

THE COURT: Members of the jury, good morning. We apologize for keeping you waiting for a few minutes. This is another one of those days, though, in which the few minutes involved has saved us some time. I've been able to discuss some things with the lawyers on both sides to enable us to move ahead, so please forgive us that. It's not time wasted.

You'll recall when we recessed yesterday afternoon, we were hearing from Mr. Darvin Bates, and we'll continue with his testimony now.

Mr. Bates, will you come in and again take the stand under the oath you took yesterday.

THE WITNESS: Yes.

THE COURT: Mr. Thurschwell.

(Darvin Bates was re-called.)

DIRECT EXAMINATION CONTINUED

BY MR. THURSCHELL:

Q. Good morning, Mr. Bates.

A. Good morning.

Q. When we broke yesterday, I believe you had just described your conversation with the FBI agent in the Lawton office up to the point where you had given some of the facts and descriptions about the individual who you believed was John Doe No. 2. Do you recall that?

Darvin Bates - Direct

A. Yes, sir.

Q. Okay. What was the reaction of the FBI agent when you -- after you gave him that description and those facts?

A. He stated that they had the two they were interested in and if they needed additional information, they would contact me.

Q. Okay. And could you -- could you repeat that? They need -- could you re -- I didn't quite catch the beginning of that response.

A. Well, he said they had the two arrested that they needed in the case, or the two --

Q. Okay. And he said if they needed any additional information, they would contact you?

A. Correct.

Q. Okay. Now, that was Friday morning?

A. Correct.

Q. Did this individual who you believe to be John Doe No. 2 show up for work that day?

A. Yes.

Q. Did he work a full shift?

A. Yes.

Q. That was 2 to 10?

A. Correct.

Q. Did you have any conversation with him about money during his workday?

A. Yes.

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Q. What -- could you tell the jury about that briefly, about that conversation.

A. He stated he was homeless, and I knew that he was homeless, and that he needed some money. And I told him that we couldn't give him a check that late in the night; that I would loan him \$90; that he had approximately \$100 coming Monday morning; that when my wife made the checks out, that we would settle up with that.

Q. All right. So was the \$90 you gave him -- did you think of that as an advance on his salary?

A. Yes.

Q. Okay. Was he scheduled to work the next day?

A. Yes.

Q. Did he show up for work the next day?

A. No.

Q. Did he ever show up for work again?

A. No.

Q. Did you ever see him again?

A. No.

Q. Did the FBI ever follow up with you about the information you had provided?

A. No.

MR. THURSCHELL: No further questions, your Honor.

THE COURT: Mr. Ryan.

MR. RYAN: Thank you, your Honor.

Darvin Bates - Cross

CROSS-EXAMINATION

BY MR. RYAN:

Q. Good morning, Mr. Bates.

A. Good morning.

Q. How are you?

A. Fine.

Q. My name is Pat Ryan. I'm a United States Attorney in Oklahoma City. We haven't met, have we?

A. No. I don't think so.

Q. You've never called my office?

A. No, sir.

Q. Okay. Now, the events that you're telling us about yesterday and today, when did they occur?

A. Approximately one month after the bombing.

Q. You're saying May?

A. Well, I couldn't give specific dates. It could have been three weeks, or it could have been five weeks. It was after the bombing.

Q. Was it June?

A. No. I don't think so.

Q. July?

A. No. No.

Q. You're sure it wasn't August?

A. I'm positive it wasn't August.

Q. You're positive about that?

Darvin Bates - Cross

A. Yeah.

Q. What is your telephone number from which you made these calls, sir?

A. What was my telephone number?

Q. Yes, sir.

A. 252-0014.

Q. But you have no record of when you made these calls?

A. No, sir.

Q. You can't tell us who you talked to?

A. No, sir.

Q. Any of the people?

A. No, sir.

Q. The agent of the FBI that you say you talked to, you don't recall his or her name?

A. No, sir.

Q. Was it a his or a her?

A. Which location?

Q. You say -- how many times did you talk to an agent?

A. Three.

Q. You talked to three agents?

A. I called the FBI office three different times.

Q. All right. The first time you spoke to who? Man or woman?

A. A lady in Oklahoma City.

Q. What was her name?

A. I don't know.

Darvin Bates - Cross

Q. Okay. The next time, you spoke to who?

A. A lady in Lawton.

Q. What was her name?

A. I don't know.

Q. The next time, you spoke to who?

A. An agent in Lawton, a man.

Q. A man. Have you ever been to the Lawton agency --

A. No.

Q. -- of the FBI?

A. No.

Q. Or been at the Oklahoma City office of the FBI?

A. No.

Q. Now, did the -- have you heard of the fact that the FBI's interviewed approximately 30,000 people in this case?

A. No.

Q. Do you have any idea or did the agents tell you why it was that they didn't -- they selected you as a person they didn't come out and talk to?

A. No.

Q. Now, how did -- how did you come to be known as a witness?

A. How? I felt that any reasonable-thinking person that loved his country would like to bring forth any pertinent information that might be valuable to this trial.

Q. So did you write the FBI?

A. Did I what?

Darvin Bates - Cross

- Q. Did you write the FBI to tell them what you --
- A. No, sir.
- Q. -- have told this jury?
- A. No. I wrote Michael Tigar's office.
- Q. You wrote the defense counsel?
- A. Yes, sir.
- Q. You didn't write Janet Reno?
- A. Didn't write who?
- Q. Attorney General, Janet Reno.
- A. No.
- Q. Or Louie Freeh, the director of the FBI?
- A. No. No.
- Q. You didn't write me as the United States Attorney?
- A. No. No.
- Q. Mr. Mackey?
- A. No.
- Q. Bob Macy, the U.S. --

THE COURT: Well, you know, let's not go through a whole list of people he didn't write.

BY MR. RYAN:

- Q. The only person you wrote was Michael Tigar?
- A. Correct.
- Q. Now, did you bring your telephone records with you?
- A. No, sir.
- Q. Did you ask the telephone company to provide them?

Darvin Bates - Cross

- A. I suggested that to the defense, and they said it would take too long to get those records in order to have them here for the trial.
- Q. So we have to rely on your memory?
- A. Well, the FBI should have a record of it.
- Q. Of your telephone records?
- A. Well, they should have a -- probably should have a log, I would think, of the calls they received.
- Q. If you called, they would; is that right?
- A. Well, I called.
- Q. Now, you don't remember when it was, but you know it was a Wednesday?
- A. Wednesday that what now?
- Q. You don't know when it was that John showed up, you just know it was a Wednesday?
- A. He showed up to go to work on Wednesday.
- Q. And he gave you his first name as John?
- A. No, sir. I could never pronounce his first name -- his name, and he said, "Just call me John."
- Q. Did you tell him you thought he was John Doe 2?
- A. On Friday, I did. I didn't tell him I thought he was. I asked him, I said, "Has anybody ever told you that you look exactly like John Doe No. 2?"

Q. And had you given him the name "John" before that?

A. Oh, yes.

Darvin Bates - Cross

Q. Now, you've said this man was very short; correct?

A. Yes.

Q. You said he came to about your shoulder?

A. No. Right about here.

Q. About your neck. Top of your neck. Bottom of your neck?

A. Right in there.

Q. Indicating your collarbone area?

A. Yes.

Q. So you would estimate his height as being what, 5' 3" or 4"?

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

Q. You're about 6 --

A. I'm 6-foot-1.

Q. You're 6' 1", and you were a full head taller than he was?

A. Yes.

Q. And he was not very stout?

A. No.

Q. And he would not have been ex-military?

A. Well, I don't know --

Q. Didn't look like ex-military to you; is that right?

A. He didn't -- he acted like ex-military, but he didn't appear to be physically ex-military.

Q. Because he was frail-looking?

A. He wasn't frail-looking. He just wasn't very strong.

Q. All right. And his hair in a crew cut?

Darvin Bates - Cross

A. Yes, sir.

Q. He was well-dressed?

A. He was clean and had on a clean pair of khakis and sport shirt.

Q. He was well-groomed?

A. Yes.

Q. He was very polite, you told us?

A. Yes.

Q. And he did not have a winged cap with little striations in his hat?

A. No.

Q. Is that right?

A. That's correct.

Q. Now, had you seen photographs of this John Doe 2 in the newspaper?

A. Yes.

Q. Let me show you Exhibit 2142. It's not in evidence. Do you see that photograph?

A. Yes.

Q. Is that the -- a sketch of the person that you're attempting to describe?

A. Yes.

A. 163.

MR. RYAN: Your Honor, we would offer 2142.

MR. THURSCHELL: Object, and just ask to clarify which of the two sketches.

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THE WITNESS: The bottom one is John Doe No. 2.

MR. RYAN: All right. We offer 2142, your Honor.

MR. THURSCHELL: Your Honor, I would object to the newspaper article as hearsay. I'm not sure what it's being entered --

MR. RYAN: Just entered for the sketch.

THE COURT: Well, we'll have to block out the contents of the article.

MR. RYAN: Let me go a little further then with the witness, your Honor, before I make the offer.

THE COURT: All right.

BY MR. RYAN:

Q. In this Exhibit 2142 -- you see it on your screen?

A. Yes.

Q. Do you see the description that -- of the individual that's underneath the sketches?

A. I can't read that. You talking about the print?

Q. Let me see if I can bring it in a little closer. Had you read this information here prior to John coming to your waffle shop?

A. No, sir.

Q. You'd just seen the sketch?

A. Yes.

Q. Now, did you have John Doe fill out an employment application?

Darvin Bates - Cross

A. I gave him employment applications, and he -- we were shorthanded. We had dirty dishes stacked up at the waffle shop, and I said, "Go to work, and you can fill those out after we get caught up."

And he asked if he could bring them back the next day, and he never brought them back.

Q. So you don't have an employment application --

A. No, sir.

Q. -- to show us today?

A. No, sir.

Q. Do you have a W-2?

A. No, sir.

Q. Didn't fill that out, either?

A. No, sir.

Q. Don't have a paycheck?

A. No, sir.

Q. Pay stub?

A. He never got a paycheck. I gave him -- I loaned him \$90

cash, and he was to pay me back Monday when he got paid.

Q. Did you pay other employees in cash?

A. No, sir.

Q. Just John?

A. Yes, sir.

Q. How about a timecard? Do you use timecards there in your employment?

Darvin Bates - Cross

A. Yes. Yes.

Q. Did you bring us his timecard?

A. No, sir.

Q. Didn't have a timecard?

A. Yes, sir. He filled out his timecard. Employees fill their timecards out, and it was in the rack. His name, I looked at it probably half a dozen times, trying to read his name. I could never read it. And Monday morning, when my wife went to pull all the timecards out of the rack, his timecard was gone.

Q. So you don't have a timecard?

A. No, sir.

Q. Now, the -- if the John Doe that was described in the newspaper was described as an -- as 5' 9" or 10", that wasn't the man that you saw?

MR. THURSCHELL: Objection to what --

THE COURT: Sustained as to what was in the newspaper.

BY MR. RYAN:

Q. Didn't see any tattoo?

A. No, sir.

Q. This man certainly didn't weigh 175 or 180 pounds?

A. No.

Q. And he had a -- like a flattop?

A. Well, I wouldn't say it was a flattop. It was what I would call a crew cut. His hair was real short.

Darvin Bates - Cross

Q. Now, at the time that you called the -- you told us you called the FBI, you weren't able to provide them with a name?

A. No.

Q. You weren't able to provide them with any --

A. They didn't ask for a name.

Q. Weren't able to provide them with a Social Security number?

A. That's correct.

Q. He didn't have a motor vehicle --

A. No.

Q. -- is that right? You couldn't tell them -- I guess you knew at the time what the date was, but you can't tell us

today?

A. I was sure --

Q. Excuse me?

A. Yeah. I knew that day.

Q. Do you have any -- you never saw him with Tim McVeigh; is that right?

A. No.

Q. You don't know whether this man who was in your shop was, in fact, involved in the bombing, do you?

A. No.

Q. And you last saw him, at least in terms of a vehicle, on a bicycle?

A. Correct.

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

THE COURT: Any follow-through?

MR. THURSCHWELL: No redirect, your Honor. The witness is excused.

THE COURT: Is that agreed?

MR. RYAN: Yes, your Honor.

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

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. WOODS: Richard Coffman.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Richard Coffman 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 Coffman, C-O-F-F-M-A-N.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. NEUREITER:

Q. Where are you from, sir?

A. Fort Mohave, Arizona.

Q. And what do you do for a living?

A. I don't have a job right now. I've been a part-time poker dealer over in Nevada.

Q. Have you in the past worked for a department of corrections?

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A. That's correct.

Q. And where was that?

A. That was in California.

Q. And what did you do and how long did you do it?

A. I was a supervising cook for the department of corrections, and I did that for eight years.

Q. Are you familiar with an organization called the National Alliance?

A. Yes.

Q. And what is the National Alliance?

A. We're an organization that is worried about the future of European Americans.

Q. Would it be fair to say that your organization favors white supremacy?

A. No. That's not fair to say that.

Q. Would it be fair to say that your organization favors white

separatism:

A. Yes.

Q. Does your organization oppose American citizenship for people of nonwhite races?

A. Yes. If -- if this is to be our territory for our people -- wherever our people are, wherever our territory is, as a people, we would oppose citizenship of other races.

Q. Did you at one time hold office in the organization?

A. Yeah. I was at one time a unit coordinator.

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Q. And are you currently affiliated with the National Alliance?

A. Yes.

Q. Are you --

A. I'm a member.

Q. You're a dues-paying member?

A. Yes.

Q. This is an organization where the members pay dues?

A. Yes.

Q. How does the National Alliance get out its message?

A. We get the message out by -- we have a book catalogue. We sell books. We've got some periodicals. We've got a periodical called Free Speech that comes out once a month. And this is a -- in print what our radio programs were for the previous month.

Q. Does the National Alliance have a publishing arm?

A. There are -- there are books that the National A -- National Vanguard Books has published.

Q. Is National Vanguard Books part of -- or affiliated with the National Alliance organization?

A. Yes. Yes.

Q. And explain that affiliation, if you could.

A. Well, it's a close affiliation. The National Alliances are -- is the name of the organization that -- where the membership is. And then National Vanguard Books is the arm of

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the organization that sells books and publishes books. I can't say how many books National Alliance has published.

Q. And is it fair to say --

A. A few, I guess.

Q. -- that those publications carry the message of the National Alliance?

A. That's accurate.

Q. Does the National Alliance take a position with respect to interracial marriage?

A. Yes. We're opposed to it.

Q. Does the National Alliance -- how does the National Alliance make itself accessible to new individuals who are interested in the message of the National Alliance?

A. Well, we get -- on an individual basis, members distribute our literature, pamphlets, encourage others to buy our books.

Q. Does the -- or did at one time the National Alliance have a system of phone messages whereby interested individuals could call?

A. We still have that system.

Q. Tell the jury exactly how that system works.

A. Usually, in individual homes, national -- a National Alliance member will put in an answering machine and a private line for the National Alliance, and people calling in will hear a recorded message.

Q. Will the -- will the people calling in generally leave a --

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a return phone number or address?

A. We hope they will, but sometimes they just call and listen to the message and then hang up. But sometimes, if they -- if they want additional information, there is time to leave their name and address, and then they -- we send them additional information and hope they will be encouraged to either buy some of our books or become ultimately a member after they find out more.

Q. In April of 1995, did you have a phone in your home that was listed as the National Alliance phone number in Arizona?

A. Yes.

Q. And what was that number, if you recall it?

A. Let me look.

Q. Well --

A. I've got it written down in a -- a little address book.

Q. Would looking at that address book refresh your recollection as to what that number was that you had your answering machine hooked up to?

A. It would tell me what it was.

Q. All right. Well, if you could glance at that and see if it refreshes your recollection, that would be helpful.

A. Okay.

THE COURT: Well, I don't think it's a matter of refreshing recollection. He's going to look at the book. There isn't any objection to that, is there?

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MR. NEUREITER: Thank you.

THE WITNESS: It's scratched out on my book because it's no longer -- it -- this is an answering service that is no longer in existence. It was 768-8685.

BY MR. NEUREITER:

Q. And what was the area code?

A. At that time, it was 602, but that area code has been changed for the area to 520. 520 doesn't apply. At that time, it was 602.

