

a three-stage burden, and that two of those three burdens must be met beyond a reasonable doubt before anyone gets to weighing.

Under the Eighth Amendment, as well as what we can glean from the statute, the Court has not only the power but, we would respectfully suggest, the duty to make sure that were the jury to return a verdict directing that Mr. Nichols' life be taken that that verdict be one that would be consistent with the statute and the Eighth Amendment.

In that context, we suggest that the Court's prior opinion indicates that the Court has the same discretion with respect to this as it has with respect to the admission and exclusion of information; that is to say, one is not bound strictly by the Rule 29 standard, but the Court would look at the entire situation and ask whether or not the Eighth Amendment and statutory standards are satisfied.

Second, your Honor, this is a weighing statute. The Government convinced the Court to strike from the indictment the allegations of intent to kill. In a weighing statute, the important decisions about death worthiness are made at the second stage, and that is the characteristic of such a statute, as distinct from one that narrows at the so-called "guilt phase."

In this proceeding, we have seen 55 witnesses. By the Government's own count, that is a dozen more than testified in the McVeigh case. That cannot be because Mr. Nichols was convicted of more serious crimes, because in fact he was acquitted of 10 of the 11 capital counts that were charged against him and on eight of those counts also acquitted of the lesser-included offense of second-degree murder.

The only non-impact witness presented was Mr. Dilly, and your Honor will recall that the effort to turn Mr. Dilly's nearly 10-year-old observations into something came a cropper. And I don't need to remind the Court about what the cross-examination was there.

What has the Government done instead, your Honor? On Tuesday, we came to the bench at the end of the day and suggested that the testimony elicited had gone far beyond what the Eighth Amendment permitted and indeed beyond what the Court's orders were. The Court made certain comments at the bench at that time. On the morning of Wednesday, we received a promise in the form of a letter from the Government's lead counsel that this would not happen again.

Then, of course, the Court will recall the testimony of Mrs. Treanor. We have filed this morning a motion revealing that exactly the same kind of thing happened in the McVeigh case, leading Time magazine to say that the Court might as well have tried to adjudicate a monsoon. We have shown that the day after that performance in the McVeigh case, Mrs. Treanor went on the "Today" show and said that she knew that she had caused everyone to cry: "I looked around, and everyone's eyes were red-rimmed."

We also recall the testimony of Ms. Ice, whose brother was the victim of an involuntarily manslaughter, who glared at the jurors and raised her voice and glared at Mr. Nichols.

Extraordinary precautions have been taken, your Honor, to shield these jurors from improper influence. The Court has had a van to bring them to and from court. I am told that the van means that no one can see them coming and going, not the media, not anyone.

Were someone to go to a juror's home and shout invective at jurors, were someone to glare at jurors and shout invective at them on their way to court, were someone to telephone them in the night and do that, were the defendant to confront the jurors in the courtroom and hurl invective at them, the Court would know how to characterize such conduct and in the case of a defendant could deprive him under Illinois vs. Allen of the right to remain in the proceedings.

We take extraordinary precautions, and the Court has, to shield jurors from precisely those sorts of influences; and yet without any restraint by the prosecution and knowing full well, as the prosecutors must, of the risks that were involved, the prosecutors decided to make that the centerpiece of the 54 witnesses that they called to you.

Right after Mrs. Treanor was done, your Honor, a person in the audience who we believe to be her sister, who customarily has been seated near Ms. McDonnell, Mr. Nichols' sister, said, "I hope they go through hell with that." This same person had already said, loud enough for Ms. McDonnell to hear, "Did you hear about the guy they executed? Something went wrong, so he fried. Do you think we'll get to do that with this guy?"

Another witness, your Honor, an employee of the judicial branch, assaulted the jurors with a vision designed to summon up a call for vengeance.

I raise these things, your Honor, because whatever one calls this motion -- a Rule 29, an Eighth Amendment, or a mistrial -- we respectfully suggest that no verdict to take Mr. Nichols' life would be consistent with the statute and the Eighth Amendment.

I've been doing this for 32 years. I have been in Versailles when the Vichy collaborators were tried. I've been in South Africa alongside my comrades in the apartheid days, as they were tried. I have seen trials in revolutionary Cuba. I've tried a case in a little Florida courthouse where we worried that the deputy wouldn't protect our client from the danger of being lynched. But I've never seen anything like this.

I don't think that my words, your Honor, at the end of the case would be enough, and I respectfully suggest that despite the Court's efforts by instructions that the Court's words would not be enough, to guide this jury from the shoals of vengeance to the safe harbor of reason.

