

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68
UNITED STATES OF AMERICA,
Plaintiff,

vs.

TERRY LYNN NICHOLS,
Defendant.

AA

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 65)

AA

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 9:00 a.m., on the 6th day of November,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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APPEARANCES

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REID NEUREITER, Attorneys at Law, 1120 Lincoln Street, Suite
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PROCEEDINGS

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

THE COURT: Be seated, please. Good morning.
Ready for the jury.

MR. MACKEY: Yes.

THE COURT: Okay.

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

THE COURT: Members of the jury, good morning.

JURY: Good morning, sir.

THE COURT: You will recall when we recessed we were
hearing testimony from Mr. Donahue, and we'll continue with his
testimony this morning.

(Timothy Donahue was recalled to the stand.)

THE COURT: Mr. Donahue, if you'll resume the stand,
please, under the oath that you took with us yesterday

afternoon.

THE WITNESS: Okay.

THE COURT: Mr. Mackey, you may continue.

MR. MACKEY: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. MACKEY:

Q. Good morning, Mr. Donahue.

A. Good morning.

Q. Yesterday you said you had seen Tim McVeigh at the Donahue Ranch on two occasions, do you recall that?

A. Yes.

Q. When we broke yesterday, we were talking about that first occasion, do you recall that?

A. Yes.

Q. The episode at Clover Cliff.

A. Yes.

Q. Let's start from that point, Mr. Donahue. On that occasion when Mr. McVeigh was looking for Mr. Nichols at Clover Cliff, did Mr. Nichols introduce you to Tim McVeigh?

A. No.

Q. Who was driving the vehicle that came out looking for Mr. Nichols?

A. Tim McVeigh was.

Timothy Donahue - Direct

Q. What kind of vehicle was he driving?

A. It was a little, silver, small car.

Q. Mr. Donahue, take a look in your exhibit folder. It should be to your left there. There are two photographs marked 271 and 272.

A. Okay.

Q. And do you recognize the vehicle depicted in each of those two photographs?

A. Yeah, it looks like the same-style car.

Q. Is that the same-style car that you saw Mr. McVeigh in at Clover Cliff --

A. Yes.

Q. -- as you described it?

MR. MACKEY: Your Honor, we'd move to admit those two photographs, 271 and 272.

MR. TIGAR: No objection.

THE COURT: They are received.

MR. MACKEY: May I show them?

THE COURT: Yes.

BY MR. MACKEY:

Q. Mr. Donahue, this is the silverish vehicle that you were describing to the jury that you had seen at Clover Cliff; is that correct?

A. Yes.

Q. Let me show you now 272. Is that an enlargement of that

Timothy Donahue - Direct

Timotny Donanue - Direct

same photograph?

A. Yes.

Q. And with that enlargement, can you see the license plate number that's shown in that same vehicle?

A. Yes.

Q. What is that, please?

A. GRY034.

Q. And is the license tag blue in color?

A. Yes.

MR. MACKEY: Your Honor, pursuant to Rule 903, we'd move to admit Government 223, certified registration of that license to Timothy James McVeigh.

MR. TIGAR: We don't have any objection to that.

THE COURT: All right. 223 received.

BY MR. MACKEY:

Q. Mr. Donahue, prior to the episode at Clover Cliff, had you seen that vehicle on any other occasion at the Donahue Ranch?

A. Not that I remember.

Q. To the best of your knowledge, Mr. Donahue, did you learn from Mr. Nichols where it was that he -- excuse me, that Mr. McVeigh and his wife were going on that day?

A. Yes. I heard they was going to Wichita.

Q. Do you know why they were going to Wichita?

A. No.

Q. Mr. Donahue, did you see Marife Nicole ever again after

Timothy Donahue - Direct

that day at Clover Cliff?

A. No.

Q. Let's turn our attention now to the second time you recall seeing Tim McVeigh. Do you remember what day that was?

A. September 30 of '94.

Q. What day of the week was that?

A. That was a Friday.

Q. On that day, Mr. Donahue, do you recall whether you expected Terry Nichols to work the entire workweek?

A. I was planning on it, yes.

Q. And did you know whether he planned to work the following day; that is, October 1, 1994?

A. No, I believe that was discussed earlier that he was going to take that Saturday off. His last day would be Friday.

Q. And with that knowledge, did you make any adjustment to his last paycheck?

A. Yes.

Q. And how did you do that?

A. Just deducted one day's pay from it.

Q. Before Friday, September 30, when did you expect Mr. Nichols to vacate the house he was in?

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

Q. Prior to September 30, or as of that day, when did you expect Mr. Nichols to move out of his house?

A. Well, sometime that weekend.

Timothy Donahue - Direct

Q. Had you hired a replacement for him at that time?

A. I believe so, yes.

Q. And had plans been made for that person to move into the house upon Mr. Nichols' departure?

A. Yes.

Q. When was that to take place?

A. Sometime in the period. I don't know if it was that weekend or -- for sure the following week.

Q. On Thursday, September 29, did you come to know about a moving sale at the Nichols home?

A. Yes.

Q. How did you learn that?

A. Seen it in the local paper.

Q. What did you do after seeing the ad?

A. My wife called up, interested in the waterbed that was advertised in there.

Q. And the next morning, on Friday, did you talk personally to Mr. Nichols about that waterbed?

A. Yes.

Q. And what was that conversation?

A. I just asked him if I could come over that night and look at it, I was interested in buying it.

Q. On Friday morning, September 30, did you expect Terry Nichols to work the entire day?

A. Yes.

Timothy Donahue - Direct

Q. And did that change?

A. Yes.

Q. And how so?

A. Well, he asked to have off early. He needed to take the afternoon off to do some other business, I guess.

Q. And what was your reaction?

A. Well, I wasn't too happy about it, but I agreed to it.

Q. Did Mr. Nichols specify why it was he was taking off early Friday, September 30?

A. No.

Q. Did Mr. Nichols in fact leave early that day?

A. Yes.

Q. Do you recall approximately what time?

A. It was shortly after dinner. After noon.

Q. Mr. Donahue, later that same day, did you have occasion to go to Terry Nichols' house?

A. Yes.

Q. And what time did you arrive there?

A. Oh, it was around 7 in the evening.

Q. Could you describe to the jury what happened when you arrived at the Nichols ranch house?

A. Well, I pulled up there, and Terry and McVeigh were out at the back of Terry's pickup, working on it or loading it or doing something back there. And I pulled up and got out of my vehicle and started walking to the front door. And then Terry

Timothy Donahue - Direct

came up and met me on the front door, by the front door.

Q. And did the two of you talk?

A. We talked for just a little while. And we went in -- I just asked to see the waterbed, and we went into the house and I went in the first bedroom and looked at the waterbed and then come back out on the front porch and just negotiated the deal for the waterbed, and I paid him, wrote him out a check for that and give him his final paycheck, just told him I appreciated working with him and asked him to make sure that he left the house in good order, and then left.

Q. Was Mr. McVeigh ever in the house at the same time you were --

A. No.

Q. -- that evening?

Did you see him when you arrived?

A. Yes.

Q. And was he still there when you left?

A. Yes.

Q. About how long were you at the Nichols ranch house that evening?

A. Oh, I'm sure 15, 20 minutes.

Q. Were you in a vantage point to see what was inside the bed of the pickup truck that you described?

A. No. No.

Q. Mr. Donahue, take a look at Government Exhibit 52.

Timothy Donahue - Direct

A. 52?

Q. Yes. It should be a photograph.

A. Okay.

Q. Find it?

A. Yeah.

Q. First of all, let me ask you, can you describe to the jury what Mr. McVeigh appeared, his physical appearance that evening that you saw him at the Nichols home?

A. Well, he had unshaven appearance and kind of a scraggly beard and mid-ear-length hair, in that range. Tall, slender man.

Q. Do you recall why it is that you remember his appearance that evening?

A. Why I remember? Well, I seen him.

Q. But in particular, his -- the growth of his beard and the clothing that he was wearing.

A. Well, he looked a little bit, a little bit shabby. I was assuming this was the guy that was going to pay him twice what I was, and it kind of surprised me he wasn't -- didn't look like he had that much money.

Q. Can you tell the jury whether Exhibit 52 accurately depicts Mr. McVeigh as you recall seeing him on the evening of September 30.

A. Yes.

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

Timothy Donahue - Direct

52.

MR. TIGAR: No objection, your Honor.

THE COURT: 52 is received.

BY MR. MACKEY:

Q. In this photograph, Mr. Donahue, does Mr. McVeigh have a growth of beard?

A. Yes.

Q. The house that is depicted in the background, do you recognize what that house is?

A. That's the house we rent for our hired help.

Q. Is that Mr. Nichols' house?

A. Yes.

Q. On that visit to the Nichols home and on that occasion where you encountered Mr. McVeigh, did Terry Nichols introduce you to him?

A. No.

Q. In the time that Mr. Nichols was working for you and living in your home, had you seen any other non-family visitor at the Nichols ranch?

A. No.

Q. And other than Mr. McVeigh's car and Mr. Nichols' pickup, had you seen any other vehicle at the Nichols residence?

A. No.

Q. Could you describe what kind of vehicle Mr. Nichols had while he was in your employ?

Timothy Donahue - Direct

A. It was a blue GMC pickup, diesel pickup. Mid 80's, I guess, somewhere in that neighborhood.

Q. And on Friday, September 30, 1994, had that vehicle changed in appearance in any manner?

A. It had a topper on it that evening.

Q. Prior to that day, had you ever seen the pickup with a topper?

A. No.

Q. What color was the topper?

A. Light-colored, white I'd say.

Q. Would you take a look, please, at Government Exhibit 51.

A. Okay.

Q. And what is that, please.

A. That's his pickup.

MR. MACKEY: Your Honor, we'd move to admit Government Exhibit 51.

MR. TIGAR: No objection, your Honor.

THE COURT: Received, 51.

BY MR. MACKEY:

Q. On that Friday -- excuse me. Let's describe the photograph.

A. It's Terry's pickup with a topper on it like I seen it that

A. It's Terry's pickup with a copper on it like I seen it that evening.

Q. Thanks. On that Friday evening, Mr. Donahue, did you have a conversation with Mr. Nichols about when it was that he would

Timothy Donahue - Direct

be out of the house, when you expected him to in fact be out of the house?

A. Well, I just -- I guess I assumed it was going to be shortly. He kind of asked that Friday -- the way I understood, he wanted off kind of early just to make preparation so he could get out of the house for me quicker. That was my assumption.

Q. And was that the last conversation you had with Terry Nichols?

A. Yes.

Q. Was it a pleasant farewell?

A. Yes.

Q. As far as you're concerned, did the two of you end with any harsh feelings or hard feelings?

A. Not at all.

Q. When Mr. Nichols left your employ, did he leave a forwarding address, some way for you get a hold of him if you needed to?

A. No.

Q. And based on conversations with Mr. Nichols, where did you understand he was going to, once he left?

A. He told me he was going to Arizona.

Q. Let me ask you a few more questions about the ranch house, if I can, Mr. Donahue. Was it provided furnished?

A. No.

Timothy Donahue - Direct

Q. And when Mr. Nichols moved in in March of 1994, to your knowledge, did he have any furnishings?

A. Just a few small items, like a TV, I think, a VCR, that's about all I remember.

Q. And with your help, did he acquire some furnishings in the central Kansas area?

A. Yeah, I explained where he could get a washer and dryer, I remember, kind of helped him out there.

Q. Was there an occasion when you actually helped him move furniture into the home?

A. Yes, a couple times.

Q. Describe that.

A. One time it was a sofa. I helped him carry it in. Another time a refrigerator, I helped him with that, a little. I believe I helped him move the washer, his clothes washer downstairs.

Q. On Friday, September 30, when you were in the house looking at the waterbed, did you see what other furnishings were in the home at that time?

A. There was a dining room set in there. There was a sofa, I

believe a chair. A refrigerator was still there. That's all I remember.

Q. And later, a few days later, were you back in the house after Mr. Nichols had departed?

A. Yes.

Timothy Donahue - Direct

Q. What was in the house at that time?

A. Just the waterbed.

Q. Take a look, please, at two exhibits marked 1767, Photos 1 and 2.

A. I don't believe I got the one. Are they both in here?

Okay.

Q. You see those?

A. Yes.

Q. In looking at Exhibit 1767-1, does that show the sofa that you helped Mr. Nichols move into --

A. Yes.

Q. -- the residence?

A. Uh-huh.

Q. And how about Photograph No. 2, do you recognize any of the furnishings shown in that photograph?

A. That looks like the dining room set that was in there that Friday evening.

Q. If you could retrieve, Mr. Donahue, Exhibits 49 and 50 from that same packet: It should be two checks.

A. Okay.

Q. And for the record, can you identify each of those two exhibits by number?

A. 49 is the check I wrote him for the waterbed. 50 is the -- his final paycheck I give him that Friday evening.

Q. And are both those checks dated September 30, 1994?

Timothy Donahue - Direct

A. Yes.

MR. MACKEY: Your Honor, we'd move to admit Government Exhibits 49 and 50.

MR. TIGAR: No objection, your Honor.

THE COURT: They are received.

BY MR. MACKEY:

Q. Mr. Donahue, in the course of time that Terry Nichols worked for you, did you ever see him in a full beard?

A. No.

Q. Do you recall an occasion where Mr. Nichols showed you a driver's license that had been issued from the state of Michigan?

A. Yeah. He had --

Q. When did that happen?

A. Excuse me?

Q. When?

A. He asked -- that was kind of early on. He asked to take off and go to town in Marion and get a driver's license, a



Kansas driver's license, and he showed me his Michigan license at that time.

Q. Did you see his photograph on the Michigan's driver's license?

A. Yes.

Q. And describe the facial hair.

A. He had a pretty full beard, yes.

Timothy Donahue - Direct

Q. Let's return our attention, now, Mr. Donahue, to Sunday, October 2, the weekend following your last encounter with Mr. Nichols. Tell the jury where you were and what you were doing.

A. Well, I went by several times. I was expecting him to be out of the house and drove by a couple times during the day, just wanting to check things over. And that evening when I was coming around, I kind of went around the section, checking some other things and was going to come by the house and then I seen a blue pickup headed south.

Q. And approximately what time of the evening on Sunday, October 2, did you see that?

A. It would be around 7:00.

Q. And what distance were you from the vehicle?

A. Oh, a quarter of a mile, probably.

Q. I take it, then, there was no way for you to see who was driving the vehicle or was inside?

A. No.

Q. What direction was the pickup truck headed?

A. It was headed south.

Q. And which direction were you headed again?

A. I was headed east.

Q. Was that the last time that you saw Terry Nichols' pickup truck?

A. Yes.

Timothy Donahue - Direct

MR. TIGAR: Objection, your Honor. I didn't hear the witness say he recognized Terry Nichols' pickup truck.

THE COURT: Objection sustained; rephrase the question.

MR. MACKEY: I will.

BY MR. MACKEY:

Q. Did you recognize the vehicle that you saw headed south on the country road?

A. Yes.

Q. Was that the same country road in front of the Nichols residence?

A. Yes.

Q. Mr. Donahue, the last time that you ever saw Tim McVeigh -- was that on September 30 in the company of Terry Nichols?

A. Yes.

Q. And the last time that you ever saw Terry Nichols in person was that in the company of Tim McVeigh on September 30?

person, was that in the company of Tim McVeigh on September 30?

A. Yes.

MR. MACKEY: I have nothing else, your Honor.

