COURT: Be seated, please.

We'll probably take a brief recess after the opening statements so that we can rearrange the furniture.

(Jury in at 1:01 p.m.)

THE COURT: Members of the jury, we're ready to resume, and we'll hear now from defense counsel on opening statement.

Mr. Burr.

OPENING STATEMENT

MR. BURR: Good afternoon.

Your Honor. Mr. Hartzler, colleagues in the defense of Mr. McVeigh, and ladies and gentlemen of the jury. I'm sure that you noticed in the course of the last two or three days that we did not cross-examine any of the folks who were the direct victims of this offense. And you may remember that during the course of the first phase of the trial, whenever a person who was directly victimized by the bombing testified, we did not cross-examine them.

You may have wondered why. We want you to understand why, because that's where we'd like to begin today.

Ordinarily cross-examination, called by the Supreme Court the greatest legal engine ever invented to the discovery of the truth, is something that no lawyer would waive. Why did we waive it with respect to these witnesses? We did not cross-examine them because we knew, as you did, that they were speaking from their experience of the truth. They were speaking from the reality that has crowded down over them, has changed their lives, has broken their hearts, has dashed their dreams, and has left them struggling, struggling to get up and face each day.

The truth of this suffering which you have heard in extraordinarily powerful detail and emotional detail over the last three days is one of the truths that you clearly have to consider. You could not avoid considering it. Still, we ask you to think for a moment whether it is the only truth that you need to consider. And we urge you to come to the conclusion and to listen to our reasons as to why it is not the only truth that must be considered.

Judge Matsch has said to you several times that you

are acting as the conscience of the community in making this decision. You are. We have no King Solomon in our time. Indeed we have never had a King Solomon in this country. For more than 200 years, we have relied on each other, on other peers to make the hardest, most difficult decisions to accord justice.

That is the challenge that is now before you. And we submit that it is not based upon a single reality. The wisdom that you have to draw on is not conventional wisdom. The wisdom of Solomon is anything but conventional. The wisdom that you must summon calls for you first to step back, to step back from the very heavy sense that you had when you left each day, that raw feeling, the feeling that made you cringe, that made you angry, that made you feel a whole range of emotions that most people in this courtroom felt with you.

The first challenge and the first step towards the wisdom of Solomon is to step back, not to step back from the facts, we would never ask you to do that, but to step aside, leave the emotion as best you can there, and let the facts simply reside with you in a calm way.

And as you do that, we then ask that you be open to and listen to two separate realities, neither of which relates in a direct way to the first reality but both of which are intertwined and will be forever with that first reality.

And these realities, these two other realities, are just as important for you to account for and take into consideration and sift through as you come to a decision of justice for the -- for the community and for the nation.

One of the other questions that has undoubtedly been haunting you far longer than the question about why we did not cross-examine certain witnesses is the question how did this come to be? How did it come to be? What could have caused this unthinkable thing, this unspeakable tragedy to have happened right here in the heart of America? What could have happened to bring about so much suffering?

The Government has presented to you evidence and has argued to you that it was because of Tim McVeigh's anger about Waco which grew into, as the Government says, hatred for the federal government. And by your verdict, you have accepted at least a part of that, those facts and a part of that theory. We must accept your verdict in this part of the trial. This is

not the time or place to retry guilt or innocence or to quibble

about those facts, and that is not what we intend to do.

But there are two realities that we ask that you consider now. And from those realities connected with the first reality that I've talked about we ask that you find your way and find justice. The first of the two realities I would like to sketch out briefly will be coming from 20 to 25 witnesses whom you will hear over the next couple of days, today and Monday. These are people who have come from the cross section and cross span of Mr. McVeigh's life. They are teachers, they are military colleagues, they are sergeants who commanded and ordered and supervised Mr. McVeigh in the Army. They are co-workers. They are supervisors in jobs he's held. They are friends, some neighbors for a long time, some intense

they are friends, some neighbors for a long time, some intense friends for a short time. And they are family.

And they will help you come to understand the reality of Tim McVeigh. After not -- after hearing what you've heard, it would be quite understandable that you might think Timothy McVeigh is a demon, is a monster that some in the press have made him out to be. And with only the information that you have now, that may be where you are. We ask again that you set aside that in the spirit and in keeping with the wisdom of Solomon, that you set aside and listen and learn who Timothy McVeigh is.

There will be some answers there. There will be no complete answer. But the question of how did this come to be, why did this come to be will begin to be answered if you will open up to who Timothy McVeigh is.

What you will learn from this cross section of witnesses is that Timothy McVeigh was born in April of 1968 near Buffalo, New York, between Buffalo and Lake Ontario, just north of Buffalo, in a little town called Lockport, grew up in a little town, smaller town than that called Pendleton, lived there through high school and a year after high school. And in

May of 1988, he joined the United States Army. You will hear from neighbors, friends, co-employees, co-workers, and supervisors, teachers who knew him in that growing-up period and in the first two years of his adulthood after high school.

You will hear then from a number of soldiers, a number of who are still in the Army, many who are not, but all who served with Mr. McVeigh over the three and a half years that he was in the United States Army. Those people probably know him best because they knew him for the greatest period of time with the most intensity. The period of time encompassed the Gulf War, and you will hear some stories about that. We're not offering anything about effects of the Gulf War on Mr. McVeigh.

He was affected like everybody else was in that war, and you will hear what those effects were. But it is a part of his experience and a part of how people came to know him and know him in a deeper way.

You will then hear about -- from people who knew him after the Gulf War and after he left the Army. He was back in New York for a year in 1992 after he left the Army. And then beginning in 1993 and '94, he moved around a bit. He stayed in Kingman, Arizona, as you have heard from the Fortiers and other folks. He stayed in New York some, and he stayed in Michigan some, as Kevin Nicholas told you.

And you will hear from people who knew him in all of these places so that you will have a time line, if you will, for Mr. McVeigh, from the beginning to the present.

You will hear about the qualities and characteristics and traits of this young man who is not yet 30. You will hear

that he's a very bright man, did well in school; though his father will tell you he always thought he was an underachiever, he did well. His teachers found him to be dependable, reliable, one of those kids that you didn't have to ask to keep doing things. You'd ask -- or you wouldn't even ask and he'd get it done. You'll hear that he was serious, he was a serious-minded young man, that he made commitments and was dedicated to things that he committed himself to. But he was also funny, had a wry sense of humor, kind of a practical jokester, not raucous, not a partier, one who tended to be a little quiet. But also in his senior year of high school, you'll find that he was voted the most talkative. Person who colleagues in the military counted on to take their weekend duty, to take their extra duty, to come pick them up from local bars, because he didn't drink, he didn't get drunk. He was there sort of in the background to be of assistance when all called on him and to stay at the place that he loved most, the Army base where he found himself and found his sense of purpose.

You'll find that he was socially awkward at times, that he -- you know, he wanted to have the intimate relationship that all of us seek and had a hard time finding it. That he asked the wrong questions and sometimes said the wrong things around women that he most desired to have relationship with. You'll hear from one woman who loved him, who loved him, though, like a brother. And she will help you understand something important, some things important about Timothy McVeigh.

You will hear also about his interest in guns. We talked with a number of you as we asked you questions during the jury selection process about your views about guns, and there are probably as many views about guns as there are folks on the jury. But you will hear about his interest in guns.

It started early on, with some neighbors. And by the time he was out of high school, he had a pistol permit, worked for an armored car company and used a gun in the course of his work. He practiced. He joined Tonawanda Sportsman Club up near where he lived. You'll see some images from that place. And you will gradually learn why he had an interest in guns.

There is some folks, I think, who -- and those of you who do have an interest in guns may know this, yourself -- feel safer in some way to have guns available, not because you're intent on doing any harm, but because you're intent on protection and defense. And there are other reasons, long-standing political reasons, that many people in this country have for believing in guns that stem from the Second Amendment, and you will hear about that. And gradually I think you will come to understand, no matter what your own personal position is about guns, why someone who enjoys the use of

guns,
believes in the necessity of guns, can become attached and
become upset as well when there is gun control legislation
that
seems to be moving down a path of disarming people. You will
hear that, and hopefully our evidence will help you
understand.

You will also hear about the soldier that Timothy
McVeigh was. You will hear it from two -- sort of two
perspectives, I guess. You will hear the objective evidence of
what he achieved in three and a half short years. How in
about
two and a half years, he became a sergeant, an E5 for folks
who
know military nomenclature. Two and a half years to E5 is
fast, faster than most, faster than anybody else in the group
that he started the Army with in basic training, a group
called
a cohort group that started at Fort Benning in 1988.

And you will understand why he achieved that, because
of the views of sergeants and officers and colleagues, line
soldiers, other enlistees, who said there was nobody better
than Tim McVeigh, he was the most soldierly among us; he
exemplified the best qualities, the best achievement, the best
work ethic of any soldier in our unit.

And you will hear how people trusted him, how he
became the gunner in a Bradley fighting vehicle, which looks a
bit like a tank, but it's the way we now get infantry into
battle in this country. In the back of the Bradley are nine
or
ten troops called dismounted troops who on occasion get out
and
do ground battle. Protecting them is the gunner, the
commander
of the vehicle, and the driver of the vehicle; and Mr. McVeigh
was the gunner. And you will hear people talking about how
safe they felt in the vehicle that had Timothy McVeigh in it.

You will hear about the awards he achieved, the
Bronze
Star which he got for heroic efforts in the Gulf War. Two
Army
Commendation Medals, one with valor -- for other valorous
achievements and one for a whole career of achievement.

And as you sift through these facts and begin to
piece
together the person that Timothy McVeigh is, you will begin to
see through the stereotypes that might have been created for
you by the lack of information before, and you will be able to
see him for who he is: A person not very much unlike your
brother, who could be your brother, who could be your son, who
could be your grandson. You will find that because that is
who
he is.

And that reality will begin to provide some
information that you don't now have, some information that

joins the first reality that is so powerful and present for all of us now.

We then will ask you to take a look at the second reality, second separate reality, which again has roots in this case, and that is the reality of what Mr. McVeigh believed happened at Waco. Now, we will not be presenting to you a trial about Waco. We are not doing that. What we are presenting to you and will be presenting to you is what Mr. McVeigh believed happened at Waco, because that's what's important in the calculus that is before you.

We will do it in a way that helps you understand as if you were in his shoes. You will learn that Mr. McVeigh began being interested in what was going on at Waco on the very day that it started, February 28, 1993. You will learn from witnesses that he showed up at Waco in the middle of March. You may recall that Waco began February 28, 1993, and ended April 19, 1993, a period of 51 days. And somewhere in the middle of that, Mr. McVeigh showed up at Waco.

And a young, budding journalist, who was a student at Southern Methodist University, happened by the same day to interview whoever was there. He showed up at the public gathering area. And you will hear from her about her interview with Mr. McVeigh, and you will see some photographs that were taken during that time. And you will begin to see that from the very beginning, Mr. McVeigh was deeply concerned about what was happening there. This was in the middle of what was happening, and that will be placed in perspective for you.

You will hear from James Nichols, the brother of Terry Nichols, whose name you've heard, about April the 19th, 1993, because on that day, Mr. McVeigh was in Michigan, at James Nichols' farmhouse. He was there for a few days. In fact, he and -- the testimony will be that he and Terry Nichols were planning to drive back down to Waco, to try to protest or to raise more questions, to try to help this thing come to an end.

They were deeply concerned. And in the middle of the day, somebody turned on the television and Mt. Carmel, the name of the residence and church that the Branch Davidians at Waco had given their building, was ablaze. And Mr. Nichols will tell you how the three of them sat in silence, in stunned silence, watching what had happened, seeing the lives of so many people being burned to death.

You will then learn that the fire of Waco did keep burning in Mr. McVeigh. And what it led him to do was to try to learn more, to try to learn more about what had happened. He was fearful about what had happened. He thought it was wrong. He thought it was wrong from the beginning. And you'll hear the Southern Methodist University student talk about that.

But you will then hear how he went on a search. a

But you will then hear how he went on a search, a search to find more information and to glean the truth of -- what he thought was the truth about what had happened at Waco, to try to come to understand. And you will be able to learn that from the very sources that he learned from. There are three kinds of sources that he turned to. The first and probably the most important is a magazine called Soldier of Fortune magazine. Some of you may have heard of it; some of you may have not. It is a magazine that Mr. McVeigh, you will hear, read quite regularly beginning with the military. It's a magazine that appeals to people in the military, particularly infantry people, because it is about military exercise, military activities, engagement of militaries in various countries. And it is about guns. And it appealed to Mr. McVeigh along with many of his other troops, friends in the Army.

