

Monday, June 9, 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 140)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:31 p.m., on the 9th 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 1:31 p.m.)

THE COURT: Be seated, please.

We have this affidavit which has been marked A1,

which

I've reviewed.

And, Mr. Hartzler, you've now reviewed it?

MR. HARTZLER: We have. Mr. Mackey is prepared to address it.

THE COURT: All right. There are two sentences that

I

think clearly should come out, the last two sentences on the first full paragraph of the first page. I don't believe this jury should be informed about that.

What else? Do you have other problems with it?

Also, I would give a limiting instruction with it, which I have prepared. Let me give you this because it might facilitate it.

All right. Let me ask the defense if you have any objection to the limiting instruction.

MR. JONES: I don't have any objection to this instruction, your Honor. I think it is appropriate.

THE COURT: All right. Now, Mr. Mackey?

MR. MACKEY: Your Honor, I think this affidavit -- proposed affidavit goes far beyond the solution that the Court crafted at one of our hearings last week; and that is, following the Court's language in the instruction, simply to serve as a foundation for the testimony of two of the witnesses. What I would propose is the affidavit would be rewritten in such a fashion that it does that and nothing more, simply lists those exhibits that according to Tim McVeigh's affidavit he had seen or read or been exposed to on or about the dates of the publications.

There are a number of paragraphs and sentences that go beyond simply foundation, that predicate fact and talk about where he was on certain days, where he was on the day, for example, of April 19, how he reacted to news accounts. There is a tremendous amount of testimony that is woven into the affidavit itself.

So back to the Court's solution, I think the affidavit ought to be redrawn in such a way that it is nothing more than a listing of those exhibits that Mr. McVeigh has seen.

In that regard, even taking the affidavit to be facially accurate, your Honor, it does not list all of the exhibits that the two defense witnesses intend to testify about, at least according to disclosure. There are at least 15 exhibits that Mr. Reavis and Mr. Pate are listed as being responsible for that according to Mr. McVeigh's affidavit he's not seen or read or been exposed to. So even the foundational objective seems to have missed the mark as well. I don't think this is going to be a matter that we'll get to yet today, but I'd ask the Court to urge the defense to redraw the affidavit in a much more narrow fashion consistent with the Court's direction and instruction.

THE COURT: Well, I agree that some of it is testimonial and not foundational.

Do you intend to get to these exhibits and witnesses today?

MR. JONES: It is possible, your Honor, that Mr. Pate may testify this afternoon, but I don't know that we would finish with him. I think he's the ninth witness for the afternoon. Mr. Reavis I feel quite certain would not testify until tomorrow because he comes after Mr. Pate.

THE COURT: Is Mr. Pate Soldier of Fortune?

MR. JONES: Yes, sir, but all he's going to do is identify the articles as written by him and address certain writings of Mr. McVeigh, which I don't think there's any dispute that Mr. McVeigh wrote them because some of them are items that the Government has introduced into evidence. But he's not going to -- his testimony is not like that of Mr. Reavis who will be on the stand for several hours.

THE COURT: Okay. Well, we'll discuss the affidavit further at 5:00.

All right. Let's bring in the jury.

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

THE COURT: Members of the jury, we apologize for keeping you waiting this last several minutes, but I had several matters to discuss with counsel, and we needed to do that outside of your hearing, and that's why we were delayed a few minutes.

We're ready to proceed now with the next witness.

MS. WELCH: Lynn Drzyzga.

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

(Lynn Drzyzga affirmed.)

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

THE WITNESS: Yes.

THE COURTROOM DEPUTY: Would you state your full name for the record and spell your last name.

THE WITNESS: Lynn Drzyzga. Last name is spelled D-R-Z-Y-Z-G-A.

THE COURT: I think we're going to need to have you speak a little more into the microphone.

THE WITNESS: Sorry.

THE COURT: Thank you.

Miss Welch.

MS. WELCH: Thank you, your Honor.

MS. WELCH: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION

BY MS. WELCH:

Q. Good afternoon, Miss Drzyzga.

A. Hi.

Q. How are you?

A. Nervous.

Q. Are you a little nervous? Can you lean over just a little bit toward the microphone and you won't have to worry about speaking up.

Lynn Drzyzga - Direct

A. Yes.

Q. That's perfect. Thank you. Can you tell us where you are living now?

A. In Amherst, New York.

Q. In Amherst, New York?

A. Yes.

Q. Is that a suburb of Buffalo?

A. Yes.

Q. Now, have you always lived there?

A. No, I lived in Pendleton.

Q. That's -- Pendleton is outside of Buffalo?

A. Correct, that's a suburb.

Q. Go ahead, I'm sorry.

A. It's a suburb in another county.

Q. And that's a rural area, isn't it?

A. Correct.

Q. When did you move to Amherst?

A. 1992.

Q. And how long had you lived in the Pendleton area before that?

A. 16 years.

Q. You have two sons; is that right?

A. Correct.

Q. And do you know Timothy McVeigh?

A. Yes, I do.

Lynn Drzyzga - Direct

Q. Is he the same age as your oldest son?

A. He's a year older.

Q. Do you remember how old Mr. McVeigh was when you first met him?

A. Yes, I do. He was nine.

Q. Nine years old?

A. Correct.

Q. Can you recall the circumstances of meeting him?

A. He was playing with my son. He was another child in the neighborhood. And he and my son dug my car out twice during the blizzard of '77.

Q. That was a pretty bad blizzard.

A. Absolutely.

Q. How far from the McVeighs did you live?

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A. Four houses down on the same side of the road.
Q. So I imagine Tim was over there quite a bit, wasn't he?
A. Yes, off and on, yes.
Q. Did your children and Tim play together for -- regularly, frequently?
A. Yes, when they were smaller, yes.
Q. Did Tim become quite comfortable at your home?
A. Yes, he did.
Q. Would you tell us a little bit about that.
A. Well, we were very strict parents, and Tim would come over; and I think he enjoyed the family unity that we had, and we

Lynn Drzyzga - Direct

enjoyed including him.
Q. What do you remember about Tim as a small boy?
A. He was very active, always on the go and wanted to do things.
Q. Anything stand out in your mind?
A. He was very friendly and easy to like, and I just enjoyed having him around.
Q. Did you ever have problems with him going barefooted?
A. I certainly did.
Q. Would you tell us about that.
A. Well, Tim enjoyed running down the road barefooted, and I'm kind of particular about my housekeeping, so one day he did come down, and he was sitting on the couch, and I noticed the bottom of his feet were very black. And I said, Tim, you're welcome, but you must put on a pair of socks if you're going to stay. And it became a routine thing, when Tim would arrive barefooted, either I would supply the socks or he would. And sometimes he left with them, and sometimes he left them there.
Q. Did he ever do anything to indicate to you how much that meant to him?
A. Yes. Years later when he was a young man, he arrived at the door, and this time he didn't run down the road, he drove in the driveway; and when he knocked on the door, he goes, Hi, Mrs. D, and there was socks on his shoulder. That meant -- that was special.

Lynn Drzyzga - Direct

Q. How did Tim -- well, let me back up.
You mentioned that you were pretty strict with your children?
A. Yes.
Q. Can you go into that a little bit more.
A. They had curfews, we had to know where they were going, who they were going with, and we enforced it. They said they were going to a neighbor and we called and they weren't there, then we felt that they weren't honest with us and we had to deal with it.
Q. When Tim was with your children or at your house, how did

you -- did you treat him with the same kind of strictness and discipline?

A. I certainly did.

Q. Could you tell us how he responded to that.

A. If he did something that I did not approve of because I wouldn't even let my own boys do it, I would give him a tongue-lashing as well.

Q. And how did he respond?

A. Okay, Mrs. D, and he respected my wishes.

Q. He called you Mrs. D; is that right?

A. He did.

Q. Do you recall things that Tim did over the years that you felt really demonstrated his caring and concern for you?

A. Yes. Three come to mind.

Lynn Drzyzga - Direct

One, when Tim was probably 12, I believe, he was having a garage sale. And he came running down the road and up the driveway and knocked on the door and said, Mrs. D, I have something for you. And it was a little tin with a flip lid. And Tim knew I collected tins; and instead of selling it in his

garage sale, he brought it to me, and I still have it today; and it's quite special for a little fellow to do that. So I knew he must have cared something.

Q. And sort of making money at things like that was pretty important to Tim, wasn't it?

A. Right. That's why it made it extra special, because he gave it to me, he didn't ask me to pay for it, even though I collected tins.

Q. You said three things stood out.

A. Oh, I'm sorry.

I don't remember mentioning, but one Christmas Tim came to the house and he bought me a box of chocolate-covered cherries, which is my favorite candy; and for the life of me, I don't remember telling him that, but somehow he knew it and he presented it to me.

Q. Your family is not much into guns, is it?

A. No, we're not.

Q. How do you feel about guns?

A. I have nothing . . . I don't fear guns because I do have people in my family that are policemen, and I've seen them wear

Lynn Drzyzga - Direct

them. I just knew nothing about them, and I just preferred not to have them in my home when it wasn't warranted on a visit; so I just felt that they shouldn't be there.

Q. Were you aware of Tim's interest in guns?

A. Absolutely.

Q. And was he aware of your feelings about guns?

A. Yes, I made it very clear. And he respected them when he

and come to the house.

Q. Did you ever talk with Tim about politics?

A. Nothing more than I was complaining about paying my income tax and couldn't find a receipt, similar things like that, but nothing else that I can recall.

Q. You don't remember having any conversations that would indicate that Tim held antigovernment feelings during the time that you knew him?

A. Absolutely not.

Q. Now, you're aware that after a few years after high school, Tim joined the Army?

A. Yes.

Q. Did you stay in touch with him after he went into the military?

A. Yes, I did. I wrote to him.

Q. Did you see him during that time?

A. Tim stopped by to see us before he left and spent quite a lengthy time. And as Tim was leaving, I followed him to -- we

Lynn Drzyzga - Direct

had a garage connected to the house --

Q. Now, is this -- is this before he went into the military, or is this before he went away to the Gulf War?

A. Oh, the Gulf War, pardon me.

Q. So this was after he had been in the military for a short while?

A. Yes.

Q. And you said he visited with you and your husband?

A. Correct.

Q. For quite a while.

A. Yes.

Q. And did you have a private conversation with him before he left?

A. Yes. I followed Tim out to our garage, which was connected to the house, and for some reason, my husband stayed behind; and I just wished him well and told him I knew how hard it was. And he started down the stairs, and I was sitting on the stoop; and he turned around and he said, Mrs. D, I'm coming home in a body bag.

I cried, and I said, No, you're not. You must get those thoughts out of your mind. Tears welled up in his eyes. He hugged me, and he walked away very slow. And that was just like my own son was leaving at that moment.

Q. Did you do anything to sort of express how you felt about him going to war?

Lynn Drzyzga - Direct

A. Yes, I did. At that time everyone was putting yellow ribbons on trees. We didn't have an oak tree, but we had a maple tree, so I stuck a big, yellow ribbon on it; and no one in the neighborhood knew who the yellow ribbons were for but

in the neighborhood when the yellow ribbons were for Dad
Tim and I, and I told them that it would stay there till he
returned. And when he returned, the ribbons came down.

Q. Do you recall when he did get back from the Gulf?

A. I can't recall, I'm sorry.

Q. You can't remember when. You mentioned that Easter, Easter
of the year that Tim got out of the Gulf.

A. Well, Tim was still there. And Easter came along. And I
always knew that Tim liked Cadbury eggs.

Q. And what are Cadbury eggs?

A. They're chocolate eggs with a filling that usually they
only sell in stores around Eastertime. So I bought a dozen of
them, and I put them in the freezer. And when Tim -- I knew
Tim was going to stop by again. When, I didn't know. So he
did. And when he was talking to my husband, I went to the
freezer, and I put these frozen eggs into a big bowl and
presented it to him. And he had this big smile. And he put
one in his mouth, but it was a hard egg, and I made him happy.
He went through so much, and that meant a lot to me.

Q. Did you see him after he returned home?

A. Yes.

Q. I'm sorry, you just were talking about the time he came

Lynn Drzyzga - Direct

over. Did you talk to him after he came home about being in
the Gulf?

A. Yes, very briefly. He would not go into detail other
than -- I was more interested in the sand dunes and these
machines he was driving around, how they worked, and it was
kind of that type of conversation.

Q. And that would have been sometime in '91. And then Tim
left the Army at the end of '91 and came back to New York
around 1992.

Do you remember seeing him after he left New York at
the end of '92?

A. No. The last time I saw Tim was either late June or early
July of 1992.

Q. And what was that occasion?

A. We had moved to -- out of Pendleton, into the Amherst
suburb, and he stopped over on his way to work just to say hi
and see how we were doing. The visit lasted about 10 minutes,
and he was on his way to work.

Q. Did you correspond with Tim while he was in the Gulf?

A. Yes, I did.

Q. After he left New York, did you correspond with him?

A. I did one other time. It was quite a lengthy time that I
hadn't heard from him, so I called Bill McVeigh, Tim's mom --
or Tim's dad, and said, Do you have Tim's latest address? I'd
like to contact him. So Bill gave me the address, and I did

Lynn Drzyzga - Direct

write to Tim.

Q. And did you hear back from him?

A. Once, yes. I did.

Q. Did he write you a letter?

A. No, he did not. He sent me a tape of Waco with an outline,

couple pages of typed outline with little notes in the margin explaining the tape that I was going to view of Waco.

Q. Was this sometime toward the end of 1993?

A. To be honest with you, I'm not sure, but it --

Q. Do you recall how long after the Waco incident that it was?

A. I've been trying to think about that, and I can't come up with an answer, I'm sorry.

Q. Were you familiar with what had happened at Waco at that time?

A. I was, because I watched it on TV.

Q. Did you follow it at all?

A. Not any more than any other story.

Q. And did you watch the tape?

A. Yes, I did.

Q. Do you recall what your reaction was?

A. I saw this on TV. I mean it just did not present anything that I did not see on TV in either a clip on a newscast or the tape that was being run over and over and over again.

Q. Let me make sure I'm understanding you. You're saying that what was in the video were clips of things that you had seen on

Lynn Drzyzga - Direct

TV and they were repeated on the video?

A. Nothing was -- well -- what was on TV was what I saw in the tape. Yes.

Q. Based on your association with Tim as he was growing up and the contact that you had with him, can you tell us what kind of person he was.

A. He was friendly, he cared, and he always showed feeling in his own way. And I think that's how we started to build a relationship and respect each other, because he would stop over whether my boys were home or not. And that was kind of special.

Q. So you had a relationship with Tim that was special to you separate from his friendship with your son?

A. Correct.

Q. And is that also true of Tim and Mr. D?

A. Yes. They were more on a guy type of talk, and Tim and I -- I mean we'd play Scrabble together. He would help me with a puzzle once in a while. I would do those big puzzles with the big pieces, and we'd just sit around and talk, have something cold to drink, and he was off again. His visits weren't really all that long, but they were cherished.

Q. How do you feel about him today?

A. Tim is my friend, and I will always cherish all our memories because I think it was a relationship that was special because it was my son's friend and I was a mom, and really

Lynn Drzyzga - Direct

friendships like that do not come along, and that's why I feel it is so special.

MS. WELCH: Thank you.

THE WITNESS: You're welcome.

MS. WELCH: I have no further questions, your Honor.

Mr. Mackey.

MR. MACKEY: Nothing.

THE COURT: You're excusing the witness, then?

MS. WELCH: Yes.

THE COURT: You are excused. You may step down.

THE WITNESS: Thank you.

THE COURT: Next, please.

MS. WELCH: Richard Drzyzga.

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

(Richard Drzyzga 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: Richard Drzyzga, and it's spelled D-R-Z-Y-Z-G-A.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed, Ms. Welch.

MS. WELCH: Thank you, your Honor.

DIRECT EXAMINATION

Richard Drzyzga - Direct

BY MS. WELCH:

Q. Good afternoon, Mr. Drzyzga.

A. Good afternoon.

Q. How are you this afternoon?

A. Uptight, nervous.

Q. I'm a little bit that way, too.

The woman that just testified, Lynn Drzyzga, is that your wife?

A. Yes.

Q. And I assume that you also live in Amherst?

A. I hope so. Yes. Yes, I do.

Q. And you and Mrs. Drzyzga lived in Pendleton for quite a few

years before you moved to Amherst; is that right?

A. 16 years, yes.

Q. What is your occupation?

A. I'm in the insurance industry. I'm part of an organization that works with agents of other companies, and we broker out product and assist agents. And I teach continuing education in several of the local colleges for insurance professionals so they can keep up their licenses and such.

Q. Do you know Timothy McVeigh?

A. Yes, I do.

Q. And you've known him since he was a young boy; is that right?

right:

A. Since about eight or nine. When we moved into Pendleton,
I

Richard Drzyzga - Direct

believe he and his parents had either just moved in or . . .
our boys were close to the same age. We have two sons. One's
a year younger than Tim and the other one's about three years
younger. They rode the same school bus, and so consequently we
got to know Tim.