THE COURT: Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mr. Donahue.

A. Good morning.

Q. I wanted to make sure about that. On the 2d there, when

Timothy Donahue - Cross

you saw the pickup, the blue pickup truck?

A. Yes.

Q. Did you recognize that as Terry's?

A. Yes.

Q. Okay. And it had a white topper on it?

A. Yes.

Q. Okay. I don't know that we've ever met personally. I don't think we have.

A. Not to my knowledge.

Q. But you sure have answered a lot of questions. You've -- the people working with our team have been to see you; is that right?

A. Oh, yes.

Q. And you've helped us out by showing us things and answering; right?

A. Yes, sir.

Q. And then when the people from the Government have come, you've answered their questions, too; right?

A. Yes, sir.

Q. Because you feel like that's the right thing to do?

A. Yes.

Q. Well, let me start by asking you, if I could, about the 29th of September. That would be the Thursday.

A. Okay.

Q. Now, on the 29th, do you remember what the workday was like

Timothy Donahue - Cross

then?

A. That Thursday?

Q. Yes, sir.

A. That's the day before Mr. Nichols' last day? No, I really can't.

Q. Okay. Well, on a typical September time, what would the workday be?

A. Well, typically we would start at 7:30 and usually be done by 7.

Q. 7 in the evening?

A. Yes.

Q. And to your memory, did Mr. Nichols show up for work that day and work a full day?

A. Yes.

O. Because you'd sure remember if he didn't; right?

Q. I would say so, yes.  
Q. Okay. You -- then on the 30th of September, did you see Mr. Nichols' pickup in the morning, his truck, his GMC truck?  
A. Yes.  
Q. And when you saw it in the morning, did it have a white topper on it?  
A. No.  
Q. All right. Now, when you came around to the house in the evening, it was about 7, 7:30?  
A. Yeah, 7, somewhere in that neighborhood.

Timothy Donahue - Cross

Q. 7:00, and that's still daylight savings time?  
A. Yes.  
Q. So it's still light?  
A. Yes.  
Q. Was the topper installed on the pickup truck when you first got there?  
A. It was setting (sic) on there, yes.  
Q. It was setting on there.  
A. Yes.  
Q. Now, was there an extension cord and a drill out?  
A. Not to my knowledge.  
Q. Did you see somebody working on the pickup truck, trying to put the topper on, that's what I'm asking?  
A. I seen both of them -- when I drove up, both of them was behind the pickup. I guess I assumed they was putting it on because I hadn't seen it on there before.  
Q. I see.  
A. I can't say that they was putting it on, but they was working behind the pickup.  
Q. Working behind the pickup.  
A. Yes.  
Q. And that's what you -- from what you saw there, you assumed that's what they were doing?  
A. That's right.  
Q. Now, let's go back to the time when you first met Terry

Timothy Donahue - Cross

Nichols. You put an ad in a number of local papers; right?  
A. Yes.  
Q. Including the Herington paper, I believe?  
A. I believe so, yes.  
Q. And then in the Marion County paper?  
A. Yes.  
Q. And you interviewed Mr. Nichols, as you described?  
A. Yes.  
Q. Now, work -- your hired hands, they work pretty hard; right?  
A. Try to, yes.  
Q. I understand. And you work right alongside of them most of the time; correct?

A. To a certain extent, yes.

Q. And what's the usual amount of months that a hired hand will work for you? I mean is there any usual amount of months, or do they kind of come and go?

A. Some do. I had one work for me for seven years. And one for about a week and a half.

Q. Pretty well everything in between. Everything in between; right?

A. Yes.

Q. So there is no average or normal, it just depends on the person; right?

A. That's correct.

Timothy Donahue - Cross

Q. Now, when you worked there with starting in March, you hadn't started the planting, yet; right?

A. No.

Q. What kind of work was Mr. Nichols doing when you first got together?

A. Was feeding livestock, running a feed wagon. We was calving out cows at that time.

Q. Now, are you -- do you try to -- so your -- most of your cows calve in the spring; right?

A. Most of them, yes.

Q. And that's the way you plan it?

A. Yes.

Q. Now, you run, you said, a thousand cow/calf pairs?

A. Yes.

Q. And in terms of you have grass pasture for them; right?

A. Yes.

Q. And there's some kind of grass you have that fits -- works in your area, right, that's recommended?

A. Yes, sir.

Q. And it's different parts of the country, I guess?

A. Yes.

Q. And then when your thousand cow/calf pairs -- you also said you had a feed corn operation? You have feed corn?

A. We background our calves, our weaning calves. Grow them -- we wean them off the cow and then we grow them up to 800 pounds

Timothy Donahue - Cross

and then take them a commercial feedlot where they're fattened out.

Q. I see. So once they get to be 800 pounds, they're gone?

A. They're gone.

Q. What is your planting time, then, in Kansas?

A. Oh, planting time?

Q. Yes.

A. When we plant corn, it's usually first couple weeks of April. Then we go into our sorghum, which is usually the last couple weeks of March -- May.

Q. You were shown some pictures and maps of the area, and I

wanted to ask something about that, if I could. First we have this map of central Kansas, which has been admitted as Government's Exhibit 94 -- excuse me, it's Government Exhibit 47. And you describe Marion, Kansas, being right here where my finger is pointing; correct, sir?

A. Yes.

Q. Now, living in central Kansas -- do you have a VCR?

A. Yes.

Q. Okay. And are there places closer to you than Junction City where a person can rent a videotape?

A. Yes.

Q. Okay. And, for instance, can you rent them in Marion?

A. Yes.

Q. And you can rent them in Herington?

Timothy Donahue - Cross

A. Oh, I'm sure. I don't have personal knowledge, but I'm sure you can, yes.

Q. Now, I wanted to put up what's been received as Government 46A. Now, this is a map of the Marion area; correct?

A. Yes.

Q. And it's divided off into sections?

A. Yes.

Q. Now, you said you farmed 15,000 acres, correct?

A. Yes.

Q. You and your dad and your brother?

A. That's correct.

Q. And you started out with 160?

A. Yes.

Q. Now, my arithmetic's not very good. That's 20-some sections; right?

A. I suppose.

Q. Something like that. Now, would you please point out to me which -- by number, if you could -- can you see the numbers on this map?

A. Yes.

Q. Which section is the map -- is the farm we're talking about, Clover Cliff, what section numbers would that be?

A. It's in Chase County.

Q. Chase County?

A. It's not on this map.

Timothy Donahue - Cross

Q. Oh, it's not on this map?

A. This is a Marion County map.

Q. It would be the next county over?

A. Yes.

Q. Well, I wanted to ask you, then, about this picture of this -- of Timothy McVeigh, which has been Government Exhibit 52. I turned it off. There it is. Now, when you saw him for the first time, that was in August. Was that in August of 1994?

A. That is kind of hard to pinpoint. It was towards the very

A. That is kind of hard to pinpoint. It was towards the very end, I know that. Last 60 to 30 days.

Q. Okay. And when you first saw him, did he have that beard?

A. Not that I remember, no.

Q. Okay. But then when you saw him again towards the end of September, he was growing this beard out; is that right?

A. Yes.

Q. Now, during the time that you knew Mr. Nichols, he never had a beard, did he?

A. No.

Q. And was Mr. Nichols always pretty clean and well-presented?

A. Yes.

Q. That is, he would shave every morning and clean himself up?

A. Yes.

Q. Okay. Now, that first time that you saw Mr. McVeigh, he was driving that little car that you recognized; right?

Timothy Donahue - Cross

A. Yes.

Q. And you didn't have any trouble remembering what car it was from having seen it, did you?

A. The first time --

Q. Yes --

A. I believe was the first time I seen.

Q. Right, I understand. In fact, was that the first and last time you saw this car?

A. No.

Q. Oh, it wasn't. Did you see it again in the end of September?

A. Yes.

Q. From those two sightings, you don't have any trouble remembering that's the car you saw; right?

A. No.

Q. And in fact, from Terry's pickup truck, the GMC pickup, a lot of people in farm country drive pickups?

A. Right.

Q. And you don't have any trouble remembering what a GMC pickup looks like, do you?

A. No.

Q. And similarly about trailers, you were asked about these farm trailers?

A. Yes.

Q. Now, is that your dad's business?

Timothy Donahue - Cross

A. Yes.

Q. And you make those 4-by-8 utility trailers, among others; is that correct?

A. That's correct.

Q. Now, what is the advantage of the 4-by-8 utility trailer over, say, a pickup-bed trailer?

A. Well, it would be a little bit lighter, a little nicer to pull. I guess that would be the biggest advantage.

Q. And your trailers, these Donahue trailers, they have that very distinctive look, don't they?

A. Oh, I suppose, yeah.

Q. Well, I mean does your dad try to give them -- I mean they've got the two ends that come off at an angle there where the lights are mounted and it says "Donahue" in big letters; right?

A. Yeah.

Q. Do you sell a lot of those around the central Kansas area?

A. No. We discontinued building them, oh, in '93 or '94, something like that.

Q. Had you sold a lot of them up to then?

A. Not really. It wasn't a very good mover.

Q. All right. So went on to something else; right?

A. Yes.

Q. Do you see them, do you see those trailers driving around?

A. There's one in Marion, a brown one. That's about the only

Timothy Donahue - Cross

one that I know of that anybody else has got one.

Q. Do most people out in farm country prefer to make trailers out of pickup beds?

A. Oh, that's not really that common anymore. We've kind of progressed beyond that stage, I guess.

Q. Well, do you remember that the FBI came out to your farm and asked you if you'd ever seen a red trailer made from a Ford pickup bed?

A. Yes.

Q. When was that they came out and asked you about that, if you remember?

A. Oh, it was probably in May of '95. I believe.

Q. Okay. And did they ask you to be on -- did they ask you if you'd seen some around the area?

A. Yes.

Q. Did you remember having seen any?

A. No.

Q. Now, if -- but you sure -- if you were driving down the road or if you -- and you saw a trailer made out of a big, old Ford pickup bed, you'd know the difference between that and a Donahue trailer, wouldn't you?

A. I would.

Q. Ford pickup trailer rides higher than your Donahue utility trailer, doesn't it?

A. Yes.

Timothy Donahue - Cross

Q. And it has that old Ford tailgate on the back that says "Ford," doesn't it?

A. Yes.

Q. That's one difference.

A. Yes.

Q. Well, let me ask you, then, sir, about the sort of work

that you asked Mr. Nichols to do on the farm. What -- can you just describe generally what it was that he did on that March, April, on through September?

A. Well, at the beginning there, like I say, it was feeding cattle, tending to cattle, running feed wagon. Helping me calve out cows, ear-tagging calves. Then the first part of May --

Q. May I interrupt you. When you say helping you calve out cows, do your cows have trouble birthing?

A. At times. At times. You have to check them, make sure the calf's nursed.

Q. That they get up and start feeding and so they start out right?

A. Yeah.

Q. Did Mr. Nichols know how to do all of this?

A. No, he was pretty green about that.

Q. Pretty green about the calving thing?

A. Yes.

Q. I guess his farm in Michigan, had that been a cattle

Timothy Donahue - Cross

operation?

A. No.

Q. So was he a willing worker?

A. Yes.

Q. All right. So continue on. You got the calving season done. And then what did the work look like then?

A. Well, after we get the cows to grass in early May, then it's strictly a farming operation, running tractor, preparing ground, putting up hay.

Q. Was he good at that?

A. Yes.

Q. Did you ever have him working on equipment, fixing things?

A. Oh, yes.

Q. Was he good at that?

A. Yes.

Q. What, balers, tractors?

A. Planters, yes.

Q. So on. And during that time you said the workday was 7:30 in the morning to about 7 at night?

A. Oh, that varied quite a bit. If it rained, you know, we'd take some time off. Some nights it would be later, some nights it would be earlier. There's no set time on a farm.

Q. You said at one time you had him over for dinner?

A. Yes.

Q. Is that your custom, to ask your hired man and his family

Timothy Donahue - Cross

over for dinner?

A. Not very often, no. He was by himself, and just felt like needed to get him acquainted with us.

Q. Did Mrs. Nichols come?

A. Yes.



A. Yes.

Q. All right. And did there --

A. No, she didn't come to dinner, if that's --

Q. Okay.

A. It was just Terry by himself.

Q. Okay. Now, Mrs. Nichols lived in that farmhouse with the baby, Nicole; is that right?

A. Yeah, they come after maybe a month, after Terry had been there.

Q. Okay. And did you happen to observe whether Mrs. Nichols had a driver's license or whether she ever drove?

A. Not to my knowledge.

Q. Okay. So you never saw her drive a car?

A. No.

Q. Okay. And when they came out to see you in August to the field there -- or whenever it was -- and I'm not trying to say -- but whenever that time was that you first saw that man McVeigh in that little Spectrum car, what were they looking for?

A. Baby seat, as I remember.

Q. Why did they -- and where was the baby seat?

Timothy Donahue - Cross

A. It was in Terry's pickup.

Q. Oh, I see. They was -- they wanted to go somewhere in the Spectrum, and they needed the baby seat for the baby?

A. That's the way I remember it, yes.

Q. Now, did you take them over to where Terry was working?

A. Escorted them over there, yes.

Q. All right. And did you see them take the baby seat out and put it in the car?

A. No.

Q. Did you ever have any conversations with Mrs. Nichols about things?

A. No.

Q. You know that she's not -- she was not born in the United States?

A. Yes.

Q. Where did you understand that she was born and raised?

A. In the Philippines.

Q. In the Philippines.

Now, on these mornings when you would work, where did Terry show up for work?

A. At the ranch house. Ranch yard.

Q. So he'd come to the ranch yard with his pickup?

A. Yes.

Q. Then he'd get in your pickup?

A. Most of the time, yes.

Timothy Donahue - Cross

Q. And drive over to wherever it was that you were going to work for the day?

A. Yes.

Q. Now, on those mornings, did you have conversations?  
A. Oh, yes.  
Q. And what did you talk about?  
A. Oh, a lot of different things. You name it.  
Q. Okay. Well, let me try. Farming.  
A. Yes.  
Q. And did he have some ideas about farming you thought were unusual?  
A. Yes.  
Q. He did. Did he tell you about his brother James's ideas about farming?  
A. Yes.  
Q. Did he recommend that you use lime instead of commercial fertilizer?  
A. Well, he recommended a high-calcium lime.  
Q. Pardon?  
A. A high-calcium lime, yes.  
Q. Now, what did you understand him to be recommending there, instead of commercial fertilizer?  
A. Well, it wasn't as -- as I remember, it wasn't instead of commercial fertilizer. Lime is put on the fields to enhance what fertilizer does for you, and he was specifically

Timothy Donahue - Cross

recommending a high-calcium lime rather than just your average lime.

Q. Uh-huh.  
A. And that would, oh, improve your ground till-ability and things like that.  
Q. Improve your what, I'm sorry?  
A. Well, the way your ground works.  
Q. Your till-ability?  
A. Yes.  
Q. That is to say, to make the ground easier to work?  
A. Yes.  
Q. So when you go out in the spring to disk it or whatever you did, that would be easier to work on?  
A. More mellow, yes.  
Q. Okay. And did he have any ideas about pesticides?  
A. Yes.  
Q. Did you regard those as unusual?  
A. Yes.  
Q. What did he -- what attitudes did he have about pesticides?  
A. I believe that was granular sugar you should sprinkle on your field.  
Q. Okay. And did he say where he got this idea?  
A. As I remember, him and his brother James was using them practices in Michigan.  
Q. Okay. And did he say why he didn't want you to use -- why

Timothy Donahue - Cross

he didn't think you should use these chemical pesticides?

