

Mr. Neureiter will question. Thank you.

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

(James Sargent affirmed.)

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

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

THE WITNESS: James Larry Sargent. Spelling Sargent, S-A-R-G-E-N-T.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. NEUREITER:

Q. Good morning, Mr. Sargent.

A. Good morning, sir.

Q. How are you today?

A. Pretty good.

Q. Where are you from, Mr. Sargent?

A. Herington, Kansas.

Q. And what do you do for a living?

A. I'm medically retired from the military.

Q. You were in the military?

A. I spent approximately 16 years on active duty, yes, sir.

Q. And what rank were you when you retired?

A. E7.

Q. So you were Sergeant Sargent?

James Sargent - Direct

A. Sergeant first-class, yes.

Q. You live in Herington now?

A. Yes, sir.

Q. Where did you live in April time period, 1995?

A. Same place I'm residing now, 405 North Deet Street, Herington, Kansas.

Q. And did you have occasion in 1995 to drive to Fort Riley from Herington, Kansas?

A. Yes, sir. That was my last day of active duty --

Q. No, just a yes.

A. Yes, sir.

Q. I want to show you an exhibit that has not yet been admitted into evidence, I don't believe, D1762. And you can look down on that screen in front of you.

Is that -- have you seen this before?

A. I've not seen this sketch, but I know what it is.

Q. You know what it is. Does that fairly and accurately represent the area around Junction City, Herington, and Fort Riley in Kansas?

A. Yes, it does.

MR. NEUREITER: Move admission.

MR. GOELMAN: No objection.

THE COURT: D1762 is received.

BY MR. NEUREITER:

Q. Now, you lived in Herington at the time?

James Sargent - Direct

A. Yes, sir.

Q. Is that indicated by this pen here?

A. Yes, sir.

Q. And you had occasion in April, 1995, to drive to Fort Riley?

A. Yes, sir.

Q. That's up here, a little bit north of Junction City?

A. Yes, sir.

Q. And what road would you take when you drove from Herington to Fort Riley?

A. 77 north to the intersection of 70, and I'd go east off 70 to the Fort Riley entrance.

Q. Is there a recreation area, state or county, located on that route?

A. Yes, sir.

Q. And what is that?

A. That's Geary State Lake, Fishing Lake.

Q. And have you had occasion to visit Geary County fishing lake?

A. Yes, sir.

Q. Do you like to fish?

A. Love to, sir.

Q. Do you go down there a lot?

A. I go there a few times. It's not my favorite.

Q. Okay. Now, you mentioned before that you're retired from

James Sargent - Direct

the military?

A. Yes, sir.

Q. On what date did you retire?

A. My retirement date, last day of -- the retirement date was April 11. I didn't have to go back in then.

Q. When was your last day of work?

A. April the 10th.

Q. Was that a full day, or a half day?

A. That was a half day, sir.

Q. How do you know that your last day of work was April the 10th, 1995?

A. Because I have orders retiring me on that date.

Q. Did someone ask you this morning to reach into your wallet and pull out a card?

A. Yes, sir.

Q. Okay. I'm going to put on the machine something that has not yet been admitted, but it's marked for identification as D1798. I'm going to zoom in a little bit. Do you recognize that?

A. Yes, sir.

Q. Is that a fair and accurate depiction of the card that's currently in your wallet?

A. Yes, sir, it is.

MR. NEUREITER: Move its admission, your Honor.

MR. GOELMAN: No objection.

James Sargent - Direct

THE COURT: Received. What's the number?

MR. NEUREITER: D1798.

THE COURT: Received.

BY MR. NEUREITER:

Q. And what is that document that is now published to the jury?

A. That is my military retiree ID card.

Q. And is there a date indicated on that ID card?

A. Yes, sir. Date of issue, 1995, April 11.

Q. And what does that mean, if your date of issue is April 11?

A. That means that is the actual date that my retirement actually started.

Q. Okay. And that means your last day of work would have been what day?

A. The 10th, sir.

Q. The day before the 11th?

A. Yes, sir.

Q. Tell me about your last day of work -- or tell the jury about your last day of work.

A. My last day of work was an out-processing day from the military. And that was just getting SGLI and other things in order to make the transition into retirement. We finished up about 11:30 that day, and I had the rest of the day off.

Q. Did you have plans for the rest of the day?

A. Yes, sir.

James Sargent - Direct

Q. What were your plans?

A. Go fishing.

Q. Okay. Did you take something with you from Fort Riley on your way to go fishing?

A. Yes, sir. I did.

Q. What did you take?

A. I -- after I left the out-processing station, I stopped by and had dinner at the cafeteria at the hospital, and I took a pear with me.

Q. Took a pear. And were you planning on eating that pear where you were going fishing?

A. Yes, sir, and I did.

Q. I'm going to put on an exhibit that's previously admitted as Government 1982B ask you if you recognize that?

A. Yes, sir, I do.

Q. What is that?

A. That is a aerial photograph of Geary State Fishing Lake.

Q. And what's the road that runs along Geary State Fishing Lake there?

A. Highway 77.

Q. All right. Is that where you went fishing that day?

A. Yes, sir.

Q. Tell us what you did on that day when you went fishing, April 10, 1995.

A. Okay. Just north of the lake, there is a little dirt road.

James Sargent - Direct

I went to the dam to fish a little bit to start with.

Q. Is that dam depicted on this?

A. Yes, sir, it is. It's right at the northwestern corner.

Q. Is the pen indicating the dam?

A. Yes, sir.

Q. All right. And did you fish there for a little bit?

A. I fished there for about an hour and decided to give it up because it was costing me too much money on the rigs I was losing.

Q. And where did you go then?

A. I went back to 77, headed south and went into the main entrance of the fishing area. I went down --

Q. Okay. Hold on. Let's do that slowly. So you went back to 77?

A. Uh-huh.

Q. And tell me where the main entrance, if I'm moving down 77.

A. You're at it now.

Q. Okay. And then you went into the lake area?

A. Yes, sir.

Q. Okay.

A. And headed back north.

Q. And you headed back north. We're heading back north along this road. And where did you go? Stop me when --

A. I went across the culvert right there, and I stopped right where you're at now in that parking area.

James Sargent - Direct

Q. I'll leave the pen, if I can, right there. Okay.

And is there a jetty near in that parking area?

A. Yes, there is a jetty.

Q. Where were you fishing from on that day?

A. From the jetty.

Q. What did you see as you were fishing there from the jetty?

A. As I looked across from the jetty toward the end of the road that goes into the middle of the lake, I saw a Ryder truck parked there.

Q. Could you describe the Ryder truck?

A. It was a medium-sized truck. Didn't have the overhang over the cab.

Q. Did it have a truck front or a van front?

A. Truck.

Q. Were there any other vehicles around that Ryder truck?

A. Not at that time, no, sir.

Q. Not initially?

A. No, sir.

Q. Were there ever that afternoon -- by the way, what time was that, to the best of your recollection?

A. 11:30, 12:30. Probably about 2, 2:30.

Q. And over the course of that afternoon, how long did you

stay fishing on that jetty?

A. Till it got almost dark that evening. It was about 6 or later, or it was sometime in that area.

James Sargent - Direct

Q. Okay. Did you -- were there ever any vehicles around that Ryder truck that day?

A. I saw two vehicles go up toward the Ryder truck.

Q. Describe those two vehicles.

A. The first one was a pickup truck that was color either, you know -- it was -- like a primer. Didn't have a glossy finish on it. It was just a dull-primer look.

Q. Would that be a red or a maroon?

A. It was basically a red primer.

Q. And what was the other vehicle you saw come up --

A. About a half hour later, there was a white vehicle came up to it, a car.

Q. Was it a sedan or a station wagon?

A. It was just a white car.

Q. And were they parked next to the Ryder truck?

A. I saw them going toward the Ryder truck. I did not take notice of where they parked or of anyone there.

Q. So you saw no individuals around the truck over the course of that afternoon?

A. No, sir.

Q. I'm going to put up what has been previously admitted as D137, which is a brochure.

THE COURTROOM DEPUTY: D137, no.

MR. NEUREITER: I'm sorry, dyslexia is kicking in.

D1737.

James Sargent - Direct

BY MR. NEUREITER:

Q. And there are three -- four trucks depicted there. Could you tell the jury which of those four, to the best of your recollection, you saw at Geary Lake on that day.

A. To the best of my recollection, it was the third vehicle down, or the second one up.

Q. All right. And if we zoom in, is that the one labeled "three bedrooms"?

A. Yes, sir.

Q. Now, the day after that day, April the 10th, did you have occasion to drive from Herington to Fort Riley?

A. Yes, sir, I did.

Q. What time did you do that?

A. My wife and I had to go -- about 7, 7:30 in the morning.

Q. And as you drove -- did you pass Geary Lake on your way in?

A. Yes.

Q. Were you driving I -- U.S. 77?

A. Yes, sir.

Q. Did you have occasion to look down at the lake that morning?

A. Yes, sir.

A. Yes, sir.

Q. And what did you see?

A. I saw, just for a few seconds, the truck.

Q. And did you return home later that night?

A. Yes, sir.

James Sargent - Direct

Q. By the same route?

A. Yes, sir.

Q. Did you see the vehicle again?

A. No, sir. You can't see back that way when you're driving south on that highway.

Q. What kind of vehicle were you driving, by the way?

A. I was driving a Ranger, '94 Ranger XLT pickup.

Q. The day after that, the 12th, did you have occasion to drive to Fort Riley?

A. Yes, sir.

Q. Tell us about that.

A. I -- same route. I had to go back to Fort Riley to check into a school, a transition school from military to civilian life dealing with resumes, job search, stuff like that. And as I drove by the lake -- every time I passed the lake, always look down to see if anybody's fishing.

Q. Uh-huh.

A. And the truck was still there, yes.

Q. That was the third day?

A. Yes, sir.

Q. Okay. Now, do you have some recollection on the fourth day?

A. Fourth day, I went back, same route, to have dinner with my wife later in the morning, probably about 11, 11:30. I don't recall whether the truck was there. I think it was; I just --

James Sargent - Direct

I can't swear to it.

Q. Okay. Well, you're under oath now, so we won't ask you to.

A. Yeah.

Q. But are you certain on the 10th and the 11th and the 12th of April, 1995, there was a Ryder truck parked at Geary State Fishing Lake?

A. Yes, sir.

Q. Now, Mr. Sargent, I don't mean to embarrass you by this question, but have you been known to take a drink?

A. Yes, sir.

Q. You don't deny that, do you?

A. No, sir, I don't.

Q. Has your drinking in any way, shape, or form affected your memory of the events of April, 1995?

A. No, sir.

Q. And how do you know that?

A. Well, because after it all happened, two weeks later, you know, when the investigation was going on, you know, I realized that I had seen the truck there and what had happened.

--

Q. So that was two weeks after the event?

A. Yes, sir.

Q. Did you come in contact two weeks after the event with agents from the Federal Bureau of Investigation?

A. Yes, sir.

Q. Tell us about how that happened.

James Sargent - Direct

A. After it had come out of what was going on, I told my wife -- well, I had tried to go fishing.

Q. Excuse me. When you say "what was going on," you mean after the bombing?

A. Yes, sir. I had stopped back by the lake a couple weeks later to fish, and I couldn't get in. It was cordoned off with agents and policemen and people like that down there.

Q. Uh-huh.

A. And I just turned around and left. And it dawned on me, you know, these guys -- what I had seen there could be relevant to the Oklahoma bombing.

Q. Okay. Did you tell anybody about it?

A. I told my wife.

Q. And to your knowledge, did she do anything?

A. Well, she was stopped I think the next day or a couple days later by a roadblock with agents asking if she had seen anything, and she said, "No, but my husband did, because he had been fishing that lake the week he retired."

Q. And then did the FBI contact you?

A. Yes, sir. The ATF did.

Q. And did the story -- not the story -- Did what you've told the jury today -- is that consistent with what you told the ATF one or two years ago?

A. This is consistent, yes, sir.

MR. NEUREITER: Okay. One moment.

James Sargent - Direct

Pass the witness, your Honor.

THE COURT: All right. Mr. Goelman.

CROSS-EXAMINATION

BY MR. GOELMAN:

Q. Good morning, Mr. Sargent.

A. Good morning, sir.

Q. Is it fair to say that April 10, 1995, was a pretty big day in your life?

A. Probably one of the biggest in my life, yes, sir.

Q. Leaving active duty?

A. Yes, sir.

Q. Resume life as a civilian?

A. Yes, sir.

Q. And you're sure as you sit there today, are you not, that April 10 is the day that you went down to Geary Lake and fished?

A. Yes, sir, I am sure.

Q. And you got there close to -- between 2 and 2:30; is that right?

A. Say again?

Q. You got to Geary Lake, or at least to the part where you can see the Ryder truck, at 2 to 2:30 in the afternoon?

A. 2 to 2:30, somewhere in that time frame, sir.

Q. You described two other vehicles that you saw that day, Mr. Sargent. One of them was a pickup truck; is that right?

James Sargent - Cross

A. Yes.

Q. Is it fair to characterize that pickup truck as being of a rust-red color?

A. Yes, sir.

Q. And the other vehicle was a big, white car; is that right?

A. It was -- to the best of my recollection, it was a large, white car, yes, sir.

Q. And you told defense counsel that you hadn't seen any people around those vehicles; is that right?

A. No, sir.

Q. But you did see some other people around you, didn't you, sir?

A. Yes, sir.

Q. Would you tell us about that.

A. While I was fishing there -- well, when I first showed up on the jetty, there was a gentleman there fishing, a black guy from Junction City, fishing, and we got started talking and just having a good time fishing. And later on there was another guy come in, middle-aged, white guy, I think. Middle-aged. And he was fishing. And then later on, there was two other guys come in with a paddle boat and put it in the lake and was paddling around fishing off of that.

MR. GOELMAN: One moment, sir.

Your Honor, may I show the witness what's been already received in evidence at 1982B?

James Sargent - Cross

THE COURT: Yes.

BY MR. GOELMAN:

Q. Mr. Sargent, can you see that picture down there, that screen there?

A. Yes, sir, I can.

Q. Do you see a light pen up there, sir?

A. See a what?

Q. Up on the desk, there should be a pen attached to a cord.

A. Yes.

Q. Could you, drawing right on the screen itself -- you got to go below the little, glass window. Could you mark where you saw the Ryder truck on April 10?

A. I'm too high on it. Right there.

Q. And where were you fishing, sir?

On that jetty right there?

A. Yes, sir.

A. Yes, sir.

Q. And where was this black gentleman that you were having conversation with?

A. He was at the end of the jetty, sir.

Q. Do you have any reason to know whether or not he saw the Ryder truck?

A. He did see it, because we both commented about it. But we didn't think much about it at the time.

Q. And when this other gentleman, the middle-aged, white gentleman, arrived, where did he -- where was he at that --

James Sargent - Cross

where was he at Geary Lake, and what was he doing?

A. Same place. He was at the beginning of the jetty, between the beginning and the middle of the jetty fishing.

Q. Did he arrive before, or after the men in the paddle boat?

A. Before.

Q. And when did the men in the paddle boat arrive?

A. I think it was about 4:30, somewhere around there.

Q. And do you recall any conversation between any of the other people there when the two men in the paddle boat came?

A. There was some joking going on between the middle-aged, white man and the two guys in the paddle boat.

Q. What kind of joking, sir?

A. Like they knew each other and they knew that the guy -- the middle-aged gentleman knew that these two were in the military, and he was joking about them taking -- leaving work early and going fishing.

Q. When you say "paddle boat," can you describe what you mean?

A. It's just a piece of plastic, looks like a -- I guess a bathtub is about the best way to describe it. But it's only about that deep, and there's a paddle in there, you know, like a bicycle wheel that you paddle with. It's got fins underneath of it.

Q. How many people does it seat?

A. Two.

Q. And they both have paddles?

James Sargent - Cross

A. Just the one.

Q. Just the one. Did you see whether or not the paddle boat actually went into Geary Lake on that day?

A. Yes, it did.

Q. Did you see which direction it headed?

A. It headed back north.

Q. Could you go back to that screen and again place an X where you saw the Ryder truck.

And where did the paddle boat set in the lake?

A. Just north of the jetty.

Q. And then where did it go after that?

So right by the little peninsula where the Ryder truck was?