Q. Can you tell me what Tim was like as a young boy.

A. Great kid. Funny. Always, always cheerful, always looking
for a laugh. He would . . . he would con a little bit.

Q. In what way?

A. Well, my wife and I were very strict. We ran our
household

very strict, and our boys sometimes didn't like it. All right.
Tim came from a household that probably wasn't as strict.
Probably there's not another household on the street that was
as strict as us.

So when our boys couldn't do something and they
wanted

to, you know, it was like Tim and they would get together and
come up with some kind of a plan or excuse to try to get us to
change our mind.

Q. So he would try to get you to let your sons do things he
wanted to do --

A. Yeah.

Q. -- that you didn't normally let them do?

A. But it was just normal kid stuff.

Q. Did that gradually change?

A. Yeah, because Tim learned quickly that our rules didn't

Richard Drzyzga - Direct

change. They were there. They're fair, but they didn't
change. And what was good for one was good for everybody.

In fact, I can remember one of the major . . .
discourses that he had with my wife. The boys had to always
take their shoes off -- not only the little boys, the big boys,
too -- when we came into the house.

Q. Yeah, Mrs. Drzyzga told us about the white socks.

A. Oh, okay.

Q. Was that quite a -- quite a story in your home; you
remember that?

A. Well, what brought it to heart was years later, okay, when
Tim came for a visit; and there he was with his boots on and
everything else, and he was a man. He wasn't a little boy
anymore. And he walked up to the house with the white socks
over his shoulder, and he just asked if he could come in. I
mean he learned the rules, didn't object to them; and once he
got to know the rules, he played by them.

Q. Do you remember what Tim's interests were when he was in
school, in high school?

A. Oh, in high school. Well -- That was about the time that he was working at Burger King with my son.

Q. Was he into computers?

A. Very much so. Very much so. In fact, I thought that he was going to make a career out of it. And when he graduated from high school -- and he graduated, you know, with some

Richard Drzyzga - Direct

pretty good marks -- I was surprised that he didn't immediately move into that direction, all right? For some reason Tim just didn't want to proceed or go on, and --

Q. You said that he worked with your son at Burger King?

A. Yeah. Yeah.

Q. How long did they work together?

A. I don't know, my son worked there for about three -- three years. And I don't think Tim worked there for the full length of time because then he transferred to another store up in Lockport, but it was still Burger King.

Q. What kind of worker was Tim?

A. He never worked under me, so I couldn't really say. But I never heard anything negative.

Q. Are you aware of Tim's interest in guns?

A. Yep, always was.

Q. And Mrs. Drzyzga said that your family didn't share that interest and really didn't have guns around.

A. Right, we don't have guns in the house. We never allowed guns in the house, and Tim was aware of that.

Q. Did there --

A. That was one of the rules we had, by the way.

Q. And he followed that rule?

A. To the best of my knowledge, yes.

Q. Did a time come when he asked you to sign for a gun permit for him?

Richard Drzyzga - Direct

A. Yes. Yeah. He was working for a security firm at the time, and he approached me and he asked me if I would be a party to sign. He needed three signatures.

Q. In New York you needed three signatures for the permit?

A. For the permit. In New York there's two types of permits. Okay. There's a carrying permit and just a permit to, for target practice and such. And this was supposed to be for a carrying permit. Okay.

Q. And did you agree to sign it?

A. Well, I told him this: I had no problem, you know, with him and his guns. Okay? I just said I want to find out why he

needed the permit signed because this was for a carrying permit. Okay. And I would have done this for anybody that would have asked me. Okay? So I said, Give me your supervisor's name, because he told it was job related. I said, Let me call your supervisor; if your supervisor says, yes, this

is so, you've got my signature.

Q. What kind of a job was it for?

A. Well, it was armored car job, and he was going to be promoted to a situation where he needed to have a gun, a sidearm.

Q. Did you ever talk politics with Tim?

A. Not really. At least not from his side. We might have got

a few from my side.

Q. What do you mean by that?

Richard Drzyzga - Direct

A. Well, in my business, you know -- I was a financial planner, still am. You know, so I'm always working with people on readjusting their finances so that they can limit their taxes, so taxes was an issue.

Q. So you might have expressed your opinions to him?

A. Sure.

Q. But you don't recall him expressing his opinions to you?

A. No.

Q. Do you remember how Tim was as an older teenager?

A. Yeah, he was just an extension of what he was when he was a

younger kid. The only thing is -- right after high school, he started -- I'm not going to say floundering, because that's not the right word. He was undecided as to what he wanted to do with the future. And he was working for the armored car company. You know, and I kept prodding him because, you know, he kept showing up at the house. It was almost like a father-and-son relationship, but it really wasn't.

I just kept saying to him, I said, Tim, you've got to do something with your life. You've got to focus. Why don't you join the service, get into the military? It's a perfect solution for you. You like weapons. They can give you all the weapons you want; and you can learn something besides, and maybe you can bring something home and be useful in that respect.

And after doing that three or four times, to my

Richard Drzyzga - Direct

surprise, Tim come over one day and says, Guess what? I joined the Army.

I said, Well, great. Great.

Q. And did you stay in touch with him after he went to the Army, went into the military?

A. Yes. My wife wrote a couple letters. I'm a terrible letter writer. I write in my business. But as far as personal

letters, my wife calls me "the iceman." She says I can't share my emotions, I really don't know how to bring out myself, you know, in the warm way, I guess.

Q. But you did see Tim after he came back from the Gulf War

Q. But you did see Tim after he came back from the Gulf war, didn't you?

A. Well, we saw him before that.

Q. You saw him while he was home --

A. One time when he was on leave, and then another time shortly before going over, he stopped over to the house. He was bringing his car back, because he didn't want to leave it at Fort Riley. And he stopped over to the house. In fact, he was there for a little while when he came over, he and my wife had been talking. It was not an unusual thing, because even after our boys went away to school and were not present, Tim felt very comfortable coming over and just sitting and talking. And it was never anything serious, it was just chatting.

That's all it was. But this time was a little bit different.

Okay. He was a few days away from having to be back

Richard Drzyzga - Direct

at Fort Riley, and he was going to be shipping overseas, and there was a serious tone about him at the time, serious tone because he was telling me about how the fact that he had to go and rearrange his -- his will, you know, make sure that was in order and they were talking about the insurances and everything else and that they had meetings about, you know, some of his guys weren't going to be coming back, and that kind of concerned him, although he was trying to be brave and he kept a stiff upper lip.

It was a little later, really about the time that he was leaving, that he told my wife that probably the next time she'd see him, he'd be in a body bag, and she scolded him. And it brought tears to her eyes, and it's the first time I ever saw tears in his eyes.

Q. Did you talk to him again when he returned?

A. Yes. Yeah. In fact, when he was gone, we put up yellow ribbons. Okay? We had moved to the other end of the road, and

we were in a, almost like a new neighborhood; right. But we put up yellow ribbons on our tree and we wrote him to let him know that the yellow ribbons wouldn't come down until he came home.

So the day he came home, I'm not sure it was the exact

same day, he came to the house, and we had the yellow-ribbon-taking-down ceremony. Okay? And then he stayed for a while and the boys came, and he was starting to share just a few

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things that were going on, you know, in the Gulf, things that, you know, he had seen.

Q. I think you said there were two things that particularly made an impression on you.

A. Yes. The one thing that really struck me was -- mean here he was telling us about all the action that was going on and

the fact that there was a lot of carnage out there, that the sights that we had on our tanks and equipment was so far superior to what the Iraqis had, you know, that they could actually see through the clouds of burning oil and everything. It was a virtual turkey shoot; it was an unfair advantage. Okay? And coming from somebody that was pulling the trigger, you know, that kind of struck me.

But the other thing that struck me was the fact that he had time in this three-day thing -- because it was a very fast, you know, push through -- to notice the Iraqi kids. There was an element of Iraqi people that were kind of abandoned by the Iraqi government, and they were just kind of floating out there and they were starving. And as soldiers, they couldn't do anything, either. The U.S. government wasn't allowed to do anything positive for these Iraqis, so that really struck him just to see the kids kind of wandering around and begging for food and them not really being able to do anything. It saddened him.

Q. Did he talk about the Iraqi soldiers that they encountered?

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A. Yeah, he said that when they were coming out of the trenches, he said these were like the dregs of the Iraqi Army. It was almost like Hussein had sent, you know, everybody that he didn't want left into those trenches because he knew they were going to be virtually annihilated.

Q. What do you know about his performance during the war?

A. Only what, you know, we read and seen on TV. And supposedly it was superior. He did, though, talk about one -- one situation about a time when he was in his Bradley, he was in one of the lead vehicles, and he says there was some Iraqi prisoners -- not prisoners, but Iraqi coming towards him. And it was in the heat of -- heat of action. He took sight on someone, pulled the trigger, and killed them.

Q. Was he doing that in any way --

A. No, he wasn't bragging about it. In fact, I think his emotion at that point was, you know, it was something that he had to do, but he didn't feel good about doing it.

Q. Did he brag about how he did in the Army or in the Gulf?

A. No. In fact, we did because we saw him on TV, you know, standing in front of Schwarzkopf's tent, you know, when the generals were having their discussions. We thought that was pretty good.

Q. I think you told me there was one thing he bragged about. Do you remember what that was? Did he meet Tom Brokaw?

A. Yes. Yes. In fact, that made a big impression on him

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because when we were telling him about, you know, how proud we were of him standing in front of the tent, he kind of dismissed

it like, you know, there was a bunch of other guys there, too.

But the fact that he met Tom Brokaw, shook his hand, made a big

impression. I don't even know if they conversed.

Q. Were you aware that after he came back home from the Gulf, that he tried out for Special Forces?

A. Well, I knew that Special Forces was something that he wanted. I didn't recall that he had gone through the tryout until after he was home and he was talking about it. He was disappointed because he really -- I guess the time in the desert from a physical standpoint kind of wore him down a little bit. Didn't have a chance to recoup his energies or build himself back up for whatever test he had to go through to

get into the Special Forces. And the only thing I knew was that he washed out after a couple of days.

Q. Based on your contact with Tim before the war and after, did you have an opinion about whether or not his military service had affected him?

A. The amount of time that I saw him afterwards wasn't that extensive. Timings were brief, and I really couldn't say, that, you know, I could see a dramatic change, one way or the other. In fact, it was hard to tell whether there was any kind of change. To me, Tim was Tim.

Q. After he left New York, in -- at the end of '92, early '93,

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did you hear from him?

A. Well, there was a time that we didn't hear anything, period. All right. And it wasn't unusual for us not to hear anything from Tim for periods of time. But it was never a real, real long period. But in this particular time, the period just kind of extended itself to the point where my wife and I talked and she decided to call Bill McVeigh to find out what's going on with Tim. All right? And at that time he told

her that Tim had gone out West, out towards Arizona, looking for work, you know, something better than what was offered locally.

And she said, Well, if you have an address, could you please give it to me.

He said, Well, here's the last address that I have. It was in Kingman. And consequently she wrote a letter and sent out a picture of our son, our youngest son who had just graduated from boot camp, because he's in the Air Force. And we're very proud of him.

Q. And did you hear back from him?

A. Yes. It wasn't right away, but it was a little while later.

Q. Did you get a tape about Waco?

A. Yes. A package came, and in the package was a tape about Waco. Kind of like a mimeographed -- I'm not even going to say

a letter, just mimeographed sheet, step-by-step instructional

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about putting the tape in, stopping it here, taking a good look at this, taking a good look at that. And along with that was just a tiny, little note and a picture of our son that we sent to Tim.

And that kind of confused me. It really confused me because it was bent in half, and there was a little note and the note said, Did you ever wonder why there's yellow fringes on the flag? And it was a question that I had no answer for. I still don't.

Q. And that was -- in that package was also a tape of -- about

Waco?

A. Yes. Yeah.

Q. Do you remember how long after the Waco incident that you received that?

A. It was roughly around six months.

Q. Did you watch the tape?

A. Yes, I did.

Q. Can you tell us what your reaction was.

A. Well, it was the same thing that I saw on TV. Okay? The tape that I was looking at was exactly what the news media was putting on TV except as a watcher of the news on TV, it was something that I just watched. Okay? And I said, Wow, you know, because like anybody -- everybody else that watched what was going on, we got enthralled in it. This was exactly the same thing, but when you stopped the tape and, you know, read

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the little notations that were on the printed piece of material and you focused on what it said, it kind of brought to light what was really going on.

And, yeah, it did make an impression on me. But it also scared me. It scared me to the point that I turned to my wife and -- my exact words were, What the hell's he gotten into?

Q. Were you worried about him at that point?

A. Yes. Because, again, it frightened me. I mean because the

tape was basically focused as a denial -- a government denial. Okay? It wasn't that the people in Waco were the culprits. It was that the government was the culprit. And that just ran chills through my spine, not that I couldn't believe that that couldn't be true, but just the fact that, you know, that's the government.

Q. Have you seen Tim since then?

A. No, I haven't.

Q. Have you had any -- you didn't have any contact with him, then, in 1994?

A. Today is the first time that I've seen Tim McVeigh since he left to go out West

here to go out west.

Q. Can you tell us how you feel about him today.

A. Torn, confused. There's a part of me that still remembers Tim, little kid.

And then there's a part that sees what everybody else

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sees on TV and gets angry. And I can't put the two together. I mean it just . . . hearing and listening and reading all that was being said might have been true, but it just wasn't the Tim that I knew. I mean in me everything was just kind of going in circles.

As a kid growing up, you know, I was there along with some of the other neighbors and some of his teachers, and we virtually prodded Tim to do good, and he did do good. I mean he was a great kid. He wasn't mischievous. He didn't get in trouble. He was always there.

He even sided with us at one occasion when my oldest son was starting to flex his wings a little bit and trying to break the bonds of -- you know, the rules, and Tim was at the dinner table. And Scott was saying -- oh, he was trying to make us out to be the bad guys. All right? And Tim just turned around and looked at him and punched him in the shoulder and said, Hey, wait a minute. They may be strict, but they're fair.

And that was the first time that I ever really was made aware of Tim's feelings. I mean he kind of closed himself off a little bit, you know, he kept his feelings to himself. But it made me feel good because I felt what I was doing as a parent was a positive thing and somebody else besides my kids noticed it.

Q. And you still care about Tim?

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A. Yeah, I do. I do. And it's a hard situation for me, it really is. Because, you know, I have to face people every day, and there are people out there that, you know, that detest him. I mean . . . and they detest me because I knew him. They detest me because I still have feelings for him.

MS. WELCH: Thank you, Mr. Drzyzga. No further questions.

MR. MACKEY: None, your Honor.

THE COURT: All right. You may step down.

I take it he's excused?

MS. WELCH: Yes, your Honor.

THE COURT: You're excused.

Next please.

MR. COYNE: Defense calls Vincent Capparra.

THE COURT: Okay.

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

(Vincent Capparra 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: Vincent Capparra, C-A-P-P-A-R-R-A.

THE COURTROOM DEPUTY: Thank you.

MR. COYNE: Thank you, your Honor.

DIRECT EXAMINATION

Vincent Capparra - Direct

BY MR. COYNE:

Q. Good afternoon, Mr. Capparra.

A. Good afternoon.

Q. There is water in front of you. If you happen to get dry, help yourself.

A. Okay.

Q. Mr. Capparra, where do you live?

A. In Derby, New York.

Q. Is Derby 20 to 25 miles or so outside of Buffalo, New York?

A. Yes.

Q. How long have you lived in Derby, sir?

A. About 12 years, 13.

Q. Are you currently employed?

A. Yes, I am.

Q. For whom do you work?

A. RJD Security.

Q. What sort of business is RJD Security?

A. It's a security company in Buffalo.

Q. What sort of security does RJD provide?

A. They provide securities for businesses and stores and warehouse.

Q. And when you say "provide security," you mean furnish guards?

A. Armed guards, unarmed guards, yes.

Q. What are your responsibilities at RJD Security?

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A. I'm an inspector for RJD Security, and I oversee all the guards and how they work and how they uniform and attend their jobs.

Q. So you have supervisory responsibility for a number of employees?

A. Yes.

Q. About how many?

A. I'd say close to around 3-, 400.

Q. Okay. Have you ever worked for an outfit called Burke Armored Car Service?

A. Yes.

Q. And when did you work for that operation?

A. When did I work for it?

Q. Yes.

A. It was back in -- from about '77 to '90.

Q. Okay. And during your employment at Burke Armored Car, did

you come to know Tim McVeigh?

A. Yes, I did.

Q. Explain to the jury how it is that you happened to know Tim

McVeigh during that period.

A. Tim worked for me for a couple years.

Q. Okay. He worked for you in what capacity?

A. He was an armed guard, and then he became a supervisor.

Q. Do you remember when Tim was first hired to work for Burke?

A. Yes.

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Q. What year would that have been?

A. It had to be just after he got out of high school.

Q. So it was -- 1986 or so sound about correct?

A. Somewhere in there.

Q. Is there any particular reason you hired Tim McVeigh, if you recall?

A. He applied to us through an ad. We did a full background investigation on him. He had a pistol permit. We put him on. He passed the polygraph test.