A. Well, I don't know that he ever said we shouldn't use them. He said they didn't use them and didn't --

Q. So was he trying to convert you to anything, or were you just talking?

A. No, he didn't really try and convert me to it, no.

Q. Okay. And do you remember having a talk with him about health insurance?

A. Yes.

Q. And in fact, I guess you did not -- you gave him extra money instead of buying health insurance; right?

A. Yes.

Q. And what was your understanding as to the reason for that?

A. He just didn't want to spend the money on the health insurance. He said he watched what he ate and was particular about that.

Q. And to your knowledge, did he watch what he ate?

A. As far as I know.

Q. You didn't notice one way or another; right?

A. No.

Q. Do you remember talking about preventative medicine with him?

A. Preventative medicine?

Q. Preventative medicine, yeah, did he ever use that word?

A. Not that I recall.

Timothy Donahue - Cross

Q. Now, in the morning when you were driving or during the day, was there a fellow on the radio there named Burns?

A. Oh, yes.

Q. Well, tell us who this fellow Burns is who was on the radio.

A. He was just a radio talk-show host. I don't remember that much about him. I don't believe he's on there no more.

Q. Okay. Now, did you all talk about things that were on that Burns show?

A. Oh, there was one occasion I do remember. Not very often on that. I don't remember the Burns show that well.

Q. Okay. Well, what do you remember about talking about the Burns show?

A. There was something about a police that had kind of tried to apprehend some kids for . . . or young adults for playing with -- maybe it was a paint ball gun in a park, and they had -- I don't know, I guess took the gun away or something like that, as I recall. That's been a long time ago. I don't remember that much about that.

Q. Okay. Now, is it fair to say that you all did talk about a lot of political things?

A. Oh, yes.

Q. Now, are you much involved in politics?

A. Oh, I try to stay current on it.

Q. Did y'all, for instance, did you talk about NAFTA?

Timothy Donahue - Cross

Timotny Donanue - Cross

A. Yes.

Q. Did you disagree about NAFTA?

A. Yes.

Q. That's the North American Free Trade Agreement?

A. Yes.

Q. And would it be fair to say that you thought it was a good idea and he thought it was a bad idea?

A. Yes.

Q. Okay. Did y'all ever get angry with each other in these political discussions?

A. No.

Q. These were just -- was this -- I'm not trying to characterize it. Is it sort of like what you'd hear at the local coffee shop?

A. Most of it, yes.

Q. Okay. And did you talk about Waco?

A. One occasion I remember, yes.

Q. Okay. And Mr. Nichols thought the government had done wrong there; right?

A. Yes.

Q. Now, you mentioned that he -- yeah, he quoted -- or mentioned Thomas Jefferson one time?

A. Yes.

Q. I want to be clear about that. Did you -- did you ever hear Mr. Nichols say that he was going to go commit violence

Timothy Donahue - Cross

against anybody?

A. No.

Q. Okay. And in fact, sir, your -- I mean your relationship with . . . your hired hands is when you (sic) left at the end of his time, you know, when Mr. Nichols left you, if he had come back the next day and you hired another fellow after him -- excuse me, these questions are not very clear, but I'm going to clean this up now.

This fellow Mr. Wichman was his successor; right?

A. Yes.

Q. Now, if Mr. Wichman had called you on the 1st of October and said, Mr. Donahue, I can't come, my wife is pregnant and we've just decided we can't do it, and if Mr. Nichols had showed up and said, Look, you know, I'd like to work for you some more, would you have taken him back?

A. Yes.

Q. And you would have taken him back because why?

A. He done a good job for me and I would have needed help.

Q. I understand.

MR. TIGAR: Make I have just a moment, your Honor?

THE COURT: Yes.

MR. TIGAR: Mr. Donahue, thank you very much, again, for coming here and answering all our questions.

THE WITNESS: Okay.

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

Timothy Donahue - Cross

MR. MACKEY: Please.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. MACKEY:

Q. Mr. Donahue, let me show you Government's Exhibit 46A again.

A. Okay.

Q. And in September of 1994, do you know where Terry Nichols spent time working for you as depicted on this exhibit?

A. Oh, yeah. We got a bit of broke ground. Okay. Want me to circle it?

Q. Yeah, just circle that and then circle Mr. Nichols' residence.

All right. And what kind of work would he -- did he do in September, 1994, in that tract of land that you've just marked on 46A?

A. We've got about a section of broke ground there, farm ground, and we spend a lot of time over there.

Q. And was that work that Mr. Nichols often did by himself?

A. Yes.

Q. The occasions that he'd go to that area and farm that area without you present?

A. Oh, yes.

Q. Mr. Donahue, do you recall the total number of times that you saw Tim McVeigh's car at Terry Nichols' house?

Timothy Donahue - Redirect

A. There was more than the one occasion. I can't recall how many times, but I'd seen it sitting there several times.

Q. Let me show you Government Exhibit 2074. Mr. Tigar asked you some questions about the Donahue trailers.

A. Okay.

Q. And on this utility trailer, the words "Donahue" are in white, are they not?

A. Uh-huh, yes.

Q. And they're a block style?

A. Yes.

Q. And how does the tailgate work on that utility trailer?

A. Just unlatches and folds down.

Q. Much like a tailgate on a pickup truck?

A. Yes.

Q. Take a look at Exhibit 2072. Let me draw your attention to the wheels that are on that trailer. Was that unique to that size utility trailer?

A. No, not at the -- not at the end of when they built them. They started putting them on at the end.

Q. Prior to the production of this trailer, had they used a more common or simpler wheel for the tires?

A. Yeah, then they used just a black wheel with a hubcap on it.

Q. Mr. Donahue, let me just finish with asking you a final

question about the one conversation Mr. Tigar asked you about.

Timothy Donahue - Redirect

You told the jury yesterday you recalled an occasion where Mr. Nichols told you --

MR. TIGAR: Object to that, your Honor.

THE COURT: What is your objection?

MR. TIGAR: I object to the question, your Honor, because I know what it's going to be, and it's not the conversation I asked him about.

THE COURT: Well, I haven't heard the question yet.

MR. TIGAR: All right.

THE COURT: Ask the question.

BY MR. MACKEY:

Q. You recall Mr. Tigar asking you about conversations you've heard around the coffee shop?

A. Yes.

Q. On any occasion at the coffee shop, have you ever heard anyone say that they felt like the government should be overthrown?

MR. TIGAR: I object to that.

THE COURT: Overruled.

THE WITNESS: No, I haven't.

BY MR. MACKEY:

Q. Do you have any doubt that Mr. Nichols made that statement to you?

A. No, I do not.

MR. MACKEY: Thank you.

Timothy Donahue - Redirect

THE COURT: Anything else of this witness?

REXCROSS-EXAMINATION

BY MR. TIGAR:

Q. Hi, Mr. Donahue. Again, I'm sorry, I get to ask some more after he does. I put up 46A again. And this is -- I know you helped us out by circling the fields. But I want for the record to get the section number on here where Mr. Nichols was working on the field that you circled there. Could you help me there.

A. It's parts of Section 21 and parts of Section 28.

Q. Okay. I see, 21 and 28, all right. So that we'd be able to find that.

Now, when you would have him go over and look at that field -- or work in that field, would you give him a certain job to do?

A. Yes.

Q. And then would you be able to check up afterwards, see if he did the work?

A. Yes.

Q. And to your knowledge, he wasn't a slacker, was he?

A. No, I don't believe so.

Q. Okay. That is to say, if you gave him a day's work to do

over there, he'd go over and do it?

A. Yes.

Q. Now, sir, I wonder if the clerk could hand you these three

Timothy Donahue - Recross

exhibits, and I want to ask you if those are pickup-bed-type trailers that you see in farm country -- like you see in farm country?

A. Yeah, you can see them in farm country.

Q. Okay. And those -- do those look like Ford pickup-type bed trailers?

A. Yes.

MR. MACKEY: Your Honor, could we make a record as to what exhibit numbers?

MR. TIGAR: I'm sorry. As soon as he's identified, if I could have them back, your Honor. Here someone's giving me a copy.

BY MR. TIGAR:

Q. Would you tell us the exhibit number of the first one, please.

A. D946.

MR. TIGAR: Okay. We offer D946, your Honor, for illustrative purposes.

MR. MACKEY: No objection.

THE COURT: All right. D946. Do you have copies of these, Mr. Mackey?

MR. MACKEY: I think I do, Judge, I'm sure.

BY MR. TIGAR:

Q. And what's the next exhibit?

A. F18.

Timothy Donahue - Recross

MR. TIGAR: We offer F18 for illustrative purposes.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. And what's the next one, sir?

A. D955.

MR. TIGAR: D955, we offer that for illustrative purposes.

MR. MACKEY: No objection.

THE COURT: Received.

MR. TIGAR: May I have those back.

BY MR. TIGAR:

Q. I just want to put these up. There you go. That you can see the number is D946, and you can see the Ford lettering on the back of that; right?

A. Yes.

Q. But it's painted over?

A. Yes.

Q. And here's F18. And there that's that white Ford lettering; right?

lettering, right?

A. Yes.

Q. And that sure looks like the back of an old Ford, doesn't it?

A. Yes.

Q. Here is D955. Again, another Ford with slightly -- with

Timothy Donahue - Recross

that same Ford -- excuse me, with that same Ford-type lettering; right?

A. Yes.

Q. Well, Government counsel asked you about this overthrow conversation.

A. Yes.

Q. Did -- so I'll ask you about it. Did you understand that Mr. Nichols wanted to commit violence against anybody from that conversation?

A. I didn't hear him specifically say he was going to commit violence.

Q. He was angry about something the government had done; right?

A. He was angry about the government being too big, too much power.

Q. Right. And now that's certainly -- a lot of folks in farm country think the government is too big and have too much power; right?

MR. MACKEY: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. TIGAR:

Q. In fact, people talk about such things as the farm policy and taxes and all those sorts of things; right?

A. Yes.

Timothy Donahue - Recross

Q. All right. So -- now, this remark you say you heard, was that one of these conversations you're having in the pickup in the morning?

A. I believe so, yes.

Q. Okay. And you didn't say, Get out of my pickup, you revolutionary, did you?

A. No.

Q. You didn't say, I think you're a crazy man, did you?

A. No.

Q. And whenever this conversation was, you worked a full day right alongside Mr. Nichols; right?

A. We worked a full day, yes.

Q. Yes, sir. And didn't interrupt your workday; right?

A. No.

Q. And the next day, you got in the pickup and drove off to work and worked again; right?

A. Yes.

Q. And he talked about something else; correct?



A. Yes.

Q. And just repeat, you never heard Mr. Nichols say that he intended to commit violence against anybody, did you?

A. No.

MR. TIGAR: Thank you very much, sir.

THE COURT: May the witness now be excused?

MR. MACKEY: Yes, your Honor.

MR. TIGAR: Yes, your Honor.

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

THE WITNESS: Thank you.

THE COURT: Next witness.

MR. MACKEY: Your Honor, the United States would call Robert Nattier.

THE COURT: All right. Mr. Nattier.

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

(Robert Nattier affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please. Would you state your full name for the record and spell your last name.

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

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Good morning, Mr. Nattier.

A. Good morning.

Q. Where do you live, sir?

A. In Moundridge, Kansas.

Q. And where in Kansas is Moundridge?

A. It's central Kansas, just north of Wichita.

Q. How long have you lived in central Kansas?

A. All my life.

Robert Nattier - Direct

Q. Tell us briefly about your education.

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

Q. And when was that, when did you attend Kansas State?

A. It would have been in 1961, I believe.

Q. And where do you work now?

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

MR. TIGAR: Excuse me, your Honor. I wonder if we could ask Mr. Nattier speak up just a little bit. I'm having trouble hearing some of his words.

THE WITNESS: I'll speak up.

THE COURT: Speak up a little and sort of aim it towards the microphone.

THE WITNESS: All right.

BY MR. MEARNS:

Q. Why don't we do that question one more time. Where do you work, sir?

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

Q. What is the Mid-Kansas Co-op?

A. We're a large farm-supply co-op, handle grain and fresh farm supplies to agricultural producers.

Q. How long have you worked for the Mid-Kansas Co-op?

A. 20 years.

Q. How long have you been president and general manager?

Robert Nattier - Direct

A. 20 years.

Q. Tell us a little bit more about what kind of products the Mid-Kansas Co-op sells.

A. Well, besides handling the grain that our producers bring in to us, we also supply them back with petroleum products, feed, fertilizer, herbicides, miscellaneous farm supplies.

Q. Does the Mid-Kansas Co-op provide any services to its customers?

A. Yes, we do.

Q. What kind of services do you provide?

A. We of course grind and process feed for them. We also custom-apply fertilizer and herbicides.

Q. I think you said also a moment ago that you handled grain.

A. Yes, I did.

Q. Could you tell us a little bit about that.

A. The producers bring the grain in to us and store it in our facilities, and then they can sell it anytime they want to, and then we reimburse them for the grain.

Q. You mentioned that you sell fertilizer.

A. Yes.

Q. What kind of fertilizers does the Mid-Kansas Co-op sell?

A. We handle dry products, liquid, and anhydrous ammonia.

Q. Do you also -- does the Mid-Kansas Co-op also actually sell services that relate to fertilizer application?

A. Yes.

Robert Nattier - Direct

Q. Tell us about that.

A. We custom-apply fertilizer in bulk, either in dry or liquids on producers' fields for them.

Q. What kind of dry fertilizers do you apply?

A. Either 18-46-0, which is phosphate, nitrogen, or potash.

Q. Those numbers you just said, 18-46-0, what do you mean?

A. Okay. 18 stands for the nitrogen content, 46 stands for phosphate content, and the zero stands for potash content.

Q. You also said that you apply custom -- custom-apply liquid fertilizers?

A. That's true.

Q. What kind of liquid fertilizers do you apply?

A. UAM. It's a 20 percent nitrogen and also 10-34-0.

Q. What are your specific duties and responsibilities at the co-op?

A. Primarily work with the board of directors, financial planning, budget; those sort of things.

Q. You mentioned that the name of the organization is the Mid-Kansas Co-op. Is it in fact a cooperative?

Mid-Kansas Co-op. Is it in fact a cooperative?

A. Yes, it is.

Q. So that there are actual members of the co-op?

A. Yes.

Q. How does someone become a member of the co-op?

A. They fill out an application and buy one \$50 share.

Q. Does the Mid-Kansas Co-op sell products and services only

Robert Nattier - Direct

to people who are -- or organization who are members of the co-op?

A. No.

Q. How many people or organizations are members of the Mid-Kansas Co-op?

A. We have about 3,000 members.

Q. And about how many customers do you have on an annual basis?

A. Around 9 to 10,000.

Q. Generally speaking, what type of customers do you have?

A. The majority are agricultural producers.

Q. What are the remainder? You said the majority are agricultural producers, and that leaves something left over.

A. That the remainder would be urban, urban customers.

Q. What kind of products do urban customers come to the co-op to buy?

A. Lawn and garden primarily, probably filters and oil.

Q. How many employees do you have at the co-op?

A. We have about a hundred full-time.

Q. Does the Mid-Kansas Co-op have one branch, or more than one branch?

A. We have more than one branch.

Q. About how many do you have at the present time?

A. We have 21.

Q. And how many did you have in 1994?

Robert Nattier - Direct

A. We had 19.

Q. And where were those branches located in 1994?

A. All through central Kansas, from probably Highway 70 on the north to Highway 50 on the south.

Q. What I'd like to do now is show you what's been introduced in evidence as Government Exhibit 2045, if I may.

You have an electronic pen up there. And if you could

for us, indicate where Moundridge is, where it would be on that map. It's not actually located, but could you just put a circle approximately where Moundridge would be.