Q. But that same area -- 520 or 602, those were the two area codes that would have applied, to the best of your recollection? Either applies now or did apply then?

A. No. It's a fact. The area code at that time was 602.

Q. All right.
A. It's the only one that applied at that time.
Q. Did there come a time in 1995 when you received some unusual phone messages on your answering machine?
A. I got three phone messages from --
Q. Hold on. The answer is yes, I take it?
A. Oh, okay. Yeah. It's yes.
Q. How was that number listed in -- or was it listed at all in the telephone directory in Arizona?
A. It was in the Yellow Pages.
Q. And what was it located under? What was the listing?
A. It was located under "political organizations."

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Q. And there, you would find the words "National Alliance" and the number you just gave us?
A. Right. Right above the "Republican Party," if I remember right.
Q. So you got some phone calls in 1995. Can you remember what month it was that you received these phone calls?
A. It was -- the Oklahoma City bombing was in April? Right?
Q. That's what the evidence has been so far; yes.
A. Okay. Well, it was -- it was towards the end or the first of that month. The end of the previous month. March or the first of April.
Q. If you could please tell the jury what best you recall about the messages that were left on that National Alliance answering machine.
A. Yeah. The individual identified himself as Tim Tuttle, and he said that he -- and he left his address.
Q. Do you recall what town that address was in?
A. Kingman.
Q. Go ahead.
A. Kingman, Arizona.
Q. All right.
A. He left his address. And he said he wanted to talk to somebody from the National Alliance, and he said he didn't have a phone where he could be reached at. And he said he would be leaving town soon. Kingman.

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Q. Right. Now, you said there were three messages?
A. Yes.
Q. And is that, to the best of your recollection, the first message, or is this a compilation of the three and the summary of the three?
A. That's pretty close to what was said on all three messages with one exception.
Q. Why don't you tell the jury about the exception.
A. I think I'm accurate to say that on the second message, he said that he wanted to -- he was going to call back the following day at a particular time, and that because he didn't

have a phone, he hoped that somebody would be there to answer the phone instead of him just listening to the message. Is that clear?

Q. Did you ever speak with this individual?

A. No. Never spoke with him.

Q. After that second message, was there a third message where the individual tried to recontact you?

A. There was a third message.

Q. Was there -- tell us, was there or wasn't there any urgency in his messages?

A. Yeah. He -- he emphasized that he was going to be leaving town soon, and therefore, he wanted to talk to somebody with the National Alliance soon.

Q. I'd like to put on the ELMO what has been previously

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admitted -- pages of what has been previously admitted as Government Exhibit 553, I believe, and they are pages 189, 190, and 191. Now, this is a page of Exhibit 553 that's labeled April 5, 1995. Do you see that at the top? Can you read that, or am I going to have to zoom in a little more?

A. Zoom in a little bit more. I can read it.

Q. Is that accurate? That's April 5, 1995?

A. That's what it says.

Q. And we see a series of phone calls, and the first one is from the Imperial Motel to Ryder Truck Rental One Way in Lake Havasu, Arizona. Do you see that?

A. Yes.

Q. And that's April 5 at 3:43:18 p.m. Is that accurate?

A. Yes.

Q. Okay. And the second one is from the Imperial Motel in Kingman to a David Millar in Muldrow, Oklahoma. Do you see that?

A. Yes.

Q. Do you know a David Millar?

A. No.

Q. The third one is to an account balance. And the fourth one at 10:44 p.m. is from the Imperial Motel to -- if you could just read that into the record what that says there. I'll zoom in.

A. Area code (520) 768-8685.

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Q. To the best of your recollection, that's the wrong area code?

A. Yeah. I could be wrong there. Maybe when I wrote that in my address book, area code 602, I just didn't change the 602 --

Q. All right.

A. -- when it changed -- when it, in fact, changed to 520. I don't -- okay. Obviously, it's 520.

Q. But those last digits are the number --

A. The last digit. 768-8685. That's correct.

Q. If you look at -- that's a 3-minute-and-36-second call: is

Q. If you look at that 3 and 36 minute and 36 second call, is that correct?

A. That's what it says.

Q. Do you recall the length of these messages? Were they fairly lengthy, or were they short?

A. Yeah. Our messages were --

Q. Not the message that you left for people to hear but these particular Tim Tuttle messages that were left for you. Were those lengthy messages that were left, or were they relatively brief, to your recollection?

A. The messages where people leave their name and address and phone number and all that are very brief, as was his. The phone message we had was maybe -- you know, 3, 4 minutes long.

Q. All right.

A. And maybe even a little bit more than 4 minutes in some cases, but I can't say that for sure. Thereabouts. Our

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message, and then you hear the beep, and then if you want to leave your name and number. You get the drift.

Q. Okay. We got the drift. Okay. The next one is an account balance. Then at 11:03 p.m., a 3-minute-and-36-second call from the Imperial Motel, and is that the same number to the National Alliance?

A. That's the same number.

Q. And we turn to the next page, which is 190. At the top, it's April 6, 1995. And at 1:59 p.m., there's a 3-minute-and-22-second call from the Imperial Motel; and is that the same number again?

A. That's the same number.

Q. At the National Alliance?

A. At my house.

Q. At your house. And it's listed here as the National Alliance because that's what it was listed under in the Yellow Pages?

A. Yeah. Right.

Q. Okay. And then at 9:58 p.m., there's a 17-second call from the Imperial Motel to the National Alliance.

A. Uh-huh.

Q. Now, did you get a number of -- would your phone machine indicate if somebody had called and not left a message?

A. All the time. Yeah. Sure.

Q. There would be a click or a beep?

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A. Yeah. Yeah. The machine would be -- a little red light would be flashing that you got a call, but then the -- there would be nothing there.

Q. Okay.

A. Yeah.

Q. 9:59 and 39 seconds, Imperial Motel to the National Alliance. Is that accurate?

A. Says the same.

Q. And that one was 0 time period there, so --

The next one is 10:27, Imperial Motel to the National Alliance; correct?

A. That's right.

Q. And that's 0, as well.

And 10:01 and 21 seconds, Imperial Motel to the National Alliance. Again, it's 0.

And then 10:03 p.m., Imperial Motel to the National Alliance. And this one was a 20-second call; is that right?

A. That's what it says.

Q. And then here is the April 7 at 1:57 p.m., 12-second call from the Silver Spoon pay phone in Kingman, Arizona, to the National Alliance; is that correct?

A. That's what it says.

MR. NEUREITER: Okay. I would, your Honor, like to republish for the jury what has been previously admitted as Government Exhibit 260, which is a registration at the Imperial

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Motel for Mr. Tim McVeigh, date in 3-31-95, date out April 7, 1995. And this is the Imperial Motel in Kingman, Arizona.

THE COURT: And you just did.

MR. NEUREITER: I did.

THE COURT: All right.

MR. NEUREITER: If it was all right with the Court.

THE COURT: I'd let you know if it wasn't.

BY MR. NEUREITER:

Q. Do you know a gentleman by the name of William Pierce?

A. Yes.

Q. Who is William Pierce?

A. William Pierce is the chairman of the National Alliance.

Q. Has Mr. Pierce authored some books?

A. Yes. He's -- he's authored two novels.

Q. Did he author those novels under a pseudonym?

A. Yes.

Q. What was that pseudonym?

A. Andrew Macdonald.

Q. And what were the names of those books?

A. One was The Turner Diaries. That was the first. And the second was Hunter.

Q. Did FBI agents come to visit you after the bombing in Oklahoma?

A. Yes.

Q. Did you try and sell those -- or did you sell those FBI

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agents a copy of either of those books?

A. Yes.

MR. NEUREITER: Pass the witness.

THE COURT: Mr. Goelman.

CROSS-EXAMINATION

BY MR. GOELMAN:

Q. Mr. Coffman, my name is Aitan Goelman. I'm one of the lawyers representing the United States in this matter. You and I have never met, have we?

A. No.

Q. You never spoke to whoever it was that was calling you in March or April of 1995, did you, sir?

A. That's correct, I did not.

Q. And you indicated that the messages that you would leave on your answering machine that people would call up and listen to were sometimes lengthy; is that right?

A. No. I didn't say that. I said they were between 3 and 4 minutes.

Q. There were different messages, depending on what particular time someone called? Did you change them monthly?

A. I changed them just at -- I had -- oh, three, four messages on hand, and I changed them periodically and without any kind of schedule.

Q. And those messages broadcast the National Alliance's particular agenda, what you wanted callers to know?

Richard Coffman - Cross

A. Yes.

Q. To the best of your recollection, was the message -- the outgoing message on the National Alliance's answering machine in April, 1995, between 3 and 4 minutes long?

A. Oh, yes.

Q. I want you to look down on your screen again, and I'm showing you page 190 from Government Exhibit 553.

A. Uh-huh.

Q. Defense counsel just asked you some questions about those phone calls. And you identified the National Alliance's number in Mohave Valley, Arizona; is that right, Mr. Coffman?

A. That's right.

Q. The last five calls there were all under 20 seconds' duration; isn't that right? Or 20 seconds or less?

A. That's right.

Q. I'm showing the telephone calls from April 7, 1995. And that call indicates a 12-second duration, doesn't it?

A. Yes.

Q. And that's the last phone call on these phone records to the National Alliance, isn't it, sir?

A. That's all you have here.

Q. Now, you don't know how the man who identified himself as Tim Tuttle got the number of the National Alliance in Mohave Valley, Arizona, do you, sir?

A. I don't know.

Richard Coffman - Cross

Q. And you don't know what it is that he wanted when he called the National Alliance, do you?

A. No. He told me what he wanted.

Q. He wanted to talk to someone?

A. Yeah.

A. Yeah.

Q. You don't know what he wanted to talk to someone about, do you, sir?

A. Not at all.

Q. And you don't know how the person who identified himself as Tim Tuttle even learned of the existence of your organization, do you, sir?

A. No idea.

Q. But it's not hard, is it, Mr. Coffman?

A. No, it's not.

Q. The National Alliance is not a covert organization, is it?

A. No, it's not.

Q. In fact, you guys are listed in the Yellow Pages?

A. That's correct.

Q. And as -- what did you say your title was in the National Alliance? Unit chief?

A. The answer to the question was that I -- I was at one time a unit coordinator.

Q. Was one of your responsibilities as unit coordinator recruitment and outreach?

A. Yes.

Richard Coffman - Cross

Q. And to that effect, did you occasionally represent the National Alliance at gun shows?

A. Yes.

Q. As part of your effort to recruit new members?

A. That's correct.

Q. And you distributed literature there, didn't you, sir?

A. Yes.

Q. That's one way that people could find out about National Alliance if they were interested in it?

A. Yes.

Q. Your presence at gun shows?

A. Yes.

MR. GOELMAN: May I approach, your Honor?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Defense counsel asked you about some publications put out by your organization. I'm showing you what's been received in evidence as Government Exhibit 158. Do you recognize that book, Mr. Coffman?

A. Yes.

Q. What's that book called?

A. Hunter.

Q. And that's one of the books your organization puts out?

A. Yes.

Q. That's one of the books that was written by William Pierce?

Richard Coffman - Cross

A. Yes.

Q. The head of National Alliance?

A. Yes.

Q. And that, is it not, sir, is one of the pieces of literature that you sold at gun shows?

A. Yes.

Q. And if someone were to call your organization's phone number in April, 1995, they could obtain a copy of this book, couldn't they?

A. Not by just calling. I would send them literature and with a book catalogue in which Hunter is listed for sale.

Q. And then they could order Hunter through that catalogue?

A. Sure. Uh-huh.

Q. And is it fair to say, sir, that National Alliance is in favor of as many people as possible being exposed to the ideas espoused in Hunter?

A. That's -- we're very agreeable to that idea. This -- this is a novel. This -- but it's a way we disseminate ideas.

Q. It's a way that you reach the public?

A. Yes.

Q. And is it fair to say that your organization wants as many people as possible to read that book?

A. I think that's fair to say, yeah.

Q. You never met Tim McVeigh, did you, Mr. Coffman?

A. No.

Richard Coffman - Cross

Q. Never spoke to Tim McVeigh?

A. No.

Q. Never met Terry Nichols?

A. No.

Q. You didn't have anything to do with the Oklahoma City bombing, did you, Mr. Coffman?

A. No.

MR. GOELMAN: That's all I have.

THE COURT: Any redirect?

MR. NEUREITER: No, your Honor. The witness is excused.

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

Next, please.

MR. WOODS: Betty Zabel.

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

(Betty Zabel affirmed.)

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

THE WITNESS: My name is Betty Lou Zabel, Z, like in zebra, A-B-E-L.

THE COURTROOM DEPUTY: Thank you.

MR. WOODS: Thank you, your Honor.

Betty Zabel - Direct

DIRECT EXAMINATION

BY MR. WOODS:

Q. Good morning, Ms. Zabel.

A. Good morning.

Q. Will you tell the jury where you live.

A. I live at 2030 East Andy Devine, Kingman, Arizona.

Q. Okay. What is that? What is that address? Is there an apartment house or residence or --

A. Yes.

Q. Is it known as a Belle Artes (sic) Motel?

A. Yes, it is.

Q. Excuse me, your Honor. And how long have you lived there?

A. Four years.

Q. Okay. What unit do you live in?

A. No. 11.

Q. Okay. And have you lived in No. 11 the whole time?

A. Yes, sir.

Q. Okay. In February, 1995, did you come to know a person by the name of Tim McVeigh?

A. Yes, I did.

Q. Will you tell the jury how you became acquainted with Mr. McVeigh.

A. He lived in Unit 9.

Q. Okay.

A. And as he was outside, my going to the office, I would

Betty Zabel - Direct

Speak to him.

Q. Did you come to know where he was from or his background?

A. No, sir.

Q. Did you learn whether or not he had been in the military?

A. Yes, sir.

Q. And what did he tell you about that?

A. I remarked to him that -- he wore fatigues all the time, and I remarked to him that when my boys got out of the military, they were ready to get rid of them. And he said he liked them, and he would continue to wear them.

Q. All right. Did he tell you anything about his military experience?

A. No, sir.

Q. Okay. Did he tell you where he had served or when he had served?

A. No, sir. Our conversations didn't go into that, you know --

Q. All right. When he was wearing fatigues, did you notice anything unusual about his appearance?

A. He was always neat and tidy, but he always carried a -- what we call a sidearm, you know. A pistol.

Q. Where would he carry it?

A. More or less on his hip, down to his leg. You know, it was strange for around there.

Q. Okay. Approximately how long did he live there, if you

Betty Zabel - Direct

recall?

A. I'm not really sure. I'm --

MR. WOODS: Okay. Your Honor, may it please the Court, the defense would offer into evidence Defense Exhibit 1430, which is the motel records for the Belle Artes (sic) Motel by agreement with Government counsel with the foundation.

THE COURT: All right.

MR. MEARNS: That's agreed. No objection.

THE COURT: All right. You may do so then. D1430 will be received as Belle Arte Motel records, Kingman, Arizona.
BY MR. WOODS:

Q. Now, Ms. Zabel, I've put on the screen there in front of you a motel receipt from the Belle Arte at 2030 East Andy Devine in Kingman. Is that the address where you live?

A. Yes, sir.

Q. Okay. And this is for a Mr. McVeigh, Timothy McVeigh, for Suite No. 9. Is that your recollection of where Mr. McVeigh lived?

A. Yes, sir.

Q. Okay. And it shows that he checked in on January 31, '95, paid for a week, February 7 of '95. Does that conform with your memory about when you saw him?

A. Yes, sir.

Q. Okay. Did there come a time that you made a complaint to the manager concerning Mr. McVeigh?

Betty Zabel - Direct

A. It wasn't a -- a -- actual complaint. It was sort of a -- a statement that some of his friends were rowdy, comparing, you know, when he was there by himself.

Q. All right. Now, you say that "when his friends were there." Would this be during the day, or during the evening, or when?

A. Mostly during the day.

Q. Okay. And approximately how many people came when you saw Mr. McVeigh in that motel?

A. Oh, there was three or four in and out, but only two that I could identify.

Q. Okay. Over this one -- was it approximately one week that you saw Mr. McVeigh there, or was it longer?

A. I can't really remember.

Q. Okay. Did the FBI come to interview you shortly after the bombing in Oklahoma City?

A. Yes, sir.

Q. Okay. And they took statements from you?

A. Yes, sir.

Q. And did they show you this motel registration that reflected Mr. McVeigh was registered there?

A. No, sir. They -- this is the first I've seen of this.

Q. All right. Did they show you photographs to ask you to identify other people that might have been there with Mr. McVeigh?