A. Yes, sir.

Q. And to your knowledge, had the Ryder truck moved between the time that the men in the paddle boat rowed by it?

A. No, sir.

Q. It was still there?

A. I don't think it had ever moved.

Q. Now, you saw a Ryder truck also around 7, 7:30 the following day?

A. Yes, sir.

Q. And that would be Tuesday, April 11?

A. Yes, sir.

Q. And then the following day?

James Sargent - Cross

A. Yes, sir.

Q. That would be Wednesday, April 12?

A. Yes, sir.

Q. And you're not sure, but you think you saw it on Thursday, April 13?

A. Yes, sir.

Q. About what time would that have been?

A. On Thursday?

Q. Yes, sir.

A. It would have been about 11:00, 'cause I was going up to have lunch with my wife.

Q. And on these days, sir, did you actually go down into the lake?

A. No, sir.

Q. You were driving by?

A. Yes, sir.

Q. About how fast were you going?

A. Speed limit at that time was 55 miles an hour, and I usually set my cruise about 2 miles an hour over.

Q. And do you recall about how long your opportunity to see down to that part of the lake was?

A. The window of time period is probably 2 seconds that you can visualize anything going up that road.

Q. I'm sorry, how long?

A. 2 seconds.

James Sargent - Cross

Q. 2 seconds? You were describing on direct examination that there's a difference in your opportunity to view between when you're going north, when the lake's on your left, and when you're going south and the lake's on your right?

A. Yes, sir.

Q. Can you see anything in that area when you're going south?

A. You can see part of the southern part of the lake, but you can't get a good visualization of the central part of the lake or the northern part.

Q. Okay. And I understand you didn't have as much time to see it on those subsequent days after April 10; but as near as you

could tell, was the truck in the same place?

A. Yes, sir.

Q. And was the truck in the same position?

A. Yes, sir.

Q. And what was that position?

A. The position was the cab of the truck was pointed toward the lake, and the back side of it was towards 77 -- Highway 77.

Q. So the back of the truck was at the lake and it was pointed toward the highway?

A. Yes, sir.

Q. And as near as you could tell, was it the same type of truck?

A. Yes, sir.

Q. You never saw an overhang on any of the subsequent days, or

James Sargent - Cross

anything like that?

A. No, sir.

Q. And those days, whether it's April 10, 11, 12 or April 10 to 13, are those the only days that you've ever seen a Ryder truck down at Geary Lake?

A. Those were the only days, sir.

Q. Now, you mentioned that after you got out of the military, sir, you enrolled in a transition class; is that right?

A. Yes, sir.

Q. Kind of to help you and other veterans to readjust to civilian life?

A. Yes, sir.

Q. Were you at that transition class on the morning of April 19, 1995?

A. Yes, sir, I sure was.

Q. And did you hear about the bombing on that morning?

A. Yes, sir.

Q. Did you actually leave that class and go home to watch coverage of the bombing?

A. I sure did, sir.

Q. And the coverage that you saw affected you very deeply, didn't it, sir?

I'm sorry, you have to answer audibly.

A. Yes, sir.

Q. And you had cable television at that time, didn't you, sir?

James Sargent - Cross

A. Yes, sir.

Q. You had CNN?

A. Yes, sir.

Q. And over the next month until the -- what was left of the Murrah Building was imploded, you pretty much watched coverage of the bombing and investigation consistently, didn't you?

A. Yes, sir.

Q. A lot more TV than you usually watch?

A. Quite a bit, sir.

Q. For the first time, you weren't working every day; isn't that right?

A. Yes, sir.

Q. And fair to say that you wanted to help investigators in any way you could, sir?

A. I wanted them to make sure that they knew what I knew. Yes, sir.

Q. Isn't it fair to say that you wanted to give them any help you could provide?

A. Yes, sir.

Q. And you actually took steps to investigate on your own, didn't you, sir?

A. Well, yes, sir, I did.

Q. Okay. Can you tell us about those steps, please.

A. I had access to the computer at Fort Riley military hospital. Irwin Army Hospital. I had worked my last year in

James Sargent - Cross

the ENT clinic while I was on medical hold waiting to be discharged. And after Mr. Nichols surrendered . . . I went back to the ENT clinic where I had a friend, Alberto Perez -- he was the NCOIC of the office -- and asked him if he could punch on the computer and find -- try to find out where Timothy McVeigh had lived while he was in the area.

Q. And did he do that for you?

A. Yes, sir, he did.

Q. And did he tell you where Timothy McVeigh lived?

A. Yes, sir.

Q. And after that, did you actually physically drive to that house just to see what it looked like?

A. I drove by it, yes, sir.

MR. NEUREITER: Objection, irrelevant, sir.

THE COURT: What's the relevance?

MR. GOELMAN: Just to explore the witness's involvement in following the interest and coverage after the bombing.

THE COURT: What's the relevance of that?

MR. GOELMAN: To show the impact of any kind of information that got to him through other means.

THE COURT: Objection sustained.

BY MR. GOELMAN:

Q. Now, you talked to the FBI on May 4, 1995; is that right? Or I'm sorry, ATF, you indicated.

James Sargent - Cross

A. I don't remember the date, sir. But the ATF agents were the first people I talked to.

Q. And does that sound like a fair date?

A. Yes, sir.

Q. Sometime the beginning of May?

A. Yes, sir.

Q. And that was after you -- after the occasion that you were

Q. And that was after you -- after the occasion that you were telling the jury about where you actually drove down to Geary Lake and weren't able to get in; is that right?

A. Yes, sir.

Q. And after driving down there, you heard on the radio on the way back that investigators suspected that the bomb had been mixed at Geary Lake; isn't that right?

A. Yes, sir.

Q. And that there had been a Ryder truck there?

A. Yes, sir.

Q. And when you talked to the ATF, again you wanted to help, so you gave them all the information you had, didn't you, sir?

A. Yes, sir, I did.

Q. You told them, in fact, about a number of different things, didn't you, sir, in addition to the Geary Lake sighting?

A. Not a number, I don't think. Just what I knew, sir.

Q. Right. Did you tell them about seeing Tim McVeigh in a bar the previous fall?

MR. NEUREITER: Objection to the relevance, your

James Sargent - Cross

Honor.

THE COURT: Again, what's the relevance?

MR. GOELMAN: Your Honor, simply that the witness was invested in the investigation and gave other -- took independent steps to investigate.

THE COURT: Objection sustained.

BY MR. GOELMAN:

Q. Now, you -- when you talked to the ATF on that occasion, you knew about the crime that they were investigating; isn't that right?

A. Yes, sir.

Q. And you knew how important it was?

A. Yes, sir.

Q. And you wanted to provide them with every opportunity to find the people involved; isn't that right?

A. Yes, sir.

Q. So you told them, did you not, sir, everything you knew about the Ryder truck being at Geary Lake?

A. Yes, sir, I did.

Q. Told them about the other cars that you'd seen?

A. Yes, sir.

Q. Told them about the Ryder truck itself, of course?

A. Yes, sir.

Q. Yes. And you didn't tell them -- you told them about that one black gentleman you had a conversation with; isn't that

James Sargent - Cross

right?

A. Yes, sir, I did.

Q. You did not tell them at that time about the two men in the paddle boat, did you, sir?

A. I don't recall whether I told them then or later.

Q. And you did not tell them at the time about the other middle-aged man who you had a conversation with on that date?

A. No, sir.

Q. But your current memory, sir, is that those other three people were there --

A. Yes, sir, they were.

Q. -- on April 10, 1995?

MR. GOELMAN: May I have a moment, your Honor?

THE COURT: Yes.

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

THE COURT: All right.

MR. GOELMAN: Thank you, Mr. Sargent.

THE COURT: Any redirect?

MR. NEUREITER: No redirect, your Honor.

Thank you, Mr. Sargent.

THE COURT: I take it he's excused.

MR. NEUREITER: Yes, your Honor.

MR. GOELMAN: Yes, sir.

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

MR. WOODS: Yes, your Honor. Ron Karchefski.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Ronald Karchefski 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: Ronald Karchefski, K-A-R-C-H-E-F-S-K-I.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mr. Karchefski.

A. Good morning.

Q. Will you tell the jury, please, what work you do.

A. I'm a deputy sheriff in Garland County, Arkansas.

Q. Where is Garland County, Arkansas?

A. It's where Hot Springs National Park is located.

Q. How long have you been in law enforcement?

A. In law enforcement altogether since 1961.

Q. Will you tell the jury, please, briefly what your career in law enforcement has been since 1961.

A. I served 25 years with the Detroit Police Department in various positions. I retired from there in 1986 as a lieutenant.

Q. And then in 1986?

A. Moved to Arkansas. In 1990, I was hired by the Garland County Sheriff's Department, and I'm still currently employed

Ronald Karchefski - Direct

there.

Q. So you were employed there on the 5th of November, 1994; right?

A. That's correct.

Q. Well, on the 5th of November, 1994, did you get an armed robbery call?

A. Yes, sir, I did.

Q. About what time did you get that, sir?
A. It was approximately 11:30. I don't know the exact time.
Q. And how did that call come to you?
A. On a police radio.
Q. Were you on duty that day?
A. Yes, sir.
Q. Were you in uniform?
A. Yes, sir.
Q. And where were you -- where was your police automobile at the time that you got the call?
A. I don't know, sir. We have over 750 square miles that we patrol, and I don't know exactly where.
Q. Somewhere. About how long did it take you -- where did you go as a result of the call?
A. To 64 -- 6435 Albert Pike.
Q. And do you now understand that to be the residence of Roger Moore?
A. That is Mr. Moore's residence -- or was at that time.

Ronald Karchefski - Direct

Q. Okay. How long -- okay. How long did it take you to get from the place you were when you got the call to Mr. Moore's house?
A. I would say it was approximately 10 minutes.
Q. Wasn't an hour and a half?
A. No, sir.
Q. Was Mr. Moore there when you got there?
A. He was not at his house, no, sir.
Q. Where did you locate him?
A. I located him next door at the Powells'.
Q. And do you know the Powell family?
A. No, sir.
Q. You hadn't met them before that day?
A. No, sir.
Q. So can you estimate about what time you got to the Powell house there?
A. Oh, might have been about quarter to, 10 to the hour, till 12.
Q. Who was there at the house when you arrived?
A. Mr. Powell was there, Mr. Moore was there, and Mrs. Powell.
Q. Now, where was Mr. Moore when you got there?
A. I believe he was in the house. The first person I seen was Mr. Powell.
Q. And did there come a time when Mr. Moore got a telephone call?

Ronald Karchefski - Direct

A. Yes, sir.
Q. Tell us how that happened, what you remember about it.
A. Well, Mrs. Powell walked out of the back door and handed Mr. Moore a telephone and said there was a call for him.
Q. Now, did Mr. Moore talk to that person?
A. Yes, he did.

A. Yes, he did.

Q. Did there come a time when he handed you the phone?

A. Yes, he did.

Q. Now, did he say anything to you when he handed you the phone?

A. If he did, I don't recall his exact words, but it was something like, "Here, talk to him."

Q. And did you talk to that person?

A. Yes, I did.

Q. Did he explain to you how someone would know to call him at the Powell house?

A. No, sir, he did not.

Q. And you talked to that person; correct?

A. Yes, sir.

Q. All right. And did you then inform somebody else about the fact you'd talked to that person?

A. Yes, sir, I wrote his name and a phone number down, and I later gave that name and phone number, piece of paper I had wrote it down on, to Captain Sanders from our investigations division.

Ronald Karchefski - Direct

Q. And did you interview Mr. Moore there at the Powell house or -- at that time?

A. I didn't interview him there. I talked to him briefly, and then I took him down to his house which was the scene of the crime.

Q. Now, who went with you to his house?

A. Just me and him.

Q. Did --

A. Just the two of us.

Q. Did there come a time when any of the members of the Powell family were over there at Mr. Moore's house that you could observe?

A. Not while I was there. Not that I recall.

Q. Did you ask Mr. Moore whether he lived with someone?

A. Yes, I did.

Q. And what did he say about that?

A. He informed me he had a live-in girlfriend.

Q. And did he say her name?

A. If he did, I don't recall it.

Q. Did you ask him where that person was?

A. Yes, I did.

Q. What did he say?

A. Somewhere in Louisiana.

Q. Did you ask him for details about where that person was?

A. Yes, I did.

Ronald Karchefski - Direct

Q. What did he say?

A. He was unable to furnish any details as to where she was in Louisiana.

Q. Said he didn't know?

-
A. That's correct.
Q. Now, he did -- you did interview him; correct?
A. Yes, sir.
Q. And he did tell you that he'd been -- he gave you a description of the person he said had robbed him; correct?
A. Yes, sir.
Q. All right. And you -- when you made your report, you put in -- you put in the details that he provided; correct?
A. As best I could, yes, sir.
Q. Now, did there come a time when another officer arrived?
A. Two of them.
Q. Who were they?
A. That would have been Sergeant Shelby Terry and Captain Sanders.
Q. Now, in terms of the investigation, who was in charge at the point where Sergeant Terry arrived?
A. Well, it would have been Sergeant Terry at that point.
Q. All right. And when Captain Sanders arrived, did he take charge of the investigation?
A. No, sir, he just assisted Sergeant Sanders -- I'm sorry, Sergeant Terry.

Ronald Karchefski - Direct

Q. Sergeant Terry. Were you present at the time that Mr. Moore's van was located?
A. No, sir, I was not.
Q. You did not participate in the search of that?
A. I searched for the van, but I did not locate it; and I was not present when it was located.

MR. TIGAR: Thank you very much, sir. I have no further questions.

THE COURT: Ms. Wilkinson.

MS. WILKINSON: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Mr. Karchefski.
A. Good morning.
Q. How are you this morning?
A. Just fine.
Q. Good. You told us you were the first deputy sheriff to report to the scene of the robbery; is that right?
A. That's right.
Q. Now, you received a radio call to know where to go; right?
A. That's correct.
Q. That's your normal procedure?
A. Absolutely.
Q. And when you got to Mr. Moore's house, you realized he wasn't there?

Ronald Karchefski - Cross

A. That's correct.
Q. And did you call back to the radio dispatcher?

A. I called my dispatcher. She informed me that he had called from the Powells' house next door. I went to the Powells' house, and that's where I located him.

Q. And he was there just like your dispatcher told you he would be; right?

A. Yes.

Q. And you talked to him about the robbery at that time?

A. Just briefly at that point.

Q. And when you took him up to his house, did he let you go into the house and inspect it?

A. Yes, he did.

Q. And did you see his bedroom?

A. Yes, I did.

Q. And did you see that the bed was overturned or that the linens were in disarray?

A. That's correct.

Q. And did you see other signs of a robbery in the bedroom?

A. Not necessarily of a robbery, but I seen where the room was in disarray.

Q. Okay. And did you take a preliminary statement from Mr. Moore?

A. Yes, I did.

Q. Now, you have told defense counsel that you weren't

Ronald Karchefski - Cross

actually in charge of the investigation; correct?

A. That's correct.

Q. And when Mr. Terry arrived, you turned it over to him; is that right?

A. That's correct.

Q. And you wrote up a preliminary report?

A. Yes, ma'am.

Q. And in that, did you include what Mr. Moore had told you?

A. Yes.

Q. Did you include every detail of what Mr. Moore had told you?

A. Not every detail, no. It's a synopsis.

Q. And he told you that someone had pointed a shotgun at him; is that correct?

A. That's correct.

Q. And that the person was wearing a ski mask?

A. That's correct.

Q. And he told you that he was tied up?

A. That's correct.

Q. With plastic ties?

A. Yes.

Q. And duct tape?

A. Yes.

Q. And he told you that he was robbed; correct?

A. Yes.

Ronald Karchefski - Cross

Q. And guns were taken from his house?
A. Yes.
Q. And valuables?
A. Yes.
Q. And he told you that as soon as you arrived on the scene or as soon as you took him to his house; correct?
A. Within minutes, yes.
Q. Now, you told us about a phone call that he received and that you then talked to that same person; is that right?
A. That's right.
Q. And you recall writing down that person's name and number?
A. Yes, I did.
Q. And turning it over to put it in the file?
A. I turned it over to Captain Sanders, personally. I handed it to him after he arrived at the scene.
Q. Now, you never called that person back, have you?
A. I did not, no.
Q. And you've searched the file, haven't you?
A. No, I haven't.
Q. You asked someone to search the file?
A. I asked if it was in there, and they told me no.
Q. And no one's ever seen that piece of paper; correct?
A. To my knowledge, they haven't.

MS. WILKINSON: No further questions.

THE COURT: Any follow-up?

MR. TIGAR: No further questions, your Honor.

THE COURT: May he be excused?

MS. WILKINSON: Yes, your Honor.

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

Next, please.

MR. TIGAR: Call Verta Powell.

THE COURT: All right.

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

(Verta Powell 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: Verta Mae Powell, P-O-W-E-L-L.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Miss Powell.