But he turned to Soldier of Fortune because Soldier of Fortune began reporting deeply and heavily and at length about Mt. Carmel and what happened there. And that is his primary source. You will see the magazine, see the articles, have them summarized, have them highlighted, be able to read some of those, indeed as much of those, yourselves, as you wish.

There is a second source of information that you will experience, as Mr. McVeigh did, and they're videotapes. There were others -- not just Mr. McVeigh, but many others -- who were concerned about what happened at Waco, and some of these folks created videotapes. They're sort of homemade in some respects, professional in some respects, but you will see them. You will see segments from all three of them that he watched and that he occasionally passed out to other people; that he watched with people, watched with Jennifer McVeigh, his sister, watched with the Fortiers, watched with Kevin Nicholas.

And you will see the images, the analysis, the questions being raised in these videos that Mr. McVeigh saw and paid attention to.

And as you see it, you will begin gradually, gradually, to start to walk in his shoes and to begin to understand how he felt and he came to feel that way. I'm not going to go into detail at length about what you will see from these materials; but just so you will know what to expect, the materials that Mr. McVeigh drew his information from talk about -- in a way about three segments of this event. They talk about what happened on February the 28th, 1993. They talk about what happened in the 51 days up to April 19. And then they talk about what happened on April the 19th.

You will see from these written and electronic materials that on February the 28th, 1993, when a hundred Bureau of Alcohol, Tobacco and Firearm agents came to serve arrest and search warrants on David Koresh, the leader of the Branch Davidian community, that the materials that are presented here led Mr. McVeigh to believe and could lead

anybody who read -- who saw these to believe, that the assault -- that what happened in the service of that warrant was unnecessary. A hundred agents, armed agents, showed up. Helicopters flew over Mt. Carmel, and gunfire started. Before anything else happened, gunfire started. These materials acknowledge that nobody knows for sure where the gunfire came from.

But what Mr. McVeigh was able to explore in depth through these materials was all the various facts that shed light on that. And you will see how he was able to conclude from a rich welter of material and factual information, how he was able to conclude, as he has told people, that the ATF started this, that they fired first, from the helicopters and from the ground, and that the result, which was four ATF agents who were killed and six Branch Davidians who were killed, was the responsibility of the ATF. He believed that, and you will see through these materials how he came to.

And the second area, the 51 days, you will see, as Mr. McVeigh did, how the FBI took over the situation almost immediately after the 28th of February and began a process of at the same time trying to negotiate a settlement and undertaking something that these articles have come to call "psychological warfare," an effort to coerce the folks in Mt. Carmel to give up and to come out.

And you will see the images that Mr. McVeigh saw, the images of what constituted the psychological warfare: bright lights all night shining on Mt. Carmel, cutting off electricity and water, playing loud sounds during the night, sort of obnoxious sounds, Tibetan chants, the screams that rabbits make when they're slaughtered, loud sort of raucous music, other sounds.

You will see as well that there were military vehicles brought in by the FBI, tanks, Bradley fighting vehicles, just like the ones that Mr. McVeigh knew about, and another kind of tracked vehicle called combat engineering vehicles, which began a constant circling, circling of Mt. Carmel, crushing cars, crushing tricycles, bicycles, go-carts, eradicating vegetation from around Mt. Carmel, gradually closing in. That was the psychological warfare, which towards the end, when it appeared that yet that would not even work, according to these sources, led to April the 19th.

And you will see from both the 51-day siege material and what happened on April the 19th why Mr. McVeigh felt and the details that supported why he felt that on April the 19th, the government assumed responsibility for the lives that were snuffed out that day.

You will see that at the beginning of that day, at 6:00 a.m., the tanks and Bradley vehicles began punching holes in the walls of the building at Mt. Carmel and then began spraying in a gas called CS gas. And you will hear from other parts of the evidence that Mr. McVeigh knew what CS gas was, because in the Army people are trained and exposed to CS gas.

That's a part of their training.

And you will hear what he has said in letters to people about it. And CS gas is a kind of tear gas, you will hear from these articles, but you will also see from the sources that it's stronger. It is designed to get people out of an enclosed space. You'll also hear that it wasn't really designed for use in enclosed spaces. And for six hours, as these articles report, the gas was pumped in through the holes punched in the walls by the tanks and the Bradley fighting vehicles.

And at about noon that day, after this CS gas had been inserted for nearly six hours, according to Mr. McVeigh's sources, a fire broke out; and the fire swept through the entire complex in images that many of you may remember from that time in a matter of 20 or 30 minutes, and everyone inside was killed except for a few people who were able to -- to run out. But virtually everybody inside was killed, 74 people.

74
people.

And you will see at the conclusion of reviewing these materials why Mr. McVeigh felt so strongly, why he came to the conclusion, as some witnesses have already told you, that the government murdered people at Waco. The federal government, whom we rely on to protect us, to serve us, to be our servant, had turned the tables and had become the master and indeed, as Mr. McVeigh's -- one of his articles said, had declared war on the American people.

Again, this will be presented not to try to convince you as to what happened at Waco. This is not a trial about Waco. It is a trial in part about what Mr. McVeigh thought happened at Waco, because what we think happened happens constructs reality for each of us. We all do that.

After considering these two additional realities, we will ask that you return to the consideration of all three, to assume again your role as conscience of the community and taking into account all three realities, that you provide a

response to all three that you think is the right response. These realities are clearly connected. There is violence, there is much death, there is tremendous suffering. But there is also a person at the center whom you will not be able to dismiss easily as a monster or a demon, who could be your son, who could be your brother, who could be your grandson, who loved his country, who served it, who had a number of admirable human qualities, a number of vulnerable human qualities, and a number of frailties, just like any of us, but who is just like any of us. And he is at the middle of this, and there is violence at both ends. And we believe that once you have sifted through these realities that you will come to the conclusion that the right response is a life sentence.

THE COURT: Members of the jury, we're going to take just a brief recess to rearrange things here, setting up the -
-
we'll be using the television monitor again and all that; and rather than have all this movement here and you wait here

rather than have all this movement here and you wait here, we'll excuse you for a few minutes while we reset the courtroom.

You're of course -- again, just like at the longer recesses, please don't talk about anything that you've heard or seen or expect to hear and see.

You're excused now for whatever time it takes us to get ready.

(Jury out at 1:34 p.m.)

THE COURT: We ought to be able to do this in 10 minutes, I would trust, so we'll take about 10 minutes.

(Recess at 1:35 p.m.)

(Reconvened at 1:45 p.m.)

THE COURT: Be seated, please.

(Jury in at 1:46 p.m.)

THE COURT: All right. Mr. Burr, you may call your first witness.

MR. BURR: We call Jose Rodriguez.

THE COURT: All right.

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

(Jose Rodriguez 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: Jose M. Rodriguez, Jr.
R-O-D-R-I-G-U-E-Z.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Burr.

DIRECT EXAMINATION

BY MR. BURR:

Q. Good afternoon, Mr. Rodriguez.

A. Good afternoon.

Q. Where do you now live?

A. I live in Roswell, New Mexico.

Q. How long have you lived there?

A. I lived there about six years now.

Q. Prior to living in Roswell, New Mexico, what were you doing?

A. I was stationed at Fort Riley, Kansas.

Q. Were you in the United States Army?

A. Yes, I was.

Q. And when did you first join the United States Army?

A. Back in 1982.

Jose Rodriguez - Direct

Q. And do you recall the year that you left -- what year it was you left Fort Riley?

A. In '91.

Q. Was that at the time that you left the Army?

A. That's the time I left the service.

Q. Did you have an occasion to come to know Timothy McVeigh when you were in the Army?

A. Yes, I did.

Q. Where was that?
A. At Fort Riley, Kansas.
Q. Do you recall about this, what year it was that you first came to know him, first got acquainted with him?
A. Back in '88, I believe.
Q. And how did -- how did you get to know him?
A. I got to know him when they arrived in cohort unit.
Q. Now, some people don't know what a cohort unit is, so why don't you explain that to us briefly.
A. A cohort unit is a unit of soldiers that come through basic training and advanced infantry training as a whole. And then they are assigned to a unit such as Fort Riley, Kansas; and they go in and they serve their first term in that unit.
Q. And Mr. McVeigh was in the cohort unit --
A. Yes, he was.
Q. -- that you're describing?
A. Yes.

Jose Rodriguez - Direct

Q. Now, is Fort Riley a base that is just for infantry?
A. No. They have tank battalions in there as well.
Q. You need to speak up a little bit.
A. They have tankers, tanks.
Q. Tanks and infantry; is that right?
A. Tanks and infantry.
Q. And what unit did this cohort come into?
A. C Company, 216 Infantry.
Q. And were you already a part of that unit, yourself?
A. Yes, I was.
Q. What was your position in the unit?
A. When I arrived, I was a -- scheduled to be a team leader, and I stayed as team leader.
Q. What rank were you at the time?
A. I was E5. I was a sergeant.
Q. Now, just so folks understand the structure, can you describe what a company structure is, this cohort unit came into?
A. Yes. I was in charge of a small team of soldiers, and they report to me directly. And I report to my squad leader, and my squad leader then reported to a platoon sergeant, in turn to a first sergeant.
Q. So there were -- the smallest unit was a squad or a team?
A. A team.
Q. A team. Then a squad; is that right?

Jose Rodriguez - Direct

A. That's correct.
Q. And then a platoon?
A. Correct.

Q. And how many platoons were there in the company?
A. There were three line platoons and one headquarters platoon.
Q. What do you mean by line platoon?
A. They were the -- the units that man the Brad -- they man the 113's, and then later on the Bradleys.
Q. Now, when you say 113's, was that a vehicle?
A. That's an armored personnel carrier.
Q. And was it then replaced by the Bradley vehicle?
A. That's correct.
Q. Was there much difference between the two?
A. Considerable.
Q. When the cohort first got there, what platoon was Mr. McVeigh assigned to? Do you recall?
A. 1st Platoon.
Q. And is that the platoon that you were in?
A. Yes, it is.
Q. And you were his sergeant; is that right?
A. Yes, I was.
Q. How did you get to know Mr. McVeigh, as a newly -- a new member of your -- of your unit?
A. I got to know him . . . could you rephrase the question?

Jose Rodriguez - Direct

Q. Sure. What was the reason for you to have contact with Mr. McVeigh once he got into your unit?
A. He was primarily in my team; and then shortly after they arrived, we went through the -- through a transition from the armored personnel carriers to the Bradleys.
Q. What kinds of activities would your team conduct with you in the course of a day, typical?
A. Typical day. First call; then we usually conduct PT, physical training; and then from -- after that would usually be breakfast. And then we would go on to infantry task training; and whatever that may -- would consist of for the day, we'd do that.
Q. Did you directly supervise Mr. McVeigh during these activities?
A. Yes, I did.
Q. Did it take you very long to get to know him?
A. No, it didn't.
Q. After you did get to know him, what kind of soldier did he appear to be?
A. Outstanding.
Q. Can you describe what led you to that conclusion, what kinds of things led you to that conclusion?
A. He was a quick study. He was intelligent. He was a soldier that did a task without, without question, and to his best ability.

Jose Rodriguez - Direct

Q. Now, were you involved in helping him learn to be a runner

Q. Now, were you involved in helping him learn to be a gunner in one of these vehicles?

A. We learned basically as a unit, 'cause I was new to the Bradley, myself.

Q. Let me back up. How long was this group of people there, this new cohort, including Mr. McVeigh, there, before the Bradleys came? Do you remember?

A. I don't recall.

Q. Once the Bradleys came, though, everybody had to be trained; is that right?

A. That's correct.

Q. And what did that training consist of?

A. It consisted of being introduced to the Bradley as far as maintenance, its capabilities, the weaponry that it contained, the abilities of the track itself.