Betty Zabel - Direct

A. Yes, sir.

Q. And by that time, had you seen some of the publicity on television?

A. Yes, sir.

Q. Okay. And was it a matter of interest in the Kingman area on local television stations?

A. Yes, it was.

Q. Okay. Did you identify some photographs that the FBI showed you?

A. Yes, sir.

Q. Okay. Do you recall which photographs you identified who the individuals were that you knew the names of?

A. Mr. Rosencrans -- what. I'm sorry. I get mixed up on that one.

Q. Okay. Mr. Rosencrans?

A. Yes.

Q. Do you recall another one?

A. Well, we just -- it was known in Kingman for Mr. Fortier, so they didn't show me a photograph of him.

Q. Okay. Did you tell the FBI that you had seen Mr. Fortier there?

A. Yes, sir.

Q. Okay. So you were able to identify two people other than Mr. McVeigh; is that correct?

A. Yes, sir.

Betty Zabel - Direct

Q. Now, approximately how many others were there that you couldn't identify?

A. Either two or three.

Q. Okay. Could you give the jury just a general description of what you saw -- the description of the individuals that you saw there.

A. One --

THE COURT: Excuse me just a minute. You're not talking about the photographs now?

MR. WOODS: No, your Honor.

THE WITNESS: No.

BY MR. WOODS:

Q. Just the two individuals that you couldn't identify, can you give the jury just a general description of one and then the other.

A. The one was -- I would say medium height, stocky build. I -- I wouldn't attempt to give a facial description.

Q. Sure. Could you tell what race he was?

A. No. He was tan, but everybody in Arizona gets tan --

Q. Okay.

A. -- you know. Just you get out in our sunshine and --

Q. Sure.

A. But to be able to say if he was dark- or light-complected,

I could not do it.

Q. All right. What about the other person?

Betty Zabel - Direct

A. He was a little heavier than Mr. Fortier. And they were in and over -- I didn't pay that much attention to them except

their -- their vulgarity.

Q. Vulgarity?

A. Yes.

Q. All right.

A. Mr. McVeigh was very mannerly, very polite. And these people would come in and they had used quite a lot of profane language. And it was surprising, you know, that one would be very mannerly and the others would be rude and -- and vulgar.

Q. And how many days did this go on, this type of behavior?

A. Almost the entire time he was there.

Q. All right. And you made a statement to the management; is that correct?

A. Yes. Well, it was just a general statement. It was not a complaint.

Q. Okay.

A. You know, it was just a --

Q. Is that Mr. Rincon, the manager?

A. Yes.

Q. Did you ever notice Mr. Rincon talk to them?

A. No. I didn't -- I cannot honestly say that I did.

Q. Okay. Do you know whether or not they were all asked to leave the motel?

A. A few days after they moved, well, then Mr. Rincon told me

Betty Zabel - Direct

he was -- they were told to leave.

Q. Okay.

A. But I did not hear the conversation.

Q. All right. But you're sure it was Mr. McVeigh; is that correct?

A. Yes, sir.

MR. WOODS: No further questions, your Honor.

THE COURT: All right. Mr. Mearns.

CROSS-EXAMINATION

BY MR. MEARNs:

Q. Good morning, Mrs. Zabel. My name is Geoff Mearns.

Mr. Woods was asking you questions about Mr. McVeigh's stay at this motel in approximately February of 1995.

A. Yes, sir.

Q. And I think you told us that you don't have a particularly clear recollection of a lot of the events back from February of '95?

A. Yeah.

Q. And would it be fair to say that you had very little interaction with Mr. McVeigh during that week that he stayed

there?

A. Very little.

Q. You don't --

A. Just -- I'm the type of person if somebody is outside, you know, I'll speak to them and talk to them -- to them about the

Betty Zabel - Cross

weather and just, you know, things in general.

Q. And you didn't get to know him very well at all?

A. Oh, no.

Q. You did have a chance to observe him around the motel, though; right?

A. Yes.

Q. Okay. And was it obvious to you that he was very hyper and anxious?

A. Yes. Yes.

Q. And would it be fair to say that in -- that he acted very suspicious?

A. Yes. Very strange about people that lived there, you know.

Q. And that was obvious to you, even though you didn't know him very well?

A. Yes.

Q. With respect to the -- the tan man that you described as being with Mr. McVeigh --

A. Yes.

Q. -- after the bombing in Oklahoma City, did you have an opportunity to see sketches in the newspaper of a person who was identified as John Doe No. 2?

A. Yes.

Q. And the tan man you saw didn't fit the sketch John Doe No. 2; right?

A. I cannot say. Under oath, I would not attempt to say yes,

Betty Zabel - Cross

or no, you know. I'm not sure.

MR. MEARNS: No further questions.

MR. WOODS: Nothing further, your Honor.

THE COURT: Excusing her then, I assume?

MR. WOODS: Yes, your Honor.

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

THE WITNESS: Thank you.

MR. WOODS: Glynn Tipton.

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

(Glynn Tipton 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: Glynn A. Tipton, T-I-P-T-O-N.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Q. Good morning, Mr. Tipton.

Q. GOOD MORNING, MR. TIPTON.
A. Good morning.
Q. Mr. Tipton, where do you live?
A. Manhattan, Kansas.
Q. And where are you working?
A. For VP Racing Fuels and Palmer Industries.
Q. What do you do for VP Racing Fuels?

Glynn Tipton - Direct

A. Effectively, I'm the manager and salesperson.
Q. Okay. Is that out of the Manhattan office?
A. Yes.
Q. All right. Did you hold the same position in October of 1994?
A. Yes, I did.
Q. Okay. Now, briefly, can you tell the jury what VP Racing Fuels' business was in October of 1994.
A. We sell racing fuel to any type of motor sports, which encompasses drag racing, circle track, just about anything that has an internal combustion engine.
Q. Could you lean forward a little bit just to speak into the microphone.
A. Okay.
Q. Thank you, sir. What types of fuel do you sell to these --
A. We carry a large line of gasoline, methanol, nitromethane, various different power additives and accessories that go along with, you know, petroleum and fuel products.
Q. Are you -- do you know Tim Chambers?
A. Yes, I do.
Q. Who is Tim Chambers?
A. He's the truck driver and does national events for VP San Antone.
Q. VP San Antone. Is that the San Antonio, Texas office?
A. Yeah. The headquarters.

Glynn Tipton - Direct

Q. Okay. Mr. Tipton, I'm going to show you what has been previously admitted as Government Exhibit G318. Have you ever met this individual in person?
A. Yes, I did.
Q. When did you meet him?
A. It would have been October 1, 1994.
Q. All right. And do you recall what time of day it was?
A. It was early afternoon, right around 1:00.
Q. Now, where were you when you met him?
A. I was at the Sears Craftsman Nationals just south of Topeka.
Q. Okay. Is that -- tell the jury what the Sears Craftsman Nationals is.
A. It's an NHRA-sanctioned drag race.
Q. And by NHRA, is that the National Hot Rod Association?
A. Yes, it is.
Q. Okay. What was the name of the racing park that you were

located at?

A. Heartland Park, Topeka.

Q. And where is that -- it's called the Topeka Park, but where is it actually located?

A. It's south of Topeka, actually on Highway 75. I think there's a sign there that says Pauline, Kansas, or something.

Q. Okay. Now, tell the jury about your encounter with this individual.

Glynn Tipton - Direct

A. Basically, he just had approached me. I was -- had my back to the door -- side door in the --

Q. Let me stop you there. Maybe I should -- where were you specifically at the park when you first met this person?

A. Okay. I was at the race truck which is a semi tractor-trailer, and we sold the fuel out of the -- out of the tractor.

Q. Is that sort of a mobile office for you when you go to racetracks?

A. For those particular events, yes.

Q. Okay. Now -- now, go ahead and tell -- tell the jury what happened.

A. I remember that I was at one point in time going down the steps. I turned around and went back up to get something else. I heard an individual holler "hey, boss" at me. I turned around to look and find out what that individual wanted.

Q. Okay. And the individual that you saw was the individual we just showed on the screen?

A. Yes.

Q. And did you subsequently come to learn that that was Timothy McVeigh?

A. Yes, I did.

Q. Okay. Now, did you have a conversation with Mr. McVeigh at that time?

A. Yes, I did.

Q. And tell the jury what he said and what you said.

Glynn Tipton - Direct

A. Basically, he was looking for 55-gallon drums of anhydrous hydrazine.

Q. Did he --

A. Price and availability.

Q. Okay. He asked you about the availability of anhydrous hydrazine, 55-gallon barrels?

A. Yes.

Q. All right. When he asked you that, did you know what he was talking about?

A. I did not know what anhydrous hydrazine was at that point in time.

Q. And so how did you respond?

A. I would check with the chemical agent for the company, which was not at the event at that point in time, on Monday.

Q. Okay. And who was that chemical person at the company?

A. That would be Wade Grey.

Q. Okay. Did Mr. McVeigh give you his name at that time?

A. He gave me the name of John, I believe.

Q. All right. And did you subsequently write that down?

A. Yeah. I -- at one point in time, I went back up into the truck to get a piece of paper and a pen; and I was making some notes as far as what he wanted, what his name was. I was going to try and get his phone number.

Q. Okay. Did he give you his phone number?

A. No. He said he was in the process of moving from Junction

Glynn Tipton - Direct

City to Salina, I believe. And that at that point in time, I think I may have went back in the truck and got a business card and gave it to him.

Q. And what was your purpose in giving him the business card?

A. He was going to get back in touch with me on the -- on the product.

Q. All right. Did you have any other conversation with him?

A. At that point in time, I think I turned around to go back up the -- the steps, or maybe I was in the truck at that point in time. But anyway, I turned around. He turned around to leave. He stopped and asked me what the price of a drum of nitromethane was.

Q. All right. And what did you tell him?

A. \$1,200, I believe.

Q. Okay. And then -- and then what occurred? Did you have any further conversation?

A. No, he left at that point.

Q. Now, did you get a clear look at this individual while -- during the course of this conversation?

A. Yes.

Q. Okay. About how far away from him were you when you were speaking to him?

A. Oh, I'd say the closest was about around 2 to 3 feet. Somewhere right around there.

Q. Okay. Now, you had mentioned to him that you would follow

Glynn Tipton - Direct

up about the anhydrous hydrazine with Wade Grey; is that correct?

A. Yes. That is correct.

Q. Did you, in fact, do that?

A. Yes, I did.

Q. When did you do that?

A. Monday morning.

Q. Okay. You -- did you call Mr. Grey?

A. Yes, I did.

Q. Now, when you -- as a result of your conversation with Mr. Grey, did that cause him some concern?

A. Yes, it did.

Q. And what was his concern?

A. Well, basically, that at some point in time through the

A. Well, basically, I at some point in time through the conversation -- I had asked him if you mixed nitromethane with anhydrous hydrazine, you know, what would -- what would be the result. And he explained that it would become a bomb or be explosive. And so at that point, I explained the whole situation and the contact, and he thought we ought to call the ATF.

Q. He thought you should call the ATF?

A. Yes.

Q. And that's the Bureau of Alcohol, Tobacco, and Firearms?

A. Yes.

Q. Did you do that?

Glynn Tipton - Direct

A. He conference-called to the office, I believe, in New Orleans -- I believe it was.

Q. Okay.

A. And they referred us to the Kansas City office because of where the -- the interaction took place.

Q. Okay. Did you have any further contact with Timothy McVeigh after that initial contact?

A. I received a phone call approximately two to three weeks later.

Q. Okay.

A. I guess.

Q. Are you sure about the timing of that, two to three weeks?

A. Not 100 percent positive, no.

Q. Okay. Now, where were you when you received the phone call?

A. I was in my office.

Q. And do you recall -- well, before I ask that, how do you know that it was Timothy McVeigh or the same individual you had spoken to earlier?

A. Because when he -- or when I answered the phone, anyway, he explained to me, "I was looking for the anhydrous hydrazine," so --

Q. Okay. Now, did you ask him at that point whether he had any plans about mixing the anhydrous --

A. Yes, I did.

Glynn Tipton - Direct

Q. -- hydrazine and nitromethane?

A. Yes, I did.

Q. What did he say?

A. He said no, he didn't have any plans on that.

Q. Do you recall your phone number in October 1994 at the office there?

A. Yes, I do.

Q. What was it?

A. It's (913) 539-2700.

MR. THURSCHELL: Okay. Excuse me, your Honor.

BY MR. THURSCHELL:

O. Mr. Tipton, I want to show you what -- what -- page 51 of

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what has been previously admitted as Government Exhibit 553.

And zooming in, do you see there your phone number --

A. Yes, I do.

Q. -- office phone number at the time?

A. Yes, I do.

Q. Okay. And zooming out a bit, do you see the date that's indicated?

A. October the 7th.

Q. Does that refresh your memory that the call might have been received only about a week after your initial contact?

A. Yeah.

Q. Now, looking -- looking across to the initial column, do you see where that call was placed from?

Glynn Tipton - Direct

A. Yes.

Q. And where is that?

A. It says Kingman, Arizona.

Q. Okay. And the residence of Michael Fortier; is that right?

A. Yes.

Q. Okay. And do you see some additional -- another phone call made shortly after the one to your office?

A. Yes.

Q. And was that made to Coogle Trucking?

A. Yes, it was.

Q. What is Coogle Trucking?

A. It's another company that services NHRA national events --

Q. Okay.

A. -- with racing fuel.

Q. They sell racing fuel, also?

A. Yeah. They --

Q. Do they sell nitromethane?

A. They are bigger in the nitromethane than they are the racing fuel.

Q. Mr. Tipton, when -- when did you first realize that it was Timothy McVeigh who you had had contact with on these occasions?

A. After I had been presented with a picture by the FBI and I started comparing my description that I had given them to the -- to the picture.

Glynn Tipton - Direct

Q. Okay. When you -- you were given a photograph of Timothy McVeigh by the FBI?

A. Yes.

Q. And were you given a photograph of Terry Nichols at the same time?

A. I believe so.

Q. Okay. And you, after some cogitation -- you decided that the person you had seen was Timothy McVeigh?

A. Yes.

MR. THURSCHELL: No further questions, your Honor.

THE COURT: Mr. Goelman.
CROSS-EXAMINATION

BY MR. GOELMAN:

Q. Good morning, Mr. Tipton.

A. Good morning.

Q. On October 1, 1994, sir, you had a face-to-face encounter in Kansas with Tim McVeigh?

A. Yes, I did.

Q. And he was looking to buy fuel?

A. Anhydrous hydrazine.

Q. And nitromethane?

A. And nitromethane, yeah. Basically.

Q. Two things that, when combined together, would be explosive?

A. Yes.

Glynn Tipton - Cross

Q. You testified that Mr. McVeigh made inquiries about buying a drum of nitromethane; is that right?

A. Yes.

Q. Did he actually try to buy nitromethane from you on October 1, 1994?

A. No. He just asked for a price.

Q. And after you told him the price, did he explain why he didn't want to take possession of nitromethane right then and there?

A. No, he did not.

Q. I want to show you what's already been received in evidence as Government Exhibit 2098. Is that what the top of a VP barrel of nitromethane looks like?

A. Yes, it is.

Q. So it's clearly labeled as nitromethane?

A. Uh-huh.

Q. And do you have experience in selling and handling 55-gallon drums of nitromethane for VP?

A. Yes, I do.

Q. Could you fit three of those drums in the trunk of a compact car like a Chevy Spectrum?

A. No.

Q. But you could, could you not, sir, load three 55-gallon drums into a pickup truck with a camper shell?

A. Oh, yes.

Glynn Tipton - Cross

Q. And isn't it a fact, Mr. Tipton, that each one of those 55-gallon drums weighs about 500 pounds?

A. That is correct.

Q. Are you familiar with an NHRA race held every year in Ennis, Texas?

A. Yes, I am.

Q. And is VP Racing represented at that race?

A. Yes, they are.

Q. Is Coogee Trucking represented at that race?

A. Yes, they have been.

Q. Okay. And were you personally at that race on October 21, 1994?

A. No, I was not.

Q. And why is that?

A. That's not my territory.

Q. And you already testified that Tim Chambers is a driver for VP?

A. Yes, he is.

Q. Would Tim Chambers have been at that race as part of his duties for VP?

MR. THURSCHELL: Objection, your Honor.