A. Hello.

Q. Will you tell the jury, please, where you're from.

A. I am from Royal, Arkansas.

Q. What is your address in -- I'm sorry, the name?

A. Royal.

Q. Royal?

A. Uh-huh. 6447 Albert Pike.

Verta Powell - Direct

Q. And do you have a neighbor?

A. Yes, sir, I do.

Q. All right. What is the name of your neighbor, the person

Q. All right. What is the name of your neighbor, the person that lives next door?

A. Roger Moore.

Q. How long have you known Roger Moore?

A. I'm not sure about the years.

Q. All right. Has it been several years --

A. Yes, it has.

Q. -- since he moved in next door?

A. Yes.

Q. To your observation, does he live by himself?

A. No, sir.

Q. Who lives with him?

A. A friend and a wife.

Q. All right. And what's the friend's name?

A. Karen Anderson.

Q. And what is the wife's name?

A. Carol Moore.

Q. Now, during how much of the year is Carol Moore there?

A. Not very often. Just kind of off and on.

Q. Now, what's your husband's name?

A. Martin Walton Powell.

Q. Goes by Walt?

A. Goes by Walt.

Verta Powell - Direct

Q. And do you have a son named Lance?

A. Yes, sir, I do.

Q. Now, I'm going to ask you about November the 5th, 1994. Do you remember that day?

A. Yes, sir.

Q. Well, on that day, did you see Roger Moore sometime in the morning?

A. Yes, sir, I did.

Q. Where did you see him?

A. At my back door.

Q. Now, to get a picture of where the Powells live, what does your house look like? What kind of a house is it?

A. It's a three-bedroom house with a garage to the right side, enclosed garage to the right side.

Q. Now, back in 1994, did you have a mobile home also on your property?

A. Yes, sir, I did.

Q. Who lived in your mobile home back there in 1994?

A. My son Lance.

Q. Didn't he live by himself at that time?

A. No, sir, his wife was with him at that time.

Q. Okay. And did they have any children, Lance and his wife, as of 1994?

A. I'm trying to figure out how old my grandson is. He's five. Yes, sir, they did.

Verta Powell - Direct

Q. Okay.

A. I'm sorry.
Q. How old is your grandbaby now?
A. He's five.
Q. Five. Okay. So 1994, he would have been what?
A. Two.
Q. About two. All right. Whatever. Okay.
A. I had to figure that out.
Q. Were you alone in the house when you saw Mr. Moore there in the morning?
A. Yes, sir, I was.
Q. And tell the jury, do you remember about what time that was?
A. It was about midmorning, probably between 10 and 11, something like that.
Q. Okay. And did he come to the front door, or the back door?
A. Actually to the garage door, which is a side door.
Q. Okay. Now, is that a door you have to go in through where the cars are and get to the house, or how does that work?
A. Yes, sir.
Q. And did he knock?
A. He rang the doorbell.
Q. Rang the doorbell. And you answered it?
A. Yes, sir, I did.
Q. And then what happened?

Verta Powell - Direct

A. He stated that he had been robbed. He rushed past me, walked past me on up into my house. When he passed me at that point, there was a gun at his back, stuck in the pants that he had on, the waistline.
Q. What kind of a gun was stuck in the belt of his pants?
A. Some type of pistol.
Q. Okay. Now, did it look like one of those six-shooter pistols, or did it look like one with a more square sort of a butt; do you remember?
A. I want to state more of a square type. I don't know much about guns, but . . .
Q. Okay. Now, did -- what did he say next?
A. Basically that he had been robbed; that he asked if Walton was at home, and I told him no. He asked if he could use the phone.
Q. Now, did he say how many people had robbed him, or did he say anything about that subject?
A. When he was on the phone to someone at that point, he made the remark that he didn't know how many they were, something to that effect.
Q. Okay. Now, did he ask you to do something?
A. He wanted to talk to Walton, and he asked if I would go get him.
Q. Now, did you immediately go and get Walt?
A. Yes, sir.

Verta Powell - Direct

Q. All right. Did somebody else arrive before you left to go get Walt?

A. Yes, sir. I called my son Lance and asked if he would come over and stay in the house with Mr. Moore while I went and got my husband.

Q. Now, about how long was it -- was Lance over in the mobile home?

A. Yes, sir, he was.

Q. About how long did it take for Lance to get there?

A. I don't really remember. It was not very long. Maybe 10 or 15 minutes.

Q. Now, how did you get hold of Lance to ask him to come? Call him up, or --

A. Yes, sir, I called him.

Q. Now, during the time that you were alone there in the house with Mr. Moore, what did you see him do?

A. He made a couple of phone calls.

Q. And could you observe whether they were local calls, or long distance calls? I mean --

A. He took something out of his pocket, maybe a card. But as far as knowing, you know, where he called, or whether it was long distance, I do not know.

Q. Now, then there came a time when you left the house; correct?

A. Yes, sir.

Verta Powell - Direct

Q. Now, when Mr. Moore was talking on the phone, was he talking in a voice like . . . well, not as loud as I am right now, but how would you describe his voice, what was he doing?

A. He talked rather low. I could not understand everything that he said.

Q. How close were you to him?

A. Just a few feet. We were in the same room. Maybe 4 feet away, something like that.

Q. Now, so there came a time when you went to get Walt; right?

A. Yes, sir.

Q. Where was Mr. Powell?

A. He was at our church, working.

Q. And about how long did it take from the time that Lance got there for you to get Mr. Powell and bring him back?

A. Maybe 20 minutes. The drive is fairly short. It's very close to the house. So it probably took me about 5 minutes to drive and then a few minutes for him to get, you know, things together and get in his truck and then come back. So I'm just guessing, you know, maybe 20 minutes.

Q. Did he come back in his truck and you come back in the other car?

A. Yes, sir.

Q. Came back separately?

Now, when Mr. Powell got there, what did he do?

A. He came in and talked to Mr. Moore. As far as a lot of
the

Verta Powell - Direct

conversation, I really don't remember other than he asked him if he had called the sheriff.

Q. Did Mr. Powell ask Mr. Moore if he had called the sheriff?

A. Yes.

Q. And what did Mr. Moore say?

A. He had not at that time.

Q. Did you then observe Mr. Moore call the sheriff?

A. Yes, sir.

Q. What did Mr. Powell -- did Mr. Powell say anything to Mr. Moore after Mr. Moore said that he had not called the sheriff, that you remember?

A. No, sir, I really don't.

Q. Okay. And then did a sheriff's officer arrive later?

A. Yes, sir.

Q. Do you remember his name?

A. No, sir, I do not.

Q. Do you remember seeing him in the witness room this morning, the sheriff's deputy who arrived?

A. No, sir.

Q. Now, did there come a time when Mr. Powell and Lance left the house?

A. Yes, sir, they did.

Q. How did that happen? What happened then?

A. Mr. Moore wanted them to go over to the house to see what had happened. As far as I remember, they left at that time and

Verta Powell - Direct

walked over there.

Q. That would be the three of them together?

A. Yes, sir.

Q. Now, after -- the night before -- or excuse me, that morning, what time had you gotten up?

A. It was probably about 6:30.

Q. And from 6:30 to the time that Mr. Moore showed up, where had you been?

A. I was in the house the entire time.

Q. Did you hear any gunfire?

A. No, sir, I did not.

Q. All right. From the time that -- I just want to make sure. From the time you got up in the morning to the time that Mr. Moore arrived, did you hear any gunfire?

A. No, sir, I did not.

Q. Now, have you heard gunfire -- had you before that day heard gunfire from the direction of Mr. Moore's house?

MS. WILKINSON: Objection, relevance.

THE COURT: What's the relevance?

MR. TIGAR: Whether or not it can be heard, your

Honor.

THE COURT: All right. For that purpose.

MR. TIGAR: Yes, your Honor.

THE COURT: I'll permit it.

THE WITNESS: Yes, you can hear the gunfire.

Verta Powell - Direct

BY MR. TIGAR:

Q. And after the robbery, did you ever have occasion to see your son Lance having some distress as a result of a tear-gas round?

MS. WILKINSON: Objection. Relevance.

THE COURT: Sustained.

MR. TIGAR: Thank you very much, Miss Powell. No further questions.

THE COURT: Miss Wilkinson.

MS. WILKINSON: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Miss Powell.

A. Good morning.

Q. How are you?

A. I'm fine.

Q. You're a little nervous this morning?

A. Very nervous.

Q. It's almost over. I just have a few questions for you. You have talked to the Government in the past, haven't you?

A. Yes, sir, I have -- yes, ma'am.

Q. I won't take that personally.

A. Okay.

Q. And when you've talked before, you've said that you've talked about the robbery with your husband and your son; isn't

Verta Powell - Cross

that right?

A. That's correct.

Q. You've discussed what happened that day?

A. Yes, we did.

Q. Trying to figure out what you all remember; right?

A. Yes.

Q. And you've read articles about it?

A. That's correct.

Q. And you've watched some TV about it; correct?

A. Yes, ma'am, we have.

Q. So it's hard for you to remember exactly what you know, yourself, and what you've talked to others about; is that right?

A. On some of it, yes.

Q. Now, you do remember that Mr. Moore came to your door and told you that he had been robbed; correct?

A. That's right.

Q. You don't have any doubt about that?

A. He told me he had been robbed.

Q. And you saw him use the telephone and make several phone calls?

A. Yes.

Q. You don't know who he talked with at that time?

A. No, ma'am, I do not.

Q. And you do know that the sheriff's office -- sheriff's

Verta Powell - Cross

officer, excuse me, arrived at your home on the morning of November 5, 1994?

A. Yes.

Q. Now, you don't recall exactly what time it was when Mr. Moore got to your house, do you?

A. I only remember it being midmorning because it was the time that my husband went down to the church to work, and that was the time of morning that he had left, and he had not been gone very long.

Q. You can't pinpoint what time the sheriff's officer arrived, can you?

A. No, ma'am, I cannot.

Q. And you don't know what Mr. Moore did when you were gone picking up your husband, Mr. Powell; right?

A. No, ma'am, I do not.

MS. WILKINSON: Thank you very much.

MR. TIGAR: No redirect.

THE COURT: All right.

MR. TIGAR: Thank you very much.

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

THE WITNESS: Thank you, sir.

THE COURT: Next, please.

MR. TIGAR: Call Lance Powell.

THE COURT: All right.

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

(Lance Powell 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: Lance Darren Powell, P-O-W-E-L-L.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mr. Powell.

A. Good morning.

Q. Will you tell the jury, please, what you do for work.

A. I'm parts manager for a motorcycle shop.

Q. And where is that motorcycle shop located?

A. Hot Springs, Arkansas.

Q. How long have you been doing that kind of work, sir?

A. About eight years.

Q. Were you employed there in November, 1994?

A. No, I was the parts manager for a marina.

Q. On. Now, in -- what's your father's name?

A. Walton.

Q. And your mom?

A. Verta. Goes by "Pudge."

Q. Excuse me. Do you live on the property that they own there

Q. Excuse me. Do you live on the property that they own there in Royal, Arkansas?

Lance Powell - Direct

A. I did in '94.

Q. Okay. And where did -- can you describe for the jury where you lived and where they lived on the Powell place there in Arkansas?

A. They live on 20 acres, and I'm probably -- I lived about a hundred yards away from them.

Q. Now, was that in a mobile home --

A. Yes.

Q. -- they had on the property?

Well, let's talk about November the 5th, 1994, sir.

Do you remember that day?

A. Yes, sir.

Q. Did -- where were you that morning?

A. I was at my house.

Q. Did you get a telephone call?

A. Yes.

Q. From whom?

A. My mother.

Q. What did she say -- ask you to do?

A. She asked me to come over to the house.

Q. Did you do that?

A. Yes, sir.

Q. When you got over to the house, who was there?

A. Roger Moore.

Q. Had you met Mr. Moore before?

Lance Powell - Direct

A. Yes, sir.

Q. And then did your mom stay there, or did she go somewhere?

A. She left to go get my dad.

Q. Now, when you got there, was Mr. Moore doing anything?

A. He was about to make a telephone call.

Q. Okay. Now, did he make a telephone call?

A. Yes.

Q. Now, did you see how many telephone calls he made?

A. At that point, just one that I know of.

Q. Now -- and was that during the time that your mother was gone?

A. Yes.

Q. You remember about how long your mom was gone?

A. Approximately 10 minutes.

Q. And when she came back, was she by herself, or was somebody with her?

A. My dad was with her.

Q. Now, when Mr. Moore was talking on the phone, could you hear everything he was saying?

A. Not everything. A few things, yes, sir.

Q. Pardon me?

A. A few things, yes, sir.

--- -- -- -- --

Q. And what could you hear that he was saying?

A. I just heard him say that they got it all.

Q. They got it all. All right.

Lance Powell - Direct

Did you ask him whether he had called the sheriff?

A. Yes, sir.

Q. Was that before, or after he made this phone call where he said, "They got it all"?

A. It was after.

Q. Pardon?

A. It was after.

Q. What did he say?

A. He said no.

Q. Did he say anything about -- did he give any explanation as to why he didn't want to call the sheriff?

A. He claimed that they wouldn't help him, they wouldn't be able to help him; that they wouldn't be able to get there in time.

Q. Okay. Now, after your dad got there, did your dad and Mr. Moore have a conversation?

A. Yes, sir.

Q. And can you remember what your dad said to Mr. Moore and what Mr. Moore said to your dad?

MS. WILKINSON: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: My dad also asked him if he had called the police.

BY MR. TIGAR:

Q. And what did Mr. Moore say?

Lance Powell - Direct

A. He said no.

Q. What did your dad say, if anything?

A. I don't recall.

Q. Okay. Did you hear Mr. Moore make a telephone call to the law enforcement then?

A. He did make a call then, yes, sir.

Q. Now, did . . . did you and the -- Mr. Moore and your dad leave your house -- or your parents' house there and go someplace?

A. Yes, sir, we went over to Mr. Moore's house.

Q. And did Mr. Moore show you some of the things in the inside of his house?

A. Yes, sir.

Q. Okay. Did he say something about why he thought the robbery had occurred?

A. He claimed that it could have been the government because they do things like that to keep people in check or intact.

Q. I'm sorry, he said it could have been the government because what?

A. They do things like that to keep people in check or intact.
Q. Okay. Now, did Mr. Moore show you anything on the outside of his house?
A. He showed us where his telephone line had been cut.
Q. Now, please tell the jury just how that happened. Did you walk over to Mr. Moore's house from your house, or did you go

Lance Powell - Direct

in some kind of a car or truck?

A. No, we just walked over.

Q. Now, the three of you walking along together; right?

A. Yes.

Q. And just describe for the jury how it was that Mr. Moore showed you where the phone lines had been cut.

A. He had first brought us into the house and then brought us back out of the house and took us around back to the back, and he showed us where the line had been cut.

MR. TIGAR: Excuse me just a minute.

BY MR. TIGAR:

Q. I want to show you what has been received in evidence -- we have -- I'm sorry, sir. You know, I forgot to say what the book says. Could you keep your voice up just a little more so that everybody within this area can hear every word. And there is a microphone if you want to lean into it.

A. Okay.

Q. Thank you sir. Are you a little nervous?

A. Just a fudge.

Q. Well, I'm sorry. It's not going to be too much longer.

This has been what's received in evidence as Government's Exhibit 1740A. Is that Mr. Moore's house?

A. Yes, sir.

Q. And looking here at Government Exhibit 1740E, which has also been -- yes -- which has also been received in evidence,

Lance Powell - Direct

can you point out on there -- there's a pen -- Can you see on there where the phone line comes in?

A. Where it comes into the house?

Q. Yes, sir.

A. It's just --

Q. Now, there's a pen connected to a wire there. It's high tech. If you go underneath the glass, you can make a mark directly on the screen, if you would, and just circle the place where the phone line comes into the house. Just touch the screen and make a circle.

A. It comes in right here.

Q. Right there. And where was the line cut?

A. It was right in this area.

MR. TIGAR: Okay.

Okay, sir. Thank you. Thank you very much, sir, I have no further questions.

THE COURT: Miss Wilkinson.

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CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Mr. Powell. Just have a few questions for you.

When you got to the house after your mother called, you saw Mr. Moore that morning; correct?

A. Yes, ma'am.

Q. Do you recall what time of the morning it was when you got

Lance Powell - Cross

there?

A. No, ma'am, I don't really know.

Q. You weren't taking notes at the time; right?

A. No.

Q. But Mr. Moore was there?

A. Yes, ma'am.

Q. He told you he had been robbed?

A. Yes.

Q. Did he tell you any of the details of the robbery at that time?

A. Not then.

Q. Did he later tell you?

A. Yes, at his house.

Q. Okay. And you saw some duct tape in his living room; isn't that right?

A. Yes.

Q. And you saw it -- did you go into his bedroom?

A. Yes.

Q. And did you see drawers opened?

A. Yes.

Q. And the bed in disarray? Or if you want to use different words to describe that.

A. I'd never been into his house before, so I really don't have a point of reference for that.

Q. Okay. And when you went up there, did you help your dad

Lance Powell - Cross

put the wires back together for Mr. Moore?