A. About right there.

Q. Okay. So about how far north of Wichita would that be?

A. About 40 miles.

Q. And could you just tell us generally using the light pen where the branches of the co-op were located in 1994.

A. Just kind of circle them.

--- ---- - - - - -  
Q. So it's roughly along that highway stretching from Wichita to Salina?

A. Yes.

Q. Where does the mid co-op -- Mid-Kansas Co-op rank in terms of size in the state of Kansas?

A. The largest.

Q. Are the branches that you've indicated, the 19 branches in 1994 -- are they located in cities, or in rural areas?

A. Both.

Robert Nattier - Direct

Q. Does the location of the co-op, whether it's in a city or a rural area, affect what types of products are sold in a particular branch?

A. Yes, it does, somewhat.

Q. Tell us about that.

A. In urban markets, we would have more lawn-and-garden-type products, more products that maybe people in town would use.

Q. In 1994, did the co-op follow a particular procedure at all its locations to document the sales of products and services?

A. Yes, we do.

Q. And what was that procedure?

A. We used a three-part sales ticket on every transaction.

Q. And is every transaction, then, documented on one of those three-part tickets?

A. Yes, it is.

Q. What happens to the different copies, the three parts of that sales ticket?

A. The white copy or top copy goes into main office for accounting purposes.

Q. That's the main office in Moundridge where you work?

A. That's correct.

The yellow copy then, or the next copy down, is retained by the location. And the pink copy on the back is handed to the customer.

Q. And you used that form in 1994?

Robert Nattier - Direct

A. That's correct.

Q. How long had you been using that same form prior to 1994?

A. In the 20 years I've been there.

Q. Are you still using that same form today?

A. That's correct.

Q. Is the same practice or procedure followed at all of the Mid-Kansas branches?

A. Yes, it is.

Q. What I'd like you to do is if you could look in your -- the folder there and find Government Exhibit 72.

Do you recognize that?

A. Yes, I do.

Q. What is that?

A. That's a copy -- or one of our sales tickets.

Q. And is that a blank sales ticket?

A. Yes, that would be a blank sales ticket.

MR. MEARNS: Your Honor, at this time we'd offer Government Exhibit 72.

MR. WOODS: No objection.

THE COURT: Received, 72.

MR. MEARNS: Could I have it displayed? Thank you.

BY MR. MEARNS:

Q. If you could click your pen and clear the -- there you go.

Could you tell us what kind of information is actually printed on the form at the top there.

Robert Nattier - Direct

A. The actual printed information is, of course, the locations that we have, the name of the company on top, the locations we have, and then spaces for the account number, the date, the year, the name and address, and then what kind of a transaction it was; was it cash, charge, and then who it was sold by. And then the main body is the quantity and description of the product sold.

Q. When you say name and address, that is the name and address of the customer who is making the purchase?

A. That is correct.

Q. And what is the reason that you have the account number listed on the form?

A. That's so when it comes into the main office, we know whether it was a customer that has a charge account with us.

Q. Why do you need to know that information at the main office?

A. If it was sold at the location, if it doesn't have an account number, it has to be a cash sale, no charges on that number.

Q. Do you also -- is anything done on an annual basis with respect to purchases made by people who are a members of the co-op?

A. Yes, that information is collected and patronage is paid on the basis of the business that's done with the company.

Q. So there's some kind of a rebate to members for their

Robert Nattier - Direct

patronage?

A. Yes.

Q. If you would, hold up the form so the jury can see.

They're simply seeing just the cover. If you could actually take it out of the sleeve there.

And if you could just show the three different parts of the form.

A. There's the white copy with the carbon in between and the yellow copy with another carbon and the pink copy in the back.

Q. Looking again at the receipt that's displayed on the computer, is there any number or code on that form that

indicates which branch was involved in the transaction?

A. Yes. There's a number in the lower right-hand corner.

Q. And if you could circle that for us.

Okay. And I think you just covered over the first character there. Could you click it and try that again so we can see.

Okay. What does that first character, the letter M, mean?

A. That is the location.

Q. And what location is indicated by M?

A. M stands for McPherson.

Q. Is there a different letter for each of the branches?

A. Yes.

Q. You told us that the white copy goes to the Moundridge, to

Robert Nattier - Direct

the main office, and that the yellow copy is retained at the branch.

A. That's right.

Q. What is the purpose of retaining the yellow copy at the branch?

A. Just have a record there if somebody comes in and wants to know about a particular purchase or something.

Q. And that becomes a permanent record, then, of the co-op?

A. Yes.

Q. Is the procedure or the policy with respect to filling out these receipts -- is that a strict policy?

A. Yes, it is.

Q. Have you ever experienced any problem with employees not filling out receipts for each and every transaction?

A. No.

Q. Do some co-op customers receive special tax treatment for their purchases?

A. Yes, they do.

Q. Tell us about that, please.

A. If they're an agricultural producer, they fill out a tax exemption, Kansas state tax exemption form, that then allows them to buy their products tax-free.

Q. What kind of products would be exempt from tax under Kansas state law?

A. Products used in the course of their agricultural

Robert Nattier - Direct

production.

Q. Would that be -- would that include fertilizer?

A. Yes, it would.

Q. What I'd like to do now is show you Government Exhibit 71.

I think you may be able to see it on the screen if it's easier for you, Mr. Nattier.

Do you recognize that?

A. Yes, I do.

Q. What is that?

A. That's an agricultural exemption certificate

A. That's an agricultural exemption certificate.

Q. Is that the kind of certificate that was used by the co-op in 1994?

A. Yes, it is.

MR. MEARNS: Your Honor, we would offer Government Exhibit 71.

MR. WOODS: No objection.

THE COURT: 71 is received.

BY MR. MEARNS:

Q. Mr. Nattier, if you would explain to us what kind of information would be put on that form in connection with a transaction that would be exempt from sales tax.

A. Okay. They would indicate to us -- and that's using No. 3 -- they're a farmer/rancher, and then they would also date it, sign it, and give us their address on that.

Q. And when you say they would date and sign it, who is the

Robert Nattier - Direct

"they" you're referring to?

A. The customer.

Q. And in order for a transaction to be exempt from sales tax, does the customer have to sign this exemption certificate?

A. Yes, they do.

Q. What happens to such a form when it's completed in connection with a transaction?

A. It's sent in to the main office to go on file.

Q. And are they maintained, then, in Moundridge?

A. Yes, they are.

Q. When a customer completes an exemption certificate like this, is there any indication on the actual sales ticket that we looked at just a moment ago to show that the transaction was exempt from sales tax?

A. Yes. If it was a qualified purchase, there would be no sales tax.

Q. What do you mean by "qualified purchase"?

A. If it was qualified as a production input that was sales-tax-free.

Q. What kind of payment does the co-op accept for purchase of goods or services?

A. Accept cash, charge, both in-house charge and credit card.

Q. Do you also accept checks?

A. Yes, we do.

Q. What I'd like to do now is direct your attention to the

Robert Nattier - Direct

fall of 1994. Did the Mid-Kansas Co-op sell ammonium nitrate fertilizer?

A. Yes, we did.

Q. And did they sell it at that time at the branch in McPherson, Kansas?

A. Yes, we did.

Q. What company manufactured the ammonium nitrate fertilizer that the co-op sold in 1994?

A. ICI.

Q. What I'd like to do now is show you Government Exhibit 70.  
And do you recognize that?

A. Yes.

Q. What is that?

A. That would be similar to the bag of products that we were selling.

Q. Is that a photograph of a bag of ammonium nitrate that was sold by the co-op in 1994?

A. Yes, it is.

MR. MEARNS: Your Honor, we would offer Government Exhibit No. 70.

MR. WOODS: No objection.

THE COURT: 70 is received.

BY MR. MEARNS:

Q. Was this the only kind of ammonium nitrate fertilizer sold by the Mid-Kansas Co-op in 1994?

Robert Nattier - Direct

A. Yes.

Q. Would you explain -- we see in the middle of the photograph that it says, "ammonium nitrate fertilizer, 34-0-0." Could you tell us what those numbers mean, then?

A. 34 stands for the amount of nitrogen, pounds of nitrogen, a hundred pounds, and of course the zero, zero would be no phosphate, no potash.

Q. And was this low-density ammonium nitrate that was sold by the co-op?

A. Yes, it was.

Q. Was that the only kind of ammonium nitrate sold by your co-op in 1994?

A. Yes.

Q. What I'd like you to do now is look into your folder for Government's Exhibit 73 and 75.

Do you have both of those in front of you now?

A. Yes, I do.

Q. Do you recognize those exhibits?

A. Yes, I do.

Q. What are they?

A. They would be the yellow copy of one of our sales tickets.

Q. Okay. Are they sales receipts for two different transactions?

A. Yes.

Q. Okay. Were those the yellow copies that were maintained at

Robert Nattier - Direct

the branch?

A. Yes.

Q. And those were for transactions that took place in the fall of 1994?

A. That's correct.



MR. MEARNS: Your Honor, we would offer Government Exhibits 73 and 75.

MR. WOODS: No objection.

THE COURT: They're received.

BY MR. MEARNS:

Q. I'd like to begin with Exhibit 73. And could you just walk through the information -- not the printed information but the information that is handwritten on there.

A. Okay. Patron account number is 10, which would indicate that it was not a charge account. The date was on 9-30 of '94. It was sold to Mike Havens. The initial would indicate the employee that made the sale would be Jerri Showalter. It was a charge ticket. It was forty 50-pound bags of 34-0-0 or ammonium nitrate at \$5.40 per bag for a total of \$216. There was \$12.74 sales tax charged. The total ticket was \$228.74.

Q. You indicated that the 10 indicated it was a non co-op member?

A. Yes.

Q. Does the 10 signify anything else besides that it was a -- the purchaser was not a member of the co-op?

Robert Nattier - Direct

A. Just that it was a cash -- cash transaction.

Q. Could you tell us what, then, the numbers 40/50 mean about halfway down on the left?

A. That indicates forty 50-pound bags.

Q. So those are -- that's 40 bags similar to the photograph we saw a moment ago?

A. Yes.

Q. What is the price per 50-pound bag as reflected on the receipt?

A. \$5.40.

Q. And the receipt indicates that sales tax was charged to this transaction?

A. That's correct.

Q. If I may, if we could turn to Government Exhibit 75, then.

And beginning with the information again that's handwritten, what does the 10 indicate on this receipt?

A. Again, it indicates it was a nonmember. Cash transaction.

Q. And the date is what there?

A. 10-18 of '94. Again, it was told to a Mike Havens.

Q. And on the next handwritten line, what do the initials indicate?

A. It indicates the employee that made the sale would be Rick Schlender. It was a cash ticket again. Again, it was for forty 50-pound bags of 34-0-0, \$5.40 per bag. Total of \$216, sales tax charge is \$12.74 for a total of \$228.74.

Robert Nattier - Direct

Q. So this is essentially the same quantity of ammonium nitrate, 2,000 pounds?

A. That's right.

Q. Are you familiar with the names of many of the co-ops?

Q. Are you familiar with the names of many of the co-op's largest customers?

A. Yes, I am.

Q. And are you also familiar with the businesses that those customers are engaged in?

A. In general, yes.

Q. Do you know who Mike Havens is?

A. No, I do not.

Q. Do you know what business he may be engaged in or what use he may make of ammonium nitrate fertilizer?

A. No, I do not.

Q. What I'd like to do now is show you Government Exhibit 77A. Do you recognize this exhibit, sir?

A. Yes, I do.

Q. What do you recognize it to be?

A. It's a list of some of our customers.

MR. MEARNS: Your Honor, at this time I'd offer Exhibit 77A for demonstrative purposes.

MR. WOODS: Can we ask who prepared the list?

BY MR. MEARNS:

Q. Mr. Nattier, did you assist in the preparation of this list?

Robert Nattier - Direct

A. Yes, I did.

Q. Who else assisted you?

A. I believe it was Lou Michalko.

Q. An FBI agent, Lou Michalko?

THE COURT: Well, what is it? You haven't explained what it is.

BY MR. MEARNS:

Q. What is this list? What was the purpose of the preparation of this chart?

A. It is a list of customers that have purchased 34-0-0 ammonium nitrate fertilizer.

Q. In any particular quantities?

A. Yes, in large quantities.

Q. And was it during a particular period of time?

A. Yes, I think it was. I'm sure it was. I don't remember the exact dates.

Q. Would it have been roughly in 1994 and 1995?

A. Yes.

MR. WOODS: Your Honor, as I understand, Agent Michalko compiled this list, but it's of no consequence -- or we don't object to it. But he didn't compile it.

THE COURT: Well, are you --

MR. WOODS: No objection.

THE COURT: 77A is received.

BY MR. MEARNS:

Robert Nattier - Direct

Q. Are you familiar with the first organization that's listed

on that chart?

A. Yes, I am.

Q. Could you tell us what the name of that is and what business that organization is engaged?

A. It's Harvey County Experimental Farm, it's a --

MR. MEARNS: Excuse me just a sec, Mr. Nattier.  
Can we possibly display that?

THE WITNESS: It's Harvey County Experimental Farm.  
That's an experimental farm in Kansas State University.

BY MR. MEARNS:

Q. And the next?

A. Unified District 313. It's a local school district.

Q. And the next entry you've told us about a moment ago.  
If you could move to the fourth one.

A. NCRA Refinery. They're a pipeline company that has a pumping station in our area.

Showalter Villa: That's a retirement home in Hesston,  
a nearby town.

The McPherson Country Club is a golf course.

The Memorial Home is again a retirement home in  
Moundridge.

And James Wiens is an agricultural producer in our  
area.

Q. Thank you. Based on your 20 years' experience with the

Robert Nattier - Direct

co-op, what would be the best way to determine the total amount of ammonium nitrate sales from your co-op in a particular period of time?

A. By reviewing sales transactions or sales tickets.

Q. And that would be the most accurate way to do that?

A. Yes, it would.

Q. And why would it be the most accurate way of doing that?

A. Because every transaction has a ticket made on it.

Q. In 1994 and 1995, did the Mid-Kansas Co-op sell ammonium nitrate fertilizer at all of its branches?

A. No, we did not.

Q. Prior to coming to court, did you prepare a list of the Mid-Kansas Co-op branches that sold ammonium nitrate in 1994 and 1995?

A. Yes, I did.

Q. Let me show you Government Exhibit 77B. Do you recognize that?

A. Yes, I do.

Q. What is that?

A. That would be the list of our locations that did sell ammonium nitrate.

MR. MEARNS: Your Honor, we would offer Government Exhibit 77B.

MR. WOODS: Again, he's testifying he compiled the list. It's my understanding that the agent compiled the list.

Robert Nattier - Direct

And so we're clear on that.

THE COURT: Well, his testimony is, though, that, as

I understand it, these are the branches.

THE WITNESS: Yes.

MR. WOODS: We have no objection to the list.

THE COURT: All right. 77B is received.

BY MR. MEARNS:

Q. How many different branches of the Mid-Kansas Co-op as indicated on that chart sold ammonium nitrate fertilizer in 1994 and 1995?