THE COURT: Sustained.

BY MR. GOELMAN:

Q. I want to show you what's already been received in evidence as Government 143. Do you recognize that as a receipt, a VP

Glynn Tipton - Cross

Racing Fuels receipt?

A. Yeah. That looks like one of the ones they use off the trucks.

Q. Does that indicate a cash purchase of three drums of nitromethane?

A. Yeah.

MR. THURSCHELL: Your Honor, I'll object to him testifying unless he has personal knowledge of this.

THE COURT: Sustained.

BY MR. GOELMAN:

Q. Mr. Tipton, have you ever made a cash sale of three drums of nitromethane?

A. No, I have not.

Q. Through your work at VP Racing, sir, have you become familiar with how barrels are stored?

A. Yeah.

Q. And have you become familiar with any markings that barrels make on concrete floors?

A. Yes.

Q. I want to show you what's already been received in evidence as Government 2054. Do you see those markings on that floor?

A. Yes, I do.

Q. Do they look familiar to you?

A. They look like a drum has been sitting in those positions.

Q. Can you count how many rings there are on that picture?

Glynn Tipton - Cross

A. It appears that there's three.

MR. GOELMAN: Thank you, Mr. Tipton. That's all I have.

THE COURT: Any redirect?

MR. THURSCHELL: No redirect, your Honor. Witness is excused.

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

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

MR. WOODS: Kelly Langenburg.

THE COURT: Thank you.

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

(Kelly Langenburg 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: Kelly Langenburg, L-A-N-G-E-N-B-U-R-G.

THE COURTROOM DEPUTY: Thank you.

MR. WOODS: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. WOODS:

Q. Good morning, Ms. Langenburg. Will you tell the jury where you live?

A. Snover, Michigan.

Q. Okay. Are you the sister of Lana Padilla?

Kelly Langenburg - Direct

A. Yes, I am.

Q. Okay. Do you know Terry Nichols?

A. Yes, I do.

Q. Approximately when did you meet Terry Nichols?

A. Oh, the exact year, I don't know. Probably 15 years ago.

Q. All right. How much older is Lana Padilla than you?

A. About 16 years.

Q. Okay. Do you recall a time that Terry Nichols was married to your sister, Lana Padilla?

A. Yes.

Q. All right. And when they got married, how old were you at that time?

A. 17.

Q. Okay. Did you baby-sit for their child, Josh, after he was born?

A. Yes, I did.

Q. Okay. Do you recall the time that Terry and Lana Padilla got divorced?

A. Yeah. Sort of.

Q. All right. Do you recall the time that Mr. Nichols went into the Army?

A. Vaguely, yes.

Q. All right. Were you married to James Nichols?

A. Yes.

Q. What period of time were you married to James Nichols?

Kelly Langenburg - Direct

What years?

A. '84 and '85.

Q. Okay. And do you have a son by James Nichols?

A. Yes, I do.

Q. And what is his name?

A. Chase.
Q. And how old is he?
A. 12.
Q. Okay. Have you subsequently remarried?
A. Yes.
Q. Okay. During the year 1993, did you come to know a person by the name of Tim McVeigh?
A. Yes.
Q. And where did you meet Mr. McVeigh?
A. I met him at my place of work.
Q. And where do you work?
A. LaFave Steel.
Q. And where is that?
A. In Cass City, Michigan.
Q. Okay. How did you meet Mr. McVeigh?
A. He had come in with James.
Q. Okay. Did you find out whether or not he was living with James?
A. Yes. I knew he was because he was picking Chase up from the babysitter's and taking him back to James', and Chase would

Kelly Langenburg - Direct

talk about Tim being there.
Q. Okay. Do you and James share custody of Chase?
A. I have custody. He has visitation.
Q. Okay. Do you recall approximately what time period it was that Tim McVeigh was living with James?
A. Around '93.
Q. All right.
A. Maybe part of '94.
Q. And during that time, do you know whether or not Terry Nichols was living in Decker, Michigan?
A. In '93, I believe he was. Part of '93.
Q. Do you recall whether or not he was married at that time?
A. Yes, he was.
Q. And did you meet his wife?
A. Yes, I did.
Q. And would you tell the jury her name?
A. Marife.
Q. Okay. And did they have any children?
A. Yes, they do.
Q. And what was the daughter's name?
A. Nicole.
Q. Okay. Do you recall when Terry Nichols left the Decker, Michigan area?
A. In the end of '93, I believe it was.
Q. All right. And at that time, where was your sister, Lana

Kelly Langenburg - Direct

Padilla, living?
A. In Las Vegas.
Q. Okay. Do you know whether or not Terry Nichols went to Las

Vegas?

A. I don't know for sure. I believe he did, but I don't know for sure.

Q. And was Tim McVeigh still living at the Decker farm, to your knowledge?

A. Yeah. As far as I know.

Q. And do you know approximately when he left the Decker farm?

A. Not exactly.

Q. Okay. Now, I want to call your attention to April the 21st of 1995, two days after the bombing in Oklahoma City. Do you recall that period of time?

A. Yes.

Q. Okay. Did you have an occasion to be called down to the sheriff's office in Sanilac County?

A. Yes, I did.

Q. Okay. What day and what time was that?

A. April 21st, around 5:30, 6:00 in the morning.

Q. Okay. Who did you meet with there?

A. Paul Cowley.

Q. And who is he?

A. He's a detective at the sheriff's department. And Gary English from the Friend of the Court.

Kelly Langenburg - Direct

Q. And what is Friend of the Court?

A. What is Friend of the Court?

Q. Yeah. What is a Friend of the Court? Is that an investigative position, or is that a --

A. Yeah.

Q. -- official position there in the Michigan?

A. From the Friend of the Court office.

Q. Okay.

A. He's an investigator for Friend of the Court office.

Q. There's an office there called Friend of the Court?

A. Yes.

Q. Okay. Those two people: Mr. English and Mr. Cowley. And anybody else present?

A. Dave Hall and two men from the FBI. I believe there were two.

Q. And during that meeting, did they ask you questions about your knowledge of Mr. McVeigh and Terry Nichols and James Nichols?

A. Yes.

Q. And did you tell them everything that you could recall about Timothy McVeigh, Terry Nichols, and James Nichols?

A. As much as I could remember.

Q. Okay. Did you advise them that Terry Nichols had been married to your sister, Lana Padilla?

A. Yes.

Kelly Langenburg - Direct

Q. And did you give them the address and phone number of your sister in Las Vegas?

SISTER IN Las Vegas:

A. Yes, I did.

Q. And you had that current number, work number, and home number?

A. I believe I had her home number.

Q. Okay. Now, what did you tell the FBI concerning Terry Nichols, as best you can recall, at that time?

MS. WILKINSON: Objection, your Honor.

THE COURT: Sustained.

BY MR. WOODS:

Q. Okay. Best you can recall, you told them what you remember about where he lived; is that correct?

A. I don't believe at the time I knew where he lived.

Q. Well, I mean, in the past. Where --

A. In the past, yeah; but at the current time, I don't --

Q. And did you tell them whatever you knew about Timothy McVeigh?

A. Yeah. As far as what I knew, yeah.

Q. Okay. Did you know very much?

A. No. I didn't know Tim very well.

Q. Okay. You just knew that he had been living there for a period of time; is that correct?

A. Yes.

Q. And at that time, you did not know Terry Nichols' home

Kelly Langenburg - Direct
address, where he was living at that time?

A. I don't believe I knew that he was -- where he was at the time.

Q. Okay. And you gave them information about what you knew about his living there in the past in Michigan; is that correct?

A. Yes.

MR. WOODS: Thank you. No further questions, your Honor.

THE COURT: Any questions?

MS. WILKINSON: We have no questions, your Honor.

THE COURT: All right. Excusing her?

MR. WOODS: Yes, your Honor.

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

MR. WOODS: Sheila Nicholas.

THE COURT: All right. Sheila Nicholas. Nicholas?

MR. WOODS: Excuse me?

THE COURT: The name is Nicholas?

MR. WOODS: Yes, your Honor.

THE COURT: All right. I thought I heard you say that.

MR. WOODS: We're skipping over Mr. Hall, your Honor.

THE COURT: All right.

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

(Sheila Nicholas 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: Sheila Vianne Nicholas, N-I-C-H-O-L-A-S.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. NEUREITER:

Q. Just for the record and jury, that's Nicholas, l-a-s; correct?

A. Yes.

Q. No relation to Terry Nichols?

A. No.

Q. How are you doing today?

A. I'm doing fine. Thanks.

Q. Could you tell the jury where you're from.

A. I'm from Vassar, Michigan.

Q. And where is that precisely for people who aren't familiar with Michigan?

A. It's located in the Thumb.

Q. So down to the bottom of the Thumb of Michigan. That's where Vassar is?

A. I would say roughly mid Thumb area.

Q. Mid thumb. And where is Detroit in relation to --

A. Two hours south.

Sheila Nicholas - Direct

Q. The bottom of the Thumb?

A. Yes.

Q. How old are you?

A. 26.

Q. And what do you do for a living?

A. I take care of apartments, and I am a mother.

Q. You're married?

A. Yes.

Q. To whom are you married?

A. Kevin Nicholas.

Q. And do you have children?

A. Yes. We have two.

Q. What are their ages?

A. My daughter is six and my son is just over two.

Q. Do you know Timothy McVeigh?

A. Yes, I do.

Q. And do you know Terry Nichols?

A. Yes, I do.

Q. Let's first talk about how you know Tim. When was the first time you met Timothy McVeigh?

A. November of '94.

Q. And before you met him, had you learned that your husband and Tim were friends?

A. Yes.

Q. And had your husband told you a little bit about Tim before

Sheila Nicholas - Direct

you met him?

A. Somewhat, yeah.

Q. What did he tell you about Tim?

A. That he had --

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. NEUREITER:

Q. Did there come a time when Tim came to your home?

A. Yes, there was.

Q. If you could tell the jury when that was and how that came about.

A. November of '94, I believe he was just in the area and popped in.

Q. He popped in?

A. Yeah.

Q. Had there been any prior notification that Tim would be popping in?

A. Maybe a few hours.

Q. And was that Mr. McVeigh's practice, to your knowledge?

A. Yes.

Q. Just popping in?

A. Yes.

Q. Did Mr. McVeigh spend Thanksgiving of 1994 with you and your family?

A. Yes, he did.

Sheila Nicholas - Direct

Q. Describe that for the jury.

A. He went with us to our family Thanksgiving. That would be my side. Attended the dinner.

Q. And you say Mr. McVeigh popped in in November of 1994. Was this a one- or two-hour visit and then he left, or did he stay for an extended period of time in your home?

A. He stayed for approximately two months.

Q. And to the best of your recollection, when did he leave your home?

A. The beginning of January of '95.

Q. The beginning of January, or was it the end of January?

A. Super Bowl time. I'm not sure what date that would be.

Q. Around the Super Bowl in 1995?

A. Yes.

Q. And describe your household for us. You -- who was living there at the time when Tim was living there for two months?

A. My husband, myself, and my daughter and Tim.

Q. Would -- did Tim stay there continuously for that two months, or did he come and go on occasion?

A. He came and went.

Q. Can you remember how many times he came and went during those two months?

A. For extended times would be twice.

Q. And do you know where he went?

A. He -- I believe he went to New York once and to Arizona

Sheila Nicholas - Direct

.....

once.

Q. Okay. Did there come a time where Mr. McVeigh had some car problems?

A. Yes, there was.

Q. Could you describe that incident to the best of your recollection to the jury.

MR. MACKEY: Objection. Lack of foundation.

THE COURT: You have to establish the foundation.

MR. NEUREITER: Very well.

BY MR. NEUREITER:

Q. Did you -- during one of these periods when Mr. McVeigh was gone, were you in the home with Kevin?

A. Yes.

Q. And did Kevin receive a phone call?

A. Yes, he did.

Q. And on receiving that phone call, did your husband tell you what his intent was to do?

A. Yes. He intended on going to pick Tim up. Help him get his car home.

Q. Okay. And did your husband leave the home?

A. Yes, he did.

Q. And did he reappear sometime thereafter with Mr. McVeigh?

A. Yes, he did.

Q. And did you see the next day a vehicle that Mr. McVeigh had been driving?

Sheila Nicholas - Direct

A. Yes.

Q. I'd like to show on the ELMO what has not yet been admitted, D1838.

And do you recognize that?

A. Yes, I do.

Q. And what is that?

A. That is Tim's car.

Q. And is that after the incident where Kevin went to pick him up that you saw this vehicle?

A. Yes, it is.

MR. NEUREITER: We offer D1838.

MR. MACKEY: No objection.

THE COURT: Received. May be shown.

BY MR. NEUREITER:

Q. And that's -- did Tim tell you what had happened to his car?

A. He told us he had been rear-ended, yes.

Q. He had been rear-ended. And was that why Kevin was going to pick him up?

A. Yes.

Q. How far away did Kevin have to go to pick up Tim, to your knowledge?

A. Approximately 30 miles, 20 miles.

Q. Is it unusual for folks at rural Michigan to drop everything and go and help out a friend who's had car troubles?

Sheila Nicholas - Direct

MR. MACKEY: Objection.

THE WITNESS: No, it's not.

THE COURT: Sustained.

BY MR. NEUREITER:

Q. After this accident, and when Tim came back to your home, did he stay with you continuously from that time on until he left in -- at Super Bowl time, 1995?

A. He had left one other time. I'm not sure if that was before or after the incident.

Q. Okay. Did -- over the course of those two months that he was there, did you get to know Tim?

A. Yes.

Q. And did you come to trust Tim?

A. Yes.

Q. Did Tim play with your child?

A. Yes.

Q. Did you run errands with Tim?

A. Yes.

Q. Did you have conversations with Mr. McVeigh?

A. Yes.

Q. Did you come to learn some of his political beliefs?

A. A few.

Q. Could you tell those to the jury?

A. He was unhappy about the way Waco had ended.

Q. Did he have some views about gun control?

Sheila Nicholas - Direct

A. Yes. He was unhappy with some of the laws that they had tried to pass, I guess.

Q. And with respect to the issue of Waco, was Mr. McVeigh's unhappiness with the way that had ended shared by many people in your community?

A. Yes.

Q. Did you talk with Tim a lot over those two months?

A. Yes.

Q. Was -- where was Kevin during the time when you were

running errands with Tim and talking with Tim?

A. He was working.

Q. What was Kevin doing?

A. Farming.

Q. And did -- what kinds of errands did Tim help you run?

A. Grocery store, shopping, visiting.

Q. Did you allow Mr. McVeigh to use your telephone --

A. Yes, I did.

Q. -- while he was there in your home?

A. Yes.

Q. Did you know who he was calling?

A. No, I did not.

Q. Did you know where he was calling?

A. No, I did not.

Q. How was -- how were those calls paid for?

A. I believe he used a calling card. They were not charged to

Sheila Nicholas - Direct

my phone.

Q. Would he have those conversations in the living room, or would he go into another room so that you couldn't hear the conversations?

MR. MACKEY: Objection. Form of the question.

THE COURT: What's the objection?

MR. MACKEY: Objection to the form of the question.

THE COURT: Yes. It's leading.

BY MR. NEUREITER:

Q. Were you able to overhear the conversations that Tim had?

A. No.

Q. Now, let's talk about Terry Nichols. How many times had you met Mr. Nichols?

A. Once.

Q. And can you remember, to the best of your recollection, when that occurred?

A. April -- the beginning of April, 1995.

Q. And with whom -- what was the context of your meeting with Mr. Nichols?

A. Context?

Q. Yeah. Who was there? How did it come about?

A. Him and his wife and his daughter had come for a visit.

Q. Okay. I'd like to put on the ELMO what's been marked for identification as D1625.

Ask you if you recognize that as a photograph of

Sheila Nicholas - Direct

Mr. Nichols, his wife, and his daughter.