A. No.

Q. Your dad did that by himself?

A. Yes.

Q. And you were not there or you weren't present when Mr. Moore was being interviewed by the sheriff's office, were you?

A. No.

Q. So you don't know the details that he told the sheriff's office; is that right?

A. No.

MS. WILKINSON: I have no other questions. Thank you.

MR. TIGAR: No redirect. Thank you.

Thank you very much, Mr. Powell.

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

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

MR. TIGAR: Jan Dies.

THE COURT: Thank you.

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

(Jan Dies 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: Jan Dies, D-I-E-S.

THE COURTROOM DEPUTY: Thank you.

MR. TIGAR: Excuse me, your Honor.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Miss Dies.

A. Good morning.

Q. Will you tell the jury, please, what you do for a living.

A. I'm an insurance agency, own an insurance agency.

Q. And what is the name of your insurance agency?

A. Jan Dies Insurance Agency.

Q. Where is it?

A. Hot Springs, Arkansas.

Q. Now, do you write for a particular company, or do you handle a number of different insurance companies?

A. I have several companies.

Q. And is Farmers Insurance one of companies that you represent?

A. Yes, it is.

Q. Do you know a man named Roger Moore?

A. Yes.

Q. How did you meet Mr. Moore?

A. Mr. Moore came in my office, and I wrote his homeowner's insurance.

Q. Can you remember, please, when that -- or can you remember when that was?

Jan Dies - Direct

A. August the 18th of about '92, I think.

Q. Let me see if I can find an exhibit here, and we can establish the date.

MR. TIGAR: Excuse me, your Honor. I'm looking for an exhibit here.

THE COURT: All right.

MR. TIGAR: Thank you.

BY MR. TIGAR:

Q. Miss Dies, showing you what has been marked as Defendant's D1768 for identification, can you tell us what that is?

A. That's a copy of the application. Uh-huh.

Q. Now, who did the writing on this?

A. I did.

Q. And was Mr. Moore present when you did?

A. Yes.

Q. He provided this information?

A. Uh-huh.

Q. Is this a record that you make in the or -- regular course of your insurance business?

A. Yes. At that time it is.

Q. At that time?

A. Uh-huh.

Q. Okay. And was it a part of your business to make and keep records like this?

A. Yes.

Jan Dies - Direct

MR. TIGAR: We offer it, your Honor.

MR. ORENSTEIN: Object to relevance.

THE COURT: Overruled. D1768 is received.

BY MR. TIGAR:

Q. Now, I'm going to put this up on the display here and ask you, Miss Dies, if you'd take a look at it. This says, "Roger E. Moore"; correct?

A. Yes.

Q. P.O. Box 2406, Hot Springs, Arkansas; correct?

A. Correct.

Q. And is -- that's his mailing address that he gave you?

A. That is correct.

Q. All right. Then you have a check "other than above if no street number used"; right?

A. Correct.

Q. And there's 6435. And what is that?

A. That's the property address.

Q. Would you call that the insured premises?

A. Yes.

Q. Now, you say here, "new purchase," just -- well, can you read what that says, please.

A. It was a new purchase. He just bought it. The fire receipt is attached, and it was a neat and clean home.

Q. Okay. Now, how -- what is a fire receipt?

A. Mr. Moore's home is outside the city limits of Hot Springs,

Jan Dies - Direct

Arkansas. Hot Springs will not respond to that home if it's on fire. So he has to join a volunteer fire department that will respond.

Q. Oh. And you wanted him to have a receipt that said he'd done that; right?

A. Yes. Yes.

Q. Okay. And then it says, "neat and clean home." Now, had you inspected the home?

A. We inspect all of our homes.

Q. And this was based on your observation; correct?

A. Yes.

Q. All right. Now, showing you what has been received in evidence as Government's 1740A, Miss Dies, it's on your screen. Is that Mr. Moore's home?

A. I remember it had a three-car carport, and it was a white house, one level.

Q. Going back to this form, we see now towards the bottom there are some numbers here. And can you -- and I'll move over -- can you tell the jury what those numbers mean?

A. The dwelling is the amount of coverage on the home.

Q. Now, who determines what that number is going to be?

A. Mr. Moore and I do.

Q. All right. And how -- in your business how do you arrive at this figure?

A. When the prospect comes in, I ask him -- he says he's

Jan Dies - Direct

interested in a homeowner's. I say: What do you want to insure your home for? And he may mention an amount, and then I ask the square footage. And we have a little formula to see if what he wants fits in our guidelines.

Q. And in this -- do you remember at this time whether you looked at the square footage?

A. We always have to look at square footage.

Q. Okay. Is there going to be anything on this form that tells us the square footage?

A. Yes.

Q. All right. Will that be on the next page, then?

A. Yes.

Q. All right. We'll come to that.

And then the next is "separate structures." Does that mean just what it says? That is, if he's got a -- what would that be?

A. A separate garage.

Q. Okay. Or a little barn or storage?

A. Storage, metal storage building.

Q. Then it says, "personal property, \$60,000." You see that?

A. Yes.

Q. Now, what does -- how is that figure arrived at?

A. Homeowner's policy is broken down by percentages. Just because he has 60,000, that didn't mean he necessarily has 60,000. It's just a percentage.

Jan Dies - Direct

Q. Oh. So -- is that driven by the 80,000?

A. Yes.

Q. So if I come in and if I were to say my house is worth a hundred thousand dollars and you and I were to agree on that, then what would this number be?

A. 75 -- contents is 75,000.

Q. So it's three-quarters of it?

A. 75 percent.

Q. Now, and then I can see "loss of use" is \$40,000?

A. Uh-huh.

Q. What does that insure? What peril is that?

A. Loss of use will cover under your homeowner's. If your home burns and you have to live in a hotel and have extra

home burns and you have to live in a hotel and have extra expenses, this policy would pay up to 40 percent to cover your additional expenses you would have while we went back in and fixed your home for you to move back into.

Q. And then over here we see that your premium was going to be what?

A. 334 a year.

Q. Over here on this side, you gave him some discounts; right?

A. Yes.

Q. Non-smoker, and then it says, "home security." What kind of a discount is that?

A. That's a deadbolt lock, fire extinguisher, and -- there's another safety precaution. I don't recall. Deadbolts, fire

Jan Dies - Direct

extinguisher. Smoke alarms.

Q. Smoke alarm.

Now, looking at page -- let me zoom out. Am I now showing you the second page. Okay.

Let's go on. And what did Mr. Moore say about his marital status? Can you see that, or do you want me to bring it up?

A. No, I can see it. I don't remember. It was in his name only, and I don't recall if he said single or divorced.

Q. Okay. But you checked "single"; is that correct?

A. Yes. Yes.

Q. And you do recall he said either single or divorced; right?

A. Uh-huh. Yes.

Q. Now, then it says -- can you read this writing that I'm trying to make out here?

A. I think it says, "Does applicant live alone?"

Q. And then what did he tell you?

A. Yes.

Q. He said he lived alone.

Now, he then said -- it says, "occupation"; right?

A. Uh-huh. Uh-huh.

Q. And it says -- the word's crossed out, and then it says, "retired." How did you get that information?

A. When he started out occupation, he said "self" -- and I wrote "self", and he said, "no, retired." So I scratched out

Jan Dies - Direct

"self" and wrote "retired."

Q. Now, then there's another loss. It says, "losses in the past three years." And he told you about some lightning strike in other house; correct?

A. Correct.

Q. Now, over here on the "residence," we see the square feet, and that's 1724?

A. Correct.

Q. And then "attached garage" is 200 plus a triple-car carport. Is that what that means?

A. Correct.

Q. Now, then, we get down to Question 36, "current market value of home." Right? And what is -- and that's the figure that you discussed with him?

A. Yes.

Q. And he -- now, then, it says, "approximate value of all furniture and personal property." How did -- is that information he provides to you, or is that the same as the other -- that is to say, determined by the 80,000?

A. That's determined by the 80,000.

Q. Then it says, "approximate value of target items, jewelry, guns, etc."

A. Uh-huh.

Q. Let's zoom in so we can try to -- there. "Approximate value of target items, jewelry, guns, etc." How did the figure

Jan Dies - Direct

that's in the blank next to that be -- was that arrived at?

A. Okay. When we write a homeowner's, we say if you have any luxury items, they need to be scheduled, any gun collections or furs, diamonds, minks, anything like that. And he said no, so there's nothing. So I put in the thousand dollars.

Q. Okay. Because you asked him about that; right?

A. That is our procedure, yes.

Q. Now, can you tell the jury a little bit about how the -- how a homeowner's policy works for contents; that is, I've got -- he's got contents insurance now of \$60,000 in the first policy year. Correct?

A. Yes.

Q. Now, if he has -- are there certain items that would not be covered by that 60,000?

A. Yes.

Q. And what would those items be?

A. For example, luxury items, diamond rings. Everything has got to be scheduled that's not considered just average things. If you have a \$10,000 mink coat, you've got to have that on a floater. Gun collection, fine arts, jewelry, stamp collections. That has got to be scheduled. And your appraisal.

Q. Then that was going to be my next question. If Mr. Moore had been interested in purchasing a -- we call it a "floater policy"?

Jan Dies - Direct

A. Yes. So that would be additional coverage, yes.

Q. Then what would he have had to do -- Suppose Mr. Moore had come and said: I have 70 guns in my house and they're worth, you know, many thousands of dollars. What would he have had to do to get the coverage for those guns?

A. He would have to bring me an appraisal from a -- a gun appraisal with serial numbers and the value, and that is attached to the policy. Each gun is listed separately.

Q. Now -- and in -- can you remember back in 1992 about how

much a thousand it would have cost to insure these scheduled items, in your neighborhood?

A. It's about \$8 a thousand.

Q. \$8 a thousand. Now, is that \$8 a thousand -- is going to be more or less depending on the neighborhood; that is, the part of the country?

A. In Arkansas, that is what the rate is. For our company.

Q. I understand. If I lived in New York City, would I expect to pay more?

A. Probably, yes.

Q. Okay. And with no disrespect meant to any part of the country, but how does your company set that amount per thousand that they're going to charge you to insure your things?

A. Well, I'm not an analyst on that, but I would suppose that it's based on our claims and our exposure. We're just a small state, and we don't have a great deal of exposure for guns.

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Q. Now, putting that back up, what's been received as Defendant's D1768, then you talk about "location supplement" and "secondary heating," and so on; correct?

A. Correct.

Q. All right. Now, in the -- this policy year went from when to when; do you remember?

A. It's an annual policy. Written August the 18th, '92, it renews August the 18th, '93, and thereafter.

Q. Okay. Now, is there an escalator that's built into the renewal of this policy?

A. Yes, there is.

Q. And how does the escalator system work?

A. Homeowner's usually has an acceleration clause. Because when you buy your home, you may pay 80 for it, but in a few years that value has increased, and the policy automatically increases on renewal, based on the square footage, and they look at homes in that area with the ZIP Codes.

Q. Now, in November of 1994, did Mr. Moore still have insurance with your company based on this initial application that he had made and the policy that you all issued?

A. Yes, he did.

Q. And what was his homeowner amount -- that is, what was his home insured for, if you remember, at that time?

A. I do not remember.

Q. Okay. Do you remember what the contents were insured for

Jan Dies - Direct

at that time?

A. It would have been 75 percent of the renewal, but I do not remember.

Q. All right.

See if I can find a . . .

I'm going to show you now a document and ask you if that -- if it refreshes your recollection.

MD, OPENING BY [Name] [Address] [City] [State] [Zip]

MR. ORENSTEIN: Excuse me, your Honor. May I inquire which document --

MR. TIGAR: Oh, I'm sorry. Show that to counsel.

BY MR. TIGAR:

Q. I recognize that's not your -- this is not your document. But I just wonder if looking at it refreshes your recollection.

A. 84,000, 63 --

THE COURT: No, don't read off it.

BY MR. TIGAR:

Q. Oh, okay. Don't read it. Having looked at it, does that refresh your recollection as to what it had escalated to?

A. No.

Q. Okay. All right.

Now, did there come a time in 1994 when you heard about a claim that Mr. Moore was going to make on this policy that you had issued?

A. Yes.

Q. And when did you hear that, if you can remember?

Jan Dies - Direct

A. November the 5th.

Q. How did you hear about it?

A. He came into my office.

Q. Now, were you the first person that he spoke to in the office?

A. I believe he came in and spoke with the other agent in my office and was talking, and I walked up and took over the claim.

Q. And who was the other agent in your office at that time?

A. Dana Priddy.

Q. Who is Dana Priddy?

A. My daughter.

Q. And how long had Miss Priddy, your daughter, been working with you in the agency at that time?

A. Probably a year and a half at that time.

Q. Now, to go back a little ways, in order to have an insurance agency, as do you there, in Hot Springs, what sorts of licensing and procedures do you have to go through?

A. We have to be examined by the State of Arkansas and pass a written exam. And then she has to have continuing education credits.

Q. I'm sorry. She?

A. Dana has to have continuing education in Arkansas. I'm --

Q. Now, what kind of license do you hold; that is, to have the agency?

Jan Dies - Direct

A. Property, casualty, life, and health.

Q. What kind of licensing requirement has she gone through?

A. The same.

Q. Now, when Mr. Moore came in, will you -- what did he say?

A. He was talking: He had had an armed robbery and he wanted to file a claim.

CC FILE A CLAIM.

Q. Did he describe to you what had happened?

A. Yes.

Q. What did he say had happened?

A. He said he was outside and he was jumped by someone in camouflage. They held a gun on him, took him into the home, tied him up with duct tape, and robbed him of \$8700 in cash, multiple guns, gold, silver, and precious stones.

Q. Now, did he tell you that he had been tied up with police ties or wire ties?

A. He said duct tape.

Q. Did he ever mention police ties or wire ties?

A. Not to -- not that I remember.

Q. Now, how long did that first meeting last?

A. He was probably in the office maybe 10 or 15 minutes.

Q. And did you talk to him about the extent of his coverage?

A. Yes.

Q. What did you say to him about his coverage?

A. He had a list of guns with him. And I looked at that. And I said, "Mr. Moore, these guns are not going to be covered on

Jan Dies - Direct

your homeowner's. Guns like this would have to be scheduled."

I said, "Why didn't you tell me you had guns like this?"

And he said, "Well, I didn't want anyone to know it."

Q. Now, did he say anything else during that time that you can remember about what had happened or about his insurance?

A. No.

Q. Now, was -- did -- well, did there come a time when he came to see you again?

A. Yes.

Q. And about how long was that after that first time?

A. You're talking about the theft?

Q. Yes, about the theft.

A. It was a few months, seems like.

Q. All right. Now, in between that time, had he called your agency?

A. Yes.

Q. Now, when he called your agency, did he speak first to you?

A. No.

Q. All right. Did your daughter tell you that he had called?

A. Yes.

Q. When she told you, was she upset?

A. Yes.

Q. And had -- and did you understand from her that he was on the phone at that time wanting to talk to you?

MR. ORENSTEIN: Objection to hearsay.

Jan Dies - Direct

THE COURT: Overruled. It's for the -- simply asking her whether this was --

MR. TIGAR: I'm trying to establish a foundation, your Honor, for --

THE COURT: Well, yeah. All right. Overruled.

THE WITNESS: Would you repeat the question.

BY MR. TIGAR:

Q. Yes. Did you understand that he was on the phone at that time? He was on the phone?

A. He was not on the phone when I got back to the office. But she told me he called.

Q. And did she say when he had called?

MR. ORENSTEIN: Objection to hearsay.

THE COURT: Sustained.

BY MR. TIGAR:

Q. All right. When you got back to the office, was your daughter upset?

A. Yes.

THE COURT: I don't know where we are in time now.

BY MR. TIGAR:

Q. All right. Can you tell us about what time that this telephone -- that this event occurred that your daughter -- you got back to the office, your daughter was upset?

A. It's after the claim, maybe a month. I'm not sure of the time.

Jan Dies - Direct

Q. And you got back to the office; right?

A. Yes.

Q. And could you describe your daughter's manner?

A. Very nervous. Frightened. Begging me to please call him immediately.

MR. ORENSTEIN: Objection to hearsay, your Honor.

THE COURT: Overruled as to that.

BY MR. TIGAR:

Q. And what did your daughter say Mr. Moore had said?

MR. ORENSTEIN: Objection.

THE COURT: Sustained.

BY MR. TIGAR:

Q. Did you call Mr. Moore that day?

A. Yes.

Q. And did you discuss his claim with him?

A. Yes.

Q. What did he say?

A. He was aggravated because he was not being contacted the way he felt like he should be. He was aggravated because he felt like people were not working on his case. He was just totally aggravated.

Q. Now, after he made his initial claim, did you refer the claim to your regular claim-processing procedure?

A. Yes.

Q. Now, in addition to the time shortly after the robbery and

Jan Dies - Direct

this event when you came back to the office, did you have any other discussion with Mr. Moore about the robbery?