A. I believe it's ten, isn't it?

Q. Was ammonium nitrate fertilizer sold by the Mid-Kansas Co-op at any branch other than the ten that are listed there?

A. No.

MR. MEARNS: I have no further questions, your Honor.

THE COURT: All right, Mr. Woods.

MR. WOODS: Yes, your Honor, thank you.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good morning, sir.

A. Good morning.

Q. My name is Ron Woods. I'm one of the lawyers that was appointed to help Terry Nichols. You and I have never met; is that correct?

A. That's correct.

Robert Nattier - Cross

Q. In fact, we tried to interview you, but you wouldn't allow it; is that correct?

A. Not that I remember.

Q. You remember the investigators coming by and asking to talk to you in November, '95?

A. No, I do not.

Q. Who is John Walsh?

A. John Walsh?

Q. Yes, sir.

A. I do not know him.

Q. Is that a lawyer that represents you?

A. Yes.

Q. Don't remember your own lawyer's name?

A. I had forgotten. You reminded me.

Q. Do you know how many -- when you advised the prosecutor that the way to determine the number of ammonium nitrate sales was to go back and look at all of the sales tickets -- was that your testimony?

A. Yes.

Q. That was done, wasn't it, for the period of January 1, '94, through April 19, '95?

A. Yes, it was.

Q. And do you recall how many sales tickets were found for all of the ten branches that sell ammonium nitrate, sales tickets for ammonium nitrate?

Robert Nattier - Cross

A. You mean the exact number?

Q. Yes, sir.

A. No, I do not know.

Q. Didn't you work with Michalko on that?

A. Yes, we supplied him with the tickets.

Q. You don't remember the number?

A. No, I don't.

Q. Okay. Do you remember how many sales were made at the McPherson branch during that period?

A. Actual ticket transactions?

Q. Yes, sir.

A. No, I do not.

Q. Do you remember how many transactions occurred within that period that were cash transactions?

A. No, I do not.

Q. You compiled those numbers, didn't you?

A. I supplied the tickets, and I did not actually do it, myself.

Q. But the two of you have gone over and over it, haven't you?

A. No, we have not.

Q. Okay. Do you know the percentage of cash transactions that occur in McPherson branch on a yearly basis? You sell by account, as you pointed out in this chart here, you sell by account and you also sell by cash. Do you know the percentage of cash transactions?

Robert Nattier - Cross

A. I could render a guess. I do not know exactly.

Q. As the president and general manager, is that something that you look into, to see how your sales are going, what percentage are cash and what percentage are done by accounts?

A. Not on a regular basis, no.

Q. Well, what is your estimate, then?

A. I would estimate probably be in the range of 10 to 15 percent.

Q. Would it surprise you to learn that 38 percent of your ammonium nitrate sales during that period were for cash --

A. No, it would not.

Q. -- at the McPherson branch?

A. Not on ammonium nitrate, no.

Q. Pardon me?

A. It would not on ammonium nitrate.

Q. And there are a lot of cash transactions to purchase ammonium nitrate at your various branches, aren't there?

A. Yes, there would be more.

Q. And very few of the cash transactions take time to fill out the tax exemption form, do they?

A. That's correct.

Q. What is the tax, what percentage is it?

A. Varies by the community. but it's roughly around 6 percent.

... values by the community, but it's roughly around 6 percent.  
Q. And on the sales transaction that you offered into evidence, the sale was for 200-and-some-odd dollars and the tax

Robert Nattier - Cross

was like \$12?

A. Yeah, \$12.74.

Q. A 6 percent average?

A. Roughly, yeah.

Q. That photograph that showed the ammonium nitrate, is there any indication on that bag whether or not it's low-density or high-density?

A. Not that I'm aware of.

Q. But you told the prosecutor that you sell low-density. How do you determine by looking at the bag?

A. By looking at the shipping order that we received.

Q. How does the customer determine when he comes in and looks at the bag whether it's high-density or low-density?

A. He would not know.

Q. What's the difference for farm-use fertilizer that's low-density and fertilizer that's high-density?

A. To be honest with you, I really don't know. We order fertilizer.

Q. And you only get one kind?

A. We order fertilizer. We're not aware of what we're getting in, whether it's low-density or high-density. But we order fertilizer.

Q. Did you ever sell high-density?

A. I couldn't answer you.

Q. Do you know how many transactions occurred on September 30

Robert Nattier - Cross

there at the McPherson branch?

A. Not exactly.

Q. Haven't you looked that up before and testified about that?

A. Yes, I think I did. I don't remember the exact number. I think it was somewhere around 70 or something like that.

Q. Does 106 refresh your memory?

A. Okay.

Q. And those are -- each transaction, each customer that comes in, if he purchases something, there is a sales ticket that is produced for that; is that correct?

A. That's correct.

Q. And that's the way you keep count of your inventory, the amount of money taken in, and the white copy goes to your headquarters; is that correct?

A. That's correct.

Q. And you've provided those and you've gone over them with the Government a number of times, haven't you?

A. I provided them.

Q. Now, do you know how many transactions occurred on October the 18th at the McPherson branch?

A. I do not remember for sure. It was somewhere or less, I

think, 70 or something like that.

Q. Does 76 refresh your memory?

A. That's sounds right.

Q. Now, have you made any examination to determine what the

Robert Nattier - Cross

average number of customers is on a daily basis at your McPherson branch?

A. No, we've not.

Q. That's a pretty busy facility, isn't it?

A. Yes, it is.

Q. Is it your largest?

A. Not in total volume, but in probably customer, amount of customers, it would be.

Q. And why is that?

A. Because it's located in a urban area.

Q. It's in the city?

A. That's correct.

Q. You sell a lot of things to just walk-in customers?

A. That's correct.

Q. You sell a lot of it by cash, don't you?

A. Yes.

Q. A co-op is not a private venture like a country club; any customer can walk in and buy things, can't they?

A. That's correct.

Q. And a cash transaction doesn't stand out, does it?

A. No, it does not.

Q. You want cash transactions, don't you?

A. Sure.

Q. Sometimes have difficulty collecting on those accounts, don't you?

Robert Nattier - Cross

A. Occasionally.

Q. In fact there's some accounts that you have told the people they've got to pay cash on, you've canceled their accounts, haven't you?

A. That is correct.

Q. When you pulled those tickets for all of the transactions for '94 and part of '95, do you remember how many total transactions you had?

A. During that frame, that time frame?

Q. Yes, sir.

A. I do not remember exactly. It would have probably be -- based on ticket volume, it would have been somewhere around \$250,000. Guesstimating.

Q. Do you know how many transactions occurred at McPherson, from October 18 of 1994 -- that's the date of the last Mike Havens purchase -- do you know how many transactions occurred from that date up until April the 30th of '95?

A. No, I do not.

Q. Is that approximately a six-and-a-half-month period?

A. Yes, it is.

Q. Do you know what the average number of customers per month in that facility is?

A. I could guesstimate, again.

Q. Okay.

A. Probably be somewhere in the neighborhood of probably

Robert Nattier - Cross

3,000, I suppose, in a month. Roughly.

Q. So we've got six-and-a-half months. That's 18, 20,000 transactions that occurred over that period of time?

A. That could be in the range.

Q. And do you recall that April the 30th was the day the FBI descended on your branch there in McPherson to start asking questions, April the 30th of '95?

A. I think that's correct, yes.

Q. And you'd had approximately 20,000 customers in the store since that date?

A. That would be right.

MR. WOODS: Okay. Thank you, sir.

THE COURT: Any other questions?

MR. MEARNS: Very briefly.

REDIRECT EXAMINATION

BY MR. MEARNS:

Q. Mr. Nattier, in response to a question from Mr. Woods, I think you indicated it would not surprise you to learn that many of the transactions or purchases of ammonium nitrate were in cash.

A. That's correct.

Q. Why would that not surprise you?

A. Because that was -- the ammonium nitrate was primarily used for yard fertilizers, so it would be urban customers would be paying cash.

Robert Nattier - Redirect

Q. And what kind of quantities were most people purchasing ammonium nitrate?

A. Three and four bags.

Q. Mr. Woods also asked you about whether or not looking at the bag you could tell whether or not it was high-density vs. low-density ammonium nitrate. Do you recall that?

A. Yes, I do.

Q. I'd like you to look at Government Exhibit 70 again. And could you tell us, there's a -- just below where it says Texas Powder Company. Could you read to us what that says?

A. You mean the --

MR. WOODS: I object. It doesn't say Texas Powder Company. I believe it says Atlas Powder Company. If he'd look at one of the bags.

MR. MEARNS: I apologize, your Honor.

THE COURT: All right.

BY MR. MEARNS:

Q. Could you -- could you read what's below where it says



Q. Could you read what's below where it says Powder Company, that next -- what's indicated next on the bag.  
A. You mean the Texas 75248?  
Q. And just below that.  
A. It says "explosives."  
Q. And on the lower left there's a yellow diamond.  
A. Yes.  
Q. What does that symbol indicate?

Robert Nattier - Redirect

A. I believe it's oxidizer.  
MR. MEARNS: No further questions.  
THE COURT: Do you have anything on that --  
MR. WOODS: Yes, just one question.  
THE COURT: All right.

REXCROSS-EXAMINATION

BY MR. WOODS:

Q. Does the word "oxidizer" or that symbol of oxidizer -- does that tell you that it's low-density or high-density?  
A. Not to me, no it doesn't.  
MR. WOODS: All right. Thanks.  
MR. MEARNS: The witness may be excused, your Honor.  
THE COURT: Agreed to be excused?  
MR. WOODS: That's fine, your Honor.  
THE COURT: All right. Mr. Nattier, you may step down. You're now excused.

We'll take our recess at this point, members of the jury, for our usual 20-minute break during which, of course, the usual cautions are applicable and I must repeat them of remembering to avoid discussion of the case with your fellow jurors and all others and avoid anything outside of our evidence and maintain open minds.

You're excused now, 20 minutes.

(Jury out at 10:25 a.m.)

THE COURT: Exhibit 47 was displayed to the jury, but our records keeper said it hasn't been admitted, so we ought to admit in.

MR. MACKEY: It's Exhibit 2045. Its another central Kansas map.

THE COURT: It's the same exhibit. Well, let's just stipulate that 47 is the same as 2045 and we don't have to receive it twice.

MR. TIGAR: Yes, your Honor.

THE COURT: All right. 20 minutes.

(Recess at 10:28 a.m.)

(Reconvened at 10:50 a.m.)

THE COURT: Be seated, please.

(Jury in at 10:50 a.m.)

THE COURT: Okay. Next, please.

MR. MACKEY: Your Honor, our next witness is FBI

Agent

Louis Michalko. Mr. Mearns will question.

THE COURTROOM DEPUTY: Would you raise your right hand.

(Louis Michalko affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.  
Would you state your full name for the record and  
spell your last name.

THE WITNESS: Louis Charles Michalko, M-I-C-H-A-L-K-O.

THE COURTROOM DEPUTY: Thank you.  
DIRECT EXAMINATION

Louis Michalko - Direct

BY MR. MEARNS:

Q. How are you employed?

A. I'm a special agent with the FBI.

Q. How long have you been an FBI agent?

A. About 13 1/2 years.

Q. What are your duties and responsibilities?

A. Generally my duties are to conduct criminal investigations  
and gather evidence in cases where there might have been a  
violation of federal law.

Q. Where are you assigned?

A. The Oklahoma City office.

Q. How long have you been assigned in Oklahoma City?

A. In two different assignments, a total of about 10 years.

Q. Where did you go to college?

A. LeMoyne College in Syracuse, New York.

Q. What was your degree?

A. Bachelor of science degree in accounting.

Q. Did you participate in the investigation of the bombing of  
the Murrah Building in Oklahoma City?

A. Yes, I did.

Q. Did you have an assignment that related to an analysis of  
receipts from the Mid-Kansas Co-op?

A. Yes, I did.

Q. Describe that assignment.

A. I was asked to review the business records of the

Louis Michalko - Direct

Mid-Kansas Co-op so we could determine either how commonplace  
or how unusual two purchases of ammonium nitrate by a Mike  
Havens were from that co-op.

Q. Where were the purchases by Mike Havens? At which  
Mid-Kansas Co-op branch?

A. The McPherson branch.

Q. Did your analysis only include ammonium nitrate sales at  
that branch?

A. No, it did not.

Q. Why not?

A. I felt it would be best to review the records of the  
business from all their branches that sold ammonium nitrate so  
I could determine the true nature of their sales of that  
product just in case the sales from the McPherson branch didn't  
fairly represent what type of sales were made by the whole  
company.

Q. Did you limit your analysis to any particular period of time?

A. Yes. January 1, 1994, through the date of the bombing, April 19, 1995.

Q. What was the first thing you did in connection with this assignment?

A. After reviewing our files and what we knew at that time from records of Mid-Kansas Co-op, I made arrangements to actually go to their corporate headquarters in Moundridge,

Louis Michalko - Direct

Kansas, and I went there.

Q. What did you do in Moundridge?

A. After introducing myself to the general manager and explaining why I was there, he put me in touch with the accounting manager, and they gathered the records that I wanted to see.

Q. What records were gathered for you?

A. I had asked them to identify for me all the branches of their company that sold ammonium nitrate, which they did.

Q. Let me interrupt you. Let me show you what's been introduced in evidence as Government's Exhibit 77B. Is that the list of Mid-Kansas Co-op branches -- the receipts that you received?

A. Yes, it is.

Q. What did you do next?

A. Next, I asked them to provide me with all the sales receipts from these 10 branches so that I could look at those receipts and locate all the transactions involving ammonium nitrate.

Q. Did you get those receipts?

A. Yes.

Q. What did you do?

A. I sat down and I looked at each receipt. When I came across one for ammonium nitrate, I removed it from the box, made a Xerox copy, put the copy in its place; and at the end of

Louis Michalko - Direct

the process, I wrote a receipt to the company for those tickets which I was taking.

Q. How many receipts did you review to extract the ones that had ammonium nitrate sales?

A. Approximately 132,000 receipts.

Q. What did you do with the receipts that you removed or the original receipts that you extracted from that 132,000?

A. I brought those receipts back to Denver with me, entered them into evidence in our file, and then I recorded information from each receipt into a computer database so I could analyze the records.

Q. I'm sorry. What kind of information did you record and enter into the computer?

A. I recorded the receipt number on each receipt; and as part of the receipt number, there is a letter designation which

of the receipt number, there is a letter designation which indicates or is an indicator of where a transaction took place, which branch.

I recorded the amount of ammonium nitrate that was involved in the transaction; the name of the customer, if there was a name on the receipt; the date of the transaction; the method of payment; whether the ammonium nitrate was purchased with cash or on account, charged on an account.

I recorded the dollar amount of the transaction and also whether a tax exemption was sought during the course of the transaction.

Louis Michalko - Direct

Q. Of the approximately 132,000 that you reviewed, how many receipts did you bring back to Denver and enter this information in the computer?

A. The ones I brought back to Denver I believe were about 229. And the total that I located -- there is also some records from the McPherson branch in Denver. The total number of receipts reflecting ammonium nitrate sales was 520.

Q. Did you prepare any summary charts that reflect the information that you analyzed on that 520 receipts?

A. Yes, I did.

Q. If you would look into your folder and locate Government's Exhibits 77, 78, 79 and 80.

A. I have.

Q. Do you recognize those exhibits?

A. Yes.

Q. What are they?

A. These are summary charts that I prepared to summarize the information I found on these sales tickets.

Q. And is the information that's reflected on those summary charts only information that you derived from the Mid-Kansas Co-op receipts?