A. Yes.

MR. NEUREITER: We offer it, your Honor.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. NEUREITER:

Q. If you could just identify for the record who those three people are.

A. Terry Nichols, Marife, and his daughter, Nicole.

Q. And they came in April of 1995 to your home?

A. Yes.

Q. Can you describe how long they stayed?

A. Approximately two hours.

Q. And why did he come by your house?

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. NEUREITER:

Q. Did -- can you describe the conversation that occurred during those two hours that they visited in April of 1995.

A. Catch up. Hadn't seen each other in quite a while.

Q. When you say they hadn't, this is Kevin and Tim -- or Kevin and Terry?

A. Yes.

Q. And were you all in the same room?
A. Different parts of the same room, yes.

Sheila Nicholas - Direct

Q. And were you speaking with Mrs. Nichols?
A. Most of the time, yes.
Q. Did Mr. Nichols explain his purpose in being in Michigan at that time?
A. Yes.
Q. And what was that?
A. He was attending a gun show.
Q. And did you, during the course of those conversations, learn the types of items that Mr. Nichols was selling at those gun shows?

MR. MACKEY: May I object and just make clear that the witness is speaking with firsthand knowledge of conversations with Mr. Nichols, as opposed to his wife.

THE COURT: You're asking what Mr. Nichols said to her?

MR. NEUREITER: Yes.

BY MR. NEUREITER:

Q. Only talk about what specifically you overheard Mr. Nichols saying during those conversations.
A. He was selling shovels, fertilizer -- small amounts of fertilizer, and guns.
Q. Okay. Describe the shovels and how that -- how you heard about that.
A. My husband decided he'd like to purchase one, which he did. I have not seen it, so I don't know what it looks like; but it

Sheila Nicholas - Direct

was a shovel.
Q. Did you, Mr. Nichols -- did you hear Mr. Nichols say the origin of the shovels, where he had gotten them?
A. No. I don't recall.
Q. Now, you said he was selling fertilizer. Can you describe what you heard Mr. Nichols say about his sale of fertilizer at that time?
A. He was selling mayonnaise-sized jars, small amounts.
Q. About this size?
A. Yeah, of fertilizer for personal use.
Q. And did you overhear Mr. Nichols and your husband have some laughter about his sale of fertilizer?
A. Yes, I did.
Q. Can you describe that for the jury and what caused that to come about.
A. My husband thought it odd that someone would pay for a small amount when they could purchase a larger amount for the same amount of money at a fertilizer place.
Q. And did Mr. Nichols -- what did Mr. Nichols say?
A. A lot of people were not aware that they could purchase it in larger quantities and a lot of people only needed a small

in larger quantities, and a lot of people only needed a small amount.

Q. Did he say anything about his -- how that particular product was -- was selling?

A. Pretty well.

Sheila Nicholas - Direct

MR. NEUREITER: One moment, your Honor.

THE COURT: Yes.

MR. NEUREITER: Pass the witness, your Honor.

THE COURT: Mr. Mackey.

CROSS-EXAMINATION

BY MR. MACKEY:

Q. Is it true that people from Michigan get tired of using their hand to show where they live?

A. Yes.

Q. Let me show you Government Exhibit 2134. It's not yet been admitted. And is that an accurate depiction of the relative location of places like Decker and Vassar and Saginaw, Michigan?

A. Yes.

MR. MACKEY: Judge, I'd offer 2334 (sic).

MR. NEUREITER: No objection.

THE COURT: Received.

BY MR. MACKEY:

Q. Mrs. Nichols -- Nicholas -- I'm sorry -- this shows where Decker is; correct?

A. Uh-huh.

Q. And Vassar, you and your husband, Kevin live near there?

A. Yes.

Q. Not exactly in Vassar, but not too far?

A. Correct.

Sheila Nicholas - Cross

Q. Which is not too far from the Saginaw Bay, just a little bit south and east of Saginaw; correct?

A. Correct.

Q. Some distance from Kalamazoo and Grand Rapids?

A. Yes.

Q. Which rest further west in that state; correct?

A. Yes.

Q. Tell the members of the jury, Mrs. Nicholas, when you and Kevin first became a couple.

A. We started dating in the summer of 1994.

Q. 1994. At that time, Mrs. Nicholas, do you remember where Kevin was working?

A. He was working for his uncle, William Kretzschmer.

Q. Do you know where he had worked prior to that time?

A. I later became aware that he had worked on the Nichols farm.

Q. That's the Nichols farm in Decker, Michigan?

A. Yes.

Q. Do you know how long your husband or soon-to-be husband had

worked at the Nichols farm?

MR. NEUREITER: Objection, your Honor.

THE COURT: Sustained.

BY MR. MACKEY:

Q. Did you come to Denver with Kevin, Mrs. Nicholas?

A. Yes, I did.

Sheila Nicholas - Cross

Q. All right. In late November, 1994, your memory is that Mr. McVeigh came and joined you and Kevin at your residence in Michigan; is that correct?

A. Yes, he did.

Q. And he was there on and off, as you've described, up until the time of the Super Bowl?

A. Yes.

Q. Which is not something you put down in your calendar and you don't remember the date?

A. Correct.

Q. All right. During that time frame, Mrs. Nicholas, you testified to the jury that there were a number of phone calls made from your residence; is that correct?

A. Yes.

Q. And you and your husband were working, as well, with a business known as the Nicholas Rentals?

A. Yes.

Q. All right. You've seen, have you not, before coming to court a -- an exhibit that included a number of phone calls placed from numbers subscribed to you?

A. Yes.

Q. And to the Nichols -- Nicholas Rentals; correct?

A. Yes.

Q. Would it be your testimony, Mrs. Nicholas, that none of those phone calls were placed by either you or your husband?

Sheila Nicholas - Cross

A. The ones that you have shown me, no.

Q. If any phone call were made from your residence or from your business residence number during November or December of 1994, or January of 1995, those were not made by either you or your husband; is that correct?

A. That's correct.

Q. Do you know Lana Padilla?

A. No, I do not.

Q. Ever talk to her?

A. No.

Q. Ever have any reason or occasion to call her?

A. No.

Q. Let me show you just a few pages from Government Exhibit 553. Some phone records.

This is a phone call or record of phone call from your

residence on January 16, 1995; is that correct?

A. Yes. I assume so.

Q. See the date at the top?

A. I don't. Oh, yes. Okay. Yeah.

Q. You see your phone number there?

A. Yes.

Q. This phone call was placed to the residence of Lana Padilla; correct?

A. Correct.

Q. You had no reason to make that phone call?

Sheila Nicholas - Cross

A. No, I did not.

Q. Was this during the time period that Tim McVeigh was at your house?

A. I believe so.

Q. On the next day, January 17, 1995, you see, do you not, a number of other phone calls placed from your residence on that same day?

A. Yes.

Q. You didn't make any of those phone calls?

A. No, I did not.

Q. And Mr. McVeigh was at your house?

A. Yes.

Q. Also on January 17, you see a 6-minute phone call from your residence to that of Lana Padilla?

A. Yes.

Q. Do you see that?

A. Uh-huh.

Q. And that takes place about 8:51 Central Standard Time in the morning; correct?

A. Okay. Yeah.

Q. Do you see that?

A. Uh-huh.

Q. And lasts a little more than 6 minutes?

A. Yeah.

Q. And later that same morning, according to this record,

Sheila Nicholas - Cross

9:13, there's a 5-minute phone call, is there not?

A. Yes.

Q. Back to your house?

A. Yes.

Q. You didn't talk to Lana Padilla on January 17, 1995?

A. No, I did not.

Q. But Mr. McVeigh was at your house?

A. Yes, I believe so.

Q. The next phone call is from the business phone, is it not?

A. Yes.

Q. Nicholas Rentals. Never talked to Michael Fortier, have

you?

A. No, I have not.

A. No, I have not.

Q. On January 18, 1995, to the best of your recollection, was Mr. McVeigh still at your home --

A. Yes, I believe he was.

Q. -- in Vassar, Michigan? These phone calls from the Padilla residence to your home were not calls that you participated in?

A. No.

Q. Phone calls from your business phone to the Padilla residence, back to back, were not calls that you participated in?

A. No.

Q. Do you know where Terry Nichols was on January 18, 1995?

A. No, I do not.

Sheila Nicholas - Cross

Q. Mr. McVeigh had a car; correct?

A. Yes.

Q. And you saw evidence of that in the photograph; correct?

A. Yes.

Q. And while he was staying with you in January of 1995, did you observe him purchase or drive other vehicles?

A. Yes, I did.

Q. When you last saw Mr. McVeigh in January of 1995, do you remember him driving the dark-blue Pontiac station wagon, J2000?

A. Yes, I do.

Q. Was that the vehicle he left Michigan in when you last saw him in January of 1995?

A. Yes, it was.

Q. Let me show you what's already been admitted into evidence as Government Exhibit 273P.

MR. MACKEY: May I display it to the jury?

BY MR. MACKEY:

Q. Does that look like a photograph of the car you last saw Mr. McVeigh driving in January of '95?

A. It looks like it, yes.

Q. The one and only time that you've met Terry Nichols was at a brief visit in April of 1995; is that correct?

A. Yes.

Q. And that was at your residence in Vassar, Michigan?

Sheila Nicholas - Cross

A. Yes, it was.

Q. He arrived with Marife and his young daughter; is that correct?

A. Yes.

Q. Stayed for a couple hours?

A. Yes.

Q. And that's what your -- you testified about here earlier today?

A. Yes.

Q. Did you ever attend any gun show with Mr. Nichols?

A. No, I did not.

--- ---, - --- ----

Q. In the conversation about the items that he was offering for sale, did Mr. Nichols tell you how long he had been selling ammonium nitrate at gun shows?

A. Not that I recall.

Q. You do recall that your husband reacted to his description as being "this doesn't make economic sense. Why would anyone pay more for something that they can buy --"

A. Right.

Q. "-- in large quantity"; correct?

A. That's correct.

Q. And Mr. Nichols' response again was what?

A. "People were not aware of that."

Q. Mr. Nichols said that people are unaware that you can go to a store and buy 50 pounds of ammonium nitrate for 5 bucks?

Sheila Nicholas - Cross

A. As best as I can recall, yeah.

Q. Did he tell you what use -- you said "personal use" -- exactly what use his customers would -- or he'd be offering it for sale?

A. As far as I know, to fertilize. I'm not sure, you know, what the uses would be for that.

Q. Have you ever heard of the term "ground zero impact," or did you hear so in the conversation with Mr. Nichols?

A. No, I did not.

Q. Your husband didn't buy any small quantities of ammonium nitrate?

A. No, he did not.

Q. He bought one shovel?

A. Yes.

Q. Mr. Neureiter asked you some questions about the Tim McVeigh that you came to know during the two-month stay in late '94 and early '95. Do you remember those questions?

A. Yes.

Q. You described for the jury how he was helpful --

A. Yes.

Q. -- in running errands or supporting the family needs or --

A. Yes.

Q. -- those kinds of things; is that correct?

A. Uh-huh.

Q. And that was the kind of person that you encountered and

Sheila Nicholas - Cross

experienced in Tim McVeigh; is that correct?

A. Yes.

Q. You trusted him?

A. Yes.

Q. And he never gave you any reason to not trust him?

A. Correct.

Q. Never misled you?

A. No.

MR. MACKEY: Thanks, Ms. Nicholas.

THE COURT: Any redirect?

MR. NEUREITER: I have some questions, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. NEUREITER:

Q. With respect to -- you were just asked some questions about the -- again about the conversation, the sale of ammonium nitrate and your husband's reaction. Did Mr. Nichols say anything about the distinction between rural and city folk in terms of ammonium nitrate purchases?

A. Not that I can recall.

Q. Were you aware -- well, did Mr. McVeigh tell you at any time that he was storing explosives in your shed?

A. No, he did not.

Q. I wanted to show some more pages of these phone records, starting on page 89. Do you see the date up here December 20?

Sheila Nicholas - Redirect

If you can't read it, we can zoom in a little.

A. Yes. I can see it.

Q. Does it say "Nicholas, Kevin and Jolynn"?

A. Yes.

Q. Is that a number that would have been listed at your home?

A. Yes. That is our home.

Q. And there's a call to Dave Paulsen. Do you know who that person is?

A. No, I do not.

Q. Did you ever call Dave Paulsen?

A. No, I did not.

Q. December 21, two more calls originating from the Nicholas number. Two more to that same Dave Paulsen person?

A. Yes.

Q. Do you see that?

A. Yes.

Q. Now, on page 91, this is December 26, 1994. Now, this is a little bit different number. Teri Nicholas. Is that someone that you know or is that a phone in your house?

A. Yes. That's my husband's sister.

Q. Would that have been located in a different -- different location than your home?

A. Yes.

Q. We see a call here to William McVeigh?

A. Yes.

Sheila Nicholas - Redirect

Q. And another one to William McVeigh?

A. Yes.

Q. And then four more calls to Dave Paulsen?

A. Yes.

Q. And December 26, Kevin Nicholas, Kevin Nicholas, that's your house again, these two calls?

A. Yes.

Q. Dave Paulsen, Dave Paulsen?

A. Yes.

Q. Now turning to page 95, December 30, that's Kevin Nicholas, Kevin Nicholas, two more calls?

A. Yes.

Q. And Dave Paulsen, Dave Paulsen. That's the person that's being called?

A. Yes.

Q. And you didn't make those calls?

A. No, I did not.

Q. Do you know if your husband knows a Dave Paulsen?

A. Not that I'm aware of.

Q. January 1, there's your number again, Kevin Nicholas?

A. Yes.

Q. And Dave Paulsen?

A. Yes.

Q. And January 3. Do you see that?

A. Yes.

Sheila Nicholas - Redirect

Q. And here's Nicholas Rentals now. Would that be --

A. Yes. That's at our home.

Q. That's your home. That's just your business phone?

A. Yes. We have two.

Q. Dave Paulsen, Dave Paulsen, Dave Paulsen, Dave Paulsen. Four more calls to Dave Paulsen; correct?

A. Yes.

Q. And just for the record, so that I'm not misleading anybody, there's 0000 in all these length of calls; correct?

A. Yes.

Q. So -- and I think that's all I have with the phone records.

And there were some calls that were shown from Lana Padilla's house to your home.

A. Yes.

Q. Correct? You were asked about those. Do you have any idea what those calls were about?

A. No, I do not.

MR. NEUREITER: One moment, your Honor.

THE COURT: Yes.

MR. NEUREITER: We pass the witness, your Honor.

THE COURT: Any other questions?

MR. MACKEY: No questions.

THE COURT: You're excusing the witness?

MR. NEUREITER: Yes, your Honor.

Thank you very much.

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

We'll take our morning recess. We went a little past the usual time; but of course, again, please follow the cautions regularly given. We're going to hear more witnesses than we've heard so far and also, the other parts of the trial that you know will be important to understanding the evidence that we hear and have heard. So please, again, follow the cautions regularly given, open minds, avoid discussions with all other persons, including other jurors, and be careful to avoid anything outside the evidence

avoid anything outside the evidence.

You're excused now. 20 minutes.

(Jury out at 10:35 a.m.)

THE COURT: Okay. We'll be in recess.

(Recess at 10:36 a.m.)

(Reconvened at 10:55 a.m.)

THE COURT: Be seated, please.
Counsel, please.

(At the bench:)

(Bench Conference 115B2 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

(Jury in at 10:57 a.m.)

THE COURT: Next, please.

MR. TIGAR: Kelly Staatz.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Kelly Staatz affirmed.)

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

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

THE WITNESS: My name is Kelly Jo Staatz, S-T-A-A-T-Z.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Q. Good morning, Mrs. Staatz.

A. Hi.

Q. Mrs. Staatz, where do you live?

A. In Herington, Kansas.

Q. How long have you lived there?

A. Probably about 13 or 14 years.

Q. In April of 1995, were you working?

A. Yes.

Q. Where were you working?

A. I had two jobs at the time. I was working for a company called Occupational Center of Central Kansas, abbreviated OCCK,

Kelly Staatz - Direct

and I also worked at the Herington Chamber of Commerce, in Herington.

Q. All right. Now, was that a part-time job at the Herington Chamber?

A. Yes.

Q. Herington Chamber of Commerce. Excuse me.

Was the Herington Chamber of Commerce also an office of the Department of Motor Vehicles?