A. Yes.
Q. And did he describe who he thought had done it?
A. Yes.
Q. Would you tell the jury what he said about that.
A. When he came in and filed the claim, he said, "The feds did it." He kept over and over about "the feds did it."
Q. Okay. Now, which meeting was it where he said, "The feds did it"?
A. That's when he turned in the claim in November.
Q. Now, at that -- did he show you something on that occasion?
A. When he was sitting in my office, after he had spoke with Dana, that was -- that was not the same day, but it was later. I was frightened of him.
Q. Well, without regard to how you felt about it, but did he show you something?
A. Yes. He showed me a badge.
Q. And what did the badge look like?
A. It looked very official. It was in a black case. A flip, looked like a billfold-type thing.
Q. And did this billfold -- did it appear to have currency or credit cards in it in addition to this badge?
A. All I remember was that big badge.
Q. And what did he say when he showed you this badge?

Jan Dies - Direct

A. "Don't tell anyone I showed you this."
Q. Now, did you ever -- did Mr. Moore, in your presence, ever discuss explosives?
A. Yes.
Q. What did Mr. Moore say about explosives?
MR. ORENSTEIN: Objection. Relevance.
THE COURT: Well, we need some time and foundation.
MR. TIGAR: Yes, thank you. Thank you, your Honor.

BY MR. TIGAR:

Q. When was the conversation in which --
A. The same day he showed me the badge.
Q. Okay. And about when was this in relation to the robbery?
A. Oh, couple of months, maybe.
Q. All right. But within that year 1994?
A. Yes.
Q. And Mr. Moore was still your client at that time?
A. Yes.
Q. Is that right? What did he say about explosives?
MR. ORENSTEIN: Objection, your Honor.
THE COURT: Overruled.
THE WITNESS: Mr. Moore was telling me about he was doing his own research of trying to find the guns and that he was very agitated and that he was very -- that he was going to put explosives around his house; that if anyone came on his property, that they would blow up.

Jan Dies - Direct

MR. TIGAR: May I have a moment please?

MR. TIGAR: May I have a moment, please:

THE COURT: Yes.

MR. TIGAR: Miss Dies, thank you very much. I have

no
further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, Mrs. Dies.

A. Good morning.

Q. We met a couple of nights ago --

MR. TIGAR: I'm sorry. Did you want the exhibit?

MR. ORENSTEIN: No.

BY MR. ORENSTEIN:

Q. We met a couple of nights ago; correct?

A. Yes.

Q. Thank you very much for meeting with us.

Now, Mrs. Dies, you've been in the insurance business
for some time; correct?

A. Correct.

Q. And you've had experience with people who come in and claim
losses?

A. Yes.

Q. And you process their claims and you send it on to an
adjuster; correct?

A. Correct.

Jan Dies - Cross

Q. Now, is it true that when people submit a claim, often they
don't know at the start what they have and that they, as they
go on through the process -- they might revise their initial
estimate as they discover things that have gone missing?

A. Correct.

Q. And when Mr. Moore came in in November of 1994 to report
his loss, he had already filed a report with the police;
correct?

A. I assume he had. I don't know.

Q. You know eventually he did?

A. Yes.

Q. And that was part of the process of filing the claim?

A. Correct.

Q. And you discussed with him the fact that his guns weren't
covered?

A. Yes.

Q. And eventually the claim was paid off; correct? Mr. Moore
was paid for his claim, not on the guns --

A. A partial.

Q. -- but for things that had been robbed?

A. Some of the things.

Q. And he was paid less than \$6,000?

A. Yes.

Q. Did he ever express any anger about the amount of his
payment?

Jan Dies - Cross

- A. No.
- Q. Now, you told us that when he came in -- this was right after the robbery; correct?
- A. Which time?
- Q. The first time, when he first reported the claim?
- A. Yes, when he reported the claim.
- Q. First business day after the robbery; is that right?
- A. No.
- Q. That day?
- A. When he had the robbery?
- Q. Yes.
- A. He was robbed on Friday. He reported it on a Monday.
- Q. So the first business -- the next business day?
- A. Yes. Yes.
- Q. And he came in and he told you that he had been accosted by a man with a shotgun?
- A. I don't know if it was a shotgun, but he said --
- Q. A gun?
- A. A gun.
- Q. Outside his house?
- A. Yes.
- Q. Wearing camouflage?
- A. Yes.
- Q. Do you recall he said that the man was wearing a mask?
- A. He did not know who it was, so apparently.

Jan Dies - Cross

- Q. And he told you about the guns not being covered that he didn't want people to know what he had?
- A. Exactly.
- Q. And he wasn't angry about the amount of his coverage?
- A. He was disappointed, but he was not angry.
- Q. And he didn't fight you on that?
- A. No.
- Q. He was angry at one point that you weren't taking enough care of him?
- A. He felt -- yes.
- Q. And that you weren't doing enough to find out who did this?
- A. Yes.

MR. ORENSTEIN: Thank you, ma'am, nothing further.

THE COURT: Any redirect?

MR. TIGAR: Yes.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. TIGAR:

- Q. Counsel has asked you about whether he was upset with the amount of his payment; right?
- A. Yes.
- Q. Let's start: When's the first that Mr. Moore said he was upset with you?
- A. He was more upset with my daughter.
- Q. I see.

Jan Dies - Redirect

A. He didn't really express any kind of thing to me. But he just scared me about his badge and his knowledge about explosives.

MR. TIGAR: And -- Thank you very much. I have no further questions.

THE COURT: I take it she's excused.

MR. ORENSTEIN: Yes, your Honor.

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

We'll take our recess at this time. We'll take our usual -- take our usual recess at this time, members of the jury, of the 20 minutes' duration, during which, of course, all the cautions always given. You get tired of hearing them, and I sort of get tired of saying them; but they're important, and it's required of me that I do remind you at all recesses to keep open minds, avoiding discussion of the case with other jurors and all other persons, and continuing to wait until you've heard it all before you in your own minds make any conclusions or decisions about the matter on trial. And continue to be careful so that you can limit your consideration of the issues to the evidence that's actually presented to you in the courtroom.

You're excused now, 20 minutes.

(Jury out at 10:20 a.m.)

THE COURT: Okay. Recess.

MR. MACKEY: May we approach very briefly? I apologize.

THE COURT: Give it to me when we come back.

MR. MACKEY: Very well.

(Recess at 10:20 a.m.)

(Reconvened at 10:40 a.m.)

THE COURT: Be seated, please.

Mr. Mackey, you wanted to approach?

(At the bench:)

(Bench Conference 105B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

(Jury in at 10:43 a.m.)

THE COURT: Okay. Next witness, please.

THE COURT: Okay. Next witness, please.

MR. TIGAR: Dana Priddy.

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

(Dana Priddy 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: Dana Lynn Priddy, P-R-I-D-D-Y.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Ms. Priddy.

A. Good morning.

Q. I'm going to ask you if you would please to keep your voice up so that at least everybody within this enclosed area can hear you. There is a microphone there so you don't have to shout.

A. Okay.

Q. Ms. Priddy, would you tell the jurors, please, where you live.

A. Hot Springs, Arkansas.

Q. Are you married?

Dana Priddy - Direct

A. Yes.

Q. Do you have children?

A. Yes.

Q. How many children?

A. Two beautiful boys.

Q. And how old are they?

A. I have a five-year-old and a three-month-old.

Q. And we'll -- is the three-month-old here with you?

A. He's in the witness room.

Q. We'll try to get you back there.

What do you do for a living?

A. I'm a licensed insurance agent, and I'm employed with the Jan Dies Insurance Agency.

Q. Who is Jan Dies?

A. That's also my mother.

Q. How long have you been in the insurance business?

A. For about three-and-a-half years, maybe four.

Q. Now, in order to be a licensed insurance agent, tell the jury what you have to do.

A. You have to have a high school education, go to insurance school, get your accreditation hours and take a test -- three tests.

Q. Three tests. And you passed them?

A. Yes.

Q. Moving to November of 1994, where were you working?

Dana Priddy - Direct

A. Jan Dies Insurance.

--- ---- -
Q. What was your job there?
A. To provide customer service and to service the policies that belonged to Jan, to take claims, take payments, etc.
Q. Now, how many folks work for your mom's -- for the insurance agency, the Jan Dies agency?
A. At that time?
Q. At that time, yes.
A. Just she and I.
Q. If I were to go -- Where is it? Hot Springs?
A. Uh-huh.
Q. If I were to go to Hot Springs, Arkansas, what does your office look like?
A. Well, we have one big room. I'm not sure on square footage, maybe 600 square feet, with a big counter; and that's our main office. And she has a small office in the back.
Q. Where did you sit at that time?
A. I sat at the counter.
Q. Now, the counter: Could you tell the jurors about how high is it?
A. About as high as the jury thing here.
Q. And was your desk behind the counter so you could see customers when they came in?
A. Yes. It's very long, and it has three desks behind the counter; and I was at one of them.

Dana Priddy - Direct

Q. Now, on the other side for the customers, do they stand when they talk, or do they sit? What kind of things do you have there?
A. We had two barstools. Sometimes they stand, sometimes they sit.
Q. Do you know a man named Roger Moore?
A. Yes.
Q. When did you first meet Roger Moore?
A. On the day that he filed his insurance claim in November.
Q. All right. Do you remember about when that was?
A. I know it was around November 5. I'm not sure if he filed the claim the day of the robbery or the day after, but it was within the proximity.
Q. Okay. Now, I'm going to show you what's been marked as Defendant's Exhibit D1769 and ask you if you recognize that.
A. Yes.
Q. All right. Without telling us what's on it, could you tell -- tell us what it is.
A. It's a property loss report.
Q. Now, is that a record of your agency?
A. Yes.
Q. And is it in the regular business of your agency to make records like that?
A. Yes.
Q. And did you participate in getting the information that's

Dana Priddy - Direct

on there?

A. No.

Q. All right. Who was -- would have done that?

A. Jan.

Q. All right. And is the information that's placed on there relied on in the business of your agency?

A. Yes.

MR. TIGAR: We offer it, your Honor.

MR. ORENSTEIN: May I voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, Ms. Priddy.

A. Good morning.

Q. Ma'am, you didn't fill out this form; correct?

A. No.

Q. Your mother did?

A. Yes.

Q. Now, this is the kind of form that's filled out when somebody comes in to file a claim; correct?

A. Yes.

Q. And you weren't taking the claim, the report?

A. Exactly.

Q. Your mother was?

A. Yes.

Dana Priddy - Voir Dire

Q. She was the one paying attention? It was her job to fill out this form and -- fill it out?

A. Yes.

Q. And do you know whether she wrote down exactly what she was told?

A. Yes. We always do.

Q. Okay. Do you recall whether -- how long was Mr. Moore there?

A. It's been so long ago. 20 minutes. That's a guess.

Q. Okay. In 20 minutes he can say more than about 20 words; correct?

A. Yeah.

Q. So what's written here is not fully what he said?

A. True.

Q. And to find out what he said, we could ask your mother?

A. Yes. Or me. I was in the same room.

Q. And she was the one who was taking the report and paying attention?

A. Right.

MR. ORENSTEIN: We object, your Honor.

THE COURT: Received. Continue.

DIRECT EXAMINATION CONTINUED

BY MR. TIGAR:

Q. Thank you, Ms. Priddy.

Now, Ms. Priddy, you said a moment ago you were in the

Dana Priddy - Direct

same room when Mr. Moore described what had happened to him?

A. Yes, sir.

Q. And he -- he told he had been robbed; correct?

A. Yes.

Q. Did he say how he had been restrained or tied?

A. With duct tape.

Q. All right. Did he mention that he had been tied with wire ties or police cuffs?

A. No.

Q. And did he say who he thought had robbed him?

A. He repeatedly said that he -- that the feds did it.

Q. And was this -- the robbery took place -- it says the loss date on here -- this is D1769 now in evidence. Says the loss date is 11-5-94. Now, do you remember what day of the week the 5th of November was of 1994?

A. No, sir.

Q. Well, would it refresh your recollection if I showed you a --

THE COURT: I thought that she'd have a recollection. Let's just establish by the calendar.

MR. TIGAR: Thank you, your Honor.

THE COURT: What day is it?

MR. TIGAR: The 5th of November, '94? It would be a --

MS. WILKINSON: Saturday.

Dana Priddy - Direct

MR. TIGAR: Saturday, your Honor.

MR. ORENSTEIN: Saturday, your Honor.

THE COURT: All right. So you can take it as true that it was Saturday.

BY MR. TIGAR:

Q. And do you remember him coming in shortly after the loss date that's on here?

A. Yes.

Q. Okay. Do you remember now, knowing that the 5th was a Saturday, what day it was that he came in to talk to you?

A. It was fairly recent, so I'm going to assume it was Monday.

Q. Now, you said you were -- where was Mr. Moore -- where was this conversation that Mr. Moore was having with Ms. Dies in the office? Was it out in that big room?

A. Yeah. We were in the big room.

Q. And where was he sitting or standing?

A. She was at the middle desk.

Q. Where was Mr. Moore?

A. Standing right in front of her.

Q. And you could hear what was being said?

A. Yes. Everything.

Q. Did he describe -- did he say that whoever had robbed him had had a gun?

A. I don't recall that

A. I don't recall that.

Q. And he described certain things he said were missing;

Dana Priddy - Direct

correct?

A. Yes.

Q. And did your -- did you -- he and Ms. Dies then have a discussion about the extent of his coverage?

A. Yes.

Q. And what did she tell him about his coverage?

MR. ORENSTEIN: Objection.

THE COURT: Overruled.

BY MR. TIGAR:

Q. You can answer.

A. He had said that there was lots of guns.

And she said, "For you to get full compensation for the guns, you should have bought a gun floater."

Q. All right. And did he say anything about that?

A. Yes.

Q. What did he say?

A. He said he didn't -- he knew that he'd have to have a floater but he didn't want to tell her because he didn't want her to know what he had.

Q. Now, after this -- about how long did this first meeting take, ma'am?

A. 20 minutes.

Q. All right.

A. Maybe.

Q. Now, after you got your property loss report, did your

Dana Priddy - Direct

agency go through the procedures to get that claim handled by the company?

A. We turned it in to the claims department.

Q. And did you treat it any differently from any other claim?

A. No.

Q. Did there come a time when Mr. Moore called you on the phone about the claim?

A. Yes.

Q. And you recognized his voice?

A. No. He identified himself.

Q. Okay. But you had heard his voice in the room; right?

A. Yes. Yes.

Q. And what was the tone of his voice on the phone?

A. He just wanted to talk to Jan. He was unhappy about his claim.

Q. And was Jan there?

A. Yes.

Q. What was she doing?

A. She was with a client in her office.

Q. And did you explain that to Mr. Moore?

A. Yes, I did.

Q. And would you tell the jury, please, what he said.

A. It was about 11:45, and he had called and wanted to talk to Jan; and there was a client in her office, and her 12:00 was standing in front of me. And I told Mr. Moore that I would

Dana Priddy - Direct

have her return his call but it would probably be after 1:00. And that's when Mr. Moore got angry.

Q. And when he got angry, what did he say?

A. Well, he wanted me to interrupt her appointment; and I said that I wouldn't but I would have her return his call after 1.

Q. And what did he say when you said that?

A. And then he said that he was -- he was angry and he was coming to the office to smear me all over the counter.

MR. TIGAR: I have no further questions.

THE COURT: Mr. Orenstein.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, again.

A. Hi.

Q. Mr. Moore was mad that you wouldn't put your mother on the phone right away; correct?

A. Yes.

Q. Never heard him say he was mad about the amount he got paid?

A. No.

Q. And you remember him saying that he was robbed by a man who had a mask?

A. I'm not sure if there was one man or two; but yes, there was a mask.

MR. ORENSTEIN: Thank you, ma'am. Nothing further.

THE COURT: Excused?

MR. TIGAR: Nothing further. Thank you very much for coming all this way.

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

MR. TIGAR: Rick Spivey.

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

(Richard Spivey affirmed.)

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

THE WITNESS: Richard Joel Spivey, S-P-I-V-E-Y.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mr. Spivey.

A. Good morning.

Q. Will you tell the jury, please, what you do for a living.

A. I'm a claims supervisor in the insurance claims office in Little Rock, Arkansas.

Q. What -- what company is that?

A. Farmers Insurance Group.

Q. How long have you worked for Farmers Insurance Group?

A. Since April of 1990.

Richard Spivey - Direct

Q. Directing your attention, sir, to April -- excuse me -- to November of 1994, what was your job with Farmers?

A. I was a claims representative.

Q. And did you have the responsibility for investigating a claim by a policyholder named Roger Moore?

A. Yes, I did.

Q. And what did you do in order to investigate that claim, sir?

A. I was assigned the claim, contacted Mr. Moore, and discussed the loss with him over the telephone. And a few days later, I actually went out to the residence and met with him face to face.