And for that reason, your Honor, we respectfully request that the Court exercise the power given to it under Article III to say to the executive branch, as has often been the duty of Article III judges, beginning with Chief Justice Marshall on circuit in the treason trial of Aaron Burr: This is enough and you can't do that. And we move that the proceedings be terminated now and the Court sentence under the

proceedings be terminated now and the Court sentence under the guidelines.

RULING

THE COURT: Well, I'm going to deny the motion and rely on the jury.

Now, do we have other matters to take up before -- we told the jury we'd start at 9 this morning; but they're here, so we can start earlier.

MR. MACKEY: Yes, your Honor. If the Court pleases, we have some objections to exhibits that have been noticed by the defense. I can provide those to you and --

THE COURT: All right. Well, you may approach on that.

(At the bench:)

(Bench Conference 151B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: Well, I think counsel can use a little time before 9, so we'll recess till 9.

(Recess at 8:44 a.m.)

(Reconvened at 9:00 a.m.)

THE COURT: Please be seated.

(Jury in at 9:01 a.m.)

THE COURT: Members of the jury, good morning.

We are ready to proceed now to hear and see information provided by the defense, so we'll call for the first witness.

MR. THURSCHELL: Your Honor, we call Marife Nichols.

THE COURT: All right. She's being re-called under -

-

MR. TIGAR: Re-called, your Honor.

THE COURT: Ms. Nichols, if you'll resume the stand under the oath you took with us earlier in this case. Please be seated.

(Marife Nichols was re-called.)

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Mrs. Nichols.

A. Good morning.

Q. You are the wife of Terry Nichols; is that right?

A. Yes.

Q. I want to ask you about some events that -- that began in

Marife Nichols - Direct

June of 1995. That's the time period that we're going to be talking about up to the present. Now, in June of 1995, did you leave the United States and go to the Philippines?

A. Yes, I did.

Q. And who went with you?

A. My daughter, Nicole.

Q. Okay. And did you come back to the United States then during the summer of 1995?

A. August.

Q. Yes. And during the time that -- and when you came back, where was Terry?

A. He is in El Reno.

Q. And what is El Reno?

A. It's the prison.

Q. Now, did you get a chance to visit him in El Reno?

A. Yes. We did.

Q. Did Nicole get a chance to visit, also?

A. Yes.

Q. Now, were -- was the visit that you had with a glass between you?

A. Yes.

Q. Okay. Now, did you -- did he get a chance to hold Nicole in that visit?

A. One of the legal team asked the guards if -- if he could hold his kid, and the guards let him.

Marife Nichols - Direct

Q. Now, did you then return to the Philippines?

A. Yes.

Q. Were you pregnant with -- were you pregnant at the time?

A. Yes, I was.

Q. Okay. Now, during the time that you were in the Philippines, did Terry write to you?

A. Yes. He write to me once a week.

Q. And did -- was he able to telephone you?

A. No. Because we don't have a phone in the house. We have the neighbors' phone that is where the legal team can call me, but Terry cannot call there collect, so --

Q. And in his -- in the letters that he sent you, did he talk about your pregnancy and how you were doing and how Nicole was doing?

A. Yes. He was very concerned about Nicole and me. He was

advising me to eat some good food, which is -- he always does. And he was concerned about Nicole's health. And I traveled from Cebu to Pilar Island most of the time, so --

Q. And in connection with your pregnancy, now, where was your next child born? In the Philippines?

A. Yes. Christian was born in the Philippines.

Q. And Christian is the name -- when was Christian born?

A. December 15 of '95.

Q. Now, did Terry in his letters give you some advice about your pregnancy with Christian?

Marife Nichols - Direct

A. Yes. He did.

Q. What did he tell you?

A. He advised me since -- ever since I delivered Nicole and my oldest son through natural childbirth, Lamaze -- is that what you call it here? He advised me to -- he sent a letter to Donna Carino, which was my midwife when I was pregnant of Nicole, and asked if I could -- if she could assist me in my childbirth. And Donna Carino sent him the letter that she -- she would love to, and she send me a letter, too, to invite me to come over -- come back in Michigan and live with her through the pregnancy and that she will assist me in my labor.

Q. Now, did Terry also at this time -- during this time try to provide for you financially?

A. Yes. He --

Q. What --

A. He asked his mother for some money for me every month. And he did send his money in prison, too, to me.

Q. How did that work, as you understood it?

A. It's a commissary money that he have.

Q. And he sent that to you?

A. Yes. He sent that to me, too.

Q. All right. Now, did there come a time when you decided to move back to the United States -- to come back to the United States?