A. We did the -- we took tag work there for the Herington residents and further sent it on to the county office in a different town.

Q. Okay. Now, have you ever seen Terry Nichols before?

A. Yes.

Q. Do you recall when you saw him?

A. I seen him -- he came in and picked his tag up, and I don't remember which day for sure it was. It was either a Monday or a Tuesday.

Q. And could you just place that in relationship to the Oklahoma City bombing, if you can?

A. The day or two before the bombing.

Q. All right. I'll come back to the timing. But tell us what your -- what your encounter with Mr. Nichols consisted of.

A. Okay. He came into the Herington Chamber of Commerce and asked for his tag and -- he proceeded to spell his last name for me. And I looked it up and I handed it to him. He walked

Kelly Staatz - Direct

out the door. He came back in. He poked his head around and he said, "Do I need to have a tag for the front and the back of my vehicle?"

And I stated, "No, not in the state of Kansas." And that was it.

Q. And then he left?

A. And then he left.

Q. Do you recall how he was dressed that day?

A. I think he had on jeans.

Q. Do you recall his general appearance? Neat and clean, or dirty?

A. No, neat and clean. Not dirty.

Q. Not dirty.

A. No.

Q. Let me come back to the time -- you said it was either the Monday or the Tuesday prior to the bombing.

A. Correct.

Q. Do you remember the time of day?

A. All I know, it was after 3 p.m. We close at 5, so it was between 3 and 5.

Q. If I were -- do you recall speaking to the FBI about this encounter with Mr. Nichols shortly after the bombing?

A. Yeah.

Q. If I were to show you a report of that interview, might that refresh your memory as to which specific day it was?

Kelly Staatz - Direct

A. I've thought about it, and I can't even really remember what I told the FBI agent, if I told him a specific day. I don't know for sure. And I just -- I cannot remember if it was Monday or Tuesday.

Q. Okay.

A. Because my hours weren't -- they weren't the same every week at the Chamber.

Q. Okay. Is it your testimony, then, that reviewing your interview report would not help you at all? You're certain of

that?

A. I'm just -- I just can't remember the day. I --

Q. Okay. But you're sure it was the Monday or Tuesday prior to the bombing?

A. Uh-huh.

MR. THURSCHELL: Thank you very much, your Honor.

Nothing further.

THE COURT: Any cross?

MR. ORENSTEIN: Very briefly.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, ma'am.

A. Hi.

Q. You spent probably more time today talking about this encounter with Mr. Nichols than you spent with him that day;

Kelly Staats - Cross

correct?

A. Probably.

Q. It was about a minute or two that he was there?

A. Yeah.

Q. And other than that minute or two on Monday or Tuesday afternoon before the bombing, you have no idea where Terry Nichols was or who he was with?

A. No, sir.

Q. Or what he was doing.

A. No.

MR. ORENSTEIN: Thank you. No further questions.

MR. THURSCHELL: No redirect, your Honor. The witness is excused.

THE COURT: The witness is excused, I take it.

You may step down. You're excused.

THE WITNESS: Thank you.

THE COURT: Okay.

MR. TIGAR: Linda Almes.

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

(Linda Almes affirmed.)

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

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

THE WITNESS: Linda Elaine Almes, A-L-M-E-S.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Q. Hello, Mrs. Almes.

A. Hi.

Q. Mrs. Almes, where do you live?

A. Herington.

Q. Were you living in Herington in the period March, April, 1995?

A. Yes.

Q. Where were you working at that time?

A. American Family Insurance

A. AMERICAN FAMILY INSURANCE.

Q. And what is the business of American Family Insurance?

A. We sell insurance of all natures: homeowner's, vehicle, life.

Q. And what was your position with the firm?

A. I'm office manager, secretary.

Q. Now, do you occasionally handle new accounts?

A. Yes.

Q. Now, do you recall meeting Mr. Terry Nichols at any point during the period March, April, 1995?

A. Yes.

Q. Okay. Can you tell the jury when that was.

A. In April.

Q. Do you remember the day in April?

Linda Almes - Direct

A. No, I didn't actually until I saw the date. But whatever date was on the application is correct.

Q. Okay. So if I were to show you a copy of the -- well, let me back up. Did Mr. Nichols fill out an application for insurance?

A. Yes. I filled out the information and took the information from him, yes.

Q. Do you recall what kind of insurance he had applied for?

A. Vehicle.

Q. Automobile insurance.

A. Yes.

MR. THURSCHELL: All right. Your Honor, may I approach?

THE COURT: Yes.

MR. THURSCHELL: I am going to show the witness what's been marked as Defense Exhibit D638A, which for the record consists of pages 3, 4, 5, and 6 of what was marked as D638. And it was -- has been shown to Government counsel.

BY MR. THURSCHELL:

Q. Mrs. Almes, would you page through that exhibit.

A. Okay.

Q. Can you -- if you could put it back together.

A. Sure.

Q. Do you recognize that --

A. Yes.

Linda Almes - Direct

Q. -- exhibit? What is it?

A. This is a standard vehicle application.

Q. Do you recognize it as the vehicle application that was filled out by Terry Nichols?

A. For him, yes.

Q. For him. Okay. Thank you very much. Now if you could give that back.

MR. THURSCHELL: Your Honor, we would move the admission of D638A.

MR. ORENSTEIN: No objection.

THE COURT: D638A received.

BY MR. THURSCHELL:

Q. Mrs. Almes, I am showing you and the jury the first -- should say page 2 of the exhibit consisting of the application form itself. This is a copy, is it not, of the original --

A. Yes.

Q. -- form? It's not a very good copy I'm afraid; but I think it's legible.

Do you -- can you see in front of you on the screen a date and a time?

A. Yes. 4-14-95 to 7-14-95 and at a time of 4:20.

Q. The period of 4-14-95 to 7-14-95: What does that signify?

A. Just a three-month term of insurance.

Q. What's the significance of the first date, 4-14-95?

A. That would be the day that it was bound, which would be the

Linda Almes - Direct

day that the person was in to get the insurance.

Q. And the time, 4:20: What does that indicate?

A. I called it my binding time. That would be the time that we actually bind coverage on that vehicle.

Q. Now, I'm going to slide it over a little bit, and again it's a little bit light. But focusing in, can you see the name under -- in the space listed for "applicant"?

A. Yes.

Q. What is that name?

A. Terry Nichols. Terry L. Nichols.

Q. Okay. Does this document refresh your memory as to the date that Mr. Nichols came in for his application for automobile insurance?

A. I remember when he came in. If this is the date on the application, that would have been the date it would have been.

Q. Now, do you recall the kind of vehicle he wanted to insure?

A. It was an older pickup truck.

Q. Okay. Did you have any conversation with him about the truck?

A. Just basic, something about an older truck. I don't know. It was kind of a joke in our town.

Q. Did you have any conversation with him about anything else?

A. Well, when I was asking the questions on the application, his wife did not drive; so that was significant why she didn't have a driver's license, and that's when the conversation about

Linda Almes - Direct

the Philippines came up.

Q. Okay. So you talked to him about the Philippines?

A. In general, yeah, and a little bit about his wife being from there.

Q. Anything out of the ordinary about this application?

A. No.

Q. How was Mr. Nichols dressed, if you recall?

A. I remember seeing him a couple times. He was always clean and neat.

As far as dress, I would say probably in jeans or something common to the area, because I don't remember anything significant or out of the ordinary.

Q. Did he in the course of the conversation -- did he mention what business he was in?

A. Military salvage or surplus, I believe.

MR. THURSCHELL: Thank you very much.

Nothing further, your Honor.

THE COURT: All right. Mr. Orenstein?

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, ma'am.

A. Hi.

Q. We met last night, didn't we?

A. Yes.

Q. Ma'am, you're here to tell us about Mr. Nichols coming in

Linda Almes - Cross

to take out an insurance policy on his truck. Is that right?

A. Yes.

Q. And I believe you said once or twice to Mr. Thurschwell that there was nothing out of the ordinary about that application. Is that right?

A. No, sir.

Q. Now, it's your business to fill out these forms or to help customers fill out these forms; is that right?

A. I fill them out, yes, sir.

Q. Based on information that they provide to you?

A. Yes.

Q. And you rely on that information to transmit to the actual insurer?

A. Yes.

Q. So that they'll insure the customer.

A. Yes.

Q. And in the exhibit that we were looking at, there are a number of questions that you asked the customer; is that right?

A. Yes.

Q. And one of those questions is whether there are any liens or judgments against him. Correct?

A. Yes.

Q. And I think we saw on that application -- perhaps it wasn't very clear on the screen -- but his answer to that was no?

A. Yes.

Linda Almes - Cross

Q. And did you later learn that the answer should have been yes?

A. No. Actually, I didn't know that.

Q. Okay. But you've seen a document from your business

records; correct?

A. Right. Right.

MR. THURSCHWELL: Objection to lack of personal knowledge.

THE COURT: Well, yes, we have to have some foundation.

MR. ORENSTEIN: Yes. May I approach, your Honor?

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Ma'am, I've shown you and left with you on the stand there a copy of what's marked for identification as Government's Exhibit 2140. Do you have that with you?

A. Yes.

Q. Do you recognize that as a record that would be kept in Mr. Nichols' file at your office?

A. Yes.

Q. That relates to the policy for which he applied on April 14, 1995, at 4:20 p.m.; correct?

A. Yes.

Q. And that is the same policy which you were just asked about by Mr. Thurschwell. Correct?

Linda Almes - Cross

A. Well, I assume it was because that was the only one that we wrote.

Q. Right. It's the only one you had in your files?

A. Exactly.

Q. At least with respect to the truck.

A. Yes.

Q. And that is a record developed later but in respect to the same policy; correct?

A. Yes.

MR. ORENSTEIN: Government offers Exhibit 2140.

MR. THURSCHWELL: May I inquire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. THURSCHWELL:

Q. Mrs. Almes, this is not a letter that's routinely sent to individuals who are insured by American Standard (sic) Insurance Company; is that correct?

A. One more time. I'm sorry.

Q. Is this -- this is not a letter that is routinely sent to individuals who are insured by American Standard Insurance.

A. It's not unusual for vehicle insurance or homeowner's, either one, to be denied for any number of reasons.

Q. Okay. And -- but is this particular letter with this particular reason something that is routinely sent to individuals who are denied coverage for one reason or another?

Linda Almes - Voir Dire

A. I've seen it on a homeowner's but never on a vehicle.

Q. Have you -- were you involved in the preparation of this document?

documents.

A. No.

Q. Were you involved in the decision whether or not to issue this document?

A. No.

MR. THURSCHELL: Your Honor, we would object.

THE COURT: Objection sustained.

MR. ORENSTEIN: May I inquire further to develop further foundation?

THE COURT: You may try.

CROSS-EXAMINATION CONTINUED

BY MR. ORENSTEIN:

Q. Ma'am, you were visited by an investigator for the defense. Do you recall that?

A. I remember two FBI men coming -- or, you mean last night? I'm sorry.

Q. No, no, no. Do you see this gentleman over here in the gray suit, green sweater?

A. Uh-huh.

Q. Have you met him before?

A. I don't remember.

Q. You don't recall Mr. Killam and you at your office?

A. I'm sorry, no, I don't.

Linda Almes - Cross

Q. Perhaps I could show you something that may refresh your recollection.

MR. ORENSTEIN: May I approach, your Honor?

THE COURT: I don't see what this has to do with this document.

MR. ORENSTEIN: I'm trying to establish that it was provided during that visit to Mr. Killam.

THE COURT: So what?

MR. ORENSTEIN: To show that it came from the business records.

THE COURT: Well, it's not a business record. It's not admissible for the information that's contained thereon as a business record. It refers to other sources.

MR. ORENSTEIN: All right. I'm move on then, your Honor. Thank you.

THE COURT: All right.

BY MR. ORENSTEIN:

Q. Ma'am, you spent how long with Mr. Nichols on April 14?

A. It takes about an average of maybe 15, 20 minutes to fill out an application.

Q. All right. And that was that afternoon, spent about 15 or 20 minutes with him?

A. Yes.

Q. And that was the last time you saw him?

A. Yes.

MR. ORENSTEIN: I have nothing further.

Thank you, your Honor.

MR. THURSCHELL: No redirect, your Honor.

THE COURT: All right.

MR. THURSCHELL: The witness is excused.

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

Next, please.

MR. TIGAR: Barry Thacker, your Honor.

THE COURT: All right.

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

(Barry Thacker affirmed.)

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

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

THE WITNESS: My name is Barry W. Thacker,
T-H-A-C-K-E-R.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mr. Thacker.

A. Good morning.

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

A. I'm from Herington, Kansas, and currently the chief of police.

Barry Thacker - Direct

Q. In Herington, Kansas, do you have a Department of Public Safety?

A. Not at this time.

Q. Going back to April of 1995, did you have a Department of Public Safety?

A. Yes, sir, we did.

Q. And will you tell the jury, please, what your responsibility was at that time as opposed to the other people that were in charge of your Department of Public Safety.

A. Primarily I've had about 24 years' experience in law enforcement, so I had the title of assistant chief. I worked under the director, who actually used the title of chief. He had about the same amount of experience in firefighting, so they combined it together; and that's what the "public safety" was all about.

Q. All right. And you said that you've had 24 years of law enforcement experience?

A. Yes, sir.

Q. Will you tell us briefly what that experience was.

A. I've only worked for one department. It was for the City of Herington; and I started off as a patrolman, worked my way up through sergeant and then became assistant chief and now I'm the chief.

Q. When did you become chief?

A. It was final, I believe, in like March of this year.

Barry Thacker - Direct

Q. Now, going back to April 19 -- or excuse me -- April 21, 1995, was that a busy day in your life?

A. Yes, sir, it was.
Q. And do you know Terry Nichols?
A. Yes, sir.
Q. Do you see him in court?
A. Yes, sir.
Q. Could you point him out?
A. Seated right over here.
Q. All right. And when was the first time that you had ever seen Terry Nichols?
A. The first time that I met Terry Nichols was that day in the police station.
Q. Now, had he been to your police station before that?
A. Yes, sir, he had.
Q. Now, I'm going to show you --
MR. TIGAR: Excuse me, your Honor.
BY MR. TIGAR:
Q. And based on your department records, what had he been in there before to do?
A. He came in, I believe it was on the 14th of April. It was like one week before that. He had a registration on his pickup that was registered in the state of Michigan. He wished to change it over to a Kansas title.
Q. Okay. I'm going to put up here what's been marked but not

Barry Thacker - Direct

yet received as D1017 and ask you if you recognize that as a record of your department.

A. Yes, sir, I do.

MR. TIGAR: All right. We offer 1017.

MR. MACKEY: No objection, your Honor.

THE COURT: All right. Received. It's D1017?

MR. TIGAR: D, as in Dog, Delta, 1017. Yes, your Honor. Thank you.

BY MR. TIGAR:

Q. And I'm going to show you also what's been marked here as D1022 and ask if that is a record of your department?

A. Yes, sir, it is.

MR. TIGAR: We offer D1022.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. Placing up now on the machine the -- what's been received as D1017, what does this form tell us, sir?

A. This form is what we use whenever someone comes into the station for whatever reason. It gives us a record of what the individual wanted or what -- who he wanted to see.

This particular incident was when he came in to have the VIN check done for his vehicle.

Q. Now, under what circumstances is a VIN check required?

A. Only when they change out-of-state titles to in-state or to

Barry Thacker - Direct

Kansas.

Q. And does this reflect that you checked -- did some kind of -- the department did some kind of computer check?

A. Yes, sir.

Q. And what did the computer check show?

A. The computer check showed that the VIN number matched the title and there was no wants or warrants, the vehicle had not been stolen.

Q. And the time here says 1655. Is that military time?

A. That's correct.

Q. So that's 4:55 in the afternoon on Friday, the 14th?

A. Yes, sir.

Q. Correct? Now, after somebody gets one of these VIN checks that's done -- I guess they have to pay you for it. Correct?

A. That's true.

Q. And this rest, D1022, shows that he paid you \$10. Correct?

A. That's correct.

Q. And gave you his name and address.

A. That's correct.

Q. Now, after you get your VIN check done like that, then what do you do if you want to get your tags?

A. We give them a copy of an MV1 form. They take that with their title to the county seat or at that time to the Chamber office -- I'm not familiar with which he used -- and verify -- that verifies that the vehicle was checked. And they take that

Barry Thacker - Direct

form with the title, and it will be sent to the State of Kansas; and then a State of Kansas title will be returned to the owner.