A. Yes.

MR. MEARNS: Your Honor, we would offer 77, 78, 79 and 80.

MR. WOODS: No objection.

Louis Michalko - Direct

THE COURT: Received.

BY MR. MEARNS:

Q. If we could begin first with Exhibit 80. Would you describe for us what information is reflected on that chart?

A. Government's Exhibit 80 is a chart that lists the largest individual single transaction purchases of ammonium nitrate at the McPherson branch of the Mid-Kansas Co-op during the period of time that I reviewed.

Q. And who are the -- or who or what are the five largest individual purchases of ammonium nitrate during that period from the McPherson branch?

A. There were two purchases by a Mike Havens. One on

September 30, 1994, 2,000 pounds.

One on October 18, 1994, another 2,000-pound transaction.

There was a purchase on November 18, 1994, by the McPherson Country Club for 2,000 pounds.

A purchase on the date of the bombing, April 19, 1995,

by a company called NCRA Pipeline for 1,250 pounds.

And another purchase by that same company on October 11, 1994, for 1,200 pounds.

Q. And there is a column on your chart for payment method. Would you explain to us what information is reflected in that column?

A. That column just reflects how the individual purchases were

Louis Michalko - Direct

made. The Mike Havens purchases were made with cash, and the other three purchases were made on the accounts of those customers.

Q. By "accounts," that is the account at the Mid-Kansas Co-op?

A. Yes.

Q. Turning then to Exhibit 79, please. Would you tell us what information is reflected on that chart.

A. This chart again lists the largest individual single transaction purchases of ammonium nitrate, but this chart reflects those sales at any branch of the Mid-Kansas Co-op. And it lists every single sale a thousand pounds or more for the period of time that I reviewed.

Q. And where did the two Mike Havens transactions rank in terms of this chart?

A. On the chart they're listed second and third. There was only one single purchase of ammonium nitrate that was larger than the Havens purchases.

Q. And how many individual purchases of 2,000 pounds or more?

A. There were eight.

Q. And of the total number of individual purchases that's reflected there, how many were made -- how many were purchased with cash, as opposed to account?

A. Only the Mike Havens purchases were done with cash.

Q. Turning now, if you would, to Government's Exhibit 78.

Would you tell us what information is reflected on this chart.

Louis Michalko - Direct

A. This chart reflects information from the McPherson branch only, and it shows total amounts of ammonium nitrate purchased by customers at that branch ranked in the order of how much they purchased during this period of time.

Q. And who was the largest single -- largest single customer in the aggregate?

A. Mike Havens.

Q. And how many purchases are reflected there?

A. Two purchases.

Q. And there is a payment method column again on this chart. What does that column reflect?

A. It reflects that Mike Havens made his purchases with cash.

Q. How about the other two entities that are listed on that chart?

A. NCRA Pipeline and McPherson Country Club again made their purchases on their accounts.

Q. Turning finally, then, to Exhibit 77, what is the information that's reflected on this chart?

A. This chart shows the largest overall customers of ammonium nitrate for the period of time for all the branches of Mid-Kansas Co-op.

Q. By "overall," what do you mean again?

A. Total amount purchased in the aggregate during the period of time, adding up all their single purchases together.

Q. Where does the two Mike Havens purchases rank?

Louis Michalko - Direct

A. Third overall for the whole company.

Q. And as reflected on that chart, were any of the purchases made by the other entities that are listed there, people or entities listed there, made with cash?

A. Only the Mike Havens purchases were made with cash.

MR. MEARNS: I have no further questions.

THE COURT: Mr. Woods?

MR. WOODS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good morning, sir.

A. Good morning.

Q. My name is Ron Woods. I'm one of the lawyers that was appointed to help Terry Nichols. You and I have never met. Is that correct?

A. That's correct.

Q. When did you do this study that you just talked about?

A. I began the study in May of 1996. That's when I actually went to Moundridge, Kansas, and continued working with the McPherson records in Denver and finished the study in June of '96.

Q. Okay. And did you write a 302 up concerning this analysis?

A. I wrote up a 302 concerning -- concerning the project and my review of the records, yes.

Q. Would you tell the jury what a 302 is in FBI parlance.

Louis Michalko - Cross

A. A 302 is a report that we create when we conduct some investigation. If we interview a person about any type of matter and they give us information, we record it on a form that's -- it's called a 302, but it's like a sheet of paper; and we just type up what the person told us, or if we conduct some other investigation and we need to record it for the file, we'll record it on that type of form.

Q. And is it accurate to say that you try to capture all the information you can and be as accurate as you can on the 302 so it can be of investigative use?

A. Yes.

Q. And it's shared with other FBI agents during the course of the investigation?

A. Yes.

Q. And then it's shared with the prosecutors at trial?

A. Yes.

Q. Okay. Now, do you recall the number of receipts that you reviewed when you went to that branch there at Moundridge? I believe you testified that they'd already pulled all the McPherson receipts and brought them to Denver, so the ones you were looking at were the other branches that sold ammonium nitrate; is that correct?

A. Yes.

Q. Okay. So is the figure 102,407 -- was that the number of total receipts you reviewed?

Louis Michalko - Cross

A. That would be the total number of receipts that I reviewed in Kansas, and that does not include the McPherson receipts.

Q. Right. Okay. And out of that, you found 229 ammonium nitrate receipts?

A. I believe that's correct, yes.

Q. Okay. And then when you got back to Denver, you looked at the receipts that they had already pulled, the FBI had already pulled concerning McPherson; is that correct?

A. We had all the receipts from McPherson. There hadn't been any pulled out of there; but I reviewed those in Denver, yes.

Q. Well, I'm sure I'm using the wrong term. The FBI already had the receipts. How did you get them in Denver, the McPherson receipts?

A. I assume somebody asked the company to provide them and they did. I did not personally obtain those receipts.

Q. They were here and you started going through them?

A. Yes.

Q. Okay. Now, do you remember how many total receipts that you had to review that came out of McPherson?

A. It was roughly 30,000.

Q. And do you remember how many out of that that you found were ammonium nitrate receipts?

A. It was in excess of 200. It would be the 520 less the ones that I located in Kansas.

Q. Well, do you recall testifying before that you found 278?

Louis Michalko - Cross

A. For the McPherson branch?

Q. Yes, sir.

A. Yes.

Q. Well, that doesn't add up to 520.

A. The 278?

Q. Yes, sir. You testified in the other trial that out of the

Q. Yes, sir. You recalled in the search that one of the McPherson tickets, you found 278 ammonium nitrate.

A. Yes.

Q. Okay. And you had 229 to start with.

A. Right.

Q. And what's that total?

A. 229 and 278? I'd be afraid to add that up without my calculator.

Q. Your an accountant?

A. I think I can explain what the discrepancy is that you're --

Q. Sure.

A. -- that you're asking about.

The 229 that I located in Moundridge, Kansas, all belonged to those other branches other than McPherson. There had been prior reviews of these receipts in Kansas before I got there, and some of the tickets from those branches had been removed before I got there. And they were also in evidence in Denver. So there was a small number of tickets in Denver that were not McPherson tickets.

Louis Michalko - Cross

Q. Well, you made copies of all of them and gave them to us, didn't you, as part of the Government's discovery?

A. Yes.

Q. Well, what is the total, then, that you gave to us?

A. I believe it was 520.

Q. Are you sure?

A. I'm fairly sure.

Q. Now, you went to school in Syracuse. Is that correct?

A. Yes, sir.

Q. Did you go to Syracuse University?

A. No, LeMoyne College.

Q. What is that?

A. It's a four-year college in Syracuse.

Q. Okay.

A. Jesuit school.

Q. And you've been in the FBI how long?

A. Approximately 13 1/2 years.

Q. Okay. Now, into that database when you were pulling the information off of the tickets, you also put down the customer names, didn't you?

A. Yes, sir.

Q. And did you notice that there were several customers with the last name of Unruh, U-N-R-U-H?

A. That name sounds familiar, yes.

Q. You had a Lawrence Unruh and a Max Unruh and a Virgil

Louis Michalko - Cross

Unruh, a Vance Unruh, Sherwin Unruh and Laverne Unruh?

A. I don't recall the first names specifically, but I remember the last name Unruh, yes.

Q. And you said that before you did that analysis over there,



you reviewed the FBI files to determine what?

A. Well, to determine, for example, which tickets had been previously identified, which tickets we had in our file somewhere, other places in evidence.

Q. And in reviewing that file, did you notice that the FBI had searched for red pickup trailers, cutoff-bed trailers in connection with those purchases?

A. Not in connection with my review of this, no.

Q. Have you -- well, what did you review, then, when you were reviewing the FBI file concerning the McPherson transaction and the two sales to Mike Havens?

A. I was looking to locate evidence we had received from the Mid-Kansas Co-op, which receipts had been previously identified, which ones we already had in evidence, because I wanted to make sure to include them in my list of tickets, and I wanted to make sure I saw at least all those tickets while I was in Moundridge. I didn't want to miss any.

Q. And did you review the 302's of the interview of the personnel there at the McPherson branch: Showalter; Schlender; and the president, Mr. Nattier?

A. I don't believe -- I may have reviewed Mr. Nattier's 302.

Louis Michalko - Cross

There might have been mention of some tickets in there; but I didn't review the 302's of Mr. Schlender or Mr. Showalter to identify those tickets.

Q. The people who actually identified the tickets -- and didn't they find the tickets in the yellow copies there at the branch?

A. I don't know.

Q. You didn't review that before you went over there?

A. I don't recall reviewing their 302's, no.

Q. Okay. Now, you listed in your database every ticket from January 1, '94, to April 19, '95, every ammonium nitrate ticket.

A. Yes.

Q. Is that correct?

A. Yes.

Q. Okay. What percentage of those were cash transactions?

A. I did not calculate that percentage.

Q. Would it surprise you to know that 144 of those were cash transactions?

A. It would not surprise me if that was true, because over 75 percent of the transactions were for one or two bags; and I believe a large number of those were in cash.

Q. In fact, this 105 or 73 percent were at the Mid-Kansas, weren't they, cash transactions?

A. I don't know. I didn't calculate the percentage of cash

Louis Michalko - Cross

transactions.

Q. You weren't interested in that?

A. It's something that could be calculated from the data on those sheets.

Q. When you counted up all the receipts, did you count the number -- the number of transactions -- let me rephrase that.

Was it your understanding that every single customer transaction, if the person buys something, a sales ticket is created?

A. Yes.

Q. And that was through the white copies that you looked at in Moundridge and then in Denver; is that correct?

A. Yes.

Q. And did you calculate the number of sales transactions that occurred from October 18, '94, the last Havens transaction, until April 30 of '95? Well, you only went to April 19. Let's limit it from October 18, '94, to April 19, '95. Did you calculate how many transactions there were?

A. I didn't actually do a count of those transactions, but in the database I sorted them by the different methods of information that I took; so there is a printout there of all the transactions in date order, and that could be easily calculated.

Q. Can you give us an estimation how many sales transactions occurred during that time?

Louis Michalko - Cross

A. Not without referring to those charts, no.

Q. Would an average of 30,000 a month be out of your range?

A. 30,000 transactions?

Q. I'm sorry. 3,000 a month. 3,000 transactions a month. Is that what your figures showed, the number of transactions that occurred at the McPherson branch per month?

A. Are you talking about ammonium nitrate transactions?

Q. I'm sorry. Sales transactions, where a customer comes in and buys something?

A. All transactions.

Q. Interaction with a clerk.

A. I didn't calculate that.

Q. Okay. Well, you looked at all the tickets; right?

A. Yes.

Q. 132,000?

A. Yes.

Q. Divided by -- did you ever break it down into categories as to the McPherson branch? Do you know how many tickets you looked at for the McPherson branch?

A. Yes. McPherson had more tickets than any other branch, and I think they had more than half of all the ammonium nitrate transactions.

Q. How many tickets did they have total, just sales transactions?

A. Roughly 30,000 for that period of time.

Louis Michalko - Cross

Q. And that's each individual customer transaction. Is that

Q. And that's each individual customer transaction. Is that correct?

A. Yes.

Q. Now, can you give us the amount of time it is from October 18, '94, to April 19, '95? How many months is that?

A. About six months.

Q. And you don't -- you didn't calculate how many customers they had per month?

A. Well, if you want to divide out the 30,000 by the 15 1/2 months, I guess you'd get a pretty good estimate of how many per month; but I don't know if they're evenly spread throughout that period or not.

Q. Okay. How many transactions occurred on the day of the purchase, September 30 of '94? How many customers actually bought something in there that day?

A. I do not know that.

Q. Do you know how many transactions occurred there at the McPherson on October 18, the second Havens transaction?

A. No, I don't. The purpose of my review was to identify the ammonium nitrate transactions.

MR. WOODS: Thank you, your Honor.

THE WITNESS: You're welcome.

MR. MEARNS: No questions, your Honor.

THE COURT: All right. The witness excused then?

MR. WOODS: Yes, your Honor.

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

MR. MACKEY: Thank you, your Honor. We call FBI analyst Joanne Thomas. Mr. Orenstein will question.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Joanne Thomas 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: Joanne L. Thomas, T-H-O-M-A-S.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, Ms. Thomas.

A. Good morning.

Q. Ms. Thomas, who do you work for?

A. The FBI.

Q. Where within the FBI do you work?

A. The Omaha division, Omaha, Nebraska.

Q. When did you start working for the FBI?

A. In 1984.

Q. So you've been there for about 13 years?

A. Yes.

Q. What is your educational background?

A. I have a B.A. degree in business management from the Bellevue University, Bellevue, Nebraska.

Joanne Thomas - Direct

Q. And what are your current duties with the FBI?

A. I'm a financial analyst.

Q. Can you explain to the jury what a financial analyst does

for the FBI?

A. I work on a white-collar crime squad, and mostly I deal with money matters, tracing the money, any paper trail that could be left by a subject.

Q. Now, is the job of a financial analyst different from the job of a special agent?

A. Yes.

Q. As a financial analyst, have you been trained or is it your duty to enforce federal criminal law?

A. No.

Q. Is it part of your work to support others who are special agents in their enforcement?

A. That's correct.

Q. So I take it you haven't had the opportunities that special agents have had to participate in investigations and testify in court. Is that correct?

A. That's correct.

Q. Now, in addition to your work as a financial analyst, have you had any other duties with the FBI over the years?

A. Yes. I'm also -- was also at one time the backup photo.

Q. The backup photo?

A. Backup photographer for the division.

Joanne Thomas - Direct

Q. And can you explain how that came about?

A. When I came on board with the FBI, I had previous training in photography; and at that time they needed a backup photographer, and I did do that. And I did take the FBI training at Quantico for their photographers. The senior photographer of our division died of cancer and was not replaced right away, so I was the main photographer at that time.

Q. When you refer to "that time," where you referring to the time during which the Oklahoma City bombing was being investigated?

A. That is correct.

Q. Did you participate for a period of time in that investigation?

A. Yes, I did.

Q. Let me direct your attention to April of 1995. Did you go to Herington, Kansas, during that month?

A. Yes, I did.

Q. And did you with others from the FBI execute a search warrant at the home of Mr. Nichols in Herington, Kansas?

A. Yes.

Q. What was the date of that search?

A. April 22, 1995, into the morning of April 23, 1995.

Q. Now, when you arrived, there was there somebody else who was taking pictures?

Joanne Thomas - Direct

A. Yes.

Q. So what did you do as far as executing that search warrant?

A. I just became a member of the search team.

Q. I'd like to show you on the screen in front of you, if I may, what's been marked for identification as Government's Exhibit 1769, Photo No. 6. Do you see that?