Q. Okay. Did he supply references?

A. Yes, he did.

Q. And would you have checked those references?

A. Yes, we did.

Q. It sounds like you go to a lot of trouble before you hire people at Burke Armored Car. Why would that be?

A. The insurance company that insured Burke for the armored car had us do this. That was one of their requirements.

Q. And why did they have such a requirement?

A. Because of the volume of money we carried for people and the United States Government, for the Federal Reserve.

Q. You'd been transporting large sums of money for various customers?

A. Yes.

Q. Throughout the New York area?

A. Yes.

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Q. And what would the range of money be that would be transported --

A. Varied --

Q. -- in the armored car?

A. It varies. Anywheres from 80,000 to millions.

Q. \$80,000 to several million --

A. Yes.

Q. -- dollars might be located on a armored car. Was it common for you to hire folks right out of high school to do

COMMON FOR YOU TO HIRE folks right out of high school to do this kind of work?

A. No.

Q. Was there a policy on age at the company at the time?

A. Yes. Burke had a policy on age, and he didn't hire anybody over -- or under 21.

Q. Tim McVeigh was --

A. He was younger, yes.

Q. How was it that you came to hire him notwithstanding the fact --

A. We hired a few of them because the qualifications that they met and what he did and how he handled himself.

Q. Were you Tim McVeigh's direct and immediate supervisor?

A. Yes, I was.

Q. And you said he worked there for a couple of years?

A. Two years.

Q. How often would you see him during that two-year period?

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A. Almost every day.

Q. Monday through --

A. Monday through Friday.

Q. Okay. Did he receive any training at Burke?

A. Yes, he did.

Q. What sort of training?

A. Everybody who comes on first goes on what we call our "downtown run"; that there's a three-man crew, and he worked as a guard as the third man downtown moving coin and moving money all day long.

Q. This would be during a day shift?

A. Day shift, 8:30 to around 4:30, 5:00.

Q. Is that how all employees start at Burke?

A. Every one of them.

Q. From there, did he move on to another assignment?

A. Yes.

Q. Do you recall what that assignment was?

A. Yeah, he moved on to the throughway run, which is a night shift, and from there, about six or seven months into when he was working for us, we made him a supervisor and he ran the throughway.

Q. How soon after he began working, if you recall, did you make him a supervisor?

A. Oh, maybe somewhere around six to eight months.

Q. So not yet a year out of high school, a young Tim McVeigh

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was made a supervisor of an armored car?

A. Right.

Q. Would he have supervisory authority of the other two persons inside the armored car?

A. Right, whoever was with him and who was the driver.

Q. Can you describe to the jury what kind of employee you found Tim McVeigh to be?

A. Tim was a good, honest employee.
Q. Can you explain what you mean, what the basis for that opinion is?
A. He did his job. He was left to run the truck, and he made all his stops on time, got there and got back, never had a loss in his truck.
Q. Did he do what he was told?
A. All the time.
Q. A typical shift would be how many hours, sir?
A. About an eight-hour shift. He started about midnight and get back about 8 in the morning.
Q. Would he ever work any extra hours?
A. Yep, if we had specials and we asked Tim to come to work, yes, he would.
Q. You called them "specials"?
A. They were "specials." They would stay over.
Q. And what would a special be? What might an example be of a special that Tim might be required --

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A. If we needed a run to, say, a bank that was out of money that needed the money right away, we would ask them to help out, and his truck would help out all the time.
Q. Would Tim be paid extra money for that?
A. No.
Q. Special duty?
A. Nope.
Q. Why not?
A. Because they were on salary.
Q. Did he ever complain about drawing special assignment?
A. No.
Q. Did he seem to welcome such work?
A. Yeah. He never gave us a hard time about it.
Q. How about the fact that he was relatively young? Did that present any problems to you?
A. Nope.
Q. Would you say that Tim was reliable?
A. Yes.
Q. Show up for work on time?
A. Showed up for work. I think in the two years that he was there, he only called off twice.
Q. Did he ever call in sick?
A. That's about it, just two.
Q. The two times?
A. Yeah.

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Q. Do you have an opinion -- I think you stated that you found Tim to be an honest employee. Was there a basis for that

particular opinion?

A. Yeah. They found a money bag containing quite a bit, a lot

of money in it, and he turned it in to us; and we turned it back in to the bank.

Q. Can you explain that more fully to the jury; that Tim found

a bag full of money that he turned in?

A. When they got to the bank at Rochester and they pick up empties, they throw the empties back into the bags, to the boxes that they pick up; and when they did that, there was a bag with \$8,000 that Tim and them found and brought back to us.

Q. The bag had not been emptied?

A. No.

Q. The bank employee assumed that she had emptied it, perhaps?

A. They emptied it, it was all pushed through the papers and everything. It was all checked out. There was no way they could even tell who had it.

Q. No way the bank could have told who might have had that money?

A. Nope. Because in the New York throughway, they all use the

same color bags, from Buffalo, to Syracuse, to Rochester; and that area there, and up to New York City. And there's three different armored cars that brought these bags in.

Q. If Tim wanted to keep that money, he could have --

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A. Absolutely --

Q. -- with virtually no risk of being caught?

A. Uh-huh.

Q. Did he have responsibility for any money in the armored car itself?

A. Yep. He had a cash box with \$2500 that he had to keep and keep that up to what he had and checked on that every day.

Q. What was that for?

A. That was to make change for the Throughway Authority, for each booth.

Q. Do you ever encounter any problems with Tim's cash box?

A. No.

Q. The figures always squared at the end of the day?

A. Uh-huh.

Q. Never short at all?

A. Nope.

Q. What about Tim's attitude towards work and his fellow employees?

A. He had a good attitude.

Q. Can you explain what you mean by that?

A. He never -- you know, anything we told him to do, he did it. Never gave anybody a hard time. He got along with all the guys.

Q. Did you ever see Tim outside the work environment?

A. He was at my house a couple of times and at my parents'

Vincent Capparra - Direct

home for dinner.

Q. So you had him at your home for dinner and your parents had

him into their home for dinner as well?

A. Right.

Q. Did you ever receive any complaints about Tim McVeigh?

A. The only complaint I got was that he was in the armored car, from two of the older gentleman; and he would turn the radio all the way up and put earplugs in his ears and just drive with the music blasting.

Q. He would put the radio on at a loud volume?

A. Uh-huh.

Q. And this disturbed the older gentlemen?

A. Yeah, Russ Andolino and Jerry Zambricki didn't like the rock-and-roll music.

Q. They preferred some other style of music?

A. Right.

Q. Did Tim ever receive a promotion while at Burke?

A. He made supervisor.

Q. He made supervisor. You told us that was a relatively short period of time.

A. Uh-huh.

Q. Do you know how long he operated as a supervisor for during

his employment there?

A. Better than a year.

Q. So over a period of a year?

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A. Just before he left us to go into the service.

Q. And he had additional responsibilities while in that supervisor position?

A. Uh-huh.

Q. What were those?

A. He was in charge of the truck. He had to maintain all the records and sign for money from each bank.

Q. Now, you spent about 26 years, by my calculation, in the security business; is that not right?

A. Right.

Q. How many men and women have you supervised over that period of time?

A. I'd say close to 400.

Q. How would you rank Tim McVeigh within that group of 400 employees?

A. Up in the first 25 of them. He was a good employee.

Q. In the top 25?

A. Uh-huh.

Q. Percent?

A. Right.

Q. Did you ever have occasion, other than having Tim over to

Q. Did you ever have occasion, other than having him over to your house for dinner, to see him socially outside of work?

A. When you say "socially," what do you mean?

Q. Just at some nonwork situation, a ball game, maybe Christmas party?

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A. We had him -- I call him to come to the house one night; I was having some trouble with some kids, and I wanted him to help me.

Q. You asked Tim to come out to your house to help you with trouble that you were having?

A. Uh-huh.

Q. Tell the jury what the trouble was.

A. They were throwing ice balls at the house windows, and we couldn't catch them, so we laid -- the police didn't do nothing; so we laid in the yard and we grabbed them.

Q. Who was throwing these ice balls?

A. It was about eight kids from the neighborhood.

Q. Were these just normal ice balls, or were these Buffalo special ice balls?

A. They had some good ice balls. They had some eggs inside of them.

Q. Eggs inside of them. You don't get that in Oklahoma.

A. Nope.

Q. So when they hit the windows or the frame of the house, it made quite a mess.

A. That's true.

Q. So you decided that you would try to bring a stop to that?

A. Uh-huh.

Q. You invited Tim and another fellow over to the house?

A. Uh-huh.

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Q. Another person from work. What happened?

A. We got them. We caught them that night.

Q. How did you manage to catch them?

A. We laid in the back in a trench, and finally they came around throwing ice ball and we got them.

Q. What did you do when you got them?

A. We just roughed them up a little bit.

Q. Did you try to dissuade them from pelting ice balls at the house in the future?

A. Uh-huh.

Q. Now, you were interviewed by the FBI in connection with this case, weren't you, back in April of 1995?

A. Uh-huh, telephone interview.

Q. You told them about the incident, didn't you?

A. Uh-huh.

Q. Did you tell them anything particular about what Tim had done at that time?

A. I said he said he could blow the kid up.

Q. What did he say? Put that in context for the jury, if you

would.

A. Well, I had the guy on the ground; Tim came over, he said he wanted to know his name, he could really blow his house up and that.

Q. And what did you think about that at the time?

A. We just thought it was funny and he was joking.

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Q. The kid think he was joking at the time? Do you have a sense?

A. He didn't say.

Q. He didn't say. But the point of all that was to do what?

A. Just to scare them.

Q. And do you think the kids were scared that night?

A. They've never thrown ice balls again.

Q. Do you recall when Tim left his job at Burke Armored Car?

A. Uh-huh.

Q. When did that occur?

A. That was just before he went into the service, about '83.

Q. 1988, maybe, be more accurate?

A. '88, yeah. That could be.

Q. You said he started in '86, when he graduated from high school --

A. Yeah, '86.

Q. -- so '88 might be a better date. Did you have any contact

with him after he left Burke?

A. He stopped back once when he was on -- got out of boot camp.

Q. Okay.

A. And talked to him for a few minutes.

Q. Come to the office?

A. They come to the office, yeah.

Q. Were you happy to see him?

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A. Uh-huh.

Q. Do you recall anything he might have said at that time?

A. About what?

Q. Do you recall anything that Tim might have said when he came by the office to visit on leave from boot camp.

A. Just told us he was trying out for Special Forces.

Q. Did he express how he liked the Army?

A. Yeah. Said he wanted to go; he didn't mind it.

Q. Did he seem any different on that occasion than he had when he worked for you?

A. Nope.

Q. Then after Tim left the Army, did you have any further contact with him?

A. Just that he sent me a letter once asking if I wanted to buy some handguns that he had and some weapons.

Q. And did you respond to the letter?

--

A. No.
Q. Did you end up buying any weapons from him?
A. Nothing, no.
Q. Have any idea why he might have sent you that letter, why he might have been trying to sell the weapons?
A. I think he sent it to a lot of the guys that he used to work with.
Q. Trying to make some extra money?
A. We thought he was getting married.

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Q. You thought he was getting married?
A. Uh-huh.
Q. What made you think he might be getting married?
A. I know a lot of guys that sell their guns in the security business for one thing or another if they get married and they need the money.
Q. Just might be getting rid of some guns in order to get married.
A. Uh-huh.
Q. During the course of Tim's employment with you, do you recall any particular magazines that he might have read?
A. Just like Guns and Ammo and, you know, Soldier of Fortune.
Q. Okay, was that unusual for a person in your employ to read magazines of that type?
A. No. A lot of our guys read that stuff.
Q. Do you recall Tim ever telling you about purchasing some land near Hinsdale, New York?
A. Uh-huh. He told us that he purchased land.
Q. Did he tell you what he hoped to do with that land?
A. He wanted to build a bunker.
Q. Why did he want to build a bunker on that land?
A. He was a survivalist. That's what he told us.
Q. And by survivalist, do you have a sense of what that means? Can you tell the jury --
A. He said if they ever blew up a bomb or anything, you know,

Vincent Capparra - Direct

we ever were bombed, he would have a place he could put his stuff and be safe.
Q. Put his stuff and be safe?
A. Uh-huh.
Q. Did he ever ask you anything about the walls of the vault at Burke Armored Car Division?
A. Yeah, everybody we hired asked how they were built. We had pictures of it and diagram of how they were and everything.
Q. What was so special about those walls?
A. They were 20 inches thick, poured concrete after the building was made; plus they had vault steel rods going in all different directions, half-inch steel rods.
Q. Did he relate his interest to the walls in the vault to the

land that he purchased in Hinsdale?

A. He just said it would be a good bunker.

Q. If he were able to make his bunker out of that material --

A. Uh-huh.

Q. -- that would be a useful material.

You mentioned to the jury that Tim at one point sent you a letter and offered to sell you some guns but that you didn't purchase guns. You were generally aware that while Tim worked for you that Tim was interested in guns, beyond the need to have one for his employment?

A. Right.

Q. Carrying a gun was a requirement, was it not, of working

Vincent Capparra - Direct

for --

A. For our armored people, yes.

Q. And did you share that interest with Tim?

A. Uh-huh.

Q. Did the two of you have occasion to shoot together?

A. Yeah. We shot on Burke's range together. We all had to qualify there.

Q. There was a range at the office?

A. Right at the office, yes.

Q. You and Tim went upstairs. I take it the range was upstairs?

A. Most of the guys that went up there to qualify and shoot.

Q. Was he a good shot?

A. Yes, he was.

Q. The employees under your immediate supervision at Burke at the time that Tim was working for you as well: What percentage of them had such an interest in guns?

A. Almost every one of them.

Q. Did Tim ever express to you any concern about the Government trying to restrict gun ownership?

A. Yes, he did. They were -- in New York State, you have to have a pistol permit; and it's classified for business protection, personal protection, or hunting and target. In Niagara County, they give you carry permits; but at one point in time, when the judge wanted to restrict where you only could

Vincent Capparra - Direct

have two handguns on your permit at any time.

Q. Did Tim have an opinion about that judge's proposal?

A. Like everybody else, they didn't like it.

Q. Do you have an opinion about that?

A. Uh-huh. I have eight guns on my permit.

Q. So I trust it you didn't much like that judge's proposal, either?

A. No.

Q. Mr. Capparra, during your April, 1995 interview with the FBI, did you tell them that Tim knew how to make explosives out of dishwashing detergent and household products?

A. Uh-huh.

Q. Did you also tell them that Tim would make his own fireworks?

A. Uh-huh.

Q. Did any of that strike you as unusual, the fact that Tim McVeigh would have the knowledge how to do these things?

A. No, because there was a lot of guys that worked at Burke Armored that knew how to do that.

Q. How is it that they came to know how to make firecrackers and explosives?

A. A lot of them make their own bullets, too, because it's cheaper.

Q. How do they come to know those things?

A. They read it out of the books. It's all printed in the

Vincent Capparra - Direct

books.

Q. The books and magazines that they read?

A. Right.

Q. Were there other people at Burke who made their own fireworks?

A. Uh-huh. Yes there was.

Q. Why would they do that? Why not just --

A. Because they're illegal in New York State.

Q. Fireworks are illegal in New York State?

A. Right. You have to go out of the state to buy them.

Q. Is that illegal as well?

A. Sure is.

Q. Mr. Capparra, do you recall how you first learned about the

bombing in Oklahoma City?

A. I heard it on TV.

Q. And do you recall when you first learned that Tim McVeigh was a suspect in that bombing?

A. Pardon?

Q. Do you recall when you first learned that Tim McVeigh was a

suspect in the bombing?

A. When I seen them bringing him out, in handcuffs. When they first had him in handcuffs, bringing him out.

Q. And did you have a reaction to the news that Tim had been arrested for this crime?

A. I couldn't believe that he would do it.

MR. COYNE: No more questions, your Honor.

THE COURT: Any cross-examination?

MR. MACKEY: None, your Honor.

MR. COYNE: Yes, sir.

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

Next, please.

MR. BURR: Linda Daigler.

THE COURT: Okay.

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

(Linda Daigler 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: Linda Daigler, D-A-I-G-L-E-R.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. BURR:

Q. Good afternoon.

A. Good afternoon.

Q. Where were you born?

A. I was born in Lockport, New York.

Q. Did you grow up in that area?

A. Yes, I did.

Q. Have you continued to live there through your life?

Linda Daigler - Direct

A. Yes, I have.

Q. What town do you live in now?

A. I live in the town of Lockport.

Q. What is your occupation?

A. I'm a dental assistant at the University of Buffalo.

Q. Do you have any children?

A. Yes, I do. Three.

Q. What are their names and ages?

A. Kenneth, 28; Kerry, 26; and Kyle, 23.

Q. What is Kyle's last name?

A. Kraus.

Q. Did he testify in this trial in the first part of it?

A. Yes, he did.

Q. Are you related to Timothy McVeigh?

A. Yes, I am.

Q. What's the relation?

A. I am a cousin, and I'm also his godmother.

Q. Did Tim live fairly close by as he was growing up?

A. Yes, he did.

Q. Did you see him fairly often?

A. Yes, I did.

Q. Up until about the time he was 12, do you have any
memories

of that early part of his life?