Q. All right. Do you remember when you were assigned the claim, sir?

A. I believe it was November 7. I might be incorrect on that, but I believe it was in the first week of November.

Q. Did -- sorry. I lost my train of thought there, sir.

When you were assigned the claim, did you call Mr. Moore in an effort to make an appointment?

A. Yes, I did.

Q. Now, I'm going to show you what has been marked as Defendant's D1124 for identification. And can you tell me what that is, sir?

A. It is a property insurance loss register.

Q. And does that bear your signature?

Richard Spivey - Direct

A. Yes, it does.

Q. And is that the date of your signature?

A. Yes, it is.

Q. Now, that is a form that you make in the regular course of your business at Farmers?

A. Yes, it is.

Q. And it is -- is it in the regular course of your business to keep records like this?

A. Yes.

MR. TIGAR: We offer D1124, your Honor.

MR. ORENSTEIN: No objection.

THE COURT: Received, D1124.

BY MR. TIGAR:

Q. I'm going to place this up on the monitor here, sir.

Tell the jury what this -- is this called a PILR?

A. Yes, sir.

Q. Well, what is the purpose of this PILR form?

A. It is a reporting over a database that insurance companies can report specific losses to this database that becomes available for other carriers to be able to inquire about prior losses on insureds.

Q. And where did you get the information that you put on the form, sir?

LOTH, SII:

A. There is a loss report that is printed out at the time the loss is reported to the claims office, and it lists in that

Richard Spivey - Direct

instance -- it lists the amount of the limits of the policy itself; of course, the policy number and the claim number.

Q. Now, you put insured is "Moore, Roger E." Correct?

A. Yes.

Q. And then second insured, "Moore, Karen." Correct?

A. Yes.

Q. Do you remember where you got that information?

A. It was probably how the policy was set up with the agent. And I'm sure that that's where that information came from.

Q. And then going down, we find that the amount of policy on contents is \$63,000. Is that right?

A. Yes, sir.

Q. Now, you have the figure under "estimated loss" of "\$12,000." Correct?

A. Yes, sir.

Q. Do you remember where that number came from?

A. Evidently, my first conversation over the telephone with Mr. Moore, and he indicated the items that were stolen. I knew that limits -- sub-limits within the policy were going to apply to this, and I assume that I got that number -- it was the best guesstimated figure that I could come up with at that point prior to going out and meeting with Mr. Moore.

Q. Okay. And then at the bottom is your signature, "R. Spivey, 11-8-94" -- whoops. "11-8-94." Correct, sir?

A. Yes, sir.

Richard Spivey - Direct

Q. Now, what is the purpose of this form?

A. Again, to report it to that specific company so they'll have it on database in case someone wants to inquire to Mr. Moore in the future.

Q. So if -- in other words, if I had had a loss with your company, and you would fill out this form; right?

A. Yes.

Q. And then if I wanted to get insurance with somebody else, they can call this central database, the other insurance company, and they'll find what my loss record is. Is that correct?

A. Yes. I believe so.

Q. Now, after you prepared this report, you said you went out and interviewed your insured; correct?

A. Yes, sir.

Q. And where did you do that?

A. At his residence.

Q. Do you remember what that residence looked like?

A. Yes, I do.

Q. Showing you what's been received in evidence as Government's 1740C, does that look like the house where

Mr. Moore lived?

A. Yes, it does.

Q. Now, you explained to Mr. Moore -- what did you explain to Mr. Moore when you got out there to talk to him?

Richard Spivey - Direct

A. Well, we talked about the loss itself and, of course, his statement was taken; and then we got involved as far as the process for replacement of some of the items and the limits on some of the items that he was making a claim on. We also discussed that. Basically, the entire situation was discussed.

Q. Okay. And is it your habit to tape-record interviews?

A. Yes, it is.

Q. Why do you do that?

A. For record.

Q. Is that -- is that a practice of yours, or a requirement of your company? How does that come to be, that requirement?

A. It's a requirement of the company.

Q. And were you trained as an investigator in the use of the tape recorder?

A. Yes, I was.

Q. And what did your training -- what kind of training did you get in the use of the recorder?

A. From basics of how to introduce yourself, how -- you know, what type of questions to ask and just how to proceed through the recording itself.

Q. Now, when you make a tape recording of an interview with one of your insureds, do you have a practice of when you -- the tape runs out and you've got to turn it over or put in a new tape as to what you say to the person?

A. Yes.

Richard Spivey - Direct

Q. And what do you say then after you start up the tape again?

A. Just reintroduce myself and make sure that the question is asked as to whether that person is aware that the tape was off and if he was -- was any conversation made regarding that statement while the tape was off.

Q. And what is the purpose of your doing that, sir?

A. To make sure that it is aware on the recording that nothing was talked about that was not recorded on the statement.

Q. Now, when you were out there that day, did you take some pictures?

A. Yes, I did.

Q. And did you mount those pictures up on a sheet as a part of your report?

A. Yes, I did.

Q. And when you were out there that day, did you also make a list of the items on which the claims were being made?

A. I do not recall if I made the list when I was there at the residence or if I made that when I got back to my office.

Q. All right. I'm going to show you first, sir, what's been marked as Defendant's 1799 for identification, sir, and ask you if that is a record that you prepared.

A. Yes, it is.

Q. And is it in the regular course of your business to make records like this?

A. Yes, it is.

Richard Spivey - Direct

Q. And are the entries on it designed to be used in the -- doing your business?

A. Yes, it is.

MR. TIGAR: We offer D1799, your Honor.

MR. ORENSTEIN: No objection.

THE COURT: It's received.

BY MR. TIGAR:

Q. While I'm here, sir, I'm going to ask you to take a look at what has been marked as D1206, ask you to leaf through it. I ask you whether that is a Xerox copy in black and white of the photos that you took and the photo log that you made from the photos you took that day?

A. Yes, it is.

MR. TIGAR: We offer D1206.

MR. ORENSTEIN: No objection.

THE COURT: Received.

What was -- how many of them are there?

MR. TIGAR: How many photos?

THE COURT: Are there multiple pages?

MR. TIGAR: Yes. It is Bates' stamped, your Honor,

up

to page 7.

THE COURT: Thank you.

MR. TIGAR: And it consists of eight pages because

the

first numbers are 1, 2, 3, 4 -- I'm sorry, your Honor. The Bates' stamping is out of order. Let me re-count the pages and

Richard Spivey - Direct

tell your Honor.

No, I'm sorry, your Honor. I had two stuck together. There are eight pages numbered 0 through 7.

THE COURT: Thank you.

BY MR. TIGAR:

Q. Now, sir, starting here with D1799 now in evidence, is this -- it says "Personal Property Claims Estimate and Loss Worksheet"; correct?

A. Yes, sir.

Q. What is the purpose of this kind of a record in your work, sir?

A. It's the form that we use to list the personal property that the insured is making a claim on.

Q. Now, when you went out there, sir, did you -- you

understood what the policy limits were; correct?

A. Yes.

Q. On contents; correct?

A. Yes.

Q. And was this a contents claim?

A. Yes, it was.

Q. Was he claiming anything for damage to his house?

A. I do not believe so, no.

Q. Now, did he have a deductible in on his policy?

A. Yes, he did.

Q. What was his deductible?

Richard Spivey - Direct

A. I believe it was a \$500 deductible.

Q. So -- now -- so that if his loss that he -- of insured property was \$63,500, what would he get?

A. After the deductible?

Q. Yes.

A. It would be a \$63,000 loss.

Q. And if it was \$700, he'd get 200; correct?

A. Correct.

Q. We can do the arithmetic.

A. Yes.

Q. And did the contents insurance: Did he have a floater policy in addition to that?

A. I don't believe he did, no.

Q. Now, we saw the numbers originally here of 84- and 63-. Now, what is your understanding of the relationship between the 84,000 number on building and the 63,000 on contents?

A. Well, they are separate limits built within the policy. The building, of course, is for the dwelling itself; and the contents are the personal properties in the dwelling.

Q. Now, if I insure my house for \$50,000, will my contents be a percentage of that in your standard policy?

A. Not being an agent, not selling the insurance, I'm not real familiar with that end; but I believe that it is built in. A certain percentage would apply for the contents that can be changed or negotiated, so be (sic), with the insured.

Richard Spivey - Direct

Q. Now, coming back to Defendant's 1799 in evidence, this is what Mr. Moore said he lost; correct?

A. Yes. That's my list of the items that he reported.

Q. Okay. And that's based on what he told you; correct?

A. Yes.

Q. Said he lost 77 firearms, rifles, shotguns and pistols; correct?

A. Yes.

Q. Then ammunition?

A. Yes.

Q. Jewelry, stones?

A. Yes.

Q. Cash. gold and silver?

Q. Cash, gold and silver.

A. Yes.

Q. Four vibration detectors?

A. Yes, sir.

Q. And a camera?

A. Yes, sir.

Q. And a video camera?

A. Yes, sir.

Q. Now, where did you get -- I see "location," and it all says "house." Correct?

A. Yes, sir.

Q. And then says "place of purchase," "collected for 30 years" on the guns. Is that what he told you?

Richard Spivey - Direct

A. Yes, it is.

Q. And then under "ammunition," it says "Stromen" place of purchase. Is that the name of a business?

A. I do not recollect if that was a person or if that was a business, but it was the place that he told me that it was purchased at.

Q. Now, he gave you -- where did you get these replacement costs and original-cost numbers?

A. The original-cost numbers would be the numbers that I obtained from him from his list that he provided us.

Q. Okay. Now, on the guns, there is no original cost, just a replacement cost. Correct?

A. Yes, sir.

Q. And then on the ammunition, the original cost, replacement cost the same?

A. Yes.

Q. Then on the jewelry and stones, there is -- looks like something has been written over here. Can you tell us about those entries?

A. It appears that I started with -- I would think it looks like a 4500 and maybe changed to 5500.

Q. Okay. Then looking here at the cash, gold and silver, we see 17,650. Correct?

A. Yes.

Q. And then going down, the vibration detectors are 500 and

Richard Spivey - Direct

500. Then when we get to the camera, we see a 550 on original cost and 469 on replacement, and then you say "Easy Val" and "Serv. Mdise." What does that mean?

A. Well, "Serv." -- that is Service Merchandise, the outlet store that you can purchase the camera at. And I also got the price -- I'm not sure if I used it or if it was the same price, but Easy Val is a program that we can use through our company that replaces electronics and items of that nature.

Q. So that's just -- it's a computer program?

A. Yes.

Q. And that shows percentages?

A. Yes.

Q. Now, on this -- so the cost -- the replacement cost: That was the amount that under your calculation using the Easy Val for these last two items -- how would you describe it? The amount he was saying he lost?

A. Well, it's the actual amount that it would take to replace the items that he was claiming was lost.

Q. Now, have you totaled up these items?

A. It's not on the list; but yes, I remember -- or I have seen and known that the items total up to be over \$63,400, I believe.

Q. So he -- the total is 63,400. Correct?

Now, going over here -- is that right?

A. Yes. Somewhere in that area. Not exactly.

Richard Spivey - Direct

Q. When you met with a representative of the defense last night, were you asked to make a -- to check the arithmetic?

A. Yes.

Q. And you've done that?

A. Yes.

Q. Okay. Now, on these applicable policy limitations, you have a series of numbers over here. What does that mean?

A. Well, homeowner's policy has limits built into it on certain items, and those limits apply unless the insured has an endorsement which you mentioned earlier to increase the amount of coverage for those specific items.

Q. So these are policy limits that you filled in based on your understanding of what the limits were of the policy he had?

A. Yes, it is.

Q. And what was your total that you came to?

A. \$5,913.

Q. Now, during your interview with Mr. Moore, was someone else present other than you and Mr. Moore?

A. Yes, there was.

Q. Who was that?

A. I believe it was Ms. Anderson.

Q. Were you introduced to her?

A. Yes, I believe I was.

Q. Can you describe her, color hair, size?

A. No, sir, I probably couldn't at this point.

Richard Spivey - Direct

Q. Was she in the place with you all the time while you were talking to Mr. Moore, if you remember, or did she come and go?

A. I'm -- I believe she was there the majority of the time I was speaking with him.

Q. Now, did you ask him whether he had been alone in the house on the 5th?

A. On the 5th, the date -- that is the date of loss?

Q. Date of the incident, yes.

A. I'm sure it was on the taped statement who all was at the

residence at the time of the loss.

Q. Did he -- did you ask him who Ms. Anderson went to visit?

A. Yes, I did.

Q. And what did he say?

A. I believe she was going to Louisiana to visit -- I'm not sure if it was friends or to a horse show or something of that nature.

Q. Okay. And did you ask him who did she go visit twice?

A. Possibly could have, but I don't remember --

Q. I'm going to show you a page of your interview and just ask you to look at from there to there and read it to yourself, and then I'll ask you if that refreshes your recollection.

MR. TIGAR: Page 2 of the transcript.

MR. ORENSTEIN: Thank you, sir.

MR. TIGAR: About four questions from the bottom.

BY MR. TIGAR:

Richard Spivey - Direct

Q. Does that refresh your recollection, sir?

A. Yes.

Q. And how often did you -- how many times did you ask him who Karen Anderson had gone to visit?

A. It appeared to be two times.

Q. And what did he say the first time?

A. I believe "some friends."

Q. Okay. Did he say he knew who they were?

A. I think after the second question, he named some names.

Q. Did he answer -- what did he say in response to the first question?

A. I believe it was, "I don't know. Just going to see some friends."

Q. Now, then did he describe to you what he said happened to him?

A. Yes, he did.

Q. And did he tell you that he had been -- had been put in restraints of some kind?

A. Yes, he did.

Q. What kind of restraints did he say he had been put in?

A. I believe it was some type of military ties, something of that nature.

Q. Once again, sir --

MR. TIGAR: Page 5.

BY MR. TIGAR:

Richard Spivey - Direct

Q. -- I'm going to show you your report and ask you to look at what I've highlighted and see does that refresh your recollection how he said he had been restrained.

A. Yes.

Q. And what did he say the restraints were?

A. They were police tie wraps.

Q. Did he say what size they were?

A. I don't recall

A. I don't recall.

Q. Okay. Let me find -- would it help you for refreshing your recollection to have a copy of your interview in front of you, sir?

A. Yes, sir, it probably would.

Q. Now, sir, what we want today is your memory of what happened, and so I don't want you to read this, but I am going to place it --

MR. TIGAR: Is that all right, your Honor, so I don't have to keep going back and forth for refreshment?

THE COURT: All right.

MR. TIGAR: So that if we need to, we can refer.

BY MR. TIGAR:

Q. And would you look, please, at page 5; and do you see, does that -- reading that, does that refresh your recollection as to what Mr. Moore told you about the size of the tie wraps?

A. Yes. He stated they were quarter-inch police tie wraps.

Q. All right. Now, did he tell you anything about whether he

Richard Spivey - Direct

could hear the -- this person he said robbed him going through the house?

A. Yes. I believe there was some conversation regarding he could tell he was going through the residence.

Q. Now, did he describe for you how thorough the robber was?

A. I believe he did discuss the fact that he went through house -- the entire house and he could hear him opening drawers. Then when he was leaving out specific rooms, he could tell from the sound of his footsteps that he had maybe heavy items carrying -- carrying heavy items out with him at that point.

Q. Now, did you ask Mr. Moore if he had a safe in his house?

A. I believe I did.

Q. And what did he say?

A. I do not recall.

Q. Page 8, sir.

A. Yes, I did ask him if he had a safe in his house, and he replied, "No."

Q. Now, did you discuss with him whether he had called the sheriff's office?

A. Yes, I did.

Q. And what did he say about that?

A. I believe I asked him if he had called 911, and he said no; that he had called a gentleman in the area that he felt had been in that area for a long time and had several contacts.

Richard Spivey - Direct

Q. And did he say how long, according to him, it took the sheriff's office to get there?

A. I believe he might have, but I do not recall.

Q. Page 10, middle of the page, sir, if you remember.

A. He said that the people did not come for an hour and a half.

Q. Now, was he able to tell you from whom he had bought these items that he said were missing?

A. He couldn't tell me the entire list of the guns, but he was able to tell me some of the other items, other than the firearms.

Q. But firearms, he could not. Is that right?

A. No.

Q. Now, did you look through the house?

A. Yes, I did.

Q. Did you ask Mr. Moore to reenact what had happened to him?

A. I believe I did, or he might have done that on his own.

Q. Did you take pictures of your visiting through the house; that is, your looking through the house?

A. Yes, I did.

Q. Now, did you see the closet in the master bedroom?

A. Yes, I did.

Q. Now, why were you interested in looking at the closet?

A. Best I can recall, there was some questions on my part as the number of guns that he stated were in the closet, the size

Richard Spivey - Direct

of the closet, and the amount of other items in the closet. I had questions as to whether that large number of guns could all fit in the closet.