Q. Okay. Now let's move on to the 21st of April, 1995. You said you saw Mr. Nichols on that day. Correct?

A. Yes, sir.

Q. Before you saw him, had you seen somebody from the FBI?

A. Yes, sir.

Q. Who had you seen from the FBI?

A. I met an Agent Smith.

Q. About what time -- what was his first name? Do you remember?

A. I want to say Steve, but I'm not sure.

Q. Well, when Agent Smith -- what time did Agent Smith come on the scene?

A. He came into the department around 2:15 to 2:20, somewhere in that area.

Q. And did you talk to him, sir?

A. Mr. Kuhn talked to him first.

Q. And did -- were you present during that conversation?

A. Mr. Kuhn, after the conversation started, asked me if I would set (sic) in to see if I could help them, being as I had been in the area for 24 years.

Q. And so Mr. Kuhn hadn't been in Herington for as long as you had?

Barry Thacker - Direct

A. No, sir.

Q. And what did Mr. Smith want?

A. Mr. Smith had, I believe, two names that he wished to -- if I would look at and see if I could identify or if I was familiar with these two names.

Q. Do you remember what the names were?

A. One was "Terry Nichols," and the other one -- I'm not real sure. It might have been "Rivers," but I can't swear to that now.

Q. Was -- did he show you an address that he had?

A. There was some conversation of an address, yes.

Q. And were you able to help him?

A. While he was there, we called the city office to verify if we had a Terry Nichols that was using city utilities. We were able to determine that Terry Nichols did live in Herington at 109 South 2nd Street, and we give that information to Agent Smith.

Q. Did he leave then?

A. Shortly thereafter, yes.

Q. Did you leave the police station after Mr. Smith left and before Mr. Nichols showed up?

A. Yes, sir, I did.

Q. For about how long?

A. Approximately 30 minutes.

Q. And what was the purpose of your leaving, if you remember?

Barry Thacker - Direct

A. The -- there was twofold. One was that we did a computer check and we found the VIN had been done for Terry Nichols. And the other part was it was shift change, and I was out going to pick up my relief officer so he'd have a way in.

Q. About what time did you come back to the police station?

A. We arrived back at the police station about 2:55, just prior to 3:00.

Q. And you say "we." Who was that?

A. Officer Del Lindsly, my relief.

Q. And you went into the station?

A. Yes.

Q. Now, did you notice some kind of a car or truck in your parking lot that hadn't been there before?

A. No, sir, not at that time.

Q. Now, when is the first time, then, that you saw Mr. Nichols?

A. When we were walking to the building from our car, I looked up north on Broadway Street and viewed a blue Chevrolet -- or, I'm sorry -- blue GMC pickup that was coming south towards the station; and it appeared to me that it was the vehicle that I had viewed a short time earlier in Mr. Nichols' driveway.

Q. All right. Now, you said "a short time earlier." Was that during the time you had gone out to try to look for Agent Smith and get your relief?

A. Yes, sir.

Barry Thacker - Direct

Q. About how long before you saw this truck coming your way south on Broadway had you seen the car -- this truck, rather?

A. I don't recall just what it was, but I'm thinking it was probably about 15 to 20 minutes.

Q. Where had you seen it?

A. It was parked in Mr. Nichols' driveway, backed up to his garage.

Q. 109 South 2nd Street?

A. That's correct.

Q. You say "backed up to the garage"; that is, facing out?

A. Right.

Q. Now, did the truck pull into your parking lot?

A. Yes, sir, it did.

Q. And did Mr. Nichols get out?

A. Yes, sir, he did.

Q. Well, tell the jury what you saw.

A. What I saw was Mr. Terry Nichols -- he exited the driver's side of the vehicle. He was driving. He stepped out of the vehicle, and he had his little daughter -- I believe she was about 2 years old at the time. He carried her. And his wife exited the passenger side of the vehicle, and they came to the front door of the Herington Public Safety building.

Q. Did he come inside?

A. Yes, sir, he did.

Q. Did he say something to you?

Barry Thacker - Direct

A. Yes, sir, he did.

Q. Will you tell the jury, please, what did he say.

A. I opened the door. He stepped in. I said, "May -- is there something I can do for you," or "What may I do for you," something on that order.

And he stated to me that his name was Terry Nichols and that he had just seen his name on television and would like to talk to somebody about why it was there.

Q. What did he -- what did you tell him?

A. I told him that I would try to see if I could locate someone and to step on inside, which he did.

Q. How did he appear to you?

A. He was nervous, concerned, carrying his child.

Q. Now, did Chief Kuhn come out and talk to Mr. Nichols?

A. Yes, sir, he did.

Q. Did -- could you overhear what they were saying to each other?

A. Basically, he stated the same; that he had seen his name and he would like to talk to someone.

Chief Kuhn asked him to come into the office area, which he did, and we stepped into the hallway.

Q. Now, when you started out this conversation, you were in the lobby of the police station; correct?

A. That's correct.

Q. Is that on the first floor?

Q. IS THAT ON THE FIRST FLOOR?

Barry Thacker - Direct

A. Yes.

Q. Now, did you then move into an office?

A. Yes.

Q. And whose office was that, sir?

A. This office that initially we went into is what the officers use. It's a multipurpose room we use for traffic work, DUIs, for interrogations, for officers to take breaks, just a little bit of everything.

Q. A general-purpose room.

A. Correct.

Q. Now, did you take steps, then, to find somebody who could answer Mr. Nichols' questions?

A. Yes, sir. I was attempting to.

Q. What steps did you take?

A. I proceeded into the dispatch area and was attempting to locate a number so I could call either Kansas City or our local agent to advise someone that I had a person there stating he was Terry Nichols and wanted to visit with somebody.

Q. Were you able to contact the FBI?

A. No, sir, I did not.

Q. Did you have a phone number for them?

A. Yes, sir, I found one.

Q. And did anybody answer at that phone number?

A. I didn't make a call to that number. We received a call just prior to when I was calling, and it was from an Agent

Barry Thacker - Direct

Smith who was calling to talk to Chief Kuhn.

And when he talked to Chief Kuhn, it was over the situation that Terry Nichols was in the building.

Q. Now, did you talk to Agent Smith, or was that just Chief Kuhn that spoke to him?

A. Chief Kuhn did.

Q. Did there later on, then -- did some agents come into the building?

A. Yes, sir.

Q. Did they introduce themselves?

A. Yes, sir.

Q. And what did you do?

A. I directed them to the officers' room where Terry and his wife and small child were. I told him that this was Terry Nichols and he would like to visit with someone; he had just seen his name on television, and I informed him that he was not under arrest.

Q. And when Mr. Nichols was in the officers' room, did you get some ID from him?

A. Chief Kuhn did, yes, sir.

Q. All right. And how was that done? How did you all get ID from him?

A. Chief Kuhn asked him to spell his name, his wife's name.

Terry -- I believe he asked Terry for his driver's license, and Terry got it out and give him the information that

Barry Thacker - Direct

we needed.

Q. Now, when you say "asked him for his driver's license," what did -- did you see what Mr. Nichols did in order to display the driver's license?

A. No, sir. I was in the other room or going to the other room when that part of that conversation took place.

Q. Now, did Chief Kuhn ask Mr. Nichols any questions at that time when you all were getting identification?

A. The only thing I heard Chief Kuhn ask him was if he had any weapons or if he had some identification to help spell the name. That's the only thing I heard.

Q. You talked about identification. With respect to weapons, did you see what Mr. Nichols did when Chief Kuhn asked him if he had any weapons?

A. Yes, sir, I did.

Q. What did he do?

A. I viewed Mr. Nichols. He raised up his jacket -- and he may have taken it off -- turned around, and then he sat down in the chair. It was just a visual search is what it was.

Q. Now, did Mr. Nichols object in any way when Chief Kuhn told -- did there come a time when somebody told Mr. Nichols that the FBI had arrived?

A. Yes, sir. Probably just the time when we went into the room itself.

Q. Did Mr. Nichols object to that?

Barry Thacker - Direct

A. No, sir.

Q. Now -- then later on, did there come a time when Mr. Nichols and some other people went down into the basement?

A. Yes, sir.

Q. Who chose the basement as the room where they all were going to meet?

A. Basically, the agents did.

Q. What sort of survey of the building, if you could observe it, did the agents do before they chose the basement?

A. Briefly, what they did was they looked at my office and an office down the hallway, and they thought they were too small, too confining to visit with Mr. Nichols.

At that point, the basement or the meeting area where we conduct training was mentioned.

I believe there was two agents along with Mr. Kuhn, went down the steps to the basement and viewed it.

They come back upstairs and said it would be fine.

Q. Now, the basement -- the jury has seen pictures of it -- is a big, wide-open area. Correct?

A. That's correct.

Q. And you do conduct training sessions down there.

A. That's correct.

Q. Now, at -- did you see Mr. Nichols and the agents go downstairs?

A. Yes, sir.

Barry Thacker - Direct

Q. And did Mr. Nichols offer any resistance to going downstairs with the agents?

A. No, sir.

Q. Now, after the agents and Mr. Nichols went downstairs, did you have occasion to go in the basement at any point?

A. Once.

Q. Do you remember about when that was?

A. It was very shortly after he was -- went down to the basement. It was not very long after that.

Q. And what was the reason that you had gone down to the basement?

A. The reason I went down into the basement was that downstairs we have a terminal down there for dispatching; and if we have severe weather or need of offices, we can go to the basement and continue.

The squelch was set open and radio traffic was being heard in the basement, so they asked if I could squelch that so it would make it a little quieter, which I did do.

Q. Now, how long did you stay at the police station that night, sir?

A. I left about 3:40, 4:00 in the morning.

Q. Now, during that time from 3:00 in the afternoon when Mr. Nichols arrived, till 3:30, 4:00 in the morning, did you ever leave the police station?

A. Yes, sir, I did.

Barry Thacker - Direct

Q. And how many times did you leave?

A. Three, maybe four.

Q. And about total -- how much time were you out of the police station during those three or four times, sir?

A. The best that I can recall, probably about three hours.

Q. Okay. Now, after this initial encounter where the agents -- how many agents went with Mr. Nichols downstairs into the basement?

A. I believe three.

Q. And how many agents total were in your Department of Public Safety at that time when they all went down in the basement?

A. Four.

Q. So one stayed upstairs?

A. That's correct.

Q. Now, during the course of the evening, did more agents arrive?

A. Yes, sir.

Q. Can you tell the jury how many total agents there were in your station at any one time.

MR. MACKEY: Objection, relevancy.

THE COURT: Overruled.

THE WITNESS: The numbers varied greatly, but I would guess there was from 25 to 30, 40 maybe at some points. There was ATF. There was other agencies that was there, also.

BY MR. TIGAR:

Barry Thacker - Direct

Q. And were you able to meet with each one of these people as they came in?

A. No, sir, I did not.

Q. Now, during the course of the evening, could you observe people coming up out of the basement and then going back down into the basement? Did you ever see what happen?

A. I recall one person.

Q. Now, who was that?

A. Randy Rathbun.

Q. Who was Mr. Rathbun?

A. At that time, he was U.S. prosecuting attorney.

Q. What did you see -- I'm sorry.

A. An attorney for the U.S. Government.

Q. What did you see Mr. Rathbun do?

A. He -- when I seen him, he was just coming up to the first level on the steps; and he asked us to hold the noise down upstairs, apparently being distractive (sic).

Q. Now, the steps that you talk of: Where do those steps lead?

A. The bottom steps go down to the basement. When you come to the -- the landing, it goes out into the bay, and then you come up approximately four steps to the ground floor.

Q. So that -- in other words, the steps you saw Mr. Rathbun using: They go to the basement where Mr. Nichols was talking to the agents?

Barry Thacker - Direct

A. Yes.

Q. And did Mr. Rathbun say anything other than "could you hold the noise down, it's making it --" I don't want to put -- Could you tell us as best you can remember what Mr. Rathbun said when he came up the stairs.

MR. MACKEY: Objection. Hearsay, relevancy.

THE COURT: Overruled.

THE WITNESS: He stated something to the effect,

"Just

kind of hold it down, guys"; and so we did. It was just a polite comment.

BY MR. TIGAR:

Q. And at the time that you saw Mr. Rathbun doing this, about how many people other than your employees did you have in your police station?

A. At that point, there was not as many as there were earlier because they were out working and doing other areas. At that time, a dozen or so, maybe

time, a dozen or so, maybe.

Q. And again, can you remember about what time this was?

A. As I recall, it was just a little bit after 12, 12:15, when Randy come up the steps.

Q. And had you seen him go down the steps?

A. No, sir.

Q. Now, did there come a time when Mr. Nichols left the police station?

A. Yes, sir.

Barry Thacker - Direct

Q. About what time was that?

A. 12:30.

Q. Did you see when -- did you see Mrs. Nichols and Nicole Nichols leave the station?

A. No, sir. They left while I was out.

Q. In other words, there came a time you left; and when you came back, they were gone?

A. They were gone, yes, sir.

Q. Do you remember when it is that you left and came back and they were gone? I mean, which one of the times when you had to go out and do other business?

A. What comes to my mind is when we went out, I was asked to go down the street and clear the houses approximately from one block from the station. There was some discussion that they were going to check Mr. Nichols' vehicle for explosives or unsafe situation. And that would have been probably between 7 and 9, in that area. And it was -- there was quite some time when I had the people leave their homes till when I got back.

When I returned back, she was not there.

Q. Now, other than the conversation that you had with Mr. Nichols when he first came in and introducing him to the FBI agents, did you talk to him at any other time during that evening?

A. Mr. Nichols?

Q. Yes, to Mr. Nichols.

Barry Thacker - Direct

A. No, sir.

Q. And other than the conversation where you were introducing people, did you talk to Mrs. Nichols at any other time during that evening?

A. No, sir.

MR. TIGAR: Thank you very much, Chief.

We have nothing further.

THE WITNESS: You're welcome.

THE COURT: Mr. Mackey.

CROSS-EXAMINATION

BY MR. MACKEY:

Q. Good morning, Chief Thacker. How are you?

A. Fine, thank you.

Q. On April 14, your records reflect that Mr. Nichols arrived at the Herington Public Safety building and did a vehicle

inspection. Is that correct?

A. That's correct.

Q. Did the report that you were shown -- bears a time of about 4:55 p.m.?

A. That's correct.

Q. Based on your experience, Chief, how long does it take for the Herington Police Department to run a VIN check?

A. I would say in the neighborhood of 10 minutes.

Q. To your knowledge, based on that experience only, Mr. Nichols could have been there and gone in about 10 minutes'

Barry Thacker - Cross

time on Friday afternoon?

A. 10 to 15 minutes, yes.

Q. And that was a day you were not present?

A. That's correct.

Q. You were present on the following Friday, April 21, 1995; is that correct?

A. That's correct.

Q. And your testimony is that your first -- or the event that drew your attention to Mr. Nichols in connection with this case originated with the arrival of Agent Smith.

A. That's correct.

Q. And his inquiry with you and other local officials about what, if any, information you had about an address in the presence of certain individuals in Herington. Is that correct?

A. That's correct.

Q. One of those was Terry Lynn Nichols?

A. That's true.

Q. Had you at that point in time ever met or talked to Terry Lynn Nichols?

A. Not to my knowledge.

Q. Never heard of his name in the course of policing the streets of Herington at that point in time?

A. No.

Q. Do you know whether the name "Ted Parker" was asked of you by Agent Smith on that Friday afternoon?

Barry Thacker - Cross

A. It may have been. I -- I know there was another name, but I don't recall what it was.

Q. Could have been Ted Parker?

A. Could have been.

Q. Whatever name it was, your check showed nobody by that name living in Herington?

A. That's correct.

Q. But you did verify through City Water Services' records that Mr. Terry Lynn Nichols was a resident at 109 South 2nd?

A. That's correct.

Q. And you relayed that information to Agent Smith; is that correct?

A. That's correct.

Q. In the course of that same afternoon and shortly thereafter, I take it, you left the police station; correct?

A. Yes.

Q. Made the drive that you've told this jury about?

A. Yes.

Q. And happened to drive by South 2nd; is that correct?

A. That's correct.

Q. And saw a blue GMC pickup truck with a white camper top parked there?

A. Yes, sir, I did.

Q. And sometime shortly thereafter before you went back in with Officer Lindsly, you were walking into the building and

Barry Thacker - Cross

you saw that same pickup truck headed your way?