Q. Do you know how Mr. -- what position within the Bradley Mr. McVeigh was assigned?

A. He was assigned as a gunner.

Q. Do you know how the decision was made to assign him to be the gunner?

A. Yes. He was, like I said -- was a very outstanding soldier, stood above his peers.

Q. How did he do in the training with the Bradley gun?

A. He did excellent. I remember he was one of the best gunners, for a long time, at that new company.

Jose Rodriguez - Direct

Q. In the course of your being the team leader for Mr. McVeigh, did you ever conduct evaluations of him?

A. Yes, I did.

Q. And how often did you do that?

A. I believe they were monthly.

Q. Were they in writing?

A. Yes.

Q. Do you recall anything about the evaluations of Mr. McVeigh?

A. There were always high marks. In general, just high marks.

Q. Was there any area that he was lower in than others?

A. Perhaps a little bit with the physical training.

Q. Do you know why that was?

A. He was somewhat thin. Tall, kind of lanky.

Q. What areas were evaluated, that you -- in your evaluations?

A. It's kind of hard to recall, but I believe to do with infantry task, physical training, overall appearance.

Q. Was ability to work with others a part of it?

A. Yes. Yes.

Q. And how did he do with that?

A. He was pretty good. Generally pretty good.

Q. Now, are you generally aware of Mr. McVeigh's promotion history?

A. Yes, I am.

Q. Do you recall what that history is, not in detail, but in

Jose Rodriguez - Direct

sort of speed of progress?

A. He was promoted above his peers.

Q. And do you know why he was promoted above his peers?

A. Because he performed above his peers.

Q. Did you have anything to do with recommending him for promotion?

A. I believe I did.

Q. Do you recall what Mr. McVeigh did on the weekends when -- let me back up.

Is being a soldier a five-day-a-week job?

A. No, it's not.

Q. Are Monday through Friday different from Saturday and Sunday when you're a soldier in the Army?

A. Usually not.

Q. Is there some time off on the weekends?

A. If training permitted.

Q. On those times when people could take time off, do you know

whether Mr. McVeigh did or sometimes did?

A. I'm not sure about all weekends, but sometimes he would shoot his -- go target practicing, things like that.

Q. Did you share an interest in guns with Mr. McVeigh?

A. Yes, I did.

Q. Can you tell us about that?

A. He had several pieces, privately owned weapons. He kept them at my house; but before that, he kept them in the arms

Jose Rodriguez - Direct

room. And that became somewhat of a troublesome, getting the arms room companies to sign out his weapons, so that way he asked me if I could keep them at my housing. And I allowed them, and we registered the weapons on post.

Q. Did -- do you know how long he left his weapons stored at your house?

A. Up until the time I went to South America, back in mid '90.

Q. Did you ever have occasion to go shooting together?

A. A couple times.

Q. You had your own weapons; is that right?

A. Yes, I did.

Q. And did you have occasion to share each other's weapons in these times of shooting?

A. Yes, I did. I shot his weapons, and I believe he shot mine.

Q. Did you ever talk about your -- your -- your interest in guns, why you each shared that interest?

A. Gun control, I imagine was part of the topics, I believe.

Q. What did you -- what do you recall conversing with him about on gun control?

A. The restrictions; that there were -- it was trying to be made into law, I believe, at the time.

Q. About -- excuse me. Were you -- how did Mr. McVeigh feel about those restrictions, if you remember?

A. I believe they were proposing -- if not already proposed --

-

Jose Rodriguez - Direct

stricter gun laws, as far as national registration, things like that.

Q. And do you recall what Mr. McVeigh thought about those?

A. That it wouldn't be wise for -- for such a thing to happen in case there was an uprising of some sort; that some government would know the registry of all owned weapons.

Q. Did you share those concerns, yourself?

A. Yes, I did.

Q. Do you know whether others in your unit had similar concerns about gun control?

A. I believe there were.

Q. Now, do you recall a magazine called Soldier of Fortune?

A. Yes, I do.

Q. Do you recall in the time that you were -- you and Mr. McVeigh were in the Army together that magazine being read by people in your unit?

A. Yes.

Q. Did Mr. McVeigh read it?

A. Yes, he did.

Q. Did you read it?

A. Yes, I did.

Q. What proportion of people in your unit would you guess did read it?

A. There were always magazines lying around. People fumbled through them, ordered articles such as clothing, gear, things

Jose Rodriguez - Direct

like that.

Q. And was Soldier of Fortune one of those?

A. Yes.

Q. Did Mr. McVeigh seem to have any greater interest in reading Soldier of Fortune than other people?

A. I just knew he subscribed to it.

Q. Was he your source for reading it when you wanted to read it?

A. Yes.

Q. Now, I believe you said that you went to South America in 1990 sometime; is that right?

A. Yes.

Q. Do you recall about when that was?

A. Around June or July, I believe.

Q. And when did you return?

A. Around November of '90.

Q. And was that to Fort Riley?

A. Yes, it was.

Q. When you came back, did you come back to the 1st Platoon?
A. No, I was assigned to 3d Platoon.
Q. Did you have much contact with Mr. McVeigh thereafter?
A. Not much.
Q. Were you deployed to the Gulf War along with the other platoons in Charlie Company?
A. Yes, I was.

Jose Rodriguez - Direct

Q. Do you recall whether your -- the platoon you were in then and Mr. McVeigh's platoon served in the same unit in actual combat?
A. I believe his unit was attached to a tank company.
Q. Now, in the course of the time that you knew Mr. McVeigh, did you develop some personal sense of him as well as a sense of him as a soldier?
A. Yes, I trusted him very much.
Q. As a person, just personally you say you trusted him?
A. I trusted him. He was my gunner. He was a very capable gunner; and yes, I got along with him very good.
Q. Did you ever socialize with him outside of work?
A. We went shooting a couple times together. I think we went to town a couple of times together.
Q. Did he ever come over to your house?
A. Yes.
Q. Do you remember whether he met your children?
A. Yes, he did.
Q. And tell us about the -- his -- Did he have a kind of a relationship with your children?
A. Once in a while, I'd have barbecues over at my house; and I'd invite him a couple times. I did trust him. And he came over when he picked up his guns. My son liked him a lot; and as a matter of fact, I was at one time considering him to be my son's godfather.

Jose Rodriguez - Direct

Q. Did he play with your children when he was there?
A. I believe he did.
Q. Now, in the course -- in the entire course of time that you were Mr. McVeigh's sergeant, do you ever recall having any problem with him?
A. Nothing severe, nothing that would reoccur.
Q. You, on occasion, had to, I think you've told me, chew people out; is that right?
A. Yes. It came with the territory.
Q. Did you ever chew Mr. McVeigh out?
A. From time to time; but like I said, never more than once for the same thing.

MR. BURR: Thank you, Sergeant Rodriguez.

No other questions, your Honor.

THE COURT: Do you have any questions?

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Mr. Rodriguez.

A. Good afternoon.

Q. You've told us that you served in the Gulf War; is that right?

A. That's correct.

Q. And you received quite a few awards when you were there, didn't you?

A. I received a Bronze Star and an Army Commendation with V

Jose Rodriguez - Cross

device.

Q. Those are some of the same awards that Mr. McVeigh received during the Gulf War; correct?

A. I believe it is.

Q. And when you left the Army, you decided to serve other people, didn't you?

A. Yes, I did.

Q. Tell the jury what you do now as a career.

A. As a career, I am a nurse.

Q. Now, when you were in the Army with Mr. McVeigh, were you schooled on the rules of engagement and the law of war?

A. Yes, I was.

Q. And were you taught as the first rule that you were never to kill noncombatants, including women and children?

A. That's part of the rules.

Q. And is that something that every soldier learns when they're trained in the United States Army?

A. Yes, it is.

Q. You told us that you and Mr. McVeigh shared an interest in firearms; is that right?

A. That's correct.

Q. And you told us that one of the reasons that Mr. McVeigh was opposed to gun control was because he was afraid of an uprising; is that right?

A. That's correct.

Jose Rodriguez - Cross

Q. So he was afraid of any kind of uprising against the Government before Waco occurred and before Ruby Ridge occurred; is that right?

A. I believe he had some thoughts of that.

Q. You told us that you didn't have any problems with Mr. McVeigh when he was in the Army; is that true?

A. No.

Q. You are aware, though, of some literature that he had in his possession; is that correct?

A. Yes, I am.

Q. And do you believe that he had The Turner Diaries when he was in the Army?

A. I believe that could have been a copy.
Q. And did you have to tell him that he couldn't have that in the barracks?
A. Yes, I did.
Q. You left the Army in October of 1991; correct, Mr. Rodriguez?
A. Yes, ma'am.
Q. And you never had any contact with Mr. McVeigh after that?
A. No, ma'am.
Q. So you don't know what kind of man he was in 1992, do you?
A. No, I don't.
Q. And you don't know anything about what he was doing in 1993 or 1994 or 1995; right?

Jose Rodriguez - Cross

A. No, ma'am.
Q. You're here today only to testify about what he was like back in 1991?

A. Yes, I am.

MS. WILKINSON: Thank you very much.

MR. BURR: No other questions, your Honor.

THE COURT: Is he excused?

MR. BURR: Yes.

THE COURT: Agreed?

You may step down. You're excused.

Next witness, please.

MR. BURR: Royal Witcher.

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

(Royal Witcher 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: Royal Lamar Witcher, Jr., W-I-T-C-H-E-R.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. BURR:

Q. Good afternoon, Mr. Witcher.

A. Hello.

Q. Where do you presently live?

Royal Witcher - Direct

A. Pacific, Missouri.

Q. Is that near any big city?

A. St. Louis, Missouri.

Q. How far out of St. Louis?

A. 45 miles west.

Q. What is your present occupation?

A. I am an operations manager.

Q. Have you ever served in the United States Army?

A. Yes, I have.
Q. During what period of time?
A. September '90, to January '95.
Q. And what did you do in September of 1990?
A. I went to basic training at Fort Benning, Georgia.
Q. How long did that last?
A. 13 weeks.
Q. Do you recall the month when you completed it?
A. December 23.
Q. What did you do thereafter? Where were you assigned?
A. Went on leave for 30 days; and then I went to Fort Riley, Kansas.
Q. Were you there very long?
A. I was there three days, and then I was deployed to Saudi Arabia.
Q. And when you were deployed to Saudi Arabia, what unit were you sent to?

Royal Witcher - Direct

A. Charlie Company, 216.
Q. What was your initial platoon assignment in Charlie Company?
A. 1st Platoon.
Q. Was -- did you have occasion to meet Timothy McVeigh?
A. Yes, I did.
Q. And how -- what was that occasion?
A. We were introduced. It was myself and another individual -- were new to the company; and we were introduced to pretty much everyone at that time so I could get to know everybody.
Q. And do you recall what platoon Mr. McVeigh was in at that time?
A. 1st Platoon.
Q. Do you know whether you were assigned to the same vehicle as he was?
A. Yes, I was.
Q. Now, what was your job when you first were assigned to that vehicle?
A. I was the RTO. It's a radio transmission operator.
Q. Were you a mounted or dismounted troop?
A. Dismounted.
Q. Can you explain for the jury what the difference is between mounted and dismounted troops?
A. Mounted is basically responsible for the vehicle, the

Royal Witcher - Direct

upkeep. Dismount -- basically it's -- if it ran into any dismounted troops, infantry or anything, they would get out and clear the trenches basically for the Bradley.
Q. What was Mr. McVeigh's job in the Bradley that you were

Q. What was Mr. McVeigh's job in the Bradley that you were assigned to?

A. He was a gunner.

Q. When you first -- you were first introduced to him, do you recall how you were introduced to him?

A. It was individually, at the vehicle. He was a corporal; and I guess shortly thereafter, possibly the same day, he was promoted to sergeant. And I was carrying my bags over to the track, and he and I kind of had a personal meeting. And he was

up on the top of the Bradley, and -- he was turned backwards, and I yelled, "Corporal McVeigh."

And he turned around and he said, "No, that's Sergeant." So from then on, he was Sergeant McVeigh.

Q. Did he explain to you why he said that?

A. Yes.

Q. Did you become friends?

A. Not immediately.

Q. What was your working relationship with him immediately?

A. Nothing really. I was, I was in a squad, dismounted squad;

and he was a mounted crew member, so we really didn't work closely together at first.

Q. Did there come a time when you did work closer together?

Royal Witcher - Direct

A. Yeah. I was interested in learning about the Bradley and, you know, the gun and everything. And Tim -- he volunteered to tell me about it and teach me. And he and I pretty much worked

out a good working relationship.

Q. Did he spend very much time with you, teaching you about the gun?

A. Quite a bit of time. Almost every day, he would clean it; or, you know, if he did any maintenance on any of the weapons systems, he'd ask me if I wanted to come up and observe and learn. And so that was pretty much on a daily basis.

Q. What kind of teacher was he?

A. He was a great teacher. Very meticulous, detail-oriented, made sure you understood before he went on to the next point. I learned a lot.