A. He was a typical young kid, playing, joking, always
teasing. Same as any normal child.

Linda Daigler - Direct

Q. After he was a teenager, did you continue to see him?

A. Yes. He and my older son used to sometimes go rabbit
hunting and hang out a little bit. But as they got a little
bit older, they kind of both went to high schools and kind of
both went their own way.

Q. Did Tim continue to have a relationship with you?

A. Yes, always.

Q. Tell us about that.

A. He would stop by. He would never call, he'd just stop by.

A. He would stop by. He would never call, he'd just stop by and walk in the house and get a can of Coke out of the refrigerator and sit down and we'd chat, and, you know, we had a real good relationship. He would come home always on leave, because I made him promise to stop and see me. And, you know, very -- a nice relationship.

Q. Did -- did -- were there occasions where he helped you out with various things you needed help with?

A. Tim was always very helpful. He would help us put up our pool, and one time we got all this wood that we had delivered and he just happened to stop by and he helped us split it and stack it, and he was a hard-working kid.

Q. Did you have a chance to see how Tim related to other members of the family, the extended family, I guess?

A. I think he probably saw my family, myself and my children, the most. He had a very good relationship with his grandfather. He would go over there all the time and help him

Linda Daigler - Direct

and, you know, they were -- had a real loving, close relationship.

Q. Did that continue on through Tim's life as he became an adult?

A. Yes, it did. Yes, it did.

Q. How about after high school? Did you -- did you continue to have some contact with him --

A. Uh-huh. Yeah. Our family always get together on Christmas

Eve and have big Christmas Eve parties, and Tim would be there. And as I said, he would stop by and . . . after high school he -- excuse me, after high school?

Q. Yeah.

A. He was going to college nearby, so -- and my older son had already joined the Army. And he would stop by and see how he was doing and stuff.

Q. Were you aware that at some point not too long after high school, Tim joined the Army?

A. Was I aware of it?

Q. Yes.

A. Yes, I was.

Q. Did you have contact with him off and on during the time he was in the Army?

A. Yes, I would.

Q. What would be the occasion for you to see him?

A. Well, I wrote him letters, and he would always, you know,

Linda Daigler - Direct

write back. When he was in the Persian Gulf, I tried to send him packages occasionally 'cause my son was also there. And, you know, he would write letters.

Q. On one of the times when he came home on leave from Fort Riley, did he tell you about an unusual incident --

A. Yes.

--- ----

Q. -- that happened on the way?

A. He told me that he was on his way home -- 'cause Tim would come home like -- nobody ever knew when he was coming home. He would just come home. And he would come home, and there was an accident on the road and he stopped, and the person was badly injured. And he stopped and helped them, and he administered an i.v. He said he waited till the person was stable and the police were coming, and then he left.

Q. Did you ever ask him how he happened to be traveling with an i.v. in his pocket?

A. No, I didn't.

Q. Were you aware that he had some emergency medical or first-aid training in the Army?

A. Yes, because I believe that they -- all soldiers are trained in some form of emergency 'cause I knew my son also was.

Q. Did you have occasion to visit with Tim after he got back from the Gulf War?

A. Yes, I did.

Linda Daigler - Direct

Q. Do you recall anything about what you talked with him about?

A. He came over and he sat down at our kitchen table where we always sat, and he said that -- you know, that he had spent many hours in his Bradley like sleeping, you know, that he would spend like -- work 17 hours and that he felt sorry for the children there because they would be begging for food and that he was unable to -- they were unable to give them food. And he also told me about -- that he had killed an Iraqi soldier at close range.

Q. Did he express any emotion about that?

A. It's -- he was telling a series of events, and it wasn't as

if -- I think he had remorse, you know. I mean I don't really see -- I mean he wasn't saying, Oh, yea, yippee, I did it, you know, or anything like that. He was just telling -- we asked what had happened and, you know, how he Just, you know.

Q. Did Tim take after his father, Bill, in any ways that you -- that struck you?

A. Yes.

Q. How is that?

A. He likes the country; he doesn't like city living. He likes to save his money. But if you ever wanted to borrow money from Tim, he would give it to you if he had it. A kind, loving person.

Linda Daigler - Direct

Q. Were you aware that Tim owned guns?

A. Pardon me?

Q. Were you aware that Tim had owned guns?

A. Yes, I was.

Q. How were you aware of that?

A. Well, I know he used to go hunting with my -- you know, with my son. And I knew that later on in life he went to gun shows and stuff, you know. I don't really know how many guns, you know, prior to going into the military or anything he did have.

Q. Was that ever a matter of concern for you?

A. No, because a lot of people do -- you know, do have that

interest, and it was not.

Q. Did Tim ever strike you as a little fearful that bad things might happen, not knowing exactly what it would be, but something just sort of ominous?

A. Well, he was -- went to my daughter's apartment, and he was

real concerned 'cause she never had any food there. It was a college apartment, and I think they lived on cereal. And he had had barrels delivered to his dad's house for -- there were two barrels delivered, and Bill had put them in the basement, and they were going to be for water. I don't know if they ever

filled them or not, but he had -- so I don't -- you know, I never questioned him about that. You know.

Q. Does -- do the blizzards that you have there sometimes make

Linda Daigler - Direct

you want to have water in your basement?

A. Well, you need to have enough food 'cause sometimes you can't get out.

Q. Looking back over Tim's life from where we sit today, in trying to help people understand the fellow that he is, how would you describe him?

A. Well, the person that people have been describing is not the Tim I know. Tim is kind, loving, funny, always like to crack a joke, and very loving. I don't think he ever came in my house when he didn't give me a hug or tease me or something.

You know, and he has his family's unconditional love. That's not something you can just turn off.

MR. BURR: Thank you. No other questions, your Honor.

MR. MACKEY: Nothing.

THE COURT: Any cross?

All right. You may step down. You're excused.

Next.

MR. NIGH: Sergeant Major James Hardesty.

THE COURT: Okay.

THE COURTROOM DEPUTY: Raise your right hand, please.

(James Hardesty 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: James David Hardesty, H-A-R-D-E-S-T-Y.

THE COURTROOM DEPUTY: Thank you.

MR. NIGH: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. NIGH:

Q. Good afternoon, sir.

A. Good afternoon.

Q. You're currently a sergeant major in the United States Army?

A. Master sergeant.

Q. Master sergeant. I'm sorry. And where are you currently stationed?

A. Right now I'm in Republic of Korea.

Q. A little bit of a flight away from here?

A. Yes.

Q. Before we get to your military career, can you tell us where you grew up?

A. I grew up in New Castle, Pennsylvania.

Q. And is that where you went to high school?

A. Yes, I went to high school in New Castle.

Q. When you were in 18 years old, was it then that you joined the United States Army?

A. Yes.

Q. Where did you go first?

A. My first station was Korea.

Q. You went directly from basic training to Korea?

James Hardesty - Direct

A. Yes. I did basic training and AIT in Georgia, and then I went to Korea.

Q. How long were you stationed in Korea the first time?

A. 12 months.

Q. And after that, had there been any other places you've been stationed for a long period of time?

A. I did six years in Germany and four years at Fort Riley.

Q. When was the four years at Fort Riley?

A. I got there in September of 1989, and I was there until '93.

Q. What is your current MOS?

A. I'm infantry.

Q. What kind of -- you're an operations sergeant; isn't that right?

A. My job title is operations sergeant.

Q. What does an operations sergeant do?

A. As an operations sergeant, we do -- do planning of combat operations, and we run a tactical operations center, command control group.

Q. Are you fairly close to the DMZ now?

A. Yes, 20 kilometers from the DMZ.

Q. Let's go back now to the time that you were at Fort Riley. When was it that you got stationed there?

A. 1989, September.

Q. And were you in Alpha Company at that time?

James Hardesty - Direct

A. Yes, initially I was in Alpha Company.

Q. And then in January of 1990, did you transfer to Charlie Company?

A. Yes.

Q. At that point in time was Mr. McVeigh in the 1st Platoon, Mr. Tim McVeigh?

A. Yes, he was in the 1st Platoon.

Q. Was that your platoon?

A. Negative. I was a 2d Platoon sergeant.

Q. How many people were in your company at that time?

A. Company averaged anywhere from 105 to 115 soldiers.

Q. When you first arrived at Fort Riley, did you begin -- spend the beginning months getting familiar with the soldiers in your company?

A. Yes.

Q. Was Mr. McVeigh among them, or was he in a different company?

A. He was in my company, yes.

Q. Did you become familiar with him?

A. I come -- with all the soldiers in the company, yes.

Q. Was there anything about Mr. McVeigh that you noticed in particular?

A. Well, the way the company runs, it's -- you know, you want to have the best platoon, you want to have the best company.

And as a platoon sergeant, I have 30 soldiers that work for me

James Hardesty - Direct

directly. And kind of like build your team there, you want the best soldiers; and Tim was one of the standouts in the company, and I did try to get him into my platoon.

Q. Sounds like baseball players.

A. Yes. Very similar. Well, I tried to make some trades to get him in my platoon.

Q. Were you able to do so?

A. No, platoon sergeant didn't want to part with him that was in charge of him.

Q. Even though you weren't able to get him into your platoon, were you able to have some contact with him during that period of time?

A. Yes.

Q. How -- what circumstances would you have contact with Mr. McVeigh?

A. Well, daily when we have our first formation in the morning, we'd see all the soldiers at morning formation. Usually our first formation would be physical activities, and then our work-out formation, about 09 in the morning. 1300 or 1:00 p.m. formation. So through the day, off and on I would see all soldiers.

Also whenever we did company-level training, then we trained directly together. It would be practical gunnery skills test; common task training; EIB which is Expert Infantryman's Badge, training. So there was numerous events

James Hardesty - Direct

that would happen through the year that we would be training together.

Q. Did that occur more frequently towards the times of the Gulf War?

A. When we got closer to the Gulf War, we did nuclear, biological, and chemical training and intense weapons qualifications, so, yeah, there was more activity at that time.

Q. So there would have been more activity when you would have been in connection with Mr. McVeigh?

A. Yes.

Q. You couldn't very well speak to him on an informal basis at

that time, could you? Or could you?

A. Well, most of my dealings were just professional. 'Cause when you're doing the training like you're doing, there's a lot of people you're trying to get through the training, so it's pretty intense.

Q. How would another platoon sergeant feel about you talking to one of his soldiers on an individual basis?

A. Basically if there's a chance that he knows I'm trying to get him, then he would tell me to basically leave the soldiers alone.

Q. Is that why you weren't able to have much dealings with Mr. McVeigh?

A. Yes. Well, when you're a platoon sergeant, you're basically in this case named "Platoon Daddy," and you're like

James Hardesty - Direct

their father. And you're responsible to -- their welfare, their training, everything. So the platoon sergeant basically told me to leave his people alone.

Q. Even though you weren't able to have direct or much direct contact with Mr. McVeigh on informal basis, did you come to learn about him from discussions with other people?

A. I would talk to my soldiers and, you know, try to get the best soldiers for me. And I talked to my good soldiers and find out who they'd like to have in the platoon. And through those dealings, soldiers that went through basic training and advanced training with Tim would tell me, Hey, you know, this is a guy we need to get. So, yes, you know, I did put feelers out there trying to get information.

Q. How quickly was Mr. McVeigh promoted in relation to the promotion over his peers?

A. Quickly. A lot quicker than most of the soldiers. A lot of potential. He had all the professional attributes that you'd want for your junior NCOs, or noncommissioned officers.

Q. Now, both of you went to the Gulf War, as I understand it?

A. Yes.

Q. And -- but you didn't -- you weren't in much -- or any contact with Mr. McVeigh during the Gulf War?

A. No. The way the task organization for the battalion is,

you break down into company teams which ends up becoming a mix of infantry and armor. And his platoon went with an armored

James Hardesty - Direct

company, so they were detached from us.

Q. And you came -- yourself, came back early from the Gulf War; is that right?

A. Yes.

Q. Without going into a great deal of detail, would you tell us briefly why that was.

A. We were clearing mines between our vehicles during -- matter of fact, it was the night before the cease-fire, and we were doing a flanking maneuver to let our rear -- let our follow-on brigade take the lead; and when they took the lead, we did some clearing missions. And when we stopped for the evening, we were trying to remove some mines between vehicles, and I took shrapnel cross my legs.

Q. Injured pretty severely?

A. Yes, I almost lost my right leg.

Q. And you came back and eventually to Fort Riley as a result of that injury; is that right?

A. Yes. It must have been three or more months in and out of hospitals before I finally got back to the unit.

Q. I'd like to ask you, if I may, about some of the things that occurred at Fort Riley, both before and after the Gulf War. Fort Riley was infantry position; is that correct?

A. Roger.

Q. That means yes?

A. Yes.

James Hardesty - Direct

Q. And would it be unusual for the soldiers there to read Soldier of Fortune magazine?

A. No, it wouldn't be.

Q. Was that -- was that a rare occurrence, a frequent occurrence, or how would you describe it?

A. It was a pretty usual because most of your young soldiers come in, a lot of them are in the infantry, you watch a Rambo movie. I mean that's basically infantry is what Rambo is. And Gung Ho magazine, Soldier of Fortune magazine, Guns and Ammo, rifle magazines, hunting magazines are common place, anything dealing with guns, ammunition. I knew guys have more basic issue items than what we actually get -- as far as combat gear, they buy more personal combat gear than what they're issued by the military, 'cause some people really take their job serious.

Q. Was the military or the soldiers at Fort Riley -- did they all have the same interests, or was there some diversity there?

A. Well, in the infantry, it's kind of a large -- when you say

infantry, it's a branch, but our branch deals with mechanized infantry, airborne infantry, straight leg infantry. And when you're looking at our branch and you take that, then you look at what our interests are. We get guys that are into

at what our interests are. We got guys that are into demolitions 'cause that's part of our job; guys that are into tactics, which is also part of our job; some guys are into guns and ammunition, which is kind of the gunsmith kind of the job. And everyone has their specialty that they want to get into.

James Hardesty - Direct

Q. What was your specialty or what was your interest at the time you were at Fort --

A. Mine was basically working with the Bradleys, mechanized infantry side of the house.

Q. What was Mr. McVeigh's interest?

A. Tim was more into the gunsmith side of the house where he liked to play with the guns, and there was a lot of soldiers, especially the younger ones, that were really into the small arms stuff 'cause that's more the Rambo, gung ho kind of thing.

Q. Did you ever do anything while you were at Fort Riley or while you were a young soldier that would be similar to the kinds of things we see depicted?

A. When I was a lower enlisted guy when I first came in the military, I also had my interest. And there's the stealth side where you're trying to be walking through the woods and not be detected or walk through the dark and not be seen. And my thing was when I was coming up through the ranks was not being detected. So I might camouflage, paint up after duty hours and

run through the woods. But, you know, there was numerous guys that we all had our little thing, and it was just -- it's part of growing up in the military.

Q. Was that something that was part of your regular duty, or was that something that you did on your own?

A. It was something I did on my own after duty hours.

Q. There's been testimony that Mr. McVeigh left the Army

James Hardesty - Direct

shortly after Desert Storm. Was that unusual for a noncommissioned officer to be leaving the service at that time?

A. No. What had happened was prior to -- prior to Desert Storm, we were probably at about 80 percent strength as a military, as far as infantry branch. Once Desert Storm started to come upon us and we seen it coming, when Desert Shield initially came, we got up to about a hundred percent strength. They were starting to beef the units up, because they knew something was in the wind. And then when we deployed over for Desert Storm, we were up to about 130 percent strength. So we got pretty strong.

When they got this strong and the war ended so quickly, then the draw-down started. When the draw-down started, they were trying to -- they were just dumping people left and right, trying to get people out.

Q. How did they go about dumping people?

A. Some people were getting early outs, where they were given like a severance pay and asked to leave. Some people were just

not given the option for reenlistment. They started a point ratio system where people couldn't meet the points to stay in. And there were other ways, too, that they basically were just trying to weed the force down to the number that they decided they wanted to keep, and a lot of that dealt with getting rid of the senior side and keeping the lower enlisted personnel because they make less money than the seniors.

James Hardesty - Direct

Q. How did you feel about that?

A. At the time I was -- my future in the military was very dim. One, I was wounded, and I didn't expect to stay in. I had a good chance even at that point to still lose my leg, and I didn't know -- I was very -- I'm surprised I'm still in now. My leg just held up long enough for me to stay in.

Q. It would appear also that you've changed your attitude about it since then as well.

A. When I came -- at that point I was over 10 years, and it was kind -- you know, I figured I better tough it out, try and stay in. I did see a lot of seniors get out. 'Cause it does get very disillusioning when you go there, you know, you're sacrificing for your country, and all of the sudden you come back and you're discarded baggage.

Q. Was the training that you received at Fort Riley -- how did

that prepare you as soldiers for the Gulf War?

A. A lot of the training we did just prior to going was trying

to get us refreshed on a lot of the training we do on a routine

basis. It's just that we kind of get away from some of our training during the year, and that was to get us back up to the

level of proficiency we needed to be at to go over to war. So it was a lot of nuclear, biological, and chemical training that went on at that time.