A. Yes.

Marife Nichols - Direct

Q. When was that?

A. Late June of '96.

Q. And have you been living in the Denver area ever since then?

A. Yes.

Q. And since you've been living in the Denver area, have you and the children been able to see Terry?

A. Yes.

Q. How often are you able to see him now?

A. Once a week.

Q. And how -- tell the jury what -- what are those visits like? Is he able to -- to play with the kids?

A. Now he's able to hold and play with the kids and -- and

A. Now he is able to hold and play with the kids and help me in somehow discipline them and change Christian's diaper. I used to tease about that to him.

Q. Now, in addition to that, is he able to talk to you on the telephone now?

A. Yes. Every night, he calls.

Q. I'm going to show you --

MR. TIGAR: If I can approach, your Honor?

THE COURT: Yes.

BY MR. TIGAR:

Q. I'd just like you to look through these pictures and just say the number and what the picture shows.

MR. TIGAR: Your Honor, I would like to offer at this

Marife Nichols - Direct

time M690, M691, M692, M694, M695, M696, M697.

MR. RYAN: If I may have just a moment, your Honor?

THE COURT: Yes.

MR. RYAN: No objection.

THE COURT: They are received.

BY MR. TIGAR:

Q. Now, could you just leaf through those and give the number and just tell what it is.

MR. TIGAR: Your Honor, under the Court's order, we are not going to display these publicly because they are pictures of the children, but the jury will have them.

THE COURT: All right. And I will explain that to the members of the jury.

You will, of course, have the exhibits before you when you deliberate in this matter, just as you did previously when you deliberated after the trial. And I'm not going to publish these exhibits in the courtroom or otherwise because they are photographs dealing with the children, and the children have some rights of privacy.

You may proceed.

BY MR. TIGAR:

Q. What is No. M690?

A. This is a picture of me and Christian and Nicole.

Q. Okay. What is the next one then?

A. The next one, M691.

Marife Nichols - Direct

Q. Yes.

A. This is a picture of Josh and Nicole and Christian.

Q. Now, where was that taken? In Denver?

A. In Denver, yes.

Q. Does Josh get to play with his half brother and half sister when he's here in Denver?

A. Yes.

Q. And is he able to see Terry, also?

A. Yes.

Q. What's the next one?
A. This is a picture of me and Christian.
Q. Okay. When was that taken?
A. Summer of '96.
Q. Okay. And the next one? What's the number of it?
A. M694. Oh. It's a picture of Christian.
Q. Okay. And about when was that taken?
A. I -- it's the winter of '96.
Q. And the next one, the number?
A. M695. This is a picture of me and Nicole and Christian and Terry.
Q. Where was that taken?
A. In the prison.
Q. Okay. What's the next number?
A. It's a -- M696.
Q. Okay.

Marife Nichols - Direct

A. It's a picture of Nicole writing his -- her ABCs and Terry and Christian -- Terry is made those flashcards with ABCs in it for Nicole to learn.
Q. Where was that taken?
A. In the prison.
Q. Okay. M697.
A. Picture of Nicole and Christian and Terry. Terry was holding both of them.
Q. Okay. And where was that taken?
A. In the prison.
Q. Now, you mentioned some flashcards. How old is Nicole now?
A. She's four years old now.
Q. Does she go to school?
A. Yes. She goes to the Jewish Community Center.
Q. Now, you mentioned some flashcards. I'm going to show you now what I've marked as Defendant's M258. Are those the flashcards that Terry made?
A. Yes. These are the flashcards that Terry made for Nicole.
MR. TIGAR: All right. We offer them, your Honor.
M258.

MR. RYAN: No objection.

THE COURT: Received.

BY MR. TIGAR:

Q. Now, I'm going to put these up. Where did Terry make these?

Marife Nichols - Direct

A. In the prison.
Q. Okay. And what are they made out of?
A. File folders.
Q. Okay. There it says "flashcards." On the back, we can see 28 cards, the ABCs, and there's the file-folder label. And in the picture that you showed us, is he working with the flashcards with Nicole and Christian?