Q. Now, this was actually in Saudi Arabia where you first met Mr. McVeigh; is that right?

A. Yes.

Q. How long was your unit in Saudi Arabia, from the time you got there?

A. Possibly a month, or until we began the movements.

Q. For those of us who are not very military-minded, why were you there so long before you began, as you put it, the movements?

A. I guess other units were moving. They were trying to coordinate everything, get everything worked out and all the

Royal Witcher - Direct

details figured out before they actually movement -- units start moving.

Q. Now, when you say the "units start moving," does that -- what does that mean?

A. We were given initial mission to regain Kuwait, I guess, liberate Kuwait; and we started movement towards Iraq; and we were essentially supposed to roll up towards Kuwait after breaking the defensive lines of the Iraqis.

Q. Now, was your unit -- your platoon a part of Charlie Company for the actual military operation?

A. No. We were assigned to -- we were detached and assigned to a -- an armored company.

Q. And again, for those of us who are not military-minded, what is an armored company?

A. They're M-1 Tanks, instead of Bradleys.

Q. And do you know what the reason was for your platoon being assigned to work with a tank company?

A. Tanks don't have dismounts or light infantry; and in order to provide security in hidden places, I guess, like trenches and things like that, from dismounts, they attach -- detached us and attached us to an armored company so that we could provide that protection.

Q. And do you recall what -- with your newly constituted company, what was the mission for your company?

A. Basically to break the -- I mean the defense, the defense

Royal Witcher - Direct

lines of the Iraqis and then wait for further instructions.

Q. When you did that, did you encounter any resistance from the Iraqi soldiers?

A. Yes, little resistance. A lot of people -- the Iraqis surrendered, a mass exodus.

Q. Now, tell us -- give us a sense of how that actually happened. When you were going towards the trench line, were there soldiers, Iraqi soldiers in those trenches?

A. They weren't actually -- some were in the trenches. Some -- for the most part, they were all out and walking in groups towards us with their hands up, you know, and white flags and just giving up.

Q. Were you all prepared for this, this possibility?

A. I think it kind of shocked most of us. You know, I mean we had thought that they were our enemies; and for us to be thrown -- not necessarily thrown in a situation like but encounter something like that with a mass of people giving up, we were -- I don't think we were very prepared.

Q. Was there ever any gunfire that you received in the course of this operation that your unit received?

A. Very little.

Q. Do you know whether your unit had occasion to fire at any enemy troops?

- A. There was one instance of resistance that I recall.
Q. Did that involve your vehicle?

Royal Witcher - Direct

- A. Yes.
Q. Can you tell us about that?
A. There were some Iraqis in the bunker. And some were giving up, and some were resisting. And if you -- I guess you could call it "guilty by association," really. They were there. If they wanted to give up, they should have separated themselves from the people resisting. In order to protect us, you know, we had to return fire to the people that were, you know -- that were resisting.
Q. And who directed that the fire be returned?
A. Lieutenant Rodriguez.
Q. And who was he?
A. He was our Bradley commander.
Q. Who actually fired?
A. Tim.
Q. Do you recall what happened when he fired?
A. Fired a couple rounds; and I heard him say, you know, "I got 'em, I got 'em." And that was it.
Q. Was there ever anything else said about that from him?
A. No.
Q. Now, after this part of the combat experience, what did your unit do?
A. Gathered up the people surrendering and didn't so much search them but held them in a holding area for the military police to come forward and get them and take them. I don't

Royal Witcher - Direct

- know where they took them. And then after the cease-fire was called, we went to Safwan for the peace talks, and we were the inner circle of defense for that.
Q. From the point at which you were -- at which you engaged this resistance, how far was that to Safwan? Is that S-A-F-W-A-N?
A. Yes.
Q. Where the peace talks were being held?
A. Distancewise?
Q. Well, how long did it take you to get there?
A. I guess about a week or so, from what I recall.
Q. And your unit was ordered to go there; is that right?
A. Yes.
Q. And what was it you did when you got there?
A. We were to stay at defense, defensive ring or barrier, I guess you would call it, around the tents and the air base that the peace talks were going to be held at.
Q. Now, who actually came to conduct the talks for the

warring
parties?

A. General Schwarzkopf.

Q. Did you have occasion to meet General Schwarzkopf?

A. Yes, I did.

Q. Did Mr. McVeigh, too?

A. Yes.

Q. Do you know whether your meeting with him was photographed

Royal Witcher - Direct

by anyone?

A. Yes, it was.

Q. Who was it? Do you know?

A. Lieutenant Rodriguez.

Q. Was there any -- any video made of that meeting, do you know?

A. I think there was.

Q. And do you know who the source of that was?

A. No, I don't.

Q. How long were you stationed around the peace talks in the way that you've described?

A. Two or three days.

Q. What did you actually do during those two or three days?

A. Pulled security. We switched off and on, ran shifts. And I was lucky enough to observe the announcement of the cease-fire, live.

Q. After this two- to three-day period, what did your unit do?

A. We started movement back to, back to the ships so we can go, so we could redeploy.

Q. Was Mr. McVeigh still with the unit at that point?

A. Yes.

Q. Did he stay with the unit until you got back to the shipping port?

A. No.

Q. What did he do?

Royal Witcher - Direct

A. He went back early for Special Forces school.

Q. Had he talked with you about -- about that, about going back to that?

A. Very little.

Q. When was the next time you saw Mr. McVeigh?

A. When we returned to Fort Riley.

Q. And do you recall about what month and year that was?

A. May of, May of '91.

Q. And what -- what was the occasion for seeing Mr. McVeigh? Do you recall?

A. He was -- it was a, just a regular morning. I had come in for formation.

Q. Were you living in the barracks at that time?

A. Yes, I was.

Q. Was he?

2. was he.

A. Yes, he was.

Q. Did there come a time when the two of you shared housing?

A. Yes.

Q. And when was that?

A. Late August of '91.

Q. What was the reason for that? Do you remember?

A. I was going to be getting married in February of '92. And I was looking for a house, and I wasn't real familiar with the area. And Tim pointed out Herington to me, and we went down there and looked at a couple houses and found one we liked.

Royal Witcher - Direct

Q. Is that Herington, Kansas?

A. Yes, Herington, Kansas.

Q. How far is that from the base, the Fort Riley base?

A. It's about 40 minutes.

Q. How did you feel about sharing a house with Mr. McVeigh?

A. Fine. I had no trouble with him.

Q. Did you eventually take a house together?

A. Yes.

Q. And how long did you stay together in the house?

A. From the end of August till December, whenever he got out.

Q. In the house, did you each have your own separate quarters?

A. Yes.

MR. BURR: Can I show the witness an exhibit, your Honor?

Exhibit PP17.

BY MR. BURR:

Q. Do you see that on your monitor?

A. Yes, I do.

Q. Can you identify that for the jury?

A. That's Tim's room.

MR. BURR: Your Honor, we would --

BY MR. BURR:

Q. Tim's room in the --

A. In the house in Herington, Kansas.

THE COURT: Any objection?

Royal Witcher - Direct

MS. BEHENNA: No, your Honor.

THE COURT: Received, may be shown.

BY MR. BURR:

Q. Can you describe what's being seen in that picture?

A. His bed, the window that faces the -- I think it faces the road, and a poncho liner hanging over the window, a laundry bag, and a uniform hanging to the right on a hanger.

Q. Did Mr. McVeigh have much furniture?

A. No.

Q. Did you have some furniture?

A. Not very much.

MR. BURR: That's all for now.

Now showing again the witness Exhibit PP21.

BY MR. BURR:

Q. Can you identify that for the record?

A. That's Tim's bed.

MR. BURR: Move to admit, your Honor.

MS. BEHENNA: No objection.

THE COURT: Received, may be shown, PP21.

BY MR. BURR:

Q. Now, do you know what kind of sheets Mr. McVeigh had on his bed?

A. Garfield.

Q. Is that Garfield in Army fatigues?

A. No.

Royal Witcher - Direct

Q. Okay. Thank you.

Now, in the course of the fall of 1991, was there a time when your unit did some training away from Fort Riley?

A. Yes.

Q. Where was that?

A. That was in national training center in Fort Irwin, California.

Q. And what kind of training is done there, generally?

A. Just go there and play war, really. At the time we went, we were opposing forces; so we were playing the enemy basically, for the United States.

MR. BURR: Showing again the witness Exhibit PP22.

BY MR. BURR:

Q. Can you identify that for the record?

A. That's Tim setting in the middle of the desert, waiting on a helicopter.

Q. Is that at Fort Irwin?

A. It's Fort Irwin, yes.

Q. And what was the occasion for him to be there?

A. We were waiting on a helicopter, and we were just eating some lunch while we were waiting.

MR. BURR: Move for admission, your Honor.

MS. BEHENNA: No objection.

THE COURT: Received, PP22.

MR. BURR: May we publish?

Royal Witcher - Direct

THE COURT: Yes.

MR. BURR: Thank you.

BY MR. BURR:

Q. Now, when you and Mr. McVeigh lived together, were you aware of his interest in guns?

A. Yes, I was.

Q. Did you have any interest in guns, yourself?

A. Yes, I do.

Q. Can you describe for the jury how you understood

Mr. McVeigh's interest in guns?

A. We were in the infantry. We dealt with weapon systems all the time. And I had an interest in learning more about them, just guns and everything; so I didn't see it unusual to have guns.

Q. Did Mr. McVeigh own some guns, himself?

A. Yes, he did.

Q. Do you recall how many?

A. The ones I recall, three or four.

Q. Where did he keep the guns when you shared this house together?

A. All over. Inside the house.

Q. Did you ever talk with him about that, why he had them placed about the house?

A. Not really, not in detail.

Q. Were you concerned about it?

Royal Witcher - Direct

A. No, not at all.

Q. Do you know whether he ever took a gun with him when he left the house?

A. Yes, he did.

Q. And how did he do that? Did he carry it on his person?

A. No. It was left in his car.

Q. Did you ever talk with him about why he did that?

A. I asked him once, I think, why you carry a gun with you, and he just said, "You never know."

Q. Were you uncomfortable about that?

A. No.

Q. Did you know anybody else in the Army that you were familiar with who had an interest like Mr. McVeigh in guns?

A. No.

Q. His was more pronounced than others?

A. Yeah.

Q. Now, in the course of the time you worked with and shared a

house with Mr. McVeigh, did you feel like you got to know him?

A. Fairly well.

Q. What did you think of him, first of all, as a soldier?

A. He was a model soldier. I looked up to him. He was a good

all-around soldier.

Q. Were there any -- any areas of soldiering in particular that you admired about him?

A. He was an excellent gunner.

Royal Witcher - Direct

Q. What about his person? What did you think about him as just a human being?

A. He was a good person. Very approachable. If you had a problem, go talk to him about it. Didn't matter what it was. He was a good listener.

Q. Did he speak honestly with you --

Q. Did he speak honestly with you

A. Yes.

Q. -- as far as you knew?

A. Yes.

MR. BURR: No other questions right now, your Honor.

THE COURT: All right. Miss Behenna, do you have any questions?

MS. BEHENNA: Just a couple, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MS. BEHENNA:

Q. Mr. Witcher, the last time you spoke with Tim McVeigh was in December of 1991, wasn't it?

A. Yes.

Q. And you continued with your career in the military until 1995; is that right?

A. Yes.

Q. After you left the military, you obtained a job with Home Depot; and you're now an operations manager for that company, are you not?

Royal Witcher - Cross

A. Office Depot, yes.

Q. Have you had any occasion to know what Tim McVeigh was doing, who he was associating with, in 1994?

A. No.

Q. 1993?

A. No.

Q. 1992?

A. No.

Q. Did you have any association with Tim McVeigh in 1995?

A. No.

MS. BEHENNA: That's all I have, your Honor.

THE COURT: Witness excused?

MR. BURR: Yes, your Honor.

THE COURT: All right. You may step down; you're excused.

MR. BURR: Sergeant Robert Daniels.

THE COURT: Okay.

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

(Robert Daniels 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: Robert Lee Daniels, D-A-N-I-E-L-S.

THE COURTROOM DEPUTY: Thank you.