Q. As I understand it, you haven't seen Mr. McVeigh since you were both at Fort Riley; is that correct?

James Hardesty - Direct

A. Yes.

Q. So you don't know anything about what he's done since leaving the Army?

A. No. The guys that I went to Desert Storm with, we try to keep in contact and keep in communication with each other. So the only thing I've gotten was just basically hearsay from other guys that, hey, how's this guy doing, how's that guy doing, so . . . no direct contact.

Q. Would you please tell us what your description of Mr. McVeigh was from the time that you knew him.

A. Well, one, since I tried really hard to get him into my platoon, I wouldn't have tried that unless I had a lot of -- or

seen a lot of potential in him. And at that time I seen a lot of potential.

He had all the leadership qualities that you want in a soldier: Drive, determination, bit arrogant, but the thing is with most of your soldiers, the best soldiers are your more arrogant soldiers. They got a lot of, you know, self-pride, they got a lot of self-motivation, and they think highly of themselves, and he was one of the better soldiers and very professional, a good soldier.

MR. NIGH: Thank you.

That's all I have, your Honor.

THE COURT: Miss Wilkinson.

CROSS-EXAMINATION

James Hardesty - Cross

BY MS. WILKINSON:

Q. Good afternoon, Master Sergeant Hardesty. How are you?

A. I'm fine.

Q. You've been in the service for how long?

A. Just under 18 years.

Q. And I take it you're proud of your service to your country?

A. Yes.

Q. You're proud of the Army, aren't you?

A. Yes, I am.

Q. Proud of the training that they've provided to you?

A. Yes.

Q. And when you joined the Army, you took an oath, didn't you?

A. Yes.

Q. You took an oath to uphold and defend the Constitution of the United States, didn't you?

A. Yes.

Q. And when you took that oath and you joined the Army, you learned about the rules of engagement and the law of the war, didn't you?

A. Yes.

Q. And over your 17 or 18 years in the military, you've dealt with a lot of soldiers?

A. Yes.

Q. You've seen some good ones and some bad ones?

A. Yes.

James Hardesty - Cross

Q. And you've become familiar with the training that the Army gives to its soldiers; is that right?

A. Yes.

Q. And you've had lots of experiences including injury at war?

A. Yes.

Q. And nothing in your military experience or in the training that you have observed would ever make you turn on your country and kill your own citizens, would it?

MR. NIGH: That's all, thank you, your Honor.

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

THE COURT: Sustained.

BY MS. WILKINSON:

Q. Master Sergeant Hardesty, would you consider it a privilege to serve in the military?

A. Yes.

Q. And it's not an excuse, is it?

A. No.

MS. WILKINSON: No further questions, your Honor.

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

THE COURT: All right. He's excused, I take it?

MR. NIGH: Yes, your Honor.

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

Next witness.

MR. JONES: Sergeant Major Robert Harris.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Bob Harris affirmed.)

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

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

THE WITNESS: My name is Bob Harris. My last name is Harris, H-A-R-R-I-S.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. JONES:

Q. Sergeant, what is your rank?

A. My rank is sergeant major.

Q. And what is a sergeant major of the United States?

A. That is the highest rank of an enlisted man can achieve.

Q. And where are you presently stationed?

A. I'm stationed in Panama.

Q. And how long have you been stationed there?

A. I've been there, sir, since the 25th of November, 1995.

Q. And as a sergeant major in Panama, what are your responsibilities there?

A. I am the operations sergeant major for U.S. Army south.

Q. And what is the United States Army south?

A. Well, the MACOM, major Army command that is responsible for the entire -- the freedom of movement of ships for the entire Latin American, South American, to include the Carribeans.

Q. You are the operational sergeant major for that command?

Bob Harris - Direct

A. Right it is, sir.

Q. How long have you been in the Army?

A. I've been in the Army for 22 years, sir.

Q. Where were you born?

A. Excuse me. Say again, please.

Q. Where were you born?

A. I was born in Brazil.

Q. And when did you come to the United States?

A. I came to the United States on the 14th of June, 1996 -- '66.

Q. During the period of time that you've been in the Army of

2. During the period of time that you've been in the Army of the United States, Sergeant Major, where have you been stationed, or at least some of the stations?

A. Quite a few places. I took basic training in Fort Jackson, South Carolina; AIT, advanced training, was at Fort Polk, Louisiana. My first duty station, I was stationed in Fort Hood, Texas. From there I went to Panama, and spent three years there.

From there I went on to Fort Dix, New Jersey, where I served as a drill sergeant. And later, my following assignment, I went back to Fort Hood; and from there, I went to Germany, where I instruct all the units in Germany on the Bradley fighting vehicle.

From there, I came to Fort Riley, Kansas. Later after that, Fort Riley tour, sir, I went to Carlisle, Pennsylvania,

Bob Harris - Direct

where I instruct ROTC. And from there I came to Fort Carson, Colorado, and moved on to Panama, which I'm currently stationed there.

Q. Sergeant Major, have you been to war?

A. I was in Desert Storm, sir; yes, sir.

Q. Do you know an individual by the name of Timothy James McVeigh?

A. Yes, I do, sir.

Q. Would you tell me, please, how you first became acquainted with him?

A. Well, sir, I assumed control of Charlie Company 216 on the 8th of November of 19 -- correction, 8th of January, 1990.

And

I became the first sergeant of a company. And, well, I initially became -- began to know the people of that company as a first sergeant; I started inspecting the company on a daily basis. And I got to know those soldiers that stood out, you know, from other folks in the formation. And Timothy McVeigh was one of the soldiers that stood out.

And initially, when I started to inspect the company, I made the standards were if you were the best-looking soldier in the company as far as appearance and also general military knowledge, I would give you the day off. And right off the bat, Timothy McVeigh was the first week, he know, he had won the thing about three times, 'cause he stood out.

Q. So did you discontinue the award?

Bob Harris - Direct

A. Yes. Very shortly afterwards. Because, again, the company has just -- was returned from the national training center; and they was doing recovery of the vehicles, getting everything ready to go to wherever the Army decide to send us. And pretty much about 7:00, the company was in the motor pool repairing

and fix things that, you know, to prepare to go on.

Q. All right. And --

A. And this continue, I would say for about a month.

Q. Excuse me just for a moment.

Sergeant Major, I'm going to hand you a book of exhibits through the deputy court clerk. If you'd just put those in front of you.

A. Thank you.

Q. Now, during the period of time that you were at Fort Riley and you observed Mr. McVeigh, how did he spend his personal time?

A. Well, sir, many times on the weekends, Saturdays and Sunday, would come to check on the barracks, check on the soldiers that live in the barracks. And many time, I saw Timothy McVeigh there inspecting the equipment of his folks, his troops, and also wall lockers to make sure that everything was correct, they had the proper equipment to, you know -- to go on to go to the field, in case we need to go or to go wherever we need to go.

Q. Did you have a role in selecting Mr. McVeigh as the company

Bob Harris - Direct

reenlistment NCO?

A. I was the person that did, yes, sir.

Q. First of all, tell us what a company reenlistment NCO is.

A. A company reenlistment NCO is who we trust to sell the military for the people who want to reenlist or to persuade the folks that the military is not as bad as some people think it is.

Q. Why did you choose Sergeant McVeigh?

A. Because, again, I was impressed with Sergeant McVeigh. And he was the type of soldier that possessed a level of discipline that we wanted to serve as a role model.

Q. Could you have asked for anything more in an NCO than what Mr. McVeigh demonstrated?

A. No, sir. For a junior NCO, no, sir.

Q. Now, you were interviewed by the Federal Bureau of Investigation following the Oklahoma City bombing, were you not?

A. Right that, sir.

Q. And you indicated in your statement that Mr. McVeigh was a loner. Do you recall that?

A. Yes.

Q. What did you mean by that, Sergeant Major?

A. Well, because many times, I told him to get out of the barracks; and he was -- again, like I stated earlier, on the weekends, he was in the barracks doing, taking care of people,

Bob Harris - Direct

because his soldiers were not as -- less than favorable, I should say. Though they were -- some of them were not stellar

soldiers. Some of them would -- give you an example. Some of them would go drink on a Friday night and, you know, just come back and not know exactly where they were at. Some of them had a tendency to urinate on other soldiers because they were so drunk. And they were -- I tried to help by putting those soldiers that were less favorable out of the military and to make his job and other NCOs' job easier.

Q. Now, on a scale of 1 to 100, how much did Tim McVeigh give?

A. I don't understand that question, sir.

Q. On a scale of 1 to 100, how much did Tim McVeigh give? What percent did he give?

A. Well, he give a hundred-plus, from my perspective, because again, not everybody was there -- you know, on his own time and inspecting and checking and counseling, guiding, motivating soldiers to be all they could be.

Q. Now, the Charlie Company had how many men in it when you were there as First Sergeant?

A. Sir, that vary a lot, because when I first got there, we had approximately 90 soldiers and five officers, 90 enlisted men and five officers. A company like I had -- like we have, we authorize 103 enlisted and five officers. But it varies. And any time we could have had 70 folks -- I mean as low as 70; and other, as many as -- like in the Desert Storm, we picked up

Bob Harris - Direct

additional people and we had something like 120.

Q. Now, did there come a time when you and the other troops went to operation Desert Storm?

A. I didn't understand that question. I'm sorry.

Q. Did there come a time when you and the other soldiers went to Desert Storm to engage the enemy?

A. Absolutely. Yes, sir.

Q. And when was that?

A. That was during the portion where the ground war started.

Q. And were you able to observe Sergeant McVeigh while you were there?

A. In some -- there were times that I did. Sergeant McVeigh's platoon, the 1st Platoon, was task organized or attached to another element, which was the 3d of the 37th Armor. And they were not with us during -- you know, during the war itself.

Q. Mr. McVeigh has been described as being a platoon leader gunner.

A. Yes, sir.

Q. What is that?

A. That means that he is the NCO responsible for the vehicle on the event that platoon leader dismount. And because anytime that the soldiers that are -- the dismount folks get off on the

ground, the platoon leader is supposed to be on the ground, also. And in case something happens to the platoon leader, then the platoon sergeant will assume that position. And the

then the platoon sergeant will assume that position. And the

Bob Harris - Direct

platoon sergeant is on the ground, based on the communication that they have on the Bradley fighting vehicle, which the platoon leader and the platoon sergeant vehicle each have dual net radio -- two radios, in other words. And based on that fact, the platoon sergeant was on the ground, and then the platoon leader vehicle would be in control of the platoon or whomever is inside that vehicle, the senior man.

Q. Sergeant Major, would you turn, please, to the book of exhibits that I gave you earlier. And would you turn, please, to Tab 2.

A. Excuse me.

Q. That's marked McVeigh Exhibit AA2, down in the lower right-hand corner. Do you see that?

A. Yes, sir.

Q. Is that a copy of the Bronze Star Medal awarded to Sergeant Timothy James McVeigh?

A. Yes, it is, sir.

Q. And would you turn, please, to the next tab, which is Tab 3, and is marked McVeigh Exhibit AA3.

A. Roger that, sir.

Q. And is that the Army Commendation Medal awarded June 26, 1991, by the Secretary of the Army to Timothy James McVeigh for

Meritorious Achievement with Valor?

A. Yes, sir. Did you say the 25th or the 26th?

Q. 26th of June, 1991.

Bob Harris - Direct

A. Yes, sir.

Q. And then would you turn to the next one, which is Tab 4. This is McVeigh Exhibit AA4. Do you see that?

A. Yes, sir.

Q. Is this the Army Commendation Medal awarded by the Secretary of the Army to Sergeant Timothy James McVeigh on 27 September 1991, for Meritorious Achievement?

A. Yes, sir.

Q. And then would you turn to the next tab, which is McVeigh Exhibit AA5.

A. Yes, sir.

Q. This is a Certificate of Achievement awarded to Sergeant McVeigh -- I'm sorry, Private McVeigh by the colonel who was commanding at that time?

A. I couldn't tell you that 'cause I was not there during that time frame, sir.

Q. All right. Sir, would you turn to the next one, which is AA6.

A. Yes, sir.

Q. Is this during your time period there -- well, it wouldn't be because this is 28 July 1989.

A. Yeah, I didn't get there, didn't assume control, until 8th of January 1990, sir.

Q. All right. Then let's turn to Tab 7, which is AA7.

A. Yes, sir.

Bob Harris - Direct

Q. I believe this was awarded during your time there, wasn't it?

A. Yes, sir.

Q. And is this a Certificate for Leadership Development from the command sergeant major?

A. Yes, sir.

Q. And would you look at AA8, which is behind Tab 8.

A. Got it, sir.

Q. And was this awarded while you were there?

A. Yes, sir.

Q. And this is a certificate promoting him to sergeant?

A. Roger that, sir.

Q. And did you have any role in that promotion, Sergeant Major Harris?

A. Well, all enlisted soldiers, sir, in the company that the platoon sergeant or platoon leader deemed that they have done a good enough -- they have the potential to go to the next promotion rank, all the paperwork comes through me. And I in turn will talk -- when I was a first sergeant, that is -- I would in turn talk to the company commander because promotion was pretty limited. You know, specifically for core company, and very limit. And in turn there were times that five, six soldiers qualified for a certain rank, but we could only promote one. And I would talk to the company commander, would make a decision of whom was the best qualified to -- more

Bob Harris - Direct

deserving, if you will, to get the award.

Q. Would you turn to AA9.

A. Yes, sir.

Q. Behind Tab 9.

Do you recognize what is going on in that photograph?

A. Yes, sir. The brigade commander, Colonel Moreno -- at

least it appears to me that's who it is -- is presenting Sergeant McVeigh with an award.

Q. And is this for during Operation Desert Storm?

A. Yes, sir.

MR. JONES: Move the admission of AA9 and -- McVeigh Exhibit AA2, AA3, AA4, AA7, AA8, and AA9.

MS. WILKINSON: No objection.

THE COURT: They are received.

MR. JONES: May I publish AA9, your Honor?

THE COURT: Yes.

BY MR. JONES:

Q. Now, this is -- can you see that, Sergeant Major?

A. Yes, sir.

Q. This is Sergeant McVeigh on the right of the photograph?

A. Yes, sir.

Q. And the gentleman giving him the award is who?

A. The brigade commander, sir. At least it appears to me to be the brigade commander, because he does not have a full facial expression, I couldn't see his face, but it appears to

Bob Harris - Direct

be the brigade commander, Colonel Moreno.

Q. All right. I show you now what is AA2. Is this the certificate memorializing the award of the Bronze Star Medal issued under the authority of the President of the United States to Sergeant Timothy James McVeigh?

A. Roger that, sir.

MR. JONES: No further questions.

THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Sergeant Major Harris.

A. How are you doing?

Q. Fine, thank you.

Have you said in the past that Bronze Stars were handed out left and right in the Gulf War?

A. Yeah, the Bronze Star was frequently award to just about -- many people, yes, ma'am.

Q. Was that in part because there hadn't been a war for a while and a lot of soldiers hadn't received awards?

A. Ma'am, I do not have the answer to that. You have to get that answer from the division commander, which was Major General Rames, and I was just there doing my job. I don't know the answer to that.

Q. But it was your opinion that they were handed out quite frequently?

Bob Harris - Cross

A. Yes, that was my opinion. Absolutely.

Q. You were very impressed with Timothy McVeigh as a soldier; is that right?

A. You say I was or wasn't?

Q. You were.

A. Yes, ma'am.

Q. Do you believe that he was a man who, based on his discipline, his intelligence, and his dedication, could carry out any mission that he took on?

A. Yes, ma'am.

MS. WILKINSON: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. JONES:

Q. Sergeant Major Harris, the truth of the matter is that Operation Desert Storm was one of the most successful military ventures this country ever undertook, isn't it?

ventures this country ever undertook, isn't it?

A. Absolutely, sir.

Q. With a minimum of casualties.

A. Absolutely.

Q. And a complete surrender of the enemy within, what, 92 hours after the ground war started?

A. On or about, sir, yes, sir.

Q. A lot different than some of our other military engagements, wasn't it?

A. Yes, sir.

Bob Harris - Redirect

Q. Do you know anyone in Desert Storm that received the Bronze Star that didn't deserve it?

A. That I know, no, sir.

Q. Did Tim McVeigh deserve it?

A. Absolutely. We submit him for it and we thought he deserved it, yes sir.

Q. I take it the Secretary of the Army doesn't have a reputation of just carrying them in his pocket and handing them out, does he?

A. No, no, sir.

MR. JONES: No further questions. Thank you.

REXCROSS-EXAMINATION

BY MS. WILKINSON:

Q. Mr. Jones just pointed out that the Gulf War was very successful; and you agree with that, don't you?

A. Yes, ma'am.

Q. Kept the casualties to a minimum?

A. Yes, very minimum.

Q. Very few American soldiers were killed due to direct combat with the Iraqis during the Gulf War; isn't that true?

A. That's correct, ma'am.

Q. In fact, under 137 American citizens were killed in combat during the Persian Gulf War; isn't that right?

A. I do not know the stats, ma'am. I couldn't tell you yes or no to that.

Bob Harris - Recross

Q. But you know that it was a very low number; is that right?

A. Yes, ma'am.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Witness excused?

MR. JONES: Yes, sir.