A. Yes, I do.

Q. Do you recognize what's in that photograph?

A. Yes, I do.

Q. What is it, please.

A. It's the kitchen sink in the home of Terry Nichols in Herington, Kansas.

Q. And does it accurately portray that part of Mr. Nichols' home as you saw it on April 22, 1995?

A. Yes, it does.

MR. ORENSTEIN: Your Honor, the Government offers Exhibit 1769, No. 6.

MR. TIGAR: May I inquire of Counsel, your Honor?

THE COURT: You may, yes.

MR. TIGAR: Thank you, your Honor. No objection.

THE COURT: All right. 1769, No. 6, did you say?

MR. ORENSTEIN: Yes, sir.

THE COURT: Received, may be shown.

BY MR. ORENSTEIN:

Q. Ms. Thomas, did you search the area that is shown in that

Joanne Thomas - Direct

photograph during your participation in the search warrant?

A. Yes, I did.

Q. And let me direct your attention to the drawer in the upper right-hand side of that photo. Do you see that?

A. Yes.

Q. Did you search in that drawer?

A. Yes, I did.

Q. You, yourself?

A. Yes.

Q. What did you see when you first opened that drawer?

A. In the front portion of the drawer were tea towels; and then as I pulled the drawer out, the back of the drawer, I found some what looked like coins, some in stacks and some in a plastic bag.

Q. And what did you do with those coins?

A. I removed them.

Q. Where did you take them?

A. Well, I turned around and asked an agent that was close by if I should seize these, and they said yes.

Q. Now, when you found these coins, were they all together, or were they -- were any of them wrapped separately?

A. Yes, they were.

Q. Do you recall finding within that collection of coins some that were wrapped in some pink paper?

A. Yes, I do.

Joanne Thomas - Direct

Q. And could you describe what you saw with respect to that?

A. It was a small square, I would say probably -- I can't -- don't know the measurements of it, but it was wrapped around two coins when we were listing them on the evidence bag.

Q. You mentioned an evidence bag. Could you describe what you did with the evidence bag?

A. I took it into the living room where the special agent who was doing the evidence log was sitting, and I sat down with him; and we went through all the coins, listing them as carefully as we could, not really knowing what they were for sure, so we could be explicit on the evidence bag.

Q. Now, if you could reach into the folder that you've got there and find Exhibits 62, 62A, and 1875.

A. You said 62, 62A and --

Q. And 1875. Do you have all of those?

A. Yes, I do.

Q. Let's start with Government's Exhibit 62A. Do you recognize that exhibit?

A. Yes, I do.

Q. What is that?

A. It's a receipt from the Mid-Kansas Cooperative Association.

Q. Is that 62 or 62A?

A. That is 62.

Q. Okay. Let's start with 62A for a moment.

A. Okay.

Joanne Thomas - Direct

Q. What is 62A?

A. It's the plastic bag that relisted the coins and the contents of that drawer that I seized.

Q. And are 62 and 1875 part of what you put into that bag that day?

A. Yes.

MR. ORENSTEIN: Government offers 62A.

MR. TIGAR: I'm sorry, your Honor.

No objection.

THE COURT: 62A is received.

BY MR. ORENSTEIN:

Q. Now, you said that you described what you had found on that bag.

A. Yes.

Q. Item No. 2 on that bag: Can you tell the jury what you wrote there?

A. "Two Elizabeth \$50 gold coins" and "receipt."

Q. And does it describe the other items that you've got in front of you now?

A. Yes, it does.

Q. Let me ask you to turn to Exhibit 62. Could you just remind the jury -- you did say what that was before. Can you just say that again?

A. It's a Mid-Kansas Cooperative Association receipt.

Q. And do you recognize that as something that you seized on

Joanne Thomas - Direct

April 22, 1995?

A. Yes, I do.

Q. Is that the pink wrapper that you described before?

A. Right. Particularly because the print of the two coins are embedded on the receipt.

Q. That's one of the ways in which you recognize it?

A. That's correct.

Q. And does it appear to be in the same condition now as it was when you first found it?

A. Well, other than the fingerprint evidence -- I mean powder and stuff over it, yes.

MR. ORENSTEIN: Your Honor, the Government offers Exhibit 62.

MR. TIGAR: No objection, your Honor.

THE COURT: 62 is received.

MR. ORENSTEIN: May I display it, your Honor?

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Ms. Thomas, I'd like to direct your attention to various parts of this exhibit. First, if I could ask you to look at the top of it, where it has the name and date of the transaction. Do you see that?

A. Yes.

Q. Could you read to the jury what it says there?

A. "On account number," it looks like it says "10." The date

Joanne Thomas - Direct

is 9-30 of '94. That would be September 30 of '94. The name is Mike Haven -- Havens, I believe, H-A-V-E-N-S.

Q. And now directing your attention to the next portion of the exhibit. First of all, does this indicate whether it was a cash transaction or some other type?

A. Yes, it indicates it was a cash transaction.

Q. And in the line below that, what does it read in terms of the description of the transaction?

A. It says, "40/50, 34-0-0." And under "price" it says, "5.40." And the amount it says, "216." "216."

Q. Now, finally you mentioned some indentations. Do you see those on that exhibit?

A. Yes, I do.

Q. Could you point out where they are on the exhibit?

A. Right here.

Q. If you're using the pen, you have to reach under the glass.

A. I have to reach under the glass. Okay.

They're right here and right here.

Q. Those are the indentations from the coins around which this was wrapped when you found it?

A. Folded around it, yes.

Q. If you could just click on that pen to clear it.

Let me now direct your attention to Government's Exhibit 1875. Do you recognize that exhibit?

A. Yes, I do.

Joanne Thomas - Direct

Q. What is 1875?

A. It's the Elizabeth \$50 gold coins that was wrapped inside the receipt.

Q. And are they in the same condition now as when you obtained them on April 22?

A. No, they're not.

Q. In what way are they different?

A. Well, they've been put into some -- been wrapped with some kind of adhesive or tape; and when I found them, they were wrapped inside the receipt. And there is a number on the back of them that wasn't there before, either.

Q. The number on that: Can you read that out? I'm sorry. Without reading it out, does that correspond to the entry on your log, on your exhibit log?

A. Yes.

Q. Other than the wrapping, are the coins themselves in the same condition as when you found them?

A. Yes.

MR. ORENSTEIN: Government offers Exhibit 1875, your Honor.

MR. TIGAR: No objection, your Honor.

THE COURT: Received, 1875.

BY MR. ORENSTEIN:

Q. Now, let me ask you to reach into your folder and pull out Exhibit 250, Government's Exhibit 250. And also 250B, if you

Joanne Thomas - Direct

would.

A. Okay.

MR. ORENSTEIN: If I may have a moment to confer with counsel.

THE COURT: Yes.

MR. TIGAR: Thank you, your Honor.

BY MR. ORENSTEIN:

Q. Can you tell the jury what Exhibits 250 and 250B are.

A. 250 is a notebook that's called, "Fat Little Wireless Neatbook."

Q. And 250B?

A. 250B is the packaging that I put it in when I recovered it from the closet in the living room.

Q. Now, this is from a separate area of the house that you searched the same day?

A. Yes.

Q. When you searched the closet in the living room area, did you obtain a number of items and put them in one bag?

A. Yes, I did.

Q. As is 250B that bag?

A. That's right.

Q. Before coming to court, did you examine all of the contents



of that bag and determine that they were the items that you had put into that bag during the search?

A. Yes, I did.

Joanne Thomas - Direct

Q. Is there a Q number on the back?

A. The Q number is 156.

Q. And did all of the items that you had put into the bag have a 156Q number with another sub number?

A. Yes.

Q. What is the Q number on Government's Exhibit 250?

A. It's Q156-45.

Q. That's the 45th item that was put in that bag?

A. Yes.

MR. ORENSTEIN: First the Government offers Exhibit 250B.

MR. TIGAR: No objection, your Honor.

THE COURT: Received, 250B.

BY MR. ORENSTEIN:

Q. And with respect to 250, the book: Is that in the same condition now as when you first found it?

A. No. It also has tabs put in it and fingerprinting dust all over it.

Q. With the exception of the fingerprinting processing and the tabs, is it the same book that you recovered on April 22, 1995?

A. Yes, it is.

MR. ORENSTEIN: Government offers 250, your Honor.

MR. TIGAR: May I just inquire briefly?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION

Joanne Thomas - Voir Dire

BY MR. TIGAR:

Q. Good morning.

A. Good morning.

Q. My name is Michael Tigar. I'm one of the lawyers appointed to help out Terry Nichols.

Do you know who put the tabs on there?

A. No, I have no knowledge.

Q. And when you say there is tabs, I can't see. Are they those little -- oh, they're like those little sticky flags that you can buy at the store?

A. They just look like blue tabs to me.

Q. But they're plastic; right?

A. Yes.

MR. TIGAR: Your Honor, we have no objection. We would ask that the tabs be removed before the exhibit is received in evidence because that changes what the book is and could draw attention to particular parts. I don't want to make a speaking objection, but that's our request.

MR. MACKEY: Your Honor, I'd ask permission to confer with counsel. There is a matter down the road that will come

up --

up

THE COURT: All right. You may confer with counsel.

MR. TIGAR: Your Honor, it is agreed -- Government counsel explained to me why they want that for a particular purpose. It is agreed that before this would be shown to the jury that the tabs would be removed, and that is acceptable to us.

MR. MACKEY: Used by another witness.

THE COURT: So the tabs may be used by another witness.

MR. TIGAR: Yes, your Honor. That's right.

With that understanding, we have no objection. Thank you, your Honor.

THE COURT: All right. Exhibit 250 is received with the understanding that has just been mentioned.

MR. ORENSTEIN: And with that, your Honor, the Government has no further questions on direct.

THE COURT: All right. Mr. Tigar, do you have questions?

MR. TIGAR: Yes.

#### CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good morning, again.

A. Good morning.

Q. What time did you arrive at Mr. Nichols' house on that day?

A. Approximately around 7:00 in the evening.

Q. And again, what day of the week was that?

A. It was April 22.

Q. That was a Saturday. Would that refresh your recollection?

A. If you say so.

#### Joanne Thomas - Cross

Q. All right. Well, we know that the bombing took place on the 19th; correct? And that was a Wednesday, I believe.

A. Right.

Q. So 20, 21 -- that would be Saturday?

A. Right.

Q. And about how long did you stay?

A. We were there till about, I would say 4:00 in the morning the next morning on the 23d.

Q. And how many agents were there in the party that went there at 7:00 in the evening?

A. I would not know that number.

Q. Was it more than three or four?

A. Yes.

Q. Okay. And in addition to agents, they had experts such as yourself who had other assignments -- who were not agents but who had special responsibilities; is that right?

A. I would only know those that I had contact with. I didn't know everyone there.

Q. Okay. All right. And during that time, what did you have responsibility for searching?

A. We went into the home, assigned numbers to the rooms, and we were assigned to a room to search; and when we finished the search in that part, we were to see if we could assist in other

parts of the house.

Q. Now, the house of which we're speaking is at 109 South 2nd

Joanne Thomas - Cross

Street in Herington, Kansas; correct?

A. Correct.

Q. And that's a small, frame house; is that right?

A. Yes.

Q. And there is a driveway along the side?

A. Yes.

Q. Remember that? And then out detached from it is a -- looks kind of like a garage but could be a garage or storage shed.

Is that right?

A. Yes.

Q. Did you go in that day, the garage part?

A. Yes, I was in it, but I didn't search there.

Q. Didn't search there.

Now, what rooms did you search?

A. The rooms that I retrieved evidence from was the living room and the kitchen.

Q. And the kitchen just looked like anybody else's kitchen; right? Normal Midwest-home kitchen?

A. Yes.

Q. Now, in the living room there, did you see any books?

A. I don't recall them.

Q. Okay. I understand you wouldn't recall specific ones, but did you see books that were there?

A. Yes.

Q. Okay. And do you recall any of the titles of the books

Joanne Thomas - Cross

that you saw?

A. When you say "books," are you talking about pamphlets or --

Q. I'm talking about books. For example, did you see a book called -- on the Lamaze method of childbirth?

A. No.

Q. Did you see a book on soil treatment?

A. No.

Q. Did you see a book by a veterinarian on modern farming?

A. No.

Q. Did you see a book by Pat Robertson?

A. Not to my knowledge.

Q. Okay. Specifically one with a dust jacket, and so on? You don't remember seeing that?

A. No, I don't.

Q. So I could go down a whole list of books, but you just don't remember seeing any books in particular?

A. That's correct.

Q. Okay. And -- all right. Well, let's take -- go into the kitchen there.

You said you opened up a kitchen drawer and you saw some tea towels?

A. That's right.

Q. And behind the tea towels were some plastic envelopes; correct?

A. Yes.

Joanne Thomas - Cross

Q. And you -- there was a big, plastic envelope and a smaller one inside; is that right?

A. Yes.

Q. Now, about -- and there were coins in there. Correct?

A. Yes.

Q. About how many coins were there?

A. I wouldn't be able to give you an accurate number unless I were to refer to the exhibit.

Q. Okay. Well -- this is not a memory contest. I'm just trying to find out what was in there.

A. There were numerous coins.

Q. Many coins?

A. Uh-huh.

Q. Were these coins like 25-cent pieces and 50-cent pieces -- I mean things you would spend -- or were they more like what you would call coin-collector coins?

A. I would call them coin-collector's coins.

Q. Okay. And in this -- this again is April 22; right?

A. Right.

Q. So from -- and what was the date on that piece of paper, that receipt thing you saw?

A. It was in September of '94.

Q. September, '94. So September, October, November, December, January, February, March, April -- that's almost seven months. Right?

Joanne Thomas - Cross

A. Right.

Q. Okay. Now, when you saw it, saw that piece of paper, that pink piece of paper, could you see any writing on it?

A. No, I couldn't.

Q. And why couldn't you see any writing on it?

A. Because it was folded around the coins and the back side was up.

Q. Oh. In other words, if -- just so that I can be clear, if I take this yellow piece of legal paper I'm holding up and I make some -- just scribbles on it, like that, and if I take this Magic Marker to represent a roll of something and I rolled it up and fold the edges with my writing inside, is that sort of like what you were seeing?

A. Yes.

Q. Okay. So that a person looking at this wouldn't be able to see what writing is on it; correct?

A. Correct.

Q. Okay. Now, you said that the copy you looked at today was different from the condition it was in when you found it because it had been subject to fingerprint processing; is that

because it had been subject to fingerprint processing; is that right?

A. The one I have is not a copy, but yes.

Q. I'm sorry. The one you have today. I wasn't implying it is a copy in the sense something is copied. What you've got up there -- that's what you found; right?

Joanne Thomas - Cross

A. That's right.

Q. Now, when you found it, were you wearing gloves?

A. Yes, I was.

Q. Why were you wearing gloves?

A. So we wouldn't leave any fingerprints on any of the evidence we collected.

Q. Exactly. And in your experience -- have you been to crime scenes before where you had to wear gloves?

A. Yes.

Q. Now, were you wearing cotton gloves or latex gloves?

A. Latex gloves.

Q. And these latex gloves were issued to you by the Bureau?

A. That's correct.

Q. Were they part of a crime-scene kit, did you see, or were they just in a box there? How did you get those?

A. When we came as the ERT team, we had them with us.

Q. And these ERT gloves: Are they the same kind of latex gloves that a person could buy at a medical supply store?

A. I don't know that for sure.

Q. Okay. Did they have talcum on them, or did they seem to have talcum on them, or not, or do you remember?

A. Yes, they did inside.

Q. Oh, inside, so you could slip your hand in more easily. They didn't have any talcum or any covering on the outside. Right?