A. Yes, sir.

Q. Did you think anything about it at that point in time?

A. Yes, sir.

Q. Because?

A. Only because I just seen the vehicle earlier. It appeared to be the same vehicle; although till it got closer, I was not able to determine that for sure.

Q. Just within the hour or so, the Federal Bureau of Investigation had been into your police station asking about one of your residents. Is that correct?

A. That's correct.

Q. And that turned out to be Mr. Nichols on South 2nd; correct?

A. That's correct.

Q. Mr. Tigar has asked you some questions about places inside the police department. Let me show you a couple exhibits not yet admitted and ask you a few questions about them.

Let me show you first a photograph I've marked for identification as Government's Exhibit 2143. Sir, that is an accurate depiction of the public entryway or the lobby at the Herington police station?

A. Yes, sir, it is.

MR. MACKEY: Your Honor, I'd move to admit Government's Exhibit 2143.

Barry Thacker - Cross

MR. TIGAR: No objection, your Honor.

THE COURT: Received. May be shown.

BY MR. MACKEY:

Q. Now, this doesn't show in this photograph everything that's in the lobby; but this lobby is not gigantic, is it?

A. No, sir. It's rather small.

Q. There are a few chairs situated on the left-hand side of this photograph?

A. That's right.

Q. As you walk in the door, you can find them on the left?

A. Right.

Q. And the public traffic goes straight to the counter

Q. And the public traffic goes straight to the counter depicted on the left-hand portion of this photograph?

A. That's correct.

Q. Was it in that area, Chief Thacker, that you encountered Mr. Nichols, his wife, and daughter?

A. Yes, sir.

Q. Was it in that area that you had the conversation you've just described to this jury?

A. Yes, sir.

Q. Mr. Nichols' statement to you at that time was, "I've heard my name on the radio, and I want to ask somebody why," words to that effect?

A. It was on television.

Q. I'm sorry?

Barry Thacker - Cross

A. Yes.

Q. Thank you. But some news broadcast?

A. Yes.

Q. He told you, did he not, that he had heard his name in connection with the Oklahoma City bombing?

A. Yes.

Q. And that's the reason that, Chief Thacker -- that you didn't attempt to answer any of his questions.

A. That's correct.

Q. You knew at that point in time the bombing in Oklahoma City was being investigated by the FBI?

A. That's correct.

Q. Let me show you Government's Exhibit 1935 not yet in evidence. Is that, Chief Thacker, an accurate floor plan of your police station?

A. Yes, sir, it is.

Q. That's the first floor?

A. Yes, sir.

Q. Let me show you Government's Exhibit 1936. Is that an accurate floor plan of the basement area, sublevel?

A. Yes, sir, it is.

MR. MACKEY: Your Honor, we'd move to admit both Exhibits 1935, 1936.

MR. TIGAR: No objection.

THE COURT: They're received, may be published.

Barry Thacker - Cross

BY MR. MACKEY:

Q. Let me start with the -- on that Friday afternoon, using this exhibit, Mr. Nichols and family members arrived in the immediate area left of this exhibit?

A. That's correct.

Q. Area marked "lobby"?

A. Yes.

Q. How long were the three of them in that area before moving on?

A. Just a matter of 2 to 3 minutes, very short.

Q. When they did move, did you place them then in the officers' room, that room immediately to the right of the lobby?

A. That's correct.

Q. And to your knowledge, was Mr. Nichols only in either the lobby or the officers' room before going downstairs to be interviewed by the FBI agents?

A. Yes, sir.

Q. This floor plan depicts, does it not, all the other offices on that first floor; is that correct?

A. That's correct.

Q. And that officers' room is the single largest room of any of the rooms on the first floor; correct?

A. That's correct.

Q. This room all the way to the very rear, for example, is

Barry Thacker - Cross

among the smallest, if not the smallest?

A. That's correct.

Q. And that's a room reserved for highway patrolmen or other witness interviews; correct?

A. That's correct.

Q. You'd been in that room; correct?

A. Yes.

Q. It's a very, very small room?

A. Yes.

Q. Hard to get two or three people in there comfortably?

A. Yes.

Q. This is the floor plan, is it not, for the sublevel; correct?

A. Yes.

Q. It depicts on the top center of this exhibit the stairwell that leads down from the first floor to the basement; correct?

A. Yes.

Q. Emptying into a very large meeting area; correct?

A. Yes.

Q. And that's the area that Mr. Nichols was interviewed by FBI during the course of that evening?

A. That's correct.

Q. And that's the single largest room in the Herington Police Department?

A. Yes.

Barry Thacker - Cross

Q. Upstairs when Mr. Nichols came in and you greeted him, did you tell him at that time you would take steps to find someone who might be able to answer his questions?

A. Yes, sir, I did.

Q. Did you tell him, Chief, that you were going to call the FBI?

A. I may have. I can't say the exact words, but I -- that's

the term that I meant. Whether I said it that way or not, I don't know.

Q. But in any event, you made clear to him that you were not in a position to attempt to answer his questions?

A. That's correct.

Q. You asked that he wait in the officers' room and he did?

A. That's correct.

Q. Shortly thereafter, your testimony is that a number of FBI agents did arrive?

A. That's correct.

Q. You recognized Mr. Smith. He had been in before?

A. Yes.

Q. Not hard to forget. He's very tall and thin; correct?

A. That's correct.

Q. And you escorted those agents then to the same place that you had Mr. Nichols and family members waiting.

A. That's correct.

Q. And you were there when you made the introduction?

Barry Thacker - Cross

A. That's correct.

Q. And you made it clear to Mr. Nichols that the persons you were introducing were from the FBI.

A. Yes, sir, I did.

Q. And you told them in words and substance: These are the men that might be able to answer your questions?

A. That's true.

Q. Do you remember, Chief Thacker, that the FBI agents showed their credentials or otherwise took steps to make known to Mr. Nichols who in fact they were?

A. I believe they did.

Q. And then in sum and substance, you really turned the matter over to them; is that correct?

A. That's correct.

Q. And you began to assist them in whatever way you could in a support fashion, find a place that would be quiet and large enough to conduct an interview.

A. That's correct.

Q. Provide support and general needs; right?

A. Right.

Q. On some occasion, Chief Thacker, before Mr. Nichols went downstairs, you mentioned to Terry Lynn Nichols, did you not, that he was free to go?

A. Yes, sir, I did. That occurred right after Chief Kuhn got the information on his driver's license and his correct name.

Barry Thacker - Cross

We ran a triple I, which is a -- it's a criminal wants or warrants -- to see if there was any wants or warrants for Mr. Nichols; and there was not.

And at that point, when I went back in the room -- that's when I made the statement, yes.

Q. ...

Q. So a local police officer -- and you were at that time -- informed Mr. Nichols directly, "Mr. Nichols, you're free to go if you want to."

A. Yes.

Q. And he stayed?

A. Yes.

Q. Did you assist, Chief Thacker, personally in finding the best room to conduct the interview?

A. Chief Kuhn was the one that went downstairs.

Basically what I did was when they were looking at the rooms, I suggested that they may want to look at the basement, as it was the largest room in the building, which they agreed to do and then went down and viewed it.

Q. There is no windows down in the basement?

A. No.

Q. It's sealed off from the outside?

A. Yes.

Q. It would have been, in fact, the quietest room in the building.

A. Yes.

Barry Thacker - Cross

Q. Later in that same afternoon, Chief Thacker, you told Mr. Tigar that you had occasion to go downstairs and turn off the radio that was background noise.

A. Yes.

Q. When you walked into the room, did you see Mr. Nichols seated in a chair?

A. Yes, sir.

Q. And did you see one or more FBI agents near him?

A. Yes.

Q. Would you describe how Mr. Nichols appeared to you at that point in time as you saw him seated in the basement?

A. He appeared fairly calm. He might have been a little nervous but very poised, just setting there quietly when I went downstairs.

Q. And after -- you've been a police officer or in law enforcement for some 24 years; and that was your observation: that this was a person being questioned by FBI agents who appeared calm and poised.

A. That's correct.

Q. You were not in charge, of course, Chief Thacker, of who it was would be talking to Mr. Nichols at what point in time?

A. No, sir.

Q. You were not in charge of keeping track of the many comings and goings of federal law enforcement officers that night?

A. No, sir.

Barry Thacker - Cross

Q. You weren't making assignments, I take it, as to what agent was supposed to do what in the course of their work in Herington that night?

A. No, sir. Only my officers and the assisting officers from

A. No, sir. Only my officers and the assisting officers from other agencies that were pulling security on buildings, but that was all that I directed.

Q. Based on what you saw that evening, Chief Thacker, starting with the first encounter upstairs in the officers' room, later downstairs when you were there, and on any other basis of first-hand knowledge, did you see any mistreatment of Terry Lynn Nichols by FBI officials?

A. No, sir, I did not.

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

THE COURT: Mr. Tigar, any follow-up?

REDIRECT EXAMINATION

BY MR. TIGAR:

Q. Chief Thacker, when the agents first came in, Mr. Smith and the other agents --

A. Yes, sir.

Q. -- and you told them that Mr. Nichols had some questions --

A. Yes, sir.

Q. -- did you hear them answer his questions at that time?

A. No, sir.

Q. All right. At any time during the evening, did you hear them provide him any information or answer his questions?

Barry Thacker - Redirect

A. No, sir.

Q. Now, you mentioned that when you went down to turn the radio down --

A. Yes, sir.

Q. -- you saw Mr. Nichols there; correct?

A. That's correct.

Q. And you said he appeared a little nervous?

A. Yes, but poised for the situation. He was setting there quietly. He wasn't running around. He wasn't doing anything that was unusual.

Q. Sitting in his chair?

A. That's correct.

Q. Now, during the time that you were in the basement adjusting the radio, did you hear the agents ask him any questions?

A. No, sir.

Q. Had you, as you came down the stairs towards the radio -- could you hear them ask him any questions?

A. No, sir.

Q. And when you went down there, how many agents are present with Mr. Nichols, if you remember?

A. I believe there was three. There was either two or three.

Q. And they were not asking questions at that point; right?

A. No, sir.

Q. At -- what time of the morning approximately did

Barry Thacker - Redirect

Mr. Nichols leave the police station?

A. 12:30.

Q. Now, when he left at about 12:30, was Mr. Rathbun still in the building that you could observe?

A. Now, that, I can't swear to. He may have been; but they were using other offices, and it would have been difficult for me to know who was in which one.

Q. Do you remember at what time of the evening Mr. Rathbun was first introduced to you or that you became aware that he was there?

A. No, sir.

Q. Do you know who was in charge of this group of agents that was in your police station during that evening?

A. At that point, I'm really not sure which senior agent was in charge. Mr. Kuhn was working with two or three, and I'm sure it was one of the -- those, but I don't recall the name.

Q. During that evening, did Mr. Kuhn have the principal responsibility for coordinating with the agents?

A. Yes.

MR. TIGAR: Thank you very much for coming to see us. We have no further questions.

MR. MACKEY: Nothing else.

THE COURT: All right. You may step down. I take it he's excused.

MR. TIGAR: Yes, your Honor.

THE COURT: You agree to that?

Thank you. You're excused.

I think we'll take the noon recess at this time, members of the jury, and for the usual period, maybe a few minutes longer. And during this time, of course, remembering that you will hear more testimony, more evidence will be provided in the case, and there are other parts of the case, being arguments and instructions. You know, don't jump ahead of us here. Wait until we give you the case to decide; so please continue to do as you've been doing, withholding judgment about the case and not talking about it or seeing anything outside of our evidence.

I'm going to excuse you now till about 1:30.

(Jury out at 11:55 a.m.)

THE COURT: All right. We have some matters to take up with respect to witnesses for whom counsel have been appointed. And I see Ms. Grady and Mr. Richilano in the courtroom now.

Let me first take up the witness James Rosencrans.

Mr. Richilano, you were appointed by the Court to counsel with Mr. Rosencrans.

MR. RICHILANO: That's correct, your Honor.

THE COURT: And I take it that you were given some information before talking with him or at least before you completed talking with him about why he was summoned as a witness in this case and what it is that counsel may be asking of him.

MR. RICHILANO: Only through the Court's staff, your Honor. I've spoken with my client. I've not had a chance to speak with defense counsel whom I understand subpoenaed Mr. Rosencrans. And I would like the opportunity to do so just briefly before advising the Court of his position.

THE COURT: Sure. We can do that. And what about --

Ms. Grady? You were appointed for a witness, Patty Edwards.

MS. GRADY: That's right, your Honor.

THE COURT: And let me ask of you the same question: Have you had an opportunity to visit with counsel who subpoenaed that witness?

MS. GRADY: I have, your Honor.

THE COURT: And then you've also counseled with the witness.

MS. GRADY: Yes, I have, as well.

THE COURT: And are you adequately informed with respect to the subject matter that would be expected to be covered in questions in direct and cross-examination of this witness?

MS. GRADY: I believe I am, your Honor.

THE COURT: And without asking you to in any way invade the privilege of attorney/client, are you in a position to advise us as to what her position is with respect to her constitutional right to refuse to answer questions that may incriminate her?

MS. GRADY: Her position is that she wishes to exercise her right to remain silent, your Honor.

THE COURT: All right. So -- thank you, Ms. Grady.

Mr. Richilano, if you want -- I mean we could take the noon recess and come back to this.

MR. RICHILANO: Whatever the Court prefers, your Honor. It won't take long.

THE COURT: Well, if you want to have a little conversation off the microphone there, that's okay with me.

MR. RICHILANO: That's fine, Judge.

(Discussion off the record among Mr. Richilano, Mr. Tigar, Mr. Thurschwell, and Mr. Neureiter.)

MR. TIGAR: Just another moment, your Honor.

THE COURT: Sure. I don't know -- it's possible, of course, that Mr. Richilano, you would want to know what Government counsel might have in mind on cross-examination, depending upon the --

MR. RICHILANO: That's what I'm looking at now, Judge.

(Further discussion off the record among Mr. Richilano, Mr. Tigar, Mr. Neureiter, and Mr. Thurschwell)

MR. RICHILANO: Your Honor, it's evident to me that Mr. Rosencrans will heed my advice to assert his privileges under the Fifth Amendment to the Constitution.

THE COURT: Yeah. I take it what you just learned did not come as a surprise to you as to what the subject matter might be.

MR. RICHILANO: That's correct, your Honor.

THE COURT: So you've already covered that in your conversation with him?

And you're assuring us that if called, Mr. Rosencrans would invoke his constitutional privilege not to testify under the Fifth Amendment --

MR. RICHILANO: He would, your Honor.

THE COURT: -- about these matters.

MR. RICHILANO: I am making these your Honor

MR. RICHILANO. I am making those, your Honor.

THE COURT: And I take it Counsel are willing to rely on this.

MR. WOODS: Yes, your Honor.

MR. TIGAR: Yes, your Honor. We would ask for findings of unavailability with respect to Ms. Edwards and Mr. Rosencrans.

THE COURT: All right. Thank you, Mr. Richilano. We appreciate your service in this matter.

And I take it there is no controversy about making findings of unavailability for these witnesses.

MR. MACKEY: None at all, your Honor.

THE COURT: Therefore, under Rule 804, the Court finds that James Rosencrans and Patty Edwards are unavailable as witnesses in this trial.

We'll recess till 1:30.

MR. WOODS: Your Honor, may we approach the bench on a short matter?

THE COURT: Yes.

(At the bench:)

(Bench Conference 115B3 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: All right. This conference dealt with scheduling and getting witnesses here and recognizing there are, in circumstances like this, some logistical problems as well as some other matters that have to be discussed with counsel; so that's what this side bar conference was about.

Because the counsel have some things to do during this break, we're going to recess till 1:40.

Recess.

(Recess at 12:12 p.m.)

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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from
 the record of proceedings in the above-entitled matter. Dated
 at Denver, Colorado, this 9th day of December, 1997.

Paul Zuckerman

Bonnie Carpenter

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