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

And we'll take the afternoon recess, members of the jury, remembering, of course, during this 20-minute period, you will follow the cautions given at all other recesses, avoiding discussion of the matters that are at issue here and waiting until you've heard it all before thinking about it even in your own minds.

You're excused now, 20 minutes.

(Jurv out at 3:26 p.m.)

THE COURT: All right. We'll be in recess, 20 minutes.

(Recess at 3:27 p.m.)

(Reconvened at 3:45 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:46 p.m.)

THE COURT: All right. Next witness.

MR. BURR: Debbie Carballo.

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

(Deborah Carballo 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: Deborah Carballo, C-A-R-B-A-L-L-O.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed.

MR. BURR: Thank you your Honor.

DIRECT EXAMINATION

BY MR. BURR:

Q. Good afternoon, Ms. Carballo.

A. Good afternoon.

Q. What is your occupation?

A. I'm a teacher.

Q. Where do you teach?

A. At Star Point Central School in Lockport, New York.

Q. How long have you been teaching at Star Point?

A. 19 years.

Q. Did you teach somewhere before that?

A. Yes, I did. I taught four years -- four and a half years in private schools in the city of Buffalo.

Q. So you've been teaching for almost 24 years; is that right?

A. Yes.

Q. Do you have any advanced degrees?

A. Yes, I do. I have two master's degrees.

Q. And what are they in?

Deborah Carballo - Direct

A. One is in secondary education, English, and the other is in

Spanish ESL, English as a Second Language.

Q. What courses have you primarily taught at Star Point?

A. When I was first hired at Star Point, I taught one Spanish course and four eleventh-grade Regents' English courses. And in 1981, they changed the curriculum in New York State, and I became a full-time foreign language teacher and chairperson of that department.

Q. And is Spanish the language that you teach?

A. Yes.

Q. Have you received any awards for teaching excellence?

A. Yes. I've been nominated several times for Who is Who Among American High School Teachers; and an organization called FIC, Friends for International Caring, gave me an award for the number of exchange programs that I've arranged between Hispanic countries and our high school.

Q. So have you been involved in going with students from the Lockport, New York, area to other countries?

A. Yes. I've gone to Costa Rica, I've gone to Venezuela, and I've gone to Spain several times.

Q. Now, in addition to teaching Spanish at Star Point, have you taken on other responsibilities at the school?

A. Yes, I have. I am director of the drama club, and I direct the school productions. I also, for 16, 17 years, was the advisor of the yearbook.

Deborah Carballo - Direct

Q. Do you know Timothy McVeigh?

A. Yes, I do.

Q. Did you ever have him as a student in any of your classes?

A. Yes, I did. I had him as a student in my Spanish class.

Q. What year for him was that?

A. It was his freshman year.

Q. Was that -- was Spanish a required -- foreign language a required course in New York state at that time for --

A. No, it was not. It was an elective course.

Q. Did you have a reputation as a hard teacher?

A. Yes, I did.

Q. Was it well deserved?

A. Yes, it was.

Q. How was Tim as a student in your class?

A. He achieved the grades that he got, which were high 70's, low 80's, doing -- just paying attention in class and not studying a lot; but I did push him and sent home progress reports, and he did cooperate and raise his grades. He participated very well. He liked the oral part of it much better, the talking and the group activity.

Q. Did you have additional contact with Tim other than in the one class that he took with you?

A. Yes. On various occasions, he helped me out with the stage crew; and he also -- his senior year had to come to my room many times because the senior portion of the yearbook requires

Deborah Carballo - Direct

that you turn in many things: your senior portrait, your quotation, your baby picture, just lots of things that I had to see them usually twice or three times a month. But I saw him a

lot more. He always stopped in to visit.

Q. Did -- on the productions that he helped with, you said he

helped with the stage crew. Is that right?

A. Right.

Q. What did he do?

A. Painting and helping us build things; and he was pretty handy, knew how to do things, and seemed to enjoy that a lot.

Q. Was he helpful?

A. Very helpful, very neat, well-organized. When he did something, I didn't have to clean up after him like I did after most of the kids.

Q. What did you think about him as a helper in that regard?

A. Very responsible, cooperative, and willing to help. He used to ask if there was anything he could do.

Q. Do you have a notebook on your desk right in front of you?

A. Yes, I do.

Q. If you would open it and turn to Tab 2. This is for the record SS2. And just look at the very first page there. Do you recognize -- and flip through. Do you recognize what the document is behind Tab 2?

A. Yes. It's the yearbook, the 1986 yearbook that was Tim's senior year.

Deborah Carballo - Direct

MR. BURR: Move to admit, your Honor.

MR. MACKEY: No objection.

THE COURT: Received, SS2.

BY MR. BURR:

Q. If you could turn to page 36. And I have to warn you, they

seem to be a little out of order.

A. Yes. I'm on 36.

MR. BURR: Can we publish that page, your Honor?

THE COURT: Yes.

BY MR. BURR:

Q. Is Timothy McVeigh on that page?

A. Yes.

Q. Could you read what it says under his name.

A. "People are able because they think they are able."

Q. Where did that come from?

A. I'm not sure exactly what source he took it from, but I always had a lot of restrictions about these quotations. They could use Bartlett's book of quotations, and there were several other books of quotations in the library. I warned them that they should not -- there should be no mention of violence or sex or no rock and roll lyrics. They should pick something that represented something about their high school career or something about themselves that they believed in or something that reflected something about them, their ideas, their high school career; and we were very strict about this. They could

Deborah Carballo - Direct

also only pick a certain number of words; and I couldn't tell you that, because I can't remember. But only a certain number of words would fit under the picture

or words would be under the picture.

Q. Did you actually counsel with students as to what to put under their name or you just gave them these guidelines?

A. I gave them the guidelines. They had to hand in their quote, and it had to be approved by myself. If I had questions, concerns, I went to my principal, who always said to me, "If you feel it shouldn't go in, it doesn't go in." So there were many times when students had their quotations returned.

Q. Over the course of Tim's high school years, did you feel like you got to know him pretty well?

A. Yes, I did.

Q. Knowing Tim as you did and reading what he chose for the saying under his name, how do you understand what he was saying? Put it into context for us.

A. He was a positive thinker, and I really feel that he felt if -- he could do with hard work what he needed to do and be successful. I think it's an example of the fact that he had a positive experience in high school and that he was a positive thinker.

Q. Now, was Tim chosen to -- as an outstanding person in some particular category his senior year of high school?

A. Yes. He was voted by the senior class in their senior

Deborah Carballo - Direct

polls as the most talkative.

Q. Now, some people in the media have suggested that that was a joke. Was it?

A. Absolutely not.

Q. Tell us about that.

A. The senior class each year votes on certain categories: best-looking, most likely to succeed. Most talkative is one of them. They all vote, and my -- I tally the votes along with the woman who does the business aspect of the yearbook. And the person who gets the most votes in that category is the person who gets that honor, so to speak. And it was Tim who was an avalanche -- it was Tim.

Q. Let's turn to page 42 of the book.

MR. BURR: And if we could publish that page, your Honor.

THE COURT: Yes.

BY MR. BURR:

Q. Is that reflective of the award we were just talking about?

A. Yes, it is.

Q. Ms. Carballo, I notice Tim is talking on the telephone, as is his female counterpart. How did -- how was the pose chosen? Do you know?

A. He chose it. This is what they wanted -- he worked it out with the photographer. This is where he wanted the picture taken; and, you know, they each got their chance to be

Deborah Carballo - Direct

creative, and he was very creative. And that was the perfect place for him to be as he was often there at that phone.

Q. Was that a phone in the school itself?

A. Yes. That's outside the school lobby.

Q. Some people talk because they don't have much to say and others talk because they do. How did Tim fall into that range of options?

A. He had a lot to say. He was very friendly with the teachers, as well as with the students.

I wouldn't say that he was in a particular clique.

He was friends with everybody and friends with all the teachers. He always said hello to you in the hallway; and, you know, if you were in your room and he was on his way out and he saw you,

he'd back up and say hi.

Q. Did you ever see Tim after he graduated?

A. On one occasion, he came to school and he was dressed in his uniform, but I don't remember the year. But I did see him on one occasion, but I can't remember --

Q. What uniform did he have on?

A. His Army uniform.

Q. Did he speak to you that day?

A. Yes. I don't remember the conversation, but I know he spoke to me, and I remember --

Q. How did he seem to you at that time?

A. Very happy. He looked very handsome and big. He had grown

Deborah Carballo - Direct

up.

Q. Now, this was -- he graduated in 1986. Is that right?

A. Correct.

Q. So it was more than 10 years ago?

A. Uh-huh.

Q. Do you remember most students from that period of time?

A. I remember many students. After teaching for so long, I can tell you that you remember two kinds of students, the outstanding students and the very bad students. And unfortunately, the middle-of-the-road students sort of fall to the bottom of your memory. And I remember him as among the best students.

Q. In trying to help someone come to know Tim who had never met him before, how would you describe him to that person?

A. He was friendly; a very, very good student; responsible. He went through high school without ever receiving a disciplinary referral or detention or anything, which is quite -- quite a feat.

He was friends with everybody. There was not a teacher that didn't have a good word to say about him, and he was an excellent student, very good student, very friendly, helpful. We knew that if we needed something, you know, we could ask Tim.

MR. BURR: Thank you very much, Ms. Carballo. Thanks for waiting all day.

I have no other questions.

THE COURT: Mr. Mackey?

CROSS-EXAMINATION

BY MR. MACKEY:

Q. Ms. Carballo, I understand Mr. McVeigh graduated some 11 years ago.

A. Yes.

Q. All right. And you've seen him once in that time period?

A. Yes.

Q. And during the four years he was at Star Point, he was a class -- or a student of yours in a class of yours?

A. Right.

Q. His freshman year only?

A. Correct.

Q. Some 14 years ago.

A. Correct.

Q. And during the course of his high school career, you saw him on a few other occasions when he assisted in the drama club; is that correct?

A. Yes.

Q. You have been teaching more than 24 years?

A. Yes.

Q. You have advanced -- more than one advanced degree. As a long-time teacher, can you tell us what the term "critical thinking" means.

Deborah Carballo - Cross

A. "Critical thinking" means that you consider all viewpoints before answering a question. For example, if you're writing a critical essay, you think about it critically first. You think about the pros, the cons, all the different viewpoints before you create your answer.

Q. And that's a method of reasoning where students are instructed to gather facts before they come to any conclusion or set a course of action.

A. Exactly. And it's part of the New York State curriculum in all areas.

Q. And that was true during the years that Tim McVeigh was a student at Star Point?

A. Yes.

Q. So the curriculum that he learned under for those four years was one that supported or encouraged critical thinking?

A. Yes, it did.

Q. How did Tim McVeigh do in your Spanish class?

A. 78 to 82 was the range of -- were the range of his grades.

Q. And you judge that to be an outstanding student?

A. No, not in my class, not in Spanish. His -- he was very good in the speaking aspect of it. He didn't like the grammar and the -- I don't think he liked Spanish; but I still say for somebody to take the course as an elective -- I mean, he realized the importance of a foreign language and that he was going to have to work because he knew who I was.

Deborah Carballo - Cross

Q. Star Point keeps records of standardized tests that all of its students take?

A. Yes, they do.

Q. Let me show you Government's Exhibit 1538.

Is that a record of the standardized test scores of Timothy McVeigh at Star Point?

A. Yes, it is.

MR. MACKEY: Your Honor, I'd move to admit Government's Exhibit 1538.

MR. BURR: No objection.

THE COURT: Received, 1538.

BY MR. MACKEY:

Q. At the top, it simply says, does it not, Ms. Carballo, "Standardized Test Record of Timothy McVeigh"?

A. Yes, it does.

Q. And based on tests administered to Timothy McVeigh while at

Star Point, what was his IQ?

A. 119.

Q. And what does that mean?

A. Above average.

Q. Well above average?

A. An average IQ is between 98 and 101.

Q. Let me direct your attention now to the Line No. 3, Test of Achievement and Proficiency. How did he do as reflected on those scores?

Deborah Carballo - Cross

A. He is in the -- absolute top percentile in both, because both of those ranks are out of 100; so reading comprehension, 98 out of 100, and mathematics, 99 out of 100, the national percentile.

Q. And right below that are his ATC scores for English, math, social studies, natural sciences and comprehension; correct?

A. Correct.

Q. Could you interpret those numbers for the jury, please.

A. I can only interpret the bottom ones, because I don't remember the ratio for the top; but the college-bound percentiles are out of 100, which is the national percentile. 85 in English, 83 in math, 76 in social studies, 95 in natural sciences, and 90 in comprehension.

Q. And what do those numbers mean?

A. That he is well above average in the nation, because 50 percent would be average; and he's at, well, from 76 to 95.

Q. And how did he do on his SATs?

A. Outstanding.

Q. Ver --

A. 500 on verbal and 570 on math. And both of those are out of 600 at that time -- were out of 600 percentile. Today they're out of 700, so it's different.

Q. Based on these test scores and what you know about Tim McVeigh while at Star Point, could he have gotten into college?

A. Yes.

Deborah Carballo - Cross

Q. Did he go?

A. To Bryant & Stratton, which was a business college.

Q. How long did he stay there?

A. I'm not sure. I know that he did not graduate from that school, but I'm not sure how long he stayed.

Q. Clearly based on all your years of teaching and these particular test scores, this was a man who had sufficient intelligence to accomplish many good things?

A. Yes, he did.

MR. MACKEY: That's all.

MR. BURR: No further questions, your Honor.

THE COURT: Excusing the witness?

You may step down. You're excused.

Next, please.

MS. WELCH: Sue Campbell.

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

(Susan Campbell 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: Susan Jan Campbell, C-A-M-P-B-E-L-L.

THE COURTROOM DEPUTY: Thank you.

MS. WELCH: Thank you, your Honor.

DIRECT EXAMINATION

Susan Campbell - Direct

BY MS. WELCH:

Q. Good afternoon, Ms. Campbell.

A. Good afternoon.

Q. Tell us where you're from.

A. I'm from Grand Island, New York.

Q. And is Grand Island near Buffalo?

A. Yes, it is. It's a little bit south.

Q. And it's also near the Pendleton/Lockport area?

A. Yes, it is.

Q. Are you an English teacher?

A. Yes.

Q. And are you teaching right now?

A. No, I'm not.

Q. Did you teach at Star Point High School in the past?

A. Yes, I did.

Q. When did you last teach there?

A. I left in 1988.

Q. Was Timothy McVeigh one of your students while you were at Star Point?

A. Yes, he was.

Q. Do you recall which years you would have taught him?

A. 1985 and 1986.

Q. Tell us which classes of yours that Tim was in.

A. He was in my eleventh-grade Regents' class and in my twelfth-grade English class.

Susan Campbell - Direct

Q. Explain to us what the eleventh-grade Regents' class is.

A. Eleventh-grade Regents' class is a class when I was there that tracked students who were college-bound. It was a college prep course. It had a state-mandated curriculum that I needed to cover, and there was a state exam that the students had to pass.

Q. And if you passed that class, you would get credit for the regent's diploma?

A. Yes, that's correct.

Q. And you could take the exam and get the scholarship?

A. You can take a Regents' exam; and if you score high enough, you would obtain a regent's scholarship.

Q. What do you remember about Tim's performance in your classes?

A. I remember that Tim was always a very eager and willing student. He was cooperative and he was attentive. He was respectful to me as a teacher. He was a pleasure to have in my classroom.

Q. What kinds of assignments were given in the eleventh-grade Regents' class?

A. There were a variety of assignments. As far as writing, very often it was based on literature that I'd asked the kids to read. It could be plays, novels. They might have to then write comparisons about characters or analyze the literature.

There were also assignments, compositions, and essays,

Susan Campbell - Direct

along with the regular basics that we call vocabulary, spelling, grammar.

Q. And how did Tim approach his assignments?

A. In general, I would say enthusiastically.

Q. How did his performance in that class compare with other students'?

A. I would say that Tim was always, as I said, eager and cooperative and would enjoy a challenge. If something came up that needed a little bit of extra thought, he was very willing to do that.

Q. Did his work show an unusual point of view, or did he -- how did he approach the written assignments that he was given?

A. Okay. Very often in a classroom situation, there will be kids who have an assignment; and if I ask them, for example, to talk about different characters, most of the kids will choose main characters to talk about, because they're the easiest ones there. There might be the most to say.

There were a group of kids -- I would always consider

them probably my above-average students -- who would perhaps choose a more obscure character to write about, where you had to do a little bit more thinking and maybe go a little bit more in depth, so it took a little bit more work to come up with something worthwhile to say. And very often, that's what Tim would do.

Q. What do you remember about him as a person during that

Susan Campbell - Direct

period of time?

A. The first thing I remember about him is probably his sense of humor and his smile. I will always remember that.

Q. Did he tease a lot?

A. Yes, he did. He liked to tease, never disrespectful; and, you know, if it got to a point where, okay, that's enough, we've got to settle down or get to work or whatever, that's what we did. It was never in a -- disrespectful to me as a teacher or as a person.