Robert Daniels - Direct

DIRECT EXAMINATION

BY MR. BURR:

Q. Good afternoon, Sergeant Daniels.

A. Good afternoon.

Q. Do I need to ask what your occupation is?
A. No, you do not.
Q. Where are you now stationed?
A. I'm stationed at Fort Hunter Liggett, California.
Q. What city is that near?
A. The nearest city is 22 miles, which is called King City.
Q. How long have you been in the Army?
A. 19 years, 10 months now. 11 months almost.
Q. Was there a time when you were stationed at Fort Riley?
A. I've been there twice.
Q. When was the most recent time you were there?
A. From 1988 through 1991.
Q. And during that period of time, what company were you assigned to?
A. Charlie Company, 216. 216 Infantry.
Q. Now, when people say 216 Infantry, what does that mean?
A. 2d Battalion, 16th Infantry.
Q. And Charlie Company is a company within that?
A. Yes, it is.
Q. What was your position in Charlie Company?
A. I held two positions which I got there. I was a squad

Robert Daniels - Direct

leader, and then I moved up to a platoon sergeant.
Q. What platoon were you in as a squad leader?
A. I was in 1st Platoon.
Q. And when you became a platoon leader, were you still in 1st Platoon?
A. Platoon sergeant, yes, I was still in 1st Platoon.
Q. I'm sorry. And is the platoon sergeant the highest ranking noncommissioned officer in a platoon organization?
A. Yes, it is.
Q. Did you know Tim McVeigh in the time you were there?
A. I knew him.
Q. How did you come to know him?
A. I come to know him when I became a squad leader; and when I became a platoon sergeant, he was still in the platoon.
Q. Now, a squad leader has various teams report to the squad leader; is that right?
A. Normally there's two teams under a squad leader.
Q. Was Mr. McVeigh in a team that reported to you?
A. He was in one of the squads that --
Q. I'm sorry, one of the squads?
A. -- that reported. Being that I was a squad leader, I never had him under me. I only had him under me when I was the platoon sergeant.
Q. Did you -- during the time you were a squad leader and he was not in a team that reported to you, did you come to know

Robert Daniels - Direct

him at all?

A. Yes.

Q. What was the occasion for you to get to know him then?

A. Basically casual conversation or when I had a formation, we

have formation and I put something in the platoon and I normally look at each and every soldier if I have something particular to say to the individual soldier, I talk to individual soldier. Mostly I got to know him better when we got the Bradleys and stuff.

Q. When you became platoon leader, did you have more contact with him -- I'm sorry, platoon sergeant?

A. Not a whole lot of contact, but I had contact, yes.

Q. Did you ever work directly with him?

A. Few occasions, yes, sir.

Q. How else did you know about him in your jobs there?

A. Basically he was a quiet soldier which made him stand out a little bit. He did his job well, which made him stand out even

more, excellent soldier.

Q. Let me stop you there. What kind of qualities went into making him an excellent soldier; do you remember?

A. He was -- neat appearance. Given a task to do something, he did it without any questions, he didn't complain about it; if he had anything to say about it, normally come for further instruction about it or come and tell you: "Okay, I'm finished. Anything else?"

Robert Daniels - Direct

Q. Did he seem willing and eager to take on additional duties?

A. Yes.

Q. How did he compare to other soldiers that were in your platoon?

A. I would say that compared to him and other soldiers, he was the -- like I stated earlier, he was quieter than the majority of the soldiers. He took things a little more serious. He didn't really clown around that much, if at all. Not saying that he was a boring person, but he was just what we call a outstanding soldier.

Q. Did you ever come to know him personally, or you just knew him as a soldier?

A. Just knew him as a soldier. Personally I may have talked to him, but not hanging out together. Didn't know him that personally, no.

Q. Now, did you -- when did you become the platoon sergeant during the course of this time; do you remember?

A. I think it was . . . during the summer of '89. I'm not for sure.

Q. As platoon sergeant, did you have any supervisory or

Q. As platoon sergeant, did you have any supervisory or evaluating role over Mr. McVeigh?

A. Not a whole lot, no.

Q. Did you have any role in promotions with respect to him?

A. Some role, but basically the squad leader and platoon leader was the one who overall had the say-so. I more or less

Robert Daniels - Direct

supported and said, Okay, I agree, yes.

Q. And platoon leader is the officer; is that right?

A. Yes.

Q. Who was the platoon leader during the time you were the platoon sergeant?

A. Lieutenant Rodriguez.

Q. Is that Jesus Rodriguez?

A. Yes.

Q. Did your unit get deployed in the Gulf War?

A. Yes, it did.

Q. Do you recall when your unit left Fort Riley for the Gulf?

A. I think it was 2d of January, maybe 3d or 4th. I can't remember the exact date. It was January.

Q. Of what year?

A. Of '91.

Q. And where were you shipped to to begin with?

A. Saudi Arabia on the coast, east coast. What was called -- I forgot the name of that barracks. It was a barracks complex they called it. I can't remember the name of it.

Q. Was there some time that passed between the time you got there and the time you saw combat?

A. Quite a bit of time, yes.

Q. Do you recall about how much time?

A. Three -- at least two to three weeks, maybe longer.

Q. Did you have any interaction that you remember with

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Mr. McVeigh during that time?

A. Just one of the regular soldiers.

Q. Now, was he in the same Bradley as you?

A. No, he was not.

Q. Were you a Bradley commander during that time?

A. Yes, I was.

Q. In the -- in a platoon that has Bradleys in it, how many Bradleys are in a platoon?

A. There are four Bradleys.

Q. Whose Bradley was Mr. McVeigh in?

A. He was in the platoon leader's Bradley.

Q. And do you know why he was in -- what was his role in that?

A. He was the gunner.

Q. Do you know why he was the platoon leader's gunner?

A. Because the platoon leader felt he was the best gunner and the platoon leader wanted the best gunner in his vehicle.

Q. Did you agree with the platoon's leader's assessment?

A. I agreed that McVeigh was the best gunner, but I didn't agree with him going to the platoon leader's vehicle.

Q. Would you have liked to have him in your vehicle?

A. I was pretty satisfied with my gunner, but I guess my gunner was about second best. I was satisfied with him. But yes, I won't mind having him in my vehicle.

Q. How important is the gunner's role in a Bradley vehicle when you're entering a potential combat situation?

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A. Very important, because a Bradley gunner has to be able to -- what we call, like to call put steel on steel which is like fire and hit the target, whatever he's aiming, he got to be able to hit fast, quick, and kill it quick and get gone and search for another target.

Q. Do the other people in the Bradley rely on the gunner?

A. If you're in the vehicle, like I said, yes, you must rely on your gunner to destroy the target quick before the target destroys you.

Q. Do you recall whether your platoon saw any resistance in the actual combat operations?

A. The ground war, the second day of the ground war, we saw some resistance, minor resistance, not a lot.

Q. Was there occasion for your platoon to exchange fire with enemy troops?

A. Yes, it was.

Q. Do you know whether several of the Bradleys fired, or was only one firing?

A. No, it was several vehicles did fire, including my own. I think we fired coax, which is 7.62-millimeter machine guns.

Q. Is there more than one gun on a Bradley vehicle?

A. The main gun which we call the 25-millimeter gun. Then we have a coaxial machine gun which is mounted to it, and we have a TOW launcher which is mounted to the vehicle, also.

Q. Did you have occasion to interact with Mr. McVeigh very

Robert Daniels - Direct

much in the time that you were in the Gulf?

A. Occasionally, but not a whole lot, because we was pretty much spread out. So in order to get from one vehicle to the next, normally walking, and didn't want to do a whole lot of walking if it wasn't necessary.

Q. Do you recall when your unit returned to Fort Riley after the Gulf War?

A. May 13. It was Mother's Day.

Q. Did you have any contact with Mr. McVeigh after you got back?

A. Yes. Very little contact.

Q. I'm sorry, very little contact?

A. Very little.

Q. Do you remember any particular incidents or stories or times from that period of time?

A. No.

Q. Do you recall that he had been at a Special Forces --

A. Yes.

Q. -- assessment?

Was he successful at it?

A. No, I think after about two weeks, he had to leave because of physical reasons; he couldn't keep up.

Q. Did -- had you known beforehand that he was going to go for

that trial?

A. Yes, I did.

Robert Daniels - Direct

Q. Had you had an expectation of how he would do?

A. Not really, no, I hadn't. I really didn't give it that much thought, but I knew he wanted to go. But as far as how successful he would be, I didn't think about it that much.

Q. Does everybody get to go to a Special Forces trial?

A. No. No.

Q. How do people get selected for that; do you know?

A. First you have to apply. We call it 4187 request for permission to go to Special Forces. If you get accepted, you have to go to a sort of like preselection course, which lasts normally about two, three weeks. If you make it through that, then they send you on to the assessments courses. If you make it through that, you're in.

Q. Do you know whether Mr. McVeigh went to the first level or the second level?

A. He went to the first level.

Q. Do you recall anything different about him when he got back

from that and had not succeeded at it?

A. Not a thing. He still seemed like the same McVeigh to me.

Q. Sergeant Daniels, are you familiar with any awards or medals that Mr. McVeigh received?

A. Yes.

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

THE COURT: Yes.

MR. BURR: Your Honor, we'd like to present Exhibit

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AA1, which I believe is the subject of a stipulation as to foundation, that this item belonged to Timothy McVeigh when he was in the Army.

THE COURT: Well, let's see. Is that a stipulation here that I have?

MS. WILKINSON: Yes, your Honor.

MR. BURR: It's not reduced to writing, I'm sorry.

THE COURT: Oh, all right. It's agreed that this is Mr. McVeigh's uniform coat?

MS. WILKINSON: That's correct, your Honor.

THE COURT: All right.

MR. BURR: Your Honor, I would like to present Exhibit

MR. BURR: May we have it admitted?
THE COURT: Yes.
MR. BURR: May I approach the witness?
THE COURT: Yes.

BY MR. BURR:

Q. Sergeant Daniels, I'm showing you what has been marked as Exhibit AA1. Can you identify that?

A. Yes, a uniform jacket.

Q. And do you know what it is -- whose it is?

A. It has McVeigh's name on it.

Q. Looking at it, are you familiar with the items that are on it?

A. Yes, I am.

MR. BURR: May I show it to the jury, your Honor?

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THE COURT: Yes.

BY MR. BURR:

Q. Let me stand where you can see this. Starting on this side of the uniform, can you describe what the various items are on it?

A. Yes, I can describe aside from -- starting with the shoulder, you have your green unit crest. You have blue rope, which is to signify the color of the infantry. You have your, another unit crest, placed on top which indicated he's affiliated with 2d Battalion, 16th Infantry. You have your Presidential Citation, Unit Citation, and Meritorious Unit Citation.

Q. And what is the significance of those citations?

A. Those are citations given by the president and Congress for units who have done outstanding in specific battle or specific task, or whatever.

Q. Is this citation similar to one of your own?

A. Yes.

Q. Do you know what these other citations were provided for in particular?

A. The Presidential Citation was awarded during the Desert, and Meritorious Unit Citation was awarded during the Desert Storm.

THE COURT: I don't think people are able to hear.

MR. BURR: Sorry, your Honor.

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THE COURT: Get him a microphone.

BY MR. BURR:

Q. Now, turning this way, on the side of the uniform, can you tell us what this top item is here?

A. That's the "Big Red 1" patch. It's worn on the right shoulder indicating that he went to war with the 1st Infantry division

division.

Q. And does that have any historical significance in the Army?

A. It does.

Q. What is that?

A. The "Big Red 1" was historically known for being in Vietnam, doing outstanding things. Desert Storm: What we was told, we was the first one going across to fight the Iraqis and possibly that we would not survive. So it has a lot of history to it.

Q. And what is this here?

A. Those are stripes, sergeant stripes, indicating his rank, which is a E5.

Q. Now, moving to this side of the uniform, can you, by pointing out -- tell the jury what they're seeing here.

A. What they're seeing now is the, starting from this musket with the blue background is the combat, combat patch -- not patch, but badge, indicating that he fought in war and was awarded the combat patch, which everyone who goes to war, stay over six months, you're awarded one of these.

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The Bronze Star for doing, for getting -- Bronze Star was probably given for doing something outstanding or something of valor -- the Army Commendation Medal with V device and one oak leaf cluster, has two, the V device, really doesn't say which one he got, though, but most likely he got it during Desert Storm.

Q. And what does the V stand for?

A. For valor.

Q. And what about this second row?

A. The Army Achievement -- represent Army Achievement Medal, the Good Conduct Medal, and the National Defense Service Medal.

Q. And are those individual medals?

A. Individual medals, yes.

Q. And what about this bottom row here?

A. The Army Service Medal and the School Ribbon, and this is the Southwest Asian Ribbons.

Q. Now, are those ribbons awarded to everybody that participated in those things?

A. If you participated in Desert Storm, Desert Shield, you might have gotten the Army Commendation Medal, which mostly the majority of the people did get. Not everyone got a Bronze Star, though. Only certain individuals got the Bronze Star. Not everyone can receive the Army Achievement Medal. The Southwest Asian Medal: Everyone got one that went over and stayed for the six-month time period. And everyone got the

Robert Daniels - Direct

National Defense Medal, even though if they were in basic training when the war was going on during that time, they got the National Defense Medal.