Q. How many guns had he said were -- were taken?

A. At least the 77, and seems like that he talked about there were a few others that might have been taken, also.

Q. And from his description, did it look like the number of long guns he had described being taken would fit in his clothes closet?

A. That's -- that was one of the questions that I had. It seemed like it would have been a tight fit if they would have all gotten in there.

Q. Now, this -- I'm going to show you now some of what's been received in evidence as Defendant's Exhibit 1206. This is your -- these are your photos and your photo log. Correct?

A. Yes, it is.

Q. And you're writing here what he's telling you; correct?

A. Yes.

Q. And he says that an unknown person was waiting at the corner of the house. Correct?

A. Yes.

Q. And forced him at gunpoint back in the house. Right?

A. Yes, sir.

Q. Now, when you say "unknown person," he did give you some names of suspects; correct?

Richard Spivey - Direct

A. Yes. At the end of the statement.

Q. And do you remember what names of suspects he gave you?

A. Not all of them, but I do remember Timothy McVeigh.

Q. And then you have a picture here that says telephone lines

were cut. Does this -- did the original picture show where the telephone lines -- the junction box there?

A. Yes. I believe the picture, original Polaroid photograph, resembled that --

Q. I'm going to show you what's been received in evidence as 1740E, Government's 1740E. Are we looking at that same junction box down the side?

A. Yes, sir.

Q. All right. And you see the lines, the overhead lines coming in here?

A. Yes, sir.

Q. Now, turning to the next page, this in its original was a picture of -- this is a picture of Mr. Moore?

A. Yes, I believe it is.

Q. The original? And he's showing you -- what's he showing you there?

A. He was demonstrating the position that he was in after he was brought into the house.

Q. Okay. And then down here -- I know this is a copy, but this looks like -- is this the interior of the van?

A. Yes, sir, I believe it is.

Richard Spivey - Direct

Q. What did he tell you about what he had kept in the van?

A. Seems like I remember him talking about there were -- there was cash in the van, but I do not recall what else we talked about.

Q. Did you talk to him about a list of serial numbers being in the van?

A. I could possibly have, but I do not recall.

Q. Did he tell you where in the van the cash was located?

A. I believe he did describe that.

Q. What did he say about where the cash was located in the van?

A. It seemed like it was hid in a -- in a compartment. I'm not sure if it was a door compartment or back in the back end in a compartment in the back end of the van.

Q. Okay. Out of the -- so one, or the other. That is what you remember?

A. Yes.

Q. And here you're saying, "Insured stated the guns were stolen from closets." Correct?

A. Yes, sir.

Q. You took pictures of closets? I'm going to skip over here.

Now, here is a note. Would you read what that says, please.

A. "Pistol located on night stand was not taken."

Q. And what is this picture in the original? The night stand?

Richard Spivey - Direct

A. Yes, sir, I believe it is.

Q. And do you know whether or not the claim for \$5,913 was paid by your company?

paid by your company?

A. Yes, it was paid.

Q. Now, did Mr. Moore relate to you what the person that he said robbed him said to him when he went out of his house that morning of the 5th?

A. Yes, I believe he mentioned that someone else was going to be watching the house when he left.

Q. All right. Now, did he say -- tell you what he said to the -- this person; that is --

A. I'm sorry. What?

Q. Let me take this one step at a time.

A. Okay.

Q. He told -- we established that he told you he came out of his house. Correct?

A. After the robbery occurred.

Q. No, this is -- I'm talking about that morning.

A. Okay. When he first came out.

Q. And did he tell you he saw somebody?

A. Yes.

Q. And he said that -- how did he say that person was dressed?

A. In military-style outfit.

Q. Okay. What did he say the person said to him?

A. I believe he told him to lay down on the ground.

Richard Spivey - Direct

Q. Did Mr. Moore say that he said anything to that person?

A. I believe Mr. Moore eventually told him that someone else was coming out to the house that morning or maybe for lunch that day.

Q. Did Mr. Moore tell you in words or substance that he had said to the robber, "Are you a fed?"

A. I believe that is on the statement, yes.

MR. TIGAR: I have nothing further. Thank you very much, Mr. Spivey.

THE COURT: Mr. Orenstein?

MR. ORENSTEIN: May I have a moment, your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, Mr. Spivey.

A. Good morning.

Q. We've previously met; correct?

A. Yes.

Q. Now, on approximately November 16: Does that date sound right for your interview?

A. Yes, it does.

Q. And you interviewed Mr. Moore on that date?

A. Yes, I did.

Q. Now, it's your normal practice when you conduct an interview to identify who is present at the start of the

Richard Spivey - Cross

interview?

A. Yes, it is.
Q. And make sure that whoever is present at the start of the interview consents to being interviewed?
A. Yes.
Q. And to being recorded; correct?
A. Correct.
Q. And you do the same thing at the end of the interview, make sure that the people who are there say yes, I know that this has been tape-recorded?
A. Yes.
Q. And you didn't identify Ms. Anderson, Mr. Moore's companion, at the beginning of the interview?
A. No, I did not.
Q. And you didn't identify her at the end of the interview?
A. No, I didn't.
Q. And there may be four times in the entire 20-some-odd pages of transcript when it appears she's saying something?
A. Yes.
Q. Now, when you interviewed Mr. Moore that day, he told you that he saw one robber; correct?
A. Yes, sir.
Q. And that the robbery started outside of his home?
A. Yes, sir.
Q. He was accosted by a masked gunman in military clothing?

Richard Spivey - Cross

A. Yes, sir.
Q. The man had a mask?
A. Yes, sir.
Q. The man had a shotgun?
A. Yes, sir. I believe so.
Q. He told you that the robber had a garrote wire attached to the gun?
A. Yes, sir.
Q. He told you that he was tied up with tie wraps?
A. Yes, sir.
Q. And that the robber also put duct tape over his eyes?
A. Yes, sir, I believe so.
Q. He told you that he asked the robber a number of questions and that the robber did not respond to his questions. Correct?
A. Correct.
Q. Now, you know that the police had been out to investigate the robbery?
A. Yes.
Q. And you know that in talking about whether Mr. Moore had called the sheriff's office, he told you first "No"?
A. Correct.
Q. And then immediately after that, he mentioned that the dispatcher had called him back?
A. Yes.
Q. Do you want to take a look at page 10. About the middle of

Richard Spivey - Cross

the page.

A. He answered that he did not call the sheriff; he called another gentleman by the name of Bill Stoneman, first.

Q. Right. And immediately above where he's talking about Mr. Stoneman, did he tell you that "the dispatcher called me back in 20 minutes and said, 'We're working an accident downtown. It will be an awhile before we can get out there.' That's what she said"?

A. Yes, that was his response.

Q. So he told you about the conversation he had had with the dispatcher?

A. Yes, sir.

Q. And that that -- she was calling him back?

A. Correct.

Q. Now, with respect to what Mr. Moore had stolen from him and what he was asking to be paid for, during your interview, you went over at some length the guns that he had had in his house; correct?

A. Correct.

Q. And he told you that they had been stored in closets?

A. Yes.

Q. After talking about the guns, you asked him what else had been stolen; is that right?

A. Yes, sir, probably.

Q. And was his response to that without any further prompting

Richard Spivey - Cross

from you that "Well, \$8700 in cash has been taken, but I know that's worthless as far as telling you that"?

A. Yes, I believe that was the response.

Q. Because he knew that he wasn't going to get paid for that because he wasn't covered for that; correct?

A. Yes, sir.

Q. Now, you were asked about whether Mr. Moore talked about suspects, people who might be involved?

A. Yes.

Q. And he mentioned Mr. McVeigh; correct?

A. Correct.

Q. He mentioned Mr. Trickel?

A. Yes, that name sounds familiar.

Q. Mentioned another person?

A. I believe there were three names mentioned.

Q. In talking about Mr. McVeigh, did he tell you possible locations where Mr. McVeigh goes from one place to another?

A. I believe he did discuss the fact that Mr. McVeigh traveled around to different gun shows and had been across the country doing that.

Q. Did he tell that Mr. McVeigh goes to Kansas?

A. I believe he -- yes, he did.

Q. And to Michigan?

A. Yes.

Q. And to Kingman, Arizona?

Richard Spivey - Cross

A. Yes.

Q. Now, Mr. Spivey, you're a claims adjuster. You were at that time; correct?

A. Yes.

Q. And you've since been promoted to a supervisor; is that correct?

A. Yes, sir.

Q. Now, it's not part of your business to pay out claims that you think are fraudulent?

A. No, sir.

Q. You paid out this claim, didn't you?

A. Yes, we did.

Q. No matter how small a claim is, will you pay it out if you think it's fraudulent?

A. If we think it's fraudulent and we determine it needs more investigation, we will make that decision at that point whether we're going to investigate it further.

Q. And if you think it's fraudulent, you'll continue to investigate, rather than pay out?

A. Depending on the amount of money we're talking about, whether it's economically feasible to do that. At some point, we do make the decision to go ahead and pay the claim instead of investigating it further.

Q. Now, there are certain things that you've come to recognize in your experience that raise warning signs, red flags --

Richard Spivey - Cross

A. Yes, sir.

Q. -- about a claim. One of them that is the insured is in a hurry to get his money; correct?

A. Yes, sir.

MR. TIGAR: Objection to this, your Honor.

THE COURT: Sustained.

BY MR. ORENSTEIN:

Q. Was Mr. Moore in a hurry to get his money?

A. No.

Q. Was Mr. Moore contacting you in an effort to get you to help him find out who did this?

A. Yes, he was.

Q. Had Mr. Moore recently, before the loss, obtained his insurance?

A. I do not believe so. I believe the policy was around two years old.

Q. So he didn't get the insurance and then turn around and file a claim?

A. No, sir.

MR. TIGAR: Objection.

THE COURT: Sustained.

BY MR. ORENSTEIN:

Q. Did you take steps to determine whether Mr. Moore was in a financial position to own the things that he claimed he owns?

A. Yes. I did.

Richard Spivey - Cross

Q. And you determined that he was in a financial position to own the things that he claimed he lost?

A. Yes.

Q. And after reviewing that, you determined that the claims should be paid?

A. Yes.

MR. ORENSTEIN: Thank you. I have no further questions.

REDIRECT EXAMINATION

BY MR. TIGAR:

Q. Hello again, Mr. Spivey. Very briefly, sir.

The steps you took: You called a securities company; correct? Or you contacted a securities company to find out about Mr. Moore's financial position?

A. Oh, yes. Some type of stock and bond company, yes.

Q. What did they report back about his net worth?

A. A lady faxed me a piece of paper stating it was in excess of a million dollars.

Q. Now, at the time you were interviewing him, did you ask him about the amount of cash that he was talking about?

A. Yes, I did ask him -- I was inquisitive about having that much cash on his person at the house.

Q. And what did he say was the reason he had that much cash?

A. They -- of course, he bought and sold guns; and also, Ms. Anderson was in the horse business and she traveled a lot

Richard Spivey - Redirect

with the horse business.

Q. And then did he take out some cash and show it to you?

A. Yes, he did reach in his pocket and pull out some bills and flashed them.

Q. How -- how big a roll?

A. It was a significant amount of money, but I wouldn't know how much it was.

Q. Now, sir, what was the total amount of the claim here, \$5900?

A. Yes, sir.

Q. Now, very briefly, I want to show you one picture here from your list. This is Bates' page 6 of what's in evidence as -- excuse me -- as Defense D1206. Here is a picture -- well, a Xerox. And you say silver -- could you just read that, please.

A. "Silver coins located under bed were not taken."

Q. If we were to see the original Polaroids, are they -- are those pictures of coins?

A. Yes, it is. I believe they're located in a bag.

Q. And did -- what did Mr. Moore say about that?

A. He just made me aware that there were some items -- maybe as proof that he had those type of items in the house, but he did show me those that he indicated were not stolen, were not located during the robbery.

MR. TIGAR: Thank you very much, Mr. Spivey.

I have no further questions.

MR. ORENSTEIN: Nothing further.

THE COURT: Excusing the witness, I take it?

MR. ORENSTEIN: Agreed.

MR. TIGAR: Yes.

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

Next witness?

MR. TIGAR: Rodney Bowers.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Rodney Bowers 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: Rodney Bowers, B-O-W-E-R-S.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mr. Bowers.

A. Good morning.

Q. Would you tell the jury, please, what you do for a living.

A. I'm a reporter for The Arkansas Democrat-Gazette.

Q. Where is The Arkansas Democrat-Gazette headquartered?

A. Little Rock.

Q. And do you have any particular specialty as a reporter?

A. General reporter.

Q. How long have you been a journalist?

Rodney Bowers - Direct

A. 17 years.

Q. I beg your pardon?

A. 17 years.

Q. Sir, you're a print-media journalist, not a radio journalist?

A. Yes.

Q. I wonder if I could ask you, could you keep your voice up so that everybody within this enclosure can hear you. There is a microphone right there. Are you a little nervous?

A. Not too bad.

Q. Okay. Well, going back to the year 1995, were you working for The Arkansas Democrat-Gazette?

A. I was.

Q. Now, is the Democrat-Gazette -- what is it, a daily, weekly?

A. It's a statewide daily.

Q. Is it the only daily newspaper in Little Rock?

A. Yes, sir.

Q. Okay. Now, in 1995, did you have occasion to do some reporting about a man named Roger Moore?

A. Yes, sir, I did.

Q. Did you try to contact Mr. Moore?

A. Yes, sir.

Q. Had you read about an incident involving Mr. Moore that led you to try to contact him?

Rodney Bowers - Direct

A. Generally speaking. There was reports about a gun dealer

in Garland County, Arkansas.

Q. Now, did you go out to his house?

A. Eventually I did, yes, sir, once I located it.

Q. All right. And did you get to see him when you went out to his house?

A. No, sir.

Q. Did you do something to try to get his attention?

A. Yes, sir. On second or third occasion of going out to his house, I left a business card with a note asking him to call me.

Q. Okay. And did he call you?

A. Yes, sir. Next day.

Q. Pardon?

A. The next day, he called. Yes, sir.

Q. Did you interview him about what had happened to him?

A. Yes, sir. I spoke to him for about 30 minutes on the telephone.

Q. And did he say in words or substance: Whatever I was doing for the FBI is F-blank-blank-blank-blank-blank up because they blew my cover?

A. Yes, sir.

Q. And can you tell us exactly what words he used? You don't have to use the F word, but just the other ones.

A. That was it.

Rodney Bowers - Direct

Q. Okay. And then did he also describe this incident where he said he was robbed; right?

A. Yes, sir.

Q. Did he tell you how he had freed himself from his restraints?

A. Yes, sir.

Q. And what did he say about what he did after he freed himself from his restraints?

A. He said he went to the neighbor's house and telephoned the sheriff's office.

Q. And did he give you his opinion of how the sheriff's office had investigated the case?

A. Yes, sir, he did.

Q. Okay. And again, with whatever deletions you feel appropriate, what did he say about that?

A. He felt that they were not interested in investigating the case. He thought possibly that someone in the sheriff's office may have been involved in it.

I asked him specifically how.

And he told me that they found his vehicle, his van too quickly in a remote area and -- I think he said it was 20, 30 minutes and it was 2 or 3 miles from his house on an abandoned logging road

abandoned logging road.

Q. Now, did he say that there was something that was missing from the van?

Rodney Bowers - Direct

A. Yes, sir. He said he had a list with serial numbers of some of his guns hidden in a door panel in the van and it was missing.

Q. Did he say something about the officers' attitudes that you can remember?

A. Yes, sir. He did not believe that they were sincere in their efforts to investigate the crime.

Q. Did he say they didn't give a . . .

A. I don't recall exact words.

Q. May I show you this --

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

MR. TIGAR: Thank you.

BY MR. TIGAR:

Q. Take a look at that and read it to yourself and see if that refreshes your recollection.

Does it refresh your recollection?

A. Yes, sir.

Q. Tell the jury what he said about that.

A. They didn't give a -- expletive -- about the case.

MR. TIGAR: Will your Honor indulge me for a moment?

THE COURT: Yes.

MR. TIGAR: Thank you very much, Mr. Bowers.

No further questions.

THE COURT: Ms. Wilkinson?

MS. WILKINSON: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Mr. Bowers.