Q. Was he ever a discipline problem that you know of?

A. Never.

Q. Did he take part in class discussions?

A. Yes, he did.

Q. Do you ever recall him appearing to be an angry person?

A. No.

Q. Did he tolerate disagreement with others?

A. Yes.

Q. Do you recall seeing Tim after he graduated from high school?

A. I don't have a specific recollection of that.

Q. So really, the only time that you have had any contact with him was during those two years that you had him as class --

A. Yes.

Q. -- in your class?

A. Yes.

MS. WELCH: No further questions, your Honor.

THE COURT: Any questions?

MR. ORENSTEIN: No questions, your Honor.

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

THE WITNESS: Thank you.

THE COURT: Next?

MR. JONES: James Pate, your Honor.

THE COURT: All right.

THE COURTROOM DEPUTY: Raise your right hand, please.

(James Pate 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: James L. Pate, P, as in Paul, A-T-E.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. JONES:

Q. Mr. Pate, what is your occupation?

A. I'm a journalist.

Q. And with whom do you currently work?

Q. And where do you currently work?

A. I am national affairs editor for Soldier of Fortune magazine.

Q. And where do you live?

A. I live in Maryland. I work primarily in D.C.

James Pate - Direct

Q. And where is Soldier of Fortune's editorial offices?

A. They are located in Boulder, Colorado, about 25 miles from here.

Q. When did you begin your career in journalism, Mr. Pate?

A. 1978, January.

Q. Can you tell me just a little bit about your career from then up to now, where you have worked and what you've written in general category form, that type of thing.

A. Right. I studied journalism at the University of North Carolina at Chapel Hill. My first job out of college was went back to my hometown, which is Fayetteville, North Carolina. Worked for The Fayetteville Observer there on state desk, primarily covering law enforcement and some military coverage on the state desk. I was working out in the counties.

And I left there and went to The Daily News in Jacksonville, North Carolina, where I was in charge of military coverage for Camp Lejeune and Cherry Point Marine Corps Air Station. I also worked there -- it was a small daily. I also worked there in the mornings as an assistant city editor to help the city editor move copy for an afternoon -- it was an afternoon paper.

I left The Daily News after two or three years -- I can't remember without looking at my resumé -- in about, let's see, '83. It was the year of the Beirut bombing.

I went to States News Service in Washington, D.C.,

James Pate - Direct

which some people have described as the outward bound of journalism. It's a small, independent, supplemental news service with client newspapers around the country. And I worked there covering a variety of -- a variety of issues, but primarily focusing on the military, did a lot of coverage of armed services, that type of thing, on Capitol Hill.

I left States News Service in 1984 after approximately a year and took my -- took a job with Soldier of Fortune. That

summer, I worked in El Salvador as a correspondent basically on a freelance basis; and then they brought me to Boulder in September of '84, as an associate editor to work in the office.

I stayed at Soldier of Fortune until 19 -- late '86 or early '87, and I left there and went to The Virginian Pilot in Norfolk, Virginia, where I worked covering the Coast Guard, the Norfolk naval shipyard, and as a police reporter.

I left Norfolk in 1991 to move back to Colorado and

started -- I worked for a time at a local newspaper in the mountains here in Winter Park and started -- started freelancing and again started writing some for Soldier of Fortune and did a couple of things for the Denver papers and freelanced full-time for a period of about five years until January -- it was a year ago -- Soldier of Fortune magazine put me back on staff in my present position. So I've been in that position about 18 months.

Q. I want to talk to you just a little bit about the magazine

James Pate - Direct

Soldier of Fortune. First of all, can you tell me what is, from your experience as a writer for them -- what is the focus of the reporting of Soldier of Fortune?

A. Well, it's often described as a paramilitary journal. It covers -- it covers wars generally that -- it covers wars that are covered in the daily press, but it also looks at wars, low-intensity conflict, counter-insurgency wars in areas that are often given very little attention or no attention by the rest of the news media, to more the Korean and Burma, things of that nature.

It also does every month, I'm sure -- just about every month there is an article on Vietnam veterans' affairs, usually some type of experience or feature that someone had in Vietnam.

There will be a -- there will be a gun article every month, primarily focusing on military-type infantry weapons at the infantry level. Soldier of Fortune is not a magazine that deals with military topics normally of a strategic nature. They deal more with the tactical level and the experience of the foot soldier.

Q. You indicated -- A moment ago in answering the question, you made reference to "monthly," so I take it that Soldier of Fortune is published monthly?

A. Yes, sir.

Q. And in the last several years, what has been the average circulation figure?

James Pate - Direct

A. Unlike most magazines which rely predominantly on their subscription -- subscriber base, Soldier of Fortune has the bulk of its circulation in monthly newsstand sales, so this is a very broad average; but I called the office last week to find out about this, because I'm not in the office and don't talk to the circulation people, but they said approximately 100,000, and that would be an average.

And about 20 to 25 percent of that is subscribers and the rest is newsstand. For that reason, it fluctuates from month to month.

Q. So about 75 percent of the magazine sales are from newsstands and maybe 25 percent are paid circulation?

A. Yes, sir.

Q. And if average monthly sales are 100,000, then you'd have about 25,000 paid subscribers and 75,000 pay for it over the counter?

A. Roughly.

Q. Now, who makes up the readership of the Soldier of Fortune?

A. It's been a long time since I've looked at a demographic survey, but there are a lot of active-duty military readers, primarily enlisted. There is a significant portion of the readership that are in law enforcement, because we do quite a bit of law enforcement coverage; Second Amendment advocates, gun owners, because the editorial policy of the magazine is stridently pro -- pro gun ownership, pro Second Amendment; a

James Pate - Direct

lot of young readers. I get an occasional letter from, say, a teenager.

I once saw a -- I once saw an invoice. One of the circulation people brought it up and asked me if it was legitimate. The CIA was getting 23 copies a month; so it circulates well, I think, in federal government. I know the ATF reads it very well.

Q. But basically what, you're telling us aside from institutional purchasers is that it appeals to young males and gun owners?

A. Primarily. Primarily. It's considered a men's magazine. I think Folio magazine, which is a journal that covers the magazine area, certainly classifies it as a men's magazine.

Q. Let's talk a little bit about your work for Soldier of Fortune and what you write about. First let me ask you if you have any contact with the readers of Soldier of Fortune and, if so, how.

A. Occasionally. Soldier of Fortune -- and I've worked for a number of other publications -- is unusual in the amount of reader contact that we get. I think we get -- we have the type of readers who are vitally interested in the type of issues we cover, so we do get a lot of response.

I'm in an office based in Maryland, so a lot of response to me is indirect through the editorial office in Boulder. I get letters forwarded. I do get some direct phone

James Pate - Direct

calls. The magazine sponsors a convention and a three-gun competitive shooting match in Las Vegas every September, and we get quite a bit of reader contact then.

Q. About how many people come to this annual convention and shooting fest?

A. Oh, between -- you're talking about competitors? Or --

A. Oh, between you're talking about competitors: 51

Q. Attendance. Conventioneers; right.

A. Oh, 500 to 5,000, it's ranged over the years.

Q. All right. Now, what journalistic method do you use in your work with Soldier of Fortune?

A. Well, I don't have any military background, and a number of people associated with the magazine do. I'm different in that I came into the magazine through journalism, but I generally apply the same journalistic standards and procedures that I use when I'm writing for the daily press or working for TV.

The difference is that the type of magazine Soldier of Fortune is, I get considerably more leeway in my writing style.

Q. What do you mean by that?

A. Well, they certainly allow you to editorialize a little bit. Soldier of Fortune comes from a viewpoint. There is no doubt about that, and they've never made any secret of that. For instance, we're pro Second Amendment.

I -- but in gathering facts, I use the same -- same methods and procedures that I've used in daily newspapers and for television.

James Pate - Direct

Q. Now, while you've been writing for Soldier of Fortune, have you concentrated on any particular area of work particularly in the last several years?

A. Well, not only at Soldier of Fortune but through the years just because of my interests. When I first went to Washington, for instance, people were not particularly interested in covering the military -- reporters, at least the ones I was in the office with.

I've always been attracted to military coverage. It's a little more difficult than covering other bureaucracies because of the nature of the military; but military, law enforcement, terrorism and counterterrorism in the early 80's. I was writing a lot about POW and MIA affairs, and lately I've written -- certainly been better known for coverage of federal law enforcement and particularly federal law enforcement abuse, primarily by the Bureau of Alcohol, Tobacco and Firearms. I do a number of articles every year on the ATF.

Q. Now, in addition to your writing, have you also appeared on various television shows and research projects for national magazines outside Soldier of Fortune in these areas?

A. Yeah. I have an unusual relationship with Soldier of Fortune now in that I'm a staffer, but I'm still allowed considerable leeway as a freelancer because my freelance

business was fairly successful. I've worked as a producer, as a story consultant for TV. I've appeared as an unpaid guest on

James Pate - Direct

various TV shows, "Larry King Live." I've been on "Crossfire" a couple of times; "Tim Russert Show" on CNBC, commenting on areas -- the First and the Second Amendment, the militarization of civilian law enforcement, on this case on a couple of occasions.

Q. All right. Now, you have in front of you, I believe, a notebook with a series of exhibits which I'm going to ask you to identify. I'll just show this to you.

Go ahead, there.

Can you see your monitor in front of you?

A. Yes.

Q. Now, Mr. Pate, I don't know what's easier for you: that you look at the monitor, or you look at the exhibit in the book, so

I'll leave it to you.

A. If you give me the exhibit number, I can flip for it.

Q. WW1.

A. Yes, sir.

Q. Have you got that in front of you?

A. Yes, sir.

Q. This is an article that you wrote for Soldier of Fortune magazine which appeared in June of 1992?

A. Yes, sir. I think that's one of the first articles I had done for Soldier of Fortune in some time, I believe.

Q. All right. And that's a -- looks like a three-page article. Is that correct?

James Pate - Direct

A. That's correct.

MR. JONES: Move the admission of WW1.

MR. RYAN: Object. Lack of foundation.

THE COURT: What's the lack of foundation?

MR. RYAN: I'm referring to the affidavit, your

Honor.

THE COURT: Overruled. Received.

MR. JONES: I'll just publish the first page.

BY MR. JONES:

Q. That's WW1 showing on your monitor now?

A. Yes, sir.

Q. All right. This is just for you, Mr. Pate.

THE COURT: I take it in offering these, you're not expecting us to read everything in here.

MR. JONES: No, your Honor. Not today. Of course not.

THE COURT: And he's going to be summarizing some of this.

MR. JONES: Summarizing, yes; and then there is another witness that will talk about some of these. But no, we don't intend to read them.

THE COURT: And you're offering this for the limited purpose of explaining what's been in the magazine and therefore what may have been an influence on Mr. McVeigh's views, perceptions and opinion?

MR. JONES: Exactly, your Honor.

James Pate - Direct

THE COURT: All right. It's going to be received for the limited purpose of that and not, of course, for the truth of anything that is in there.

I'm not insulting you.

THE WITNESS: No, sir. None taken. None taken.

MR. JONES: All right. I've forgotten where I was, but I think I was moving WW3.

THE WITNESS: Yes, sir.

BY MR. JONES:

Q. Now, if you'll turn over to Tab 6 --

MR. JONES: I'm sorry. I don't know if the Court ruled on WW3 yet.

THE COURT: Well, you're going to have the same objection to all.

MR. RYAN: Not on WW3, your Honor, no. It's referred to in the affidavit.

THE COURT: All right. WW3 is received.

MR. JONES: WW6.

MR. RYAN: No objection.

THE COURT: WW6 received.

BY MR. JONES:

Q. WW6 is an article written by you, isn't it?

A. Yes, sir. That's the first article I wrote about the ATF raid in Waco, Texas.

MR. JONES: All right. May we publish this?

James Pate - Direct

THE WITNESS: I beg your pardon, sir?

THE COURT: He's talking to me.

Yes, you may.

BY MR. JONES:

Q. This is an article that when the magazine was opened it spread across two pages; so that's the reason they're side by side, isn't it?

A. Yes, sir. It's called a -- I guess you'd say is a "double truck."

MR. JONES: WW10.

BY MR. JONES:

Q. WW10 is an article that you wrote which appeared in Soldier of Fortune after the events of April 19, 1993?

A. Yes, sir. Actually, that article was written that day because I was filing my second story and someone walked into the editor's office and said, "Have you guys looked at TV?"

And we turned on TV, and there was a fire; so we had to start -- start over.

MR. JONES: Move the admission of WW10.

MR. RYAN: No objection.

THE COURT: Received.

MR. JONES: Publish?

MR. JONES: PUBLISH?

THE COURT: Yes.

BY MR. JONES:

Q. This is WW10?

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A. Yes, sir. That's mine.

Q. All right, sir.

I show you now or you have in front of you WW13. And is this an article that you wrote which appeared in the Soldier

of Fortune for August of 1993?

A. Yes, sir, it is.

Q. All right, sir.

MR. JONES: Move the admission of WW13.

MR. RYAN: No objection.

THE COURT: Received.

BY MR. JONES:

Q. If you'll look at WW14, which is a Soldier of Fortune article. My exhibit tab has covered up the date, but September

of '93, I'm told. Is this an article which you wrote?

A. Yes, sir.

MR. JONES: Move the admission of WW14.

MR. RYAN: No objection.

THE COURT: Received.

MR. JONES: Move to publish.

THE COURT: Yes.

BY MR. JONES:

Q. Now, this is labeled, "Exclusive: BATF's Magic Bullet," so just tell me in summary what you're saying here without unnecessary detail.

A. That is about some ammunition that we were told by a couple

James Pate - Direct

of federal law enforcement sources that had been used by the ATF in their initial raid on Waco, Texas.

Q. All right. And then this article was accompanied by some photographs of the various types of bullets. It was about five

pages. Is that correct?

A. Yes, sir. I believe they're all basically the same type of ammunition, and there are just different manufacturing variations at various stages of development.

Q. All right, sir. Would you turn to Tab 15.

Now, is this an article which you wrote for the Soldier of Fortune magazine in October of 1993?

A. Yes, sir.

MR. JONES: Move to admit WW15.

MR. RYAN: No objection.

THE COURT: Received.

MR. JONES: May I publish?

THE COURT: Yes.

BY MR. JONES:

Q. Now, again, is this one of those spread issues, so that your article, you open it --

A. It's on two pages, yes, sir.

Q. Now, what is the gist of this article?

A. This was a follow-up visit that I made to Waco after the fire to find out how the -- some of the surviving Davidians were doing and to in that context do some follow-up on new

James Pate - Direct

developments that we had learned of since we had written about it before. I think in the first year after Waco, we -- after the raid in February -- and there is approximately a 90-day delay that we have in -- from an event to actually getting the magazine on the street. But the first year, I think we did 11 or 12 issues in a row that had Waco stories in them. The readers were tremendously interested in that.

Q. This is an article that was about almost 10 pages long, wasn't it?

A. I'd have to count them.

Well, I count eight, including the jump.

Q. Eight pages.

Now, would you turn to Tab 16, WW16.

A. Yes, sir.

Q. Is WW16 an article that you wrote which appeared in the October, 1993 issue of Soldier of Fortune concerning the ATF?

A. Yes, sir.

Q. Now --

MR. JONES: I move to admit WW16.

MR. RYAN: No objection.

THE COURT: Received.

MR. JONES: Move to publish.

THE COURT: Yes.

BY MR. JONES:

Q. Now, what -- you say here, "Exclusive Interview with Gun

James Pate - Direct

Gestapo Insider." Do you see that?

A. Yes, sir.

Q. What are you saying here? What's going on?

A. We found someone who was in the ATF who had -- was not at Waco but had quite a bit of dealings professionally through his job with some of the key people from the ATF who were involved in the Waco investigation, and this was a -- this person's viewpoint on what it was like to work in ATF and particularly dealing with management and how management dealt with rank-and-file agents.

Q. And this, you're interviewing a former ATF agent or employee of the Bureau?

A. That person -- and we did not identify that person in the magazine. He was identified by his pseudonym, because I believe at the time this was published, that person was, I

think, still employed. I know when I interviewed him, he was still employed and there was -- he has since left ATF.

Q. All right, sir.

Now, turn to WW18. Would you look at that, please.

A. Yes, sir.

Q. Is this a copy of an article that you wrote which appeared in the November, 1993 issue of Soldier of Fortune?

A. Yes, sir, it is.

Q. Now --

MR. JONES: I move to admit WW18.

James Pate - Direct

MR. RYAN: No objection.

THE COURT: Received.

MR. JONES: Move to publish.

THE COURT: You may.

BY MR. JONES:

Q. Now, you've labeled this one, have you not, "Waco: Behind the Cover-up"?

A. Well, that's the headline. And journalists are familiar with this old saw, but I don't write the headlines. I file the copy. The editors who lay it out, they have a headline story conference; and the headlines are a joint effort by people in the office. So when you say I labeled it, no, I did not.

Q. Believe me, I'm familiar with the concept.

What are you trying to say here in this article?

What's the highlight of this article?

A. This is an interview with two people who happen to be husband and wife, who were gun dealers, who sold firearms to David Koresh and who were also socially acquainted with -- not only with David Koresh but with many of the people at -- who lived at Mt. Carmel. And this is their experience after they voluntarily contacted the Bureau of Alcohol, Tobacco and Firearms on the day of the raid, the ATF raid in Waco, which was February 28, 1993, and their attempts to cooperate in hopes of defusing any further violence.