Joanne Thomas - Cross

A. Not that I was aware of.

Q. And your understanding is that the reason that you would wear gloves at the crime scene is that paper can take fingerprints; right?

A. Right.

Q. When did you first learn that paper could take a fingerprint?

A. Would be a long time ago, sir.

Q. All right. Well --

A. Before I even was an employee of the Bureau.

Q. Oh, before you were employed at the Bureau.

A. Yes.

Q. I see. So that in other words -- it's just very well known, then, you would say, that if you touch a piece of paper, you're going to very likely get a fingerprint on it. Is that right?

A. Yes.

Q. And is your understanding that is because we all carry

around with us, unless we've just now washed our hands and dried them off real thoroughly -- there is bound to be some little sweat or secretions on there that's going to transfer the ridges of our finger to what we touch? Is that right?

MR. ORENSTEIN: Objection, your Honor.

THE COURT: Sustained.

MR. TIGAR: Oh.

Joanne Thomas - Cross

BY MR. TIGAR:

Q. Well, how does it happen?

MR. ORENSTEIN: Objection, your Honor.

THE COURT: Sustained. The subject matter.

MR. TIGAR: I'm sorry, your Honor. I didn't understand. I didn't understand.

BY MR. TIGAR:

Q. So you took -- you took this piece of paper out, correct, with your gloves?

A. Yes.

Q. And you -- and I just want to make sure: When you got the piece of paper, then you went in to the agent who was in charge; correct?

A. Not the agent that was in charge. I went to the living room table where the agents that was preparing the evidence log was taking all the evidence.

Q. And went -- did you then see to it that the piece of paper was handled in such a way that nobody else's fingerprints other than the -- than the fingerprints that might then have been on it would be -- would get onto it?

A. That's right.

Q. Okay. And, of course, at that time, you couldn't know whether or not anybody's fingerprints were on it; right?

A. No.

Q. The fingerprint processing is what develops the marks that

Joanne Thomas - Cross

are on there, that have been on there since you got it; correct?

A. And the fingerprint dust, yes.

Q. Yes. Okay. Now, in addition to that, you said you found something called a "Fat Little Wireless Neatbook." Correct?

A. Right.

Q. And did you read through that at the time you found it?

A. Yes. Yes, I did.

Q. Would you take your copy, then, the one that's before you. Do you have it in front of you?

A. Yes.

Q. Could you open it up to the first page, please.

Do you see a listing, a name at the top, Angelita Punay?

A. Yes.

Q. See that?

No, I did it wrong.

Now, you can see the handwriting for that name;  
correct?  
A. Yes.  
Q. Now, did -- after you looked at that -- did you -- did you  
look at that at the time you seized it?  
A. Yes.  
Q. Okay. And then are there a number of pages that contain  
addresses and names in a similar handwriting to that?  
A. Well, it appears to, yes.

Joanne Thomas - Cross

Q. Now, would you leaf through the book, please, until you  
find a page that starts "Call on stone house." That's going to  
be more than halfway through. It will be towards the back.  
Do you have that?  
A. Well, no, I can't locate it right at the moment.  
MR. TIGAR: May I go up and assist the witness, your

Honor?

THE COURT: Yes.

MR. TIGAR: Thank you.

THE WITNESS: I think it may be forward a little  
more.

There is two tabs here and one up there.

MR. TIGAR: There we are.

Thank you, your Honor.

Thank you, ma'am.

BY MR. TIGAR:

Q. I'm going to put up that page. Zoom out. Now -- now,  
that -- if we could just read together, it says, "Call on stone  
house. Get info." Correct?  
A. Yes.  
Q. And then it says, "Get MO for INS"?  
A. Yes.  
Q. "Get MO Marife"?  
A. Yes.  
Q. "Mail premium to INS." Right?  
A. Yes.

Joanne Thomas - Cross

Q. "Mail change of beneficiary." I can't read what that says.  
A. "& add."  
Q. "& add." Oh, okay. And then, "Rent PO box," and that's an  
"at" sign, "@ Manhattan"?  
A. Yes.  
Q. "Mail letter W/MO to Marife"?  
A. Yes.  
Q. Is that correct?  
A. Yes.  
Q. "Letter to Lana" -- and I can't read what it says there.  
A. It looks like "PENC/" --  
Q. And then "LIFE"?  
A. "LIFE" --

A. Yes. Could possibly be. Yes.  
Q. Okay. And then "Marife's ADD"?  
A. Yes.  
Q. Okay. And then it says, "CK on" -- and I can't read the next word. Can you on your original?  
A. "Airline."  
Q. "Airline"?  
What is that next thing?  
A. I think it's "PA & NW."  
Q. "Miles"?  
A. "Miles."  
Q. And then there is something about "Mike D" something?  
A. Yes.

Joanne Thomas - Cross

Q. Crossed out. And then "stock cert." Right?  
A. Yes.  
Q. And as you say, other than the fact that that original document was then treated with some fingerprint stuff, that is in the condition in which you found it, except for the tabs, of course.  
A. Yes.

MR. TIGAR: Thank you very much. I have no further questions.

THE COURT: Mr. Orenstein.

MR. ORENSTEIN: Your Honor, may I retrieve the exhibit and I'll -- excuse me -- use the ELMO?

THE COURT: Yes.

THE WITNESS: Which one?

MR. ORENSTEIN: 250, please.

Thank you.

THE WITNESS: Uh-huh.

THE COURT: It may not be clear in the record. I think it was Exhibit 250 that was being shown.

MR. TIGAR: Yes, your Honor. Thank you very much.

THE COURT: All right.

MR. TIGAR: It was.

REDIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Ms. Thomas, I'd like to direct your attention, if I can

Joanne Thomas - Redirect

have the ELMO. This is the page you were just looking at; correct?

A. Yes.

Q. Starts, "Call on stone house." And if we can go one -- several pages in front of that, there are several blank pages, and then the previous page before that that has the writing on it; and then I'll pull back this tab for the moment.

MR. ORENSTEIN: Your Honor, for the record, I'm referring to a page that bears a tab marked Q156-45Y.

BY MR. ORENSTEIN:

Q. Do you see what's written there?



Q. Do you see what is written there.

A. Yes, I do.

Q. Could you read that into the record?

A. The name "Joe Kyle," K-Y-L-E, "No. 40."

Looks like "CANN/" either a G or A "RO/KAN, 10 17/94

+

12 17/94."

And on another line is "37." Directly on the same line, it says, "Ted Parker," P-A-R-K-E-R, "11.7.9.4 + 01.31.95."

And below there is written "ditto."

Q. Did you see this page with the names Joe Kyle and Ted Parker when you recovered this item on April 22?

A. Yes.

MR. ORENSTEIN: Your Honor, the parties have entered into a stipulation about handwriting on this documents.

Joanne Thomas - Redirect

THE COURT: Isn't another witness going to deal with this document?

MR. ORENSTEIN: Excuse me?

THE COURT: Isn't another witness going to deal with this document? I thought this witness is just here for production of it from the search.

MR. ORENSTEIN: That's correct, your Honor.

THE COURT: Well, let's wait for the other witness.

MR. ORENSTEIN: Very well.

BY MR. ORENSTEIN:

Q. One other matter, Ms. Thomas: You were asked about whether you could see the writing on Exhibit 62 when you found it.

A. Right.

Q. If someone wanted to look at the coins within that item, you'd have to unwrap it; correct?

A. That's correct.

Q. And at that point you could see what was written on it?

A. Yes.

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

RE-CROSS-EXAMINATION

BY MR. TIGAR:

Q. When you unwrapped the coins -- you did unwrap it -- right -- at the scene?

A. Yes.

Joanne Thomas - Recross

Q. And you wore gloves; right?

A. Yes.

Q. And again, that was so when you unwrapped it, you wouldn't leave a fingerprint; correct?

A. Yes.

MR. TIGAR: Thank you. Nothing further.

THE COURT: All right. Is this witness excused?

MR. ORENSTEIN: We'll be recalling her later, your

Honor.

THE COURT: You will. All right.

You may step down.

Next witness.

MR. MACKEY: Thank you, your Honor. We'll call  
Mr. Harry Bhakta. Mr. Pat Ryan will question.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Harry Bhakta 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: Last name is B-H-A-K-T-A. First name  
is  
H-A-R-R-Y.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Ryan.

MR. RYAN: Thank you, your Honor.

DIRECT EXAMINATION

Harry Bhakta - Direct

BY MR. RYAN:

Q. Excuse me. Mr. Bhakta, we met a couple nights ago, didn't  
we?

A. Yeah.

Q. Do you recall that?

A. Yeah.

Q. I introduced myself as Pat Ryan, the United States Attorney  
in Oklahoma City. Do you remember that?

A. Yeah.

Q. First time we met; is that right?

A. Yeah.

Q. And where do you live?

A. Salina, Kansas.

Q. Salina, Kansas?

A. Uh-huh.

Q. And how long have you lived there?

A. Since '86.

Q. Where were you born, sir?

A. India.

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

A. Around 1980.

Q. Are you married?

A. Yeah.

Q. Do you have children?

A. Yeah.

Harry Bhakta - Direct

Q. Now, between 1988 and 1985, what were you doing -- 1988 and  
1995.

A. I had a motel.

Q. What was the name of your motel?

A. Starlite Motel.

Q. Starlite?

A. Uh-huh.

Q. And where was it located?

A. It was on 211 East Pacific in Salina.

Q. In Salina, Kansas. All right. Now, I'm going to show you an exhibit that's already been introduced here. It's known as Exhibit 2045 and ask you to look at it. And point out Salina, Kansas, if you would, for the jury.

Do you have a pen there that -- there you go.

A. Right there.

Q. All right. Now, where is your motel? Is it inside the city limits?

A. Yeah.

Q. All right. And how far is your motel, the Starlight, from McPherson, Kansas? About how far?

A. 30, 35 mile (sic).

Q. Now, do you and your wife operate the motel?

A. Yeah.

Q. And what kind of work do you and your wife do there?

A. We do everything.

Harry Bhakta - Direct

Q. And by "everything," what do you mean?

A. Like front desk, clean the room, and maintenance.

Q. Do you have any other employees?

A. No.

Q. So your wife or you is always at the front desk?

A. Yeah.

Q. What is the procedure when someone comes in to check in at the motel?

A. To give the card and fill out the registration card.

Q. That is a card you provide them?

A. Yeah.

Q. Did the FBI, after the Oklahoma City bombing, come by your motel and pick up your registration cards?

A. Yeah, they did.

Q. Let me show you what has been marked as Exhibit No. 83 for identification. Can you -- would you -- there is a little button on the side of that pen. If you strike that, it will erase the marking. There you go.

Now, can you identify this Exhibit No. 83?

A. Yeah.

Q. What is it?

A. It is a motel card.

Q. Is it a card from the Starlite Motel?

A. Yeah.

Q. Is it a business record of yours?

Harry Bhakta - Direct

A. Yeah.

Q. And do you keep this in the ordinary course of your business?

business:

A. Yeah.

Q. And is this one of the records that the FBI picked up after the Oklahoma City bombing?

A. Yeah.

MR. RYAN: Your Honor, we would move to admit Exhibit No. 83.

MR. WOODS: No objection, your Honor.

THE COURT: 83 is received.

BY MR. RYAN:

Q. Now, you see some smudging on this card?

A. Uh-huh.

Q. Do you see that?

A. Yeah.

Q. Was that on the card at the time that the FBI came and picked it up?

A. No. It is not.

Q. If you would, sir, starting with the word "name," would you read what is stated there?

A. Terry Havens, H-A-V-E-N-S.

Q. H-A-V-E-N-S?

A. Uh-huh.

Q. And "street," what does it say?

Harry Bhakta - Direct

A. Route 2, Box 28.

Q. And under -- gives the name of a city. Is that correct?

A. Hillsboro, Kansas.

Q. And car license? What does it say there?

A. WY1640.

Q. And what is the state?

A. Michigan, pickup.

Q. It's a pickup truck?

A. Pickup.

Q. And how many people checked in according to this card?

A. One.

Q. Now, were you present when this person checked into the Starlite Motel?

A. Excuse me?

Q. Were you present --

A. No.

Q. -- at the desk when this person checked in at the Starlite Motel?

A. No.

Q. You don't have a recollection of that?

A. No.

Q. Do you know who this person was?

A. No.

Q. Is it the practice of your motel to check identification of people when they come in?

Harry Bhakta - Direct

A. Usually, we don't require it.

Q. I'm sorry?

A. Usually, we don't ask for ID.

Q. Is it your practice to go check the actual license plate on a vehicle when someone comes in the motel?

A. No.

Q. Did -- what is the date that Mr. Havens checked into the Starlite, according to Exhibit No. 83?

A. 10-16-94.

Q. And when did this person check out, according to the registration card?

A. Morning -- next morning.

Q. 10-17?

A. 17.

Q. And what's the rate for the motel that night?

A. \$20 plus tax. 22.38 all together.

MR. RYAN: Your Honor, we would ask to publish the stipulation concerning the handwriting on Exhibit No. 83.

MR. WOODS: Yes, your Honor. Defense agrees that's Mr. Nichols' handwriting.

THE COURT: All right. It's agreed that it's the handwriting of Terry Nichols. Thank you.

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

THE COURT: Any questions?

MR. WOODS: No, your Honor.

THE COURT: Excusing the witness?

MR. RYAN: Yes, your Honor.

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

We'll take the noon recess at this point, members of the jury, to 1:30. During this time, again, of course, it's my duty to remind you of your duty to keep open minds, avoiding discussion of the case or anything about it and continue to avoid anything outside of our evidence in the case.

With respect to scheduling, I know some of you are wondering because there is a national holiday on Tuesday, Veterans Day, whether we're going to recognize that holiday. And we are. That is a day of significance; and of course, the Court appreciates the significance of the day and the purpose of the national holiday, so we will not be working that day, Tuesday.

I hope it's Tuesday. Isn't it? Yeah.

Also, I'd like -- because we have a short day tomorrow -- we're going to hold to that, too -- I'd like to start at 8:45, unless we have a blizzard overnight or something like that. So I'll just advise you of our scheduling.

So you're excused now till 1:30.

(Jury out at 11:59 a.m.)

THE COURT: I am thinking about going to 8:45 in the morning as a starting time. It seems to me that unless we have inclement weather we have the jury here by then, Counsel are normally here by then, and, you know, I'd rather -- it's probably easier to do it at 8:45 than to cut the noon hour.

So let's plan on 8:45 starting times, beginning tomorrow.

Court is in recess. 1:30.

(Recess at 12:00 p.m.)

\* \* \* \* \*

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\* \* \* \* \*

PLAINTIFF'S EXHIBITS

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| Exhibit | Offered | Received | Refused | Reserved | Withdrawn |
|---------|---------|----------|---------|----------|-----------|
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| D946    | 7204    | 7204     |         |          |           |
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\* \* \* \* \*

REPORTERS' CERTIFICATE

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

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Paul Zuckerman

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Kara Spitler

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