Q. What is this item here?

A. That's the Expert Rifleman, that means qualified with an M-16.

Q. What is this?

A. The Belgian Forgarriere.

MR. BURR: We'll spell it for you later.

THE WITNESS: It was awarded to the battalion during the World War II most likely.

BY MR. BURR:

Q. So this is something that everyone in the battalion would wear?

A. Everybody in the battalion would wear.

Q. What about this down in the left?

A. That was the service stripe indicating that he was in the Army for three years. Every three years, you would add a service stripe.

MR. BURR: Thank you, Sergeant.

No further questions, your Honor.

THE COURT: Any cross-examination?

MS. WILKINSON: No questions, your Honor.

THE COURT: All right. Sergeant, you may step down.

You're excused.

Next witness.

MR. NIGH: Sergeant Charles Johnson, your Honor.

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

(Charles Johnson affirmed.)

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

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

THE WITNESS: My full name is Charles Russell Johnson,
J-O-H-N-S-O-N.

THE COURTROOM DEPUTY: Thank you.

MR. NIGH: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. NIGH:

Q. Sergeant Johnson, you're currently a sergeant in the United States Army; is that right?

A. Yes, sir.

Q. Where are you stationed right now?

A. I'm stationed at Fort Hood in Killeen, Texas, sir.

Q. Before we go through what happened with your service career, if you would, tell us a little bit about where you grew up.

A. Okay. I was born in Holbrook, Arizona, and raised at the Petrified Forest National Park in Arizona.

Q. Is there any particular reason that you were raised in the

Charles Johnson - Direct

Petrified Forest?

A. My dad was a park ranger, sir.

Q. And did you go to high school in that area, as well?

A. Yes, I did. I went to Holbrook High School.

Q. Now, after high school, did you go immediately into the United States Army?

A. Yes, I did.

Q. And where did you go to basic training, after joining the Army?

A. I went to basic training in Fort Benning, Georgia.

Q. And that is a -- approximately a three-month training program?

A. Yes, sir.

Q. After going through basic training at Fort Benning, what places have you been stationed?

A. I've been stationed at the National Training Center in California; in Germany; in Fort Riley, Kansas; and Republic of Korea; and currently at Fort Hood, Texas.

Q. How long were you in Germany?

A. I was there for three years, sir.

Q. And was it after Germany that you went to Fort Riley?

A. Yes, sir.

Q. Is Fort Riley the place where you spent more time than any other place while you've been in the service?

A. Yes, sir. I spent six years at Fort Riley.

Charles Johnson - Direct

Q. Now, at Fort Hood and before that, do you -- in the Army is

there something called a MSO?

A. MOS.

Q. MOS, sorry. And what is an MOS?

A. And MOS is your job, Military Occupational Specialty.

Q. What is your Military Occupational Specialty?

A. My MOS was 11 Mike, which is a Bradley fighting vehicle, infantry.

Q. And what does that mean?

A. It means it's a light infantry who rides around in a Bradley fighting vehicle, which is an armored personnel carrier.

Q. And your job would be to get out of the personnel carrier if you encountered the enemy outside; is that right?

A. Right.

Q. Now, while you were at Fort Riley, did there come a time when you came to know Tim McVeigh?

A. Yes, there was.

Q. Tell us approximately when that was.

A. When I arrived at Fort Riley in 1990, January, Sergeant McVeigh was already stationed there. He'd been there probably a year. So he was already a soldier in the unit when I arrived there.

Q. What rank was Mr. McVeigh when you arrived there?

A. Sir, I believe he was a Pfc. E3.

A. Sir, I believe he was a Pfc. E5.

Charles Johnson - Direct

Q. How does -- What kind of rank is that as ranks go? Is it a low rank, a high rank?

A. That's a pretty low rank, sir.

Q. What was your rank when you first went to Fort Riley?

A. I was a Sergeant E5 at the time.

Q. So your rank was higher than his?

A. Yes.

Q. Because of that or for any other reason, did you have much contact with Mr. McVeigh when you first got there?

A. Not a lot when I first got there.

Q. Did you have any particular reason to notice Mr. McVeigh?

A. He was a -- he was an outstanding soldier. He stood out amongst the entire company. He wasn't in my platoon, but everybody spoke highly of him, and everybody took notice of him.

Q. Was -- did there come a time when you took even more notice of him because of a promotion?

A. Yes. Once he made corporal, he became a noncommissioned officer, and then the noncommissioned officers stick closer together in a unit than anybody else does. So once he became an NCO, he was like in the group, in the group of NCOs.

Q. And you were among that group, yourself?

A. Yes, sir.

Q. What kind of things did the NCOs do together? I mean -- or how was it that you were closer as a result?

Charles Johnson - Direct

A. Well, the NCOs all work together pretty close, and they confide in each other and a lot of problems and just basic everyday work type stuff. And in off-duty hours, the NCOs socialize together. It's not common practice for an NCO to socialize with a lower enlisted, so the NCOs stick together during duty and off-duty hours.

Q. And did you stick together with Mr. McVeigh in that regard?

A. Only during duty hours.

Q. And in the beginning, before Mr. McVeigh became a corporal, what was his status as compared to the other privates in the cohort unit?

A. He was in a -- like you say, he was in a cohort unit, which is a unit that goes through basic training together and then moves on to their first duty station together. Being that they all start at the same level, the competition for promotion and for awards is very stiff. And Sergeant McVeigh all the way up

through his ranks was promoted ahead of his peers because of his outstanding performance.

Q. When you lived in Fort Riley, did you live on the base, yourself?

A. Yes, I did.

Q. Did you live in the same type of housing that Mr. McVeigh would have?

A. No, I didn't. I lived in the barracks -- before the Desert Storm, he lived in the barracks, which is for single soldiers;

Charles Johnson - Direct

and I was married at the time, so I lived in government quarters with my family.

Q. Which consisted of a wife at that time?

A. Yes, sir.

Q. Since that time, have you expanded your family a little bit?

A. Yes. I have three sons now.

Q. But because he didn't have a family at that time, he lived in different quarters than you lived in?

A. Yes, sir.

Q. During the time before the Gulf War, did you have much occasion to spend time with Mr. McVeigh?

A. Before the Gulf War, the only time I spent with Sergeant McVeigh was either during -- at duty I saw him at work or spoke

with him at work; and then if I pulled charge of quarters, which is a 24-hour duty in the barracks to maintain order and discipline in the barracks, which is a duty for Sergeant E5, Sergeant McVeigh at the time would come out -- usually would come out and speak with me. And I would usually borrow magazines from him to read during that 24-hour duty, being that

he lived -- his room was right around the corner from the CQ desk.

Q. What kind of magazines did you borrow?

A. They were mostly firearms-type magazines.

Q. Any names of any magazines in particular that you recall?

Charles Johnson - Direct

A. American Rifleman, Guns and Ammo, and Soldier of Fortune magazine.

Q. Did you read Soldier of Fortune magazine?

A. Yes, sir.

Q. Why would a fellow read Soldier of Fortune magazine?

A. Because it's a -- Soldier of Fortune magazine is about -- tells a lot of stories about military history and combat experiences, and it has a lot of articles on new adventure-type or combat-type equipment, which is all very interesting to an infantryman.

Q. Were you an infantryman at the time?
A. Yes, sir.
Q. Was Mr. McVeigh an infantryman at the time as well?
A. Yes, sir.
Q. Were there other people like yourself and Mr. McVeigh who also read Soldier of Fortune?
A. Yes, sir. It's not unusual.
Q. Was it a fairly common magazine?
A. Yes, sir.
Q. Did you, during the time before the Gulf War, kind of learn what kind of a person Tim McVeigh was?
A. I knew what type of a soldier he was.
Q. And how would you describe that at that time?
A. He was a highly motivated, professional, honest, loyal, easy-to-get-along-with soldier.

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Q. Now, when you went to the Gulf War, when was it -- you, yourself, went to the Gulf War; right?
A. Yes, sir.
Q. When did you go?
A. I went on January 8, 1991.
Q. Mr. McVeigh went as well?
A. Yes.
Q. But as I understand it, you didn't have any contact with him, real contact with Mr. McVeigh during the Gulf War?
A. That's correct.
Q. Why is that?
A. His platoon, which was 1st Platoon, was attached to an armored company during the Gulf War itself, in what they call "task force organization," where they cross-attach armored platoons and infantry platoons within the battalion. And his platoon was attached to the armor company, and my platoon, which was 3d Platoon, stayed with our parent company.
Q. Was that a strategic type of arrangement to make sure that there were more functions that could be performed?
A. Yes, sir.
Q. All right. Did there come a time when you had some discussions with Mr. McVeigh about guns -- did that occur before, or after the Gulf War?
A. I had some discussion with him before the Gulf War, like I said, when I pulled CQ. And I also spoke with him after the

Charles Johnson - Direct

Gulf War on different occasions about firearms and shooting and so forth, because it interested me as well.
Q. Did those conversations result from a sticker that you had on your car?
A. When he realized -- when he saw a National Rifle Association sticker on my vehicle, I think it sparked the conversation. And I believe that was the first time that he

conversation. And I believe that was the first time that he spoke about that.

Q. Did you have any interest in guns, yourself, at the time?

A. Yes, sir.

Q. And is that an interest that the both of you shared together?

A. Yes, sir.

Q. Did Mr. McVeigh's interest in guns appear excessive to you at that time?

A. No, sir.

Q. Did it appear any different than your own?

A. No, sir.

Q. After Desert Storm, did you have any contact with Mr. McVeigh?

A. Yes, sir.

Q. Go ahead and describe it.

A. Sometime after he got out of the Army, at the end of 1991 -- somewhere between three and eight months, I believe, after he got out of the Army, he came back through Fort Riley,

Charles Johnson - Direct

Kansas. And he stopped at the company and spent a good part of

a day at the CQ desk, which is the main -- it's the center of everything in a company, pretty much. He spent most of a day there, reminiscing with a lot of the people that were still assigned to the company that he was assigned with.

Q. All right. Did -- had his personality changed, or did you notice any changes in him?

A. No, sir.

Q. Did you have -- did you get a sense for how he felt about the Army at that point in time?

A. It seemed like he missed it to me, sir.

Q. Before that incident when he came back through, after he left the Army, after the period that the Gulf War was over and you were back at Fort Riley, did you have occasion to observe his performance as a gunner?

A. Yes, sir. I was very interested in Sergeant McVeigh's performance as a gunner, because in that Bradley infantry company, you have a -- what you call a gunnery exercise, where each crew is required to qualify on a live fire exercise. And it was called Bradley Table 8. And there's very stiff competition. It's friendly competition; but it's stiff competition just as well, because everybody wants to get top gun, which is the person that -- the crew that scores the highest score. And Sergeant McVeigh and his crew were my gunner's and my crew's competition for that award. So I

Charles Johnson - Direct

watched him very closely so that hopefully I could get my gunner to beat him, which I could not -- I couldn't do.

Q. Mr. McVeigh usually won?

A. Yes, sir. He got top gun of the battalion.

... yes, sir. He got top gun or the decoration.

Q. How many gunners would be in a battalion?

A. Approximately 56 gunners, sir.

Q. So he would have been the best out of 56?

A. Yes, sir.

Q. Was your gunner pretty good?

A. Yes, sir.

Q. Was he as good as Mr. McVeigh?

A. No, sir.

Q. During the time -- as I understand it, Sergeant Johnson, the time that Mr. McVeigh came back to Fort Riley after he left

the Army was the last time that you saw him?

A. Yes, sir.

Q. And you didn't have any contact with him, really, after that?

A. No, sir.

Q. So that would have been in what year? In 1990 --

A. I believe it was the spring or summer of 1992, sir.

Q. Spring or summer of 1992. So there's nothing you can tell us about what Mr. McVeigh was doing in '93, '94, '95?

A. No, sir.

Q. During the time period that you were familiar with him in

Charles Johnson - Direct

the Army and that time that he came through after he left the Army, how would you describe Mr. McVeigh in your own words?