A. Good morning.

Q. You've been a reporter for a long time, haven't you?

A. A while, yes.

Q. Interviewed a lot of folks?

A. Yes, ma'am.

Q. And you've talked to some people on the telephone; right?

A. Yes, ma'am.

Q. Sometimes folks will talk to you in person?

A. Yes, ma'am.

Q. And when you talked to Mr. Moore, this was at what time?

A. It was early June, 1995.

Q. So it was after the bombing in Oklahoma City; correct?

A. Yes, ma'am.

Q. You spoke to him over the phone?

A. Yes, ma'am.

Q. Did you record your conversation with him?

A. No, ma'am.

Q. Why not?

A. It's not a general practice.

Q. Why is that?

A. Just generally don't tap a phone. It's not something I do.

Rodney Bowers - Cross

Q. Haven't you said before that people you interview often clam up when you turn on the tape recorder?

A. If you turn on the tape recorder in person, that's often the case. On the telephone -- in my state, it's legal. Other states, it's illegal to tap -- to have a -- a telephone recording.

Q. So instead of having a tape recording, you rely on notes that you take during the conversation?

A. Yes, ma'am.

Q. You took notes with your -- on your conversation with Mr. Moore?

A. Yes, ma'am.

Q. Do you have those notes with you?

A. No, ma'am.

Q. Did you save those notes?

A. For a period of time, I believe I did.

Q. Do you know where they are right now?

A. I have no idea.

Q. But you did write up some of your conversation in an article that you published in your newspaper; correct?

A. Yes, ma'am.

Q. And when you spoke to Mr. Moore, he was upset about his name being in the media, wasn't he?

A. Yes, ma'am.

Q. He was very upset about that, wasn't he?

Rodney Bowers - Cross

A. Very upset, yes.

Q. And when he told you that his cover had been blown, he was referring to the media, wasn't he?

A. His cover with the media?

Q. That the media had blown his cover?

A. Yes, ma'am.

Q. Because his name had been publicized?

A. Yes.

Q. And up to that point, he had been cooperating with the FBI without his name being public. Correct?

A. I don't know that to be a fact.

Q. Well, he told you that he had been interviewed by the FBI?

A. Yes, ma'am.

Q. He told you he had been interviewed by them several times?

A. Yes, ma'am.

Q. But he wouldn't tell you how many times?

A. Correct.

Q. And he wouldn't tell you what he was talking to the FBI about; correct?

A. That's true.

Q. Although he did tell you that he was identifying some property, didn't he, from Mr. Nichols' house?

A. No, ma'am.

Q. You don't recall that?

A. I don't -- I don't remember him saying that he was

Rodney Bowers - Cross
identifying property.

Q. Okay.

MS. WILKINSON: May I have a moment, your Honor?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Do you remember him saying that "I was spoken to by the FBI about items found in Mr. Nichols' house"?

A. Yes, ma'am.

Q. And you understood that that occurred after the bombing in Oklahoma City; correct?

A. Yes, ma'am.

Q. Didn't he tell you that the FBI showed up at his door a couple days after the bombing?

A. Yes, ma'am.

Q. You didn't discuss that subject matter?

A. He didn't go into detail about that.

Q. But he did tell you that it was about property recovered from Mr. Nichols' home?

A. I believe that to be the case, yes.

MS. WILKINSON: We have no further questions, your Honor.

MR. TIGAR: No further questions.

Thank you, sir.

THE COURT: I take it we're excusing him.

MR. TIGAR: Yes.

MS. WILKINSON: Yes.

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

MR. TIGAR: Larry Hethcox.

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

(Larry Hethcox 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: It's Larry B. Hethcox, H-E-T-H-C-O-X.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mr. Hethcox.

A. Good morning, sir.

Q. I'm going to ask you, sir, if you would, to keep your voice up just so everybody within this enclosed area can hear. If you need a microphone, that's what that is sticking out there.

A. Okay.

Q. Where do you live, sir?

A. I live in Little Rock, Arkansas.

Q. What do you do for a living?

A. I'm a helicopter pilot for the Little Rock Police Department.

Larry Hethcox - Direct

Q. How long have you been a helicopter pilot for the Little Rock Police Department?

A. For the past year.

Q. How long have you been flying helicopters?

A. Oh, since about 1966.

Q. In the military?

A. I was.

Q. Now, going back to the period of fall and winter of 1994, what were you doing for work at that time?

A. I was a salesman for a food-brokerage company.

Q. And have you ever met a man named Roger Moore?

A. Yes, I have.

Q. How many times in your life have you had contact with Roger Moore?

A. I believe it's been five times. Two times I saw him in person and three phone calls.

Q. All right. Now, when was the first time that you can remember being contacted by the man who you later learned was Roger Moore?

A. This was in late November or early October of '94, I guess. He called me. I had a gun that I had for sale in the paper, and Roger Moore called me and wanted to come look at the gun.

Q. Now, where had you advertised this gun?

A. In the local paper in Little Rock, the Democrat-Gazette.

Q. That's your daily paper there?

Larry Hethcox - Direct

A. That's correct.

Q. Now -- and did someone then come to your house to look at the gun?

A. Yes, they did.

Q. And that is the man you later learned was Roger Moore?

A. That's correct.

Q. What name was this individual using at that time?

A. He introduced himself -- it was not Roger Moore, but I cannot remember what he said his name was.

Q. Okay. Was he with someone, or was he by himself?

A. He was with a lady.

Q. And do you remember her name?

A. I later learned -- was told -- that her name was Karen Anderson, I believe.

Q. Okay. Now, did you sell him a gun?

A. I did.

Q. What kind of a gun was that?

A. It was a Remington 700 ADL, .308 caliber.

Q. Now, a few days later, did you have another contact with Mr. Moore?

A. Yes, I did. Mr. Moore called me.

Q. And what did he say to you?

A. He asked me if I had the serial number of that gun. He informed me that he had been robbed and needed that money

informed me that he had been robbed and needed that money,
for -- needed that number for insurance purposes.

Larry Hethcox - Direct

- Q. Okay. Did he describe the details of the robbery to you?
- A. He did describe the details of the robbery.
- Q. Okay. What -- how -- what did he tell you happened to him?
- A. He told me that he was outside working in his yard and a man came out of the woods wearing a military-type outfit with a firearm.
- Q. Did he say what kind of a firearm?
- A. I'm sure he did, but I can't recall specifically.
- Q. Okay. And then what did he say happened?
- A. He said after that, the man made him get on the ground, he tied him up, fired the gun -- and I can't recall if that was before or after he tied him up.
- Q. All right. But Mr. Moore told you that the man had fired the gun?
- A. Yes, he did.
- Q. Did he say how -- how this person had fired the gun?
- A. Not -- you mean as --
- Q. I mean at somebody, or in -- towards a tree, in the air, towards the ground? Did he say?
- A. He told me. I can't recall. I know it wasn't towards someone.
- Q. Okay.
- A. But I cannot recall exactly what he said.
- Q. All right. And then what did he say happened next?
- A. Okay. He was tied up, drug inside, forced to open a safe,

Larry Hethcox - Direct

- was duct-taped around his mouth.
- Q. All right. And what did he say -- that who was forced to open a safe?
- A. Mr. Moore.
- Q. All right. And did Mr. Moore then say what had been taken?
- A. Yes. He said that there was weapons taken, there was money taken, and there was paintings taken.
- Q. Paintings?
- A. Paintings.
- Q. What did he say the value of the items that were taken?
- A. I don't remember the exact dollar amount, but I do recall that it was in excess of \$100,000.
- Q. Now -- so that was your third contact with him. Correct?
- A. That was my third contact, yes.
- Q. Now, was there a fourth time that you talked to him?
- A. There was. And it was that same night after I had searched for the serial number of that gun and was not able to find it right away. I called him and informed him that I couldn't find it but told him where the gun was purchased and could get the number there.
- Q. And did you ever see Mr. Moore again after that evening?
- A. Yes. That following summer, June, July -- I don't remember

exactly the month -- he stopped by the house. I was out in the front yard, didn't recognize him at first; and as he walked up, he said, "Remember me? I'm the guy that you sold the gun to."

Larry Hethcox - Direct

And I remembered him; and that was the last time I saw him.

Q. And did he ask you some questions on that occasion?

A. He asked me if I had talked to the FBI or the ATF and the media. And I informed him that yes, I talked with the FBI and the ATF.

Q. Did he have any response to that?

A. Only some negative responses about how the media had treated him badly.

Q. When he was describing this episode to you back in 1994 when he called you, did he say that he had said anything to the person that he said had robbed him that you remember?

A. Not that I can recall.

MR. TIGAR: Thank you very much, sir. I have no further questions.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, Mr. Hethcox.

A. Good morning.

Q. We met last night, didn't we?

A. Yes, we did.

Q. You sold the gun to Roger Moore; correct?

A. That is correct.

Q. And that was in October, November, sometime around there, in '94. Is that right?

A. That's correct.

Larry Hethcox - Cross

Q. And I think you told me that it was before the start of deer season. That's how you recall?

A. Right. Just prior to deer season.

Q. You were trying to get rid of the gun before deer season started and demand went down?

A. Yes.

Q. And a few days later, you got a call from Mr. Moore and he was looking for the serial number on that gun because he had been robbed?

A. That's correct.

Q. Now, when was the first time that you were asked to describe what he told you in that conversation? When was the first time that you were asked by law enforcement to do that?

A. This was -- all I know, it was between March and probably June of -- would be 1995.

Q. All right. Now, in that period, you were interviewed by an agent for the ATF. Correct?

A. That's right.

Q. And he was asking you about the gun itself; is that right?

A. Well, yes. He asked me about the gun itself.

Q. Is it true that the first time you were recontacted and asked about the conversation that Mr. Moore had with you and what he described didn't occur until October of '95?

A. Say that again, please.

Q. It's true, isn't it, that the first time you were asked

Larry Hethcox - Cross

about the conversation itself, rather than just having sold the gun to Mr. Moore, but the first time you were asked about the conversation in which Mr. Moore described the robbery -- that wasn't asked of you until October of '95?

A. I'm still not for sure I quite understand.

Q. I'm sorry. I'm stating it very poorly.

The first time you were contacted was in -- sometime in that period of March to June?

A. By someone other than Mr. Moore, you're talking about?

Q. By law enforcement. That was an ATF Agent, Joe Gahn. Correct?

A. That's correct.

Q. And he asked you about selling the gun to Mr. Moore?

A. Correct.

Q. He didn't ask you at that time about the conversation. You weren't asked to describe the conversation.

A. I don't recall if I was asked at that time or not.

Q. You were contacted later -- this was the fall of '95 -- by another agent of the FBI; and during that interview, you were asked to describe what Mr. Moore had told you about the robbery. Is that correct?

A. Yes, I'm sure that's correct.

Q. So it's a year after the initial conversation that you had -- not the initial conversation. A year after Mr. Moore told you about the robbery that you were first asked to

Larry Hethcox - Cross

describe what he told you.

A. That's the first time I can recall that happening.

Q. And you couldn't recall the specific words that he told you at that time; is that right?

A. There were many specific words I could not recall, yes.

Q. You knew he told you he had been robbed?

A. That's correct.

Q. And you thought you had some of the other information and you did the best you could to recall it? Is that right?

A. Uh-huh.

Q. And now it's another two years later, and you're still doing your best to describe what he told you?

A. That's correct.

Q. Okay. But there is no doubt in your mind that shortly after you sold him the gun, Mr. Moore came to you looking for a serial number of the gun that you had sold him?

A. That's correct. He called me wanting the serial number,

yes

yes.

Q. Because it had been robbed from him?

A. Yes.

Q. Now, the gun that you sold him was a Remington 700 ADL rifle; is that right?

A. That's right.

MR. ORENSTEIN: May I approach, your Honor?

THE COURT: Yes.

Larry Hethcox - Cross

BY MR. ORENSTEIN:

Q. Now, Mr. Hethcox, I've left in front of you Government's Exhibit 1753, which is not yet in evidence. Do you recognize what that is?

A. I do.

Q. What is it?

A. It's a record of purchase of that particular weapon from Wal-Mart.

Q. It's the record for when you bought the gun that you later sold to Mr. Moore; is that right?

A. Yes, when the gun was originally sold.

Q. And does it bear your signature?

A. That is my signature.

MR. ORENSTEIN: Government offers Exhibit 1753.

MR. TIGAR: No objection, your Honor.

THE COURT: Received.

BY MR. ORENSTEIN:

Q. Now, that document --

MR. ORENSTEIN: If I may retrieve it so I can put it on the screen, your Honor.

THE COURT: All right.

BY MR. ORENSTEIN:

Q. Now, just for the convenience of the jury, that's your signature over there; correct?

A. That is correct.

Larry Hethcox - Cross

Q. Now, let me zoom in a little bit. All right. And there we see the serial number of the gun. Is that right?

A. I assume that is the serial number of the gun, yes.

Q. Now, we can zoom out just to show. That's the part where the gun is described; correct?

A. That's correct.

Q. The rifle is a 700 ADL, .308 -- that's the caliber; and serial number we see the letter C6580372. Am I reading that correctly?

A. Yes.

MR. ORENSTEIN: Now, if I may approach to show the witness an exhibit that's in evidence.

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Mr. Hethcox, I'm showing you Government's Exhibit 1810 in evidence. Let me ask you if you recognize that gun.

A. It looks exactly like the gun I sold him.
Q. When you say "him," you're referring to Mr. Moore?
A. Yes.
Q. And can you find the serial number on it?
A. The serial number is on it.
Q. Let me ask you to take a look at the serial number, and the serial number from the yellow sheet is still on the screen. And would you tell the jury if it's the same number.
A. It is the same number.

Larry Hethcox - Cross

Q. So that's the gun that you sold to Mr. Moore?
A. Yes, it is.
Q. And that he told you was stolen from him?
A. Yes.
Q. Did you ever give or sell that gun to Mr. Terry Nichols?
A. No, I didn't.

MR. ORENSTEIN: Thank you, sir.

I have no further questions.

Let me just retrieve the gun.

THE COURT: All right.

Mr. Tigar, any redirect?

MR. TIGAR: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. TIGAR:

Q. Mr. Hethcox, if we can just put up here on the board: This is a -- an ATF form. Is that right, sir?
A. That's correct.
Q. And does that -- what does that tell us about this purchase; that it's an original purchaser?
A. That it was sold by a federal firearms dealer.
Q. And that would be Wal-Mart; correct?
A. That would be Wal-Mart.
Q. And when you purchased this weapon, it was new; correct?
A. It was new.
Q. And on here, are we going to find the date of that

Larry Hethcox - Redirect

purchase?

A. Yes. Find the date of my signature, yes.
Q. August 20, 1991?
A. Yes.
Q. And that's when you bought it. Is that correct, sir?
A. I believe that to be correct. The gun, I think, was put in layaway for a few days. I'm not sure if that was dated prior to my receiving the gun or not, but it was --
Q. It was around that time?
A. It's around that time, yes.
Q. And then you're asked to answer all of these questions. Is that correct, sir?
A. That's correct.
Q. And then there is a penalty provision and you sign.

Correct?

A. That's correct.

Q. And there is no doubt in your mind, sir, is there, that this is the correct serial number; correct?

A. That is the serial number that's on the gun, yes.

Q. Had there been some confusion about that before that -- that some agent had contacted you more than once about that, or do you recall that?

A. No, sir. I recall no confusion about that serial number.

Q. Okay. All right. So that is exactly the correct serial number; right?

Larry Hethcox - Redirect

A. Yes, sir.

Q. And when you sold that gun -- all right -- you sold it to a man you later learned was Roger Moore; correct?

A. That's correct.

Q. And you don't recall the name he was using at the time; right?

A. I do not.

Q. Now, how did he pay you for this gun?

A. He paid me in cash.

Q. How much cash did he give you?

A. \$350, I believe it was.

Q. Did you see him peel a bill off a roll, or do you remember what he was carrying at the time?

A. No, sir, I don't recall.

Q. And you remember that -- do you remember that transaction clearly?

A. I remember that transaction clearly.

Q. And when this person later -- when the man you later learned was Mr. Moore called you, he gave you certain details about his robbery; correct?

A. That's correct.

Q. And just to go over that, are you sure that he told you that somebody fired a shot?

A. Yes. He said someone fired a shot.

Q. Are you sure he told you that he had paintings missing?

Larry Hethcox - Redirect

A. Yes, sir.

Q. Are you sure that he told you that it was more than \$100,000?

A. Yes, sir.

MR. TIGAR: I have no further questions.

MR. ORENSTEIN: Nothing further. Witness excused.

MR. TIGAR: He can be excused, your Honor.

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

We'll take our noon recess at this time, members of the jury, with the usual cautions of taking advantage of the time to rest, relax, nourish, but not talk about the case or things related to it; and, of course, continue to avoid

things related to it; and, of course, continue to avoid anything outside the evidence, knowing that the evidence is far from complete at this time.

So you're excused now till about 1:30, 1:32.

(Jury out at 12:02 p.m.)

THE COURT: Okay. We'll be in recess.

(Recess at 12:02 p.m.)

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PLAINTIFF'S EXHIBITS

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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 4th day of December, 1997.

Paul Zuckerman

Kara Spitler

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