One of the key aspects of this story is that Henry

James Pate - Direct

McMahon, the gun dealer who was visited by an ATF compliance agent in July or August of '92, six or eight months prior to the raid, had got David Koresh on the phone and gotten Mr. Koresh's permission for the ATF agents who were asking about these weapons transactions to come out and visit him at Mt. Carmel and inspect his firearms.

Q. So you were now interviewing this individual?

A. Two individuals, Henry McMahon and Karen Kilpatrick.

Q. And they were representing to you their experiences with the ATF which you then wrote about and published?

A. Right. They now, I believe, have a lawsuit pending against the Bureau of Alcohol, Tobacco and Firearms due to the experiences laid out in this article.

Q. Now, I want to turn over, if I may, to WW19. This is an article which you wrote which appeared in the November, 1993 issue of Soldier of Fortune?

A. It appeared in the same issue that the one we just previously referred to, yes, sir.

Q. All right.

MR. JONES: Move the admission of WW19.

MR. RYAN: No objection.

THE COURT: Received. You may publish.

BY MR. JONES:

Q. Now, Mr. Pate, this is not an article as such about Waco, is it?

James Pate - Direct

A. No, but it was an article that spun out of our interest in Waco in trying to run down various leads. This is an article about a federal firearms licensee in South Carolina who had sold gun parts to David Koresh and who was referred to by reference in the search warrant affidavit and I believe was referred to as a criminal suspect.

And this is ultimately -- this article is about what ultimately happened to him, when the ATF raided his business and how that raid was conducted, the aftermath of that raid and the dismissal -- subsequent dismissal of all charges.

Q. All right. Would you turn, please, to WW20.

WW20: This is an article written by you?

A. Yes, sir, it is.

Q. For Soldier of Fortune magazine?

A. Yes, sir.

Q. For December, 1993?

A. Yes, sir.

MR. JONES: Move the admission of WW20.

MR. RYAN: No objection.

THE COURT: Received. You may publish.

BY MR. JONES:

Q. Now, this is labeled "ATF's Next Big Mistake" and appears to be an aerial photograph of something. Is that correct?

A. Yes, sir.

Q. What is the theme of this article? What is it about?

James Pate - Direct

A. This is an article about the Church Universal and Triumphant in Montana, whom some have described as a, quote/unquote, "survivalist cult." Among other things, they had one of the largest concentration of privately owned nuclear bomb shelters in the United States, if not the western hemisphere.

Q. In fact, you've got pictures of that in here?

A. Yes, sir, we do.

And they were also believers in the Second Amendment, and they had been under investigation by the ATF. And they had been the topic at that point of some TV magazine pieces, and there was quite a bit of speculation because of the attention

there was quite a bit of speculation because of the attention they had drawn from ATF -- there was quite a bit of speculation

in the aftermath of the Waco raid that there was going to be a similar-type operation in Montana, in Paradise Valley.

This particular photograph, this compound is just north of the Montana border, just outside of Yellowstone Park.

Q. So your article is about their apprehensions and concerns and anxiety about --

A. Right, and about this relationship of this Church Universal and Triumphant with the community at large in Park County, Montana, and the frictions between the church members and the community, the local sheriff's department, and the attention that they had drawn from ATF.

Q. All right. Let's turn to WW21.

James Pate - Direct

WW21 is an article written by you for the January, 1994 issue of Soldier of Fortune?

A. Yes, sir.

MR. JONES: Move to admit WW21.

MR. RYAN: No objection.

THE COURT: Received. You may publish.

BY MR. JONES:

Q. This article is entitled "The Government's Waco Whitewash," and you make some reference or someone makes a reference in the headline to "Treasury Report on Raid, A Damage-Control Masterpiece." Do you see that?

A. Yes, sir.

Q. And there is a photograph of something up in the upper right-hand corner?

A. That is the cover of the Treasury Department investigative report on the Waco raid.

Q. And Vernon Wayne Howell was the legal name of David Koresh. Is that correct?

A. Actually, when he died, his legal name was David Koresh; but that was the name he had been more commonly known by in McLennan County, Texas.

Q. What is this article about?

A. This is an analysis, if you will, or a critique of the Treasury Department's Waco report. It was remarkably candid in many respects but also noteworthy for a number of areas of the

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raid that they failed to address.

Q. And so you were critiquing the report?

A. Yes, sir.

Q. All right. Now, would you turn to WW22.

A. Yes, sir.

Q. Is this an article written by you for Soldier of Fortune for February of 1994?

A. Yes, sir.

MR. JONES: Move to admit WW22.

MR. RYAN: No objection.

THE COURT: Received. You may publish.

BY MR. JONES:

Q. Now, this article says, "Waco Whitewash Continues." Do you see that?

A. Yes, sir.

Q. Now, what is the theme of the article here? What are you suggesting in this article?

A. Well, on the heels, I think -- I forgot the exact time -- two or three weeks after the Treasury report was released in Washington, the Department of Justice released their report on the conduct of the Federal Bureau of Investigation in the Waco standoff and subsequent fire.

And it was another critique, an analysis; and it was, I thought, less candid, less circumspect than the Treasury report and thus a more out-and-out, just -- what the headline

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says: It was a whitewash.

Q. Now, I want to ask you to look just a moment at page 58 of the article.

A. Yes, sir.

Q. And there are two photographs there. Do you see them?

A. Yes, sir.

Q. All right. Without in any way being argumentative about it, just tell me what these two photographs are and what they represent insofar as your article is concerned.

A. These are still photos taken from a video which was -- they

look like black-and-white photographs. They're actually forward-looking infrared radar which shows heat, and heat shows up as a light area and the absence of heat shows up as darker areas. And it doesn't necessarily mean cold but the relative absence of heat compared to the warmer areas.

And it shows various stages of Day 51 on February --

I mean April 19, 1993, the final day of the Waco siege, when the armored vehicles were dismantling Mt. Carmel; and I believe this shows -- and this is taken from the Government report -- shows the FBI's contention on where there were points of ignition just prior to the fire.

Q. Now, someone reading this article: What is the point you want the reader to understand or believe about these two pictures?

A. Well, we were raising questions about whether the

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Government's interpretation -- the FLIR video was correct; whether the points of ignition were in the same areas. And I think one photo, we point to what appears to be a point of ignition in the rubble of the gymnasium behind Mt. Carmel that was not considered to be a key point of ignition by the -- in

the FBI's interpretation or the interpretation of the Justice Department report.

Q. You say still photo from FLIR. What's FLIR?

A. Forward-looking infrared radar.

Q. And where do you take that from? How is that taken?

A. That is taken from a video camera mounted in the nose of an

aircraft that was circling. Actually I believe for various times there were two and on some occasions three aircrafts at different altitude shooting FLIR. Some were FBI, civilian aircraft at various times. There were a couple of military aircraft involved, too; FLIR video.

Q. All right. WW23. Is this an article that you wrote which appeared in the March, 1994 issue of Soldier of Fortune?

A. Yes, sir, it is.

MR. JONES: Move the admission of WW23.

MR. RYAN: No objection.

THE COURT: Received, and you may publish.

BY MR. JONES:

Q. Now, in this article, on page 80 -- or 62, rather, there is

a photograph of an individual that's identified as Dr. Alan

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Stone. Do you see that?

A. That's correct, yes, sir.

Q. Now, what was the point that you were making to the reader here? What did you want the reader to understand?

A. Dr. Stone is on the faculty at Harvard University of both the medical school and the law school. He is a forensic psychiatrist. He was one of a panel of experts who was invited

or solicited -- I believe paid by the Department of Justice to compile the Justice Department report.

And we got very interested in Dr. Stone because he withheld his conclusions at the end of the time prior to publication and insisted on issuing a separate report, because his findings differed dramatically from other panel members in the Department of Justice report.

And he, interestingly, we thought, came to some of the same conclusions about the government's conduct at Waco that we had arrived at; so we found that of great interest.

Q. Is it fair to say he was a critic of the official government report?

A. He was a strong critic. I think the lead to the story again -- the lead to the story is that he will probably never again be asked to serve as a consultant for the U.S. Department of Justice, he was so critical.

And it was interesting to me that the Federal Bureau of Investigation, within a very short time, less than a day of

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when he issued his report, they issued a press release --

MR. RYAN: Your Honor, I'm going to object, unless this is contained in the article. I can't tell.

BY MR. JONES:

Q. Do you reference the press release in the article?

A. Yes, sir, we do. I'm not certain on that, but I believe it is.

Q. In any event, the FBI responded to Dr. Stone's criticism?

A. Right.

Q. All right. Now, would you turn to WW25.

I'm sorry. I've overlooked one. WW24. Let's go to '24. Yes. Turned one too many tabs.

Is WW24 an article that you wrote for Soldier of Fortune which appeared in the April, 1994 issue?

A. Yes, sir, it is.

MR. JONES: Move the admission of WW24.

MR. RYAN: No objection.

THE COURT: Received. You may publish.

BY MR. JONES:

Q. Now, what is the -- first of all, tell me what the article is about, and then I want to ask you what it is you wanted the reader to understand.

A. This is an article about a man named Mark Domangue, who owned a hotel in Waco, Texas, the Brittney, who befriended the Branch Davidians after the fire, and it -- he provided them a

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place -- some of them -- a place to live in the aftermath of the fire because they didn't have anywhere else to go and they didn't have jobs. I think he provided them some work. There was an exchange going on that they provided some work in the hotel.

The article is what happened to Mr. Domangue when he ran afoul of the IRS. It was not a major story in the Waco coverage. It was an interesting sort of sidelight that this man befriended the IR -- befriended the Branch Davidians, and it was the way that the IRS handled the case.

Q. That is what you wanted the reader to understand?

A. Yes, sir.

Q. All right, sir.

A. There was some implied retribution there, I think.

Q. WW25. Is this an article that you wrote which appeared in Soldier of Fortune magazine for April of 1994?

A. Yes, sir.

Q. And --

MR. JONES: Move to admit WW25, your Honor.

MR. RYAN: No objection.

THE COURT: Received, may be published.

BY MR. JONES:

Q. Now, again, let's take this article, Mr. Pate. Tell me, first of all, what this article is about and then tell me what it is you wanted the reader to understand from reading it.

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A. This is an article about a man named Louis Katona III, who was in the -- is in the real estate business in central Ohio. He's also a part-time police officer for a couple of municipal police departments and an avid gun collector. As a matter of fact, he was a Class III collector. He collected machine guns. And the story is about his experiences with the ATF after he got in a dispute with his chief and what transpired. It was a particularly egregious raid, because it was alleged by Mr. Katona and his wife that she miscarried a child in the third trimester of her pregnancy after being pushed against the wall by an ATF agent during the raid.

Q. This is an article that you wrote which is critical of the ATF but not related to Waco. Is that correct?

A. No, sir. It was in no way related to Waco.

Q. All right. WW26. This is an article you wrote for Soldier

of Fortune which appeared in the May, 1994 issue?

A. Yes, sir.

MR. JONES: Move the admission of WW26.

MR. RYAN: No objection.

THE COURT: Received, may be published.

BY MR. JONES:

Q. This article is entitled, "Special Forces Involved in Waco Raid," is it not?

A. Yes, sir.

Q. Would you take a moment and tell me first of all what is

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the article about and what is it that you wanted the reader to understand about it.

A. The article is about the fact that the ATF agents involved in the Waco raid prior to that raid, up to the very time of the

raid, were trained by a detachment from 3d Battalion, 3d Special Forces Group, at Fort Bragg, North Carolina; and in the course of interviewing military sources for this story, it was stated to me that this training detachment had crossed the line in the types of training that they provided -- that they had provided some types of training that they were not supposed to provide to civilian law enforcement.

And what we wanted to tell the reader -- suggest to the reader was that there was some potential violations of the Posse Comitatus Act -- potential.

Q. All right. And what is the Posse Comitatus Act as you understand it?

A. The Posse Comitatus Act was passed in the 1870's after the Civil War; that it's generally understood to prohibit the involvement of the active duty military in civilian law enforcement, in the enforcement of civilian laws in this country. There have been a number of exceptions passed since 1980.

Q. Now, would you turn to Tab 27, which is WW27.

A. Yes, sir.

Q. Is this an article that you wrote which appeared in Soldier

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of Fortune magazine from May, 1994?

A. Yes, it is.

MR. JONES: Move the admission of WW27.

MR. RYAN: No objection.

THE COURT: Received, may be published.

BY MR. JONES:

Q. Now, this article by you is entitled, "Judgment Day: The Waco Trial"?

A. Yes, sir.

Q. Would you tell me what the article is about and then what was the point you were trying to make for the reader.

A. The article is about the trial of 11 Branch Davidians in San Antonio, Texas, approximately a year after the ATF raid on Waco. It covers various aspects of the trial, recounts testimony. It is critical of the judge in the case.

Q. An exception, I'm sure.

A. Yes, sir.

Q. That was the point you were making for the reader?

A. Right. It was what I thought were the -- in as much as you

can encompass in a two-month trial in 2- or 3,000 words what we

thought were significant portions of testimony and evidence.

Q. All right. Now, would you turn to WW28. This is an article that you wrote which appeared in the June, 1994 issue of Soldier of Fortune?

A. Yes, sir, it is.

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MR. JONES: Move to admit WW28, your Honor.

MR. RYAN: No objection.

THE COURT: Received. May be published.

BY MR. JONES:

Q. Now, this article is entitled, "Judgment Day: The Waco Trial, Part 2." I take it it's in reference to the sentence imposed.

A. It also has some trial coverage in it. It's Part 2 of our trial coverage, and it dealt specifically with the fact that -- the first article was filed -- it had just gone to the printers

when the verdict came back, and we had some other testimony and evidence that we wanted to inform our readers about. And probably more importantly is after the verdicts were rendered, there was some confusion about the counts against the Davidians and the guilt or the innocence on some of the counts. And there was a change made by Judge Walter Smith, I believe in

Count Three. And don't hold me to that, because I don't have the charge sheet in front of me; but that significantly altered the length of the sentences that some of the key defendants received.

Q. So would it be fair to say that your article here, WW28, is critical of the decisions made with respect to sentencing of the Branch Davidians?

A. Yes.

THE COURT: I think we'll interrupt it at this point.

MR. JONES: All right, sir.

THE COURT: It's close to 5, and we'll return tomorrow morning, Mr. Pate, and you'll be back on the stand.

THE WITNESS: Yes, sir.

THE COURT: At 9:00 in the morning. You're excused till then.

THE WITNESS: Yes, sir.

THE COURT: Members of the jury, we're going to recess now; but before we do, I want to give you a brief explanation of what is happening with this witness and also will be with respect to some witnesses tomorrow and some exhibits.

We're not going to ask you, the jury, in that case to decide what happened at Waco. You already heard from this witness that there have been reports done by Department of Justice, the Treasury Department, and also a trial was held on some charges there; but it isn't an issue here and we're not going to try the events at Waco, what actually occurred or with respect to any of the other matters that may be testified to by this and other witnesses.

The purpose of hearing information in the way of testimony and exhibits about these views and opinions that some have expressed concerning federal law enforcement activities, including their perceptions of fairness, and so forth, is that it may be considered with respect to the issues here possibly as mitigation, like some of what you have heard and saw during the trial. At times, you'll remember I said that the material was being admitted not for the truth of the matter but rather for the mere fact that these things were being asserted.

And here, what we are receiving now in evidence and will be also tomorrow is being received for the limited purpose of perhaps explaining something about Timothy McVeigh's views, perceptions, and beliefs for whatever consideration you may wish to give them with respect to the circumstances of the offense and the character of the defendant.

And then it will be for you to decide, as I will explain to you in detail in the instructions when this matter is given to you for deciding -- for you to decide -- it will be for you to determine what relevance this may have with respect to mitigating factors and the weighing process that I will talk about in some detail.

So I just wanted you to be reassured that we are not opening up this for full trial of Waco or any other events; and

....
I also, of course, want to again caution you: We are moving right along here, but we haven't completed the taking of the testimony or the receipt of the exhibits. And as I told you when we started last week on this phase, this is very much like the trial phase, in that you've heard from Government witnesses, you're hearing from defense witnesses. Then you will be hearing argument from the lawyers with respect to the issues, and then you'll hear from me on the law that governs you in the decisional process.

And again, that will be given to you, just as I did in the instructions at the trial. It will be given to you by my reading to you written instructions, and then you'll receive copies of them again, as was the case during the trial.

So that will help, I think, for you to follow a deliberative process in approaching the important questions that you must decide.

We haven't gotten there yet. So again, just as during all of the recesses during the trial, I caution you to keep open minds, avoiding discussion among yourselves and with all other persons and, of course, continuing to avoid anything that you might inadvertently see, hear, or come across in any form of communication or publication, knowing that you should decide based on what happens in front of you in this room.

So with that, members of the jury, you're excused till 9:00 tomorrow morning.

(Jury out at 5:02 p.m.)

THE COURT: Trial will be in recess till 9 a.m.

(Recess at 5:03 p.m.)

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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 9th day of June, 1997.

Paul Zuckerman

Kara Spitler