A. He was a -- seemed like a normal, high-speed, what we call a high-speed, highly motivated, ease-to-get-along-with, caring individual. And he always seemed to have a good head on his shoulders. He didn't -- he didn't get into the kinds of trouble that a lot of young soldiers get into. And he seemed like he really liked what he did when he was in the Army. And when a person is like that, it's very obvious, because there are a lot of people who don't like what they're doing.

Q. At the time that Mr. McVeigh was promoted to corporal and then after that when he was a sergeant, did he have some responsibility towards soldiers of a lower rank?

A. Oh, yes, sir.

Q. How did he deal with those responsibilities?

A. I think he dealt with them very seriously. I think he took

his job very seriously.

Q. How did he treat those soldiers that would have been his subordinates?

A. He treated them very well, sir.

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

THE COURT: Any cross?

MS. BEHENNA: Just a few.

THE COURT: All right.

CROSS-EXAMINATION

Charles Johnson - Cross

BY MS. BEHENNA:

Q. Sergeant Johnson, you share Mr. McVeigh's interest in guns, do you not?

A. Yes, ma'am.

Q. And you shared his interest in Soldier of Fortune magazine and liked reading those, did you not?

A. Yes, ma'am.

Q. You went on and have a distinguished career in the Army, do you not?

A. Yes, sir. I mean yes, ma'am.

Q. What is your current rank?

A. I'm a sergeant first class.

Q. You consider yourself to be a good soldier, don't you, Sergeant Johnson?

A. Yes, ma'am.

Q. As a matter of fact, you're in a distinguished club of sergeants, are you not?

A. Yes, ma'am.

Q. What is that?

A. It's called the Sergeant Audie Murphy Club, ma'am.

Q. You obey orders?

A. Yes.

Q. You do what you're supposed to do?

A. Yes.

Q. And you fought for your country as well, did you not?

Charles Johnson - Cross

A. Yes, ma'am.

Q. Sergeant Johnson, is this the first time you've seen Mr. McVeigh in five and a half years?

A. Yes, it is.

MS. BEHENNA: Your Honor, that's all I have.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. NIGH:

Q. Sergeant Johnson, you mentioned the Sergeant Audie Murphy Club?

A. Yes, sir.

Q. Can you tell us about that, describe that.

A. It's a club in the forces command of the Army that is designed to -- designed to select outstanding noncommissioned officers. It's a very small club, and they look at selection -- or membership in the club based on duty performance and potential leadership potential; and I think that 1 percent of the Army's noncommissioned officers are in that club.

Q. 1 percent?

A. I believe so.

Q. Did you have any thoughts about Mr. McVeigh in connection with the Sergeant Audie Murphy Club?

A. I always thought that he displayed the characteristics to -- that were needed to be selected into the Sergeant Audie

Charles Johnson - Redirect

Murphy Club.

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

MS. BEHENNA: Nothing further, your Honor.

THE COURT: Witness excused, I take it.

MR. NIGH: Yes, your Honor.

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

We'll take our recess at this time. Members of the jury, we'll excuse you also, for the usual 20-minute period during which, again, of course, please avoid discussion with respect to the case, anything that you have seen or heard and, as I say, expect to see and hear; and again keep open minds, remembering to wait till you hear it all to talk about it or think about it.

You're excused now, 20 minutes.

(Jury out at 3:12 p.m.)

THE COURT: I have the defendant's motion to extend time under Rules 29, 33, and 34. Does the Government have a copy?

Yes?

MR. MACKEY: Yes, we do.

MR. CONNELLY: We just got served before this.

THE COURT: Do you oppose it?

MR. HARTZLER: Could I have a moment after we get back? I have not seen it, I'm sorry.

THE COURT: All right. We'll address it at 5:00.

Recess, 20 minutes.

(Recess at 3:12 p.m.)

(Reconvened at 3:30 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:30 p.m.)

THE COURT: Next witness, please.

MR. BURR: Liz McDermott.

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

(Elizabeth McDermott 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: Elizabeth McDermott, M-C-D-E-R-M-O-T-T.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Burr.

DIRECT EXAMINATION

BY MR. BURR:

Q. Good afternoon, Ms. McDermott.

A. Good afternoon.

Q. Where do you live?

A. In Pendleton, New York.

Q. How long have you lived there?

A. 21 years.

Q. Where is Pendleton, New York, in relation to Buffalo?

Elizabeth McDermott - Direct

- A. It's a northern suburb. It's about 20 miles from Buffalo.
- Q. And how far is it from Lake Ontario?
- A. 10 miles -- no, it's more than that. I don't know. 15, 20.
- Q. Are you close to Niagara Falls?
- A. 15, 20 miles. Yes.
- Q. What is your address in Pendleton, New York?
- A. 4665 Meyer Road.
- Q. Did you have neighbors named McVeigh at one point?
- A. Yes, we did.
- Q. And when was that?
- A. They moved in in the summer of 1977.
- Q. And do you recall how long they lived there? Were they next door?
- A. Yes, right next door.
- Q. How long did they live next door?
- A. About eight years.
- Q. Do you recall the McVeigh children?
- A. Certainly do.
- Q. Do you recall Tim?
- A. Yes.
- Q. How old was he, do you remember, when they first moved in?
- A. Uh-huh. He was nine.
- Q. Did you have much interaction early on with the McVeighs?
- A. Yes. We both had three-year-old daughters who became very

Elizabeth McDermott - Direct

- good friends. So yes, there was a lot of interaction.
- Q. What is your daughter's name who is three?
- A. Molly.
- Q. Or who was three then.
- A. Right. Molly.
- Q. Molly. And she's now 23; is that right?
- A. Yes, uh-huh.
- Q. And who was the McVeigh child that was her friend?
- A. Jennifer.
- Q. Did Tim McVeigh get to know you pretty quickly?
- A. Yes.
- Q. How did you all get to know each other?
- A. Mostly through time spent outside, because the kids would be playing outside.
- Q. Did you -- did the adults in the families interact with each other very much?
- A. Yes. Yes. We were friends shortly. Yeah.
- Q. Did you go out together on occasion?
- A. Yes.
- Q. Did you eat in each other's houses, eat dinner?
- A. Not so much formal meals, but party-type things, yes.
- Q. Was there a pool at somebody's house during that period of time?
- A. Yes. McVeighs had the neighborhood pool.
- Q. Tell us about that.

Elizabeth McDermott - Direct

A. Well, it was just kind of a mecca for the kids, and Tim was always pretty much in charge and set the rules that everybody had to go by.

Q. Did the rules seem to be sensible?

A. Oh, yes. Yes. No running, no throwing. Uh-huh.

Q. Did Tim have a relationship with your children of his own?

A. Yes. We had Tim baby-sit our kids very often, and he was wonderful. I mean, the kids loved him because he spent time with them. He played with them; and yes, he was super.

Q. Now, about what age were your kids when Tim started baby-sitting them? Do you remember?

A. Well, Tim is six years older, so probably seven and two.

Q. And the seven-year-old at that point was Molly?

A. Yes.

Q. And who was the two-year-old?

A. My son, Paul.

Q. Over what period of time would you say -- how many years did Tim baby-sit for Paul and Molly?

A. Three, four.

Q. Was he your regular baby-sitter?

A. Yes.

Q. How often would he baby-sit for your kids, would you guess?

A. Oh, a couple times a month, but he was over much more than that on an informal basis.

Q. Did you feel comfortable leaving him with your kids, having

Elizabeth McDermott - Direct

him be in charge?

A. Absolutely.

Q. Now, in this period of time that we're talking about, when the McVeighs moved in, were you working at that point in time?

A. Not when they first moved in, but --

Q. Did there come a time when you did go to work?

A. Yes.

Q. And where was that?

A. I became a religious education director at our church, the

Good Shepherd Church.

Q. Were the McVeighs members of that church as well?

A. Yes.

Q. Did you have any interaction with Tim in that role as the religious education director of the church?

A. Yes. He was enrolled in one of the classes.

Q. What kind of class was it?

A. We meet once a week for about an hour and 15 minutes. He was in junior high, I think, when I started.

Q. Have you had religious training yourself?

A. Yes.

Q. Can you tell us briefly what that was.

A. Well, I was a religious sister for several years; and I studied at Catholic University of America, Ignatius College.

Q. And then you became a lay person at some point?

A. Yes.

Elizabeth McDermott - Direct

Q. And got married; is that right?

A. Yes.

Q. Were there other ways in which you had other interaction with Tim through the church?

A. Just religious education.

Q. Were there ever church picnics that you were responsible for something in?

A. Yes. I -- I was chairman of a candy booth at our summer lawn fete, and Tim helped me out at that booth. And he also helped out the kids who came. If they weren't successful at winning candy, he would slip them one.

Q. Were you aware that he did that?

A. Yes.

Q. Did he do that with your approval?

A. Yes.

Q. In the course of the years that the McVeighs were your neighbors, do you feel like you came to know them as a family very well?

A. Yes, I do.

Q. What kind of family were they?

A. Average, normal family. They used to take our daughter when they would go camping at the local -- one of the local campsites. Just -- I mean, nothing that stands out in any way,

just your average family.

Q. Now, after -- was there a time when the McVeighs moved away

Elizabeth McDermott - Direct

from next door?

A. Yes.

Q. Do you recall what year that was? You may have said already, but --

A. I believe it was 1984.

Q. Did you have much contact with Tim thereafter?

A. Well, obviously not as much; but yeah, we'd probably see him once a month or so.

Q. Do you remember whether you went to his high school graduation?

A. No, I did not.

Q. Do you remember what year that was?

A. 1986.

Q. After his graduation from high school, did he ask you to sign something that you did not want to sign?

A. Yes. He asked me to sign his pistol permit. It wasn't so much that I didn't want to sign it for him; it's just that I

MUCH THAT I DIDN'T WANT TO SIGN IT FOR HIM; IT'S JUST THAT I DIDN'T SEE WHY ANYBODY WOULD WANT ONE, BUT --

Q. Did you -- go ahead. I'm sorry.

A. You know, if Tim wanted me to, I would. I think I did give

him a little sermon on my views, but -- yes, I did sign it.

Q. Do you know why he needed a pistol permit? Did he tell you?

A. I don't recall. I -- I truly don't recall if he did or not. It was just that if -- you know, if it was something that

Elizabeth McDermott - Direct

was reasonable and it certainly was within the bounds of law -

-

and I know a lot of people have them, so I said yes.

Q. Do you recall not long after that time when you signed the

pistol permit that Tim joined the Army?

A. Yes.

Q. And do you remember about what year that was?

A. Probably about '88.

Q. After he joined the Army, did you see him at all?

A. Yes. He stopped over when he was home on leave a couple of times, uh-huh.

Q. Did he ever write to you when he was in the Army?

A. He wrote when he was over in Desert Storm, yes.

Q. Okay.

MR. BURR: I'd like to show the witness an exhibit for identification, please. It's Exhibit LL5.

BY MR. BURR:

Q. Do you see that on the monitor in front of you, Ms. McDermott?

A. Yes.

Q. Let's see if we can make it a little larger.

Can you identify that without talking about what it is, but just identify it for us.

A. It's a letter received from Tim.

Q. And can you tell us the date?

A. 11 January '91, Friday.

Elizabeth McDermott - Direct

Q. And who is it addressed to?

A. Liz, Jack, Paul, Molly.

Q. Is -- who were Liz, Jack, Paul and Molly?

A. Jack is my husband, Paul is my son, and Molly is my daughter.

Q. Is this a letter that you received from Tim?

A. Yes.

MR. BURR: Move for admission, your Honor.

MR. MACKEY: No objection.

THE COURT: Received. LL5, is it?

MR. BURR: Yes, sir.

THE COURT: Do you wish to display it?

MR. BURR: Yes, if we could.

BY MR. BURR:

Q. Ms. McDermott, I'm going to ask you to read a portion of the letter, if we can zoom in a little bit.

Starting with the paragraph that is towards the bottom of the page, if you could read that paragraph.

A. "Right now, we're in barracks, very similar to those made famous in Beirut." One of our vehicles -- "Once our vehicles get here, we'll move out 300 miles to the north to our positions."

Q. And then to the next page, the last full paragraph.

A. "This is definitely the real stuff now. We had an alert yesterday. Everyone had to get into their chemical protection

Elizabeth McDermott - Direct

gear and wait."

Q. Thank you. Do you recall receiving any more correspondence

from Tim when he was in the Gulf?

A. Yes. We had another letter a couple of months later.

MR. BURR: Showing the witness only for identification
LL6.

BY MR. BURR:

Q. Can you identify that for the record?

A. Yes.

Q. Is this a letter from Tim?

A. Yes, it is.

Q. And who is it addressed to?

A. Jack, Liz, Paul, and Molly.

Q. And what is the date?

A. 15 March '91, Friday.

Q. Do you recall receiving that letter?

A. Yes, I do.

MR. BURR: Move to introduce, your Honor.

MR. MACKEY: No objection.

THE COURT: LL6 received, may be displayed.

BY MR. BURR:

Q. And I will ask you to read a portion of this letter, too, Ms. McDermott. Starting with the next-to-the-last paragraph.

Do you need it zoomed in a little more?

A. No, that's all right.

Elizabeth McDermott - Direct

"Right now, we're 17 miles too deep into Iraq somewhere in a small farming community."

Q. I think that might be "a major."

A. "A major six-lane highway runs through here, and" we're

set

up to blockade -- "we've set up a blockade to deter the movement of supplies from south to north. It's not like the movies, where a car comes through the middle of others to get through. There is a diagram. Try --"

Q. "Crashing," maybe?

A. "Try crashing a Toyota pickup through two 16-ton M-1 tanks.

Not pretty.

"Anyway, we've got these starving kids and sometimes adults coming up to us begging for food. Because of the situation, we can't give them any. It's really trying emotionally. It's like the puppy dog at the table but much worse. The sooner we leave here, the better. I can see how the guys in Vietnam were getting killed by children. Thank God, this isn't that way."

Q. Thank you. After Tim got out of the Army, did you see him anymore?

A. Occasionally. Not as regularly.

Q. Do you recall whether he returned to the Pendleton area after the Army?

A. Yes, he did.

Q. And approximately how long was he there -- did he live

Elizabeth McDermott - Direct

there?

A. About a year.

Q. Did you see him enough to have any sense of whether he seemed different than the fellow that you had known before?

A. Yes. I did not sense any difference.

Q. Did you ever talk with him about his experiences in the Army?

A. Not at great length. When he was home on leave right after

he came home from Iraq, but that's the only time I recall.

Q. Based on your experience with Tim as his neighbor, seeing him grow up, what do you think of him?

A. I love Tim. I -- I think he's -- I love Tim.

MR. BURR: Thank you. No further questions.

THE COURT: Mr. Mackey.

CROSS-EXAMINATION

BY MR. MACKEY:

Q. Mrs. McDermott, Tim McVeigh was about nine years old when he moved in next door?

A. Yes.

Q. And about 15 when he moved away?

A. Yes.

Q. And you learned that he grew up and went off to the Army?

A. Yes.

Q. And in 1991, you knew he was overseas in the Middle East. Correct?

Elizabeth McDermott - Cross

A. Yes.

Q. The two letters that you showed the jury today: Those are letters Tim McVeigh wrote back to you -- is that right -- in 1991?

A. Yes.

Q. You had sent him a Christmas card and he responded?

A. Yes.

Q. And you sent him some cookies and he responded?

A. Yes.

Q. The last letter that you've ever received from Tim McVeigh was the letter you've shown this jury, March of 1991. Is that right?

A. Yes.

Q. And the last time you've seen or talked to Tim McVeigh was in the year 1992; is that right?

A. '92 or '93.

Q. Okay. Would it be fair to say that the Tim McVeigh that you know best is the youngster who grew up between ages 9 and 15 living next door?

A. I would extend it more to 9 to 22 or 23.

Q. You don't know what he was doing because you didn't have any contact with him in 1995?

A. Correct.

Q. Or 1994?

A. Correct.

MR. MACKEY: Thanks, Mrs. McDermott.

MR. BURR: No other questions, your Honor.

THE COURT: Excusing the witness?

MR. BURR: Yes.

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

Next, please.

MR. BURR: Jack McDermott.

THE COURT: Okay.

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

(John McDermott 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: John G. McDermott, M-C capital D-E-R-M-O-T-T.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. BURR:

Q. Good afternoon, Mr. McDermott.

A. Mr. Burr.

Q. Where do you live?

A. Pendleton, New York, on Meyer Road.

Q. How long have you lived in the Pendleton area?

John McDermott - Direct

A. 21 years.

Q. Where did you live before that?

Q. Where did you live before that?

A. In the Buffalo area my entire life, born and raised in Buffalo.

Q. Is this the furthest away from the Buffalo city proper that you've lived in your lifetime?

A. When I was in the service, I was stationed in Japan for two years.

Q. That's the only time you've lived away from that area?

A. That's correct.

Q. Thank you.

Do you recall some neighbors that were -- lived next door to you named McVeigh on Meyer Road?

A. Yes, I do, very well.

Q. Do you remember approximately what period of time they lived there?

A. About 1977 to probably 1984.

Q. Are you related to the witness who was just on the stand?

A. That's my wife. Yes.

Q. How long have you all been married?

A. How long have we been married?

Q. Yes.

A. 27 years.

Q. What do you recall from your earliest memories about the McVeighs as neighbors?

John McDermott - Direct

A. Well, I remember them building the house next to us. We had an option to buy the land. And I cut the grass one year, and I didn't want to cut it anymore; and it was sold within a week.

And they built a house. They moved in. There was an older girl, Timmy, and a young girl my daughter's age, Jennifer.

Q. And your daughter's name is Molly?

A. Right. Mary Molly. Right.

Q. Did the McVeighs have a garden?

A. Wonderful garden, yes.

Q. Who was the gardener in the McVeigh family?

A. Bill McVeigh.

Q. Did he -- did you ever have a garden?

A. Yes, I did, a small garden.

Q. Did he on occasion assist you with your garden?

A. Well, yes, he did. As a matter of fact, he told me at one time, "Don't even bother weeding it, because you don't do it well. I'll take care of it."

So he came over and weeded it for me. He had a green thumb.

Q. Do you know whether the kids were ever involved in helping with the garden?

A. Not -- I don't recall them being greatly involved in helping.

John McDermott - Direct

Q. Do you have -- what's your most distinct memory of the time

you spent with Tim when he was growing up next door?

A. Well, he was always the kid next door. I mean, I'd see him

all the time. He'd baby-sit our children. And I watched him developing into high school; and then when he got a little older, he got an interest in comic books.

Q. About what age was he then? Do you remember?

A. Probably 13, 14, somewhere in that area.

Q. Did you have some contact with him about that?

A. Yes, I did, because I had a friend that had a comic book store; so I arranged and I took him down. And they hit it off quite well. I mean, he was -- actually, what he was doing, he was buying comic books for his future. He was getting his college education money together, and he really made a study out of it.

Q. So his purchase of comic books was for investment. Is that

a fair way to put it?

A. Yes, it was. He referred to it as his college fund.

Q. Now, did he get along with your kids, Molly and Paul?

A. Well, the kids loved him. He was a good baby-sitter. He used to eat us out of house and home; but other than that, he was good.

No, we felt quite confident, you know, when we'd go out that he was taking care of them. He entertained them and kept them happy.

John McDermott - Direct

Q. Did he ever help your family put a garage sale together?

A. Oh, yes. Yeah.

Q. About when was that? Do you remember?

A. Oh, he was probably 15, in that area. We decided to make -- put a garage sale together, and he just came over and helped organize the whole thing and took care of it for us.

Q. What happened to the funds that were raised in that garage sale? Do you recall?

A. I don't actually recall, truthfully. My wife probably would.

Q. I should have asked her.

A. Yes.

Q. Do you recall when he was in the Army?

A. Yes. He visited us when he is on leave. We had him over for dinner. We got letters from him, which I think Liz probably read to you.

He was a -- he was just a nice kid, really.

Q. Did you have any contact with him after the Army, when he returned home from the Army?

A. Yes.

Q. What was --

A. I'm retired basically, and I had gone to work in security

work, just to keep busy; and I was taking a couple civil service examinations. As it worked out, Tim and I took one together.

John McDermott - Direct

Q. Which one was that?

A. I believe it was the toll-takers exam for New York State. He did pretty well on it. I didn't do very well; but we had a nice visit that day, and he talked about the Army and was just normal. I'd been in the service 40 years before, and it was just a -- everything he said was the way I remembered it.

Q. Anything distinct stand out about what he said about his Army experience?

A. No.

Well, he was a little concerned. I asked him, you know, if anyone was hurt in his unit. And I think he said two -- two fellas had been hurt, but they were not hurt by enemy action; they were hurt by their own action, "M-1 thumb," or something like that.

Q. Did he talk with you about why he left the Army?

A. Well, no, as a matter of fact. At that time, he was going back to his base; and he said he thought they were going to re-form another unit and he was probably going to stay with it.

And we never really went into much detail on the future.

Then the first thing I knew, his father told me he was out.

Q. Do you know whether he got a job ever as a toll-taker for New York state?

A. No, I don't think he did. I believe he did well in the exam, but they just didn't hire him.

John McDermott - Direct

Q. Do you remember -- did he ever talk with you about taking other civil-service-type exams?

A. Yes. He had taken, I think, federal marshal's exams in that time period; and I think he did well on that one, too.

Q. Do you know whether he ever got a job as a U.S. marshal?

A. No, he didn't. He's a bright boy.

Q. What kind of person was Tim in your experience with him?

A. I liked him very much, trusted him. I can't imagine him doing anything like this. Can't.

MR. BURR: Thank you, Mr. McDermott.

THE COURT: Any cross-examination?

MR. MACKEY: No cross-examination.

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

THE WITNESS: Thank you.

THE COURT: Do you have any additional witnesses?

MR. BURR: Your Honor, we have no other witnesses today.

THE COURT: Well, we're running ahead of schedule, members of the jury, as you can gather from that statement.

members of the jury, as you can gather from that statement;
and

of course, you recognize that the defense can't call witnesses
in until the Government has rested their part. And it's
always
difficult to estimate exactly when we'll run out of witnesses.
And we have, which means we'll recess early today, which is
probably not bad news for you. But an overall estimate: We
would expect to complete this penalty phase hearing next week.
I can't tell you exactly when. Obviously, like all human
events, we can't, as I told you in the beginning, program it
according to a specific schedule; but we will, I expect,
complete the submission of information to you sometime next
week, and then you will have the responsibility to make a
decision. But wait till we do that.

And I know that given the nature of the questions
that
you're going to have before you, it is something that you may
be thinking about or want to think about or whatever. I have
to ask you to resist that temptation, knowing, as you do, that
you haven't heard all that you're going to hear both from
witnesses and also from the lawyers and from me with respect
to
what the particular questions are and how you go about it. As
I've already explained, there is a systematic way to approach
the question of sentencing; and I'll approach that in some
detail in the instructions.

So please withhold judgment in your own minds. And,
of course, do not discuss it with other jurors or anyone else;
and continue to be very careful about anything that you might
come across in newspapers, magazines, publications of any
kind.

I, of course, don't want to sequester you again at
this point, so you have to be careful. And I'm sure you
recognize there is a lot out there. People freely discuss
what
they think you ought to do; and it would, of course, violate
your oath to come into contact with any of that, or, if you do
inadvertently, to let any of it influence or affect you.

We'll proceed here as we've done before; and that is
if, indeed, you do inadvertently come across something that
relates to the questions that remain in this case, you let me
know about that, without talking to other jurors about it but
with giving me a note as to what happened. And we'll take it
from there.

So we know that you have throughout, here, and you
will continue to, exercise these cautions; and you know how
important it is.

It was, of course, a choice that I had, to continue
the sequestration during this hearing; and I resisted the
temptation to do that. It might make me more comfortable, but
it wouldn't make you any more comfortable; but then again, what
I'm doing is and all of us are doing is relying on your honor
and your continuing compliance with these requirements. So
there is a freedom for you here, but it's also a freedom with
a
discipline. And the discipline is, of course, for you to keep

open minds, avoid discussion, and avoid anything outside of what happens in this courtroom that would in any way influence and undermine your judgment.

We'll resume this at 9:00 Monday morning.

You're excused until then.

(Jury out at 4:03 p.m.)

THE COURT: I'd like to discuss scheduling and jury instructions and some of those other details with counsel, so I'd like counsel to meet with me in about 15 minutes in the conference room.

Recess, 9:00 Monday morning.

(Recess at 4:04 p.m.)

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WITNESSES (continued)

Cross-examination by Mr. Mackey

Jan McDermott

Direct Examination by Mr. Burr

DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
AA1	12424	12424			
LL5	12452	12452			
LL6	12453	12453			
PP17	12408	12409			
PP21	12409	12409			
PP22	12410	12410			

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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 6th day of June, 1997.

Paul Zuckerman

Kara Spitler