A. Yes.

Q. Okay. And here's one. That's the A. And then -- whoops. And on the back --

A. Apple.

Q. -- apple. And the B. On the back is the bunny?

A. Bunny.

Q. And does it then go all through the alphabet?

A. Yes.

Q. And did -- did Terry draw all the pictures and -- and do the whole thing?

A. Yes, he did.

Q. Then that's the label there for Nicole and Christian; right?

A. Yes.

Q. Now, in addition to making these items, did Terry also make cards to send?

A. Yes, he did.

Q. Okay. I'm going to show you now what I've marked as M298,

Marife Nichols - Direct

which is dated 13 March 1997. For you. Is that a card that he made for you?

A. Yes. That's a card that he made for me.

MR. TIGAR: We offer M289, your Honor -- excuse me. M298.

MR. RYAN: No objection.

THE COURT: All right. Received. May be shown.

BY MR. TIGAR:

Q. Now, I'm going to put this up. This is a card with a note and so on. But what's it made of?

A. It's made of file folders.

Q. File folders?

A. Yes. And he uses toothpaste to paste it.

Q. Okay. And the envelope, is that -- is that a regular envelope you can buy in the store, or is that a handmade envelope?

A. That's a handmade envelope, too.

Q. And the white we can see here, the paste, what does he use to paste that with?

A. Toothpaste.

Q. I'm going to show you now what I've marked as M299, which is a copy. Did Terry make that?

A. Yes, he did.

Q. Do you know about when he made that?

A. April of '96. I think this is the Easter.

Marife Nichols - Direct

Q. And who did he make it for?

A. For Nicole and Christian.

MR. TIGAR: We offer M299, your Honor.

MR. RYAN: No objection, your Honor.

THE COURT: Received. May be shown.

BY MR. TIGAR:

BY MR. TIGAR:

Q. That's a picture that Terry drew?

A. Yes.

Q. I'm going to show you what I have marked as Defendant's M300, which is a card dated March 30, 1997. Did Terry make that for you?

A. Yes.

MR. TIGAR: We offer M300, your Honor.

MR. RYAN: No objection, your Honor.

THE COURT: Received. May be shown.

BY MR. TIGAR:

Q. That's an Easter card again made out of file folders?

A. Yes.

MR. TIGAR: Your Honor, I have a number of these cards. If I could approach, we could -- we could put them all in a group.

THE COURT: All right.

BY MR. TIGAR:

Q. Let me show you first -- why don't you read through each one and briefly --

Marife Nichols - Direct

MR. TIGAR: Let me do it this way to save time. We offer M301, M303, M304, M306, M308, M309, and that's it, your Honor.

MR. RYAN: No objection to any of those, your Honor.

THE COURT: All right. They are received.

BY MR. TIGAR:

Q. Mrs. Nichols, could you just leaf through those and just tell the jury briefly what each one of them is.

A. M301, it's a card for me that Terry made -- made. It's -- a welcome-back card. When I went to Philippines.

Q. And is it made in the same way as the other ones?

A. Yes.

Q. Okay. All right. The next one.

A. M303. He made a card for Nicole, "Daddy's little angel."

M304, he made me a card. I think this is a Valentine's card. It says he loves me.

M306, he made a -- what do you call it? Kootchie --

I don't know -- how do you call it in English?

Q. A cooty-catcher?

A. A cooty-catcher.

Q. Is that folded paper with numbers on it for kids to use?

A. Yes.

Q. Okay.

A. M308, he made a card for Nicole, "You are my sweetheart Valentine."

Marife Nichols - Direct

M309, he made a card for Christian to say hello and put numbers and ABCs in it.

O. And so -- and during the time that you've been in Denver,

have you -- has the family been able to be together with Terry and the kids at least once a week?

A. Yes.

Q. And has he continued as a father to try to work with them and teach them and have as normal a family life as possible?

A. Yes, he did.

MR. TIGAR: No further questions, your Honor.

THE COURT: All right. Do you have any questions? Proceed.

MR. RYAN: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. RYAN:

Q. Good morning, Mrs. Nichols.

A. Good morning.

Q. Now, you have told the jury about a number of things that Mr. Nichols has prepared; is that correct?

A. Has made, yes.

Q. These are flashcards and notes to you and notes to the children?

A. Cards for the children, yes.

Q. All of these cards, all of these notes, all of these materials have all been made since Terry Nichols has been in

Marife Nichols - Cross

prison?

A. That's right.

Q. All have been made while Terry Nichols knew he was facing these charges?

MR. TIGAR: Objection, your Honor.

THE COURT: Sustained as to what he knew.

BY MR. RYAN:

Q. All of these materials were made while Terry Nichols was pending charges in this case?

MR. TIGAR: Objection, your Honor.

THE COURT: Overruled.

BY MR. RYAN:

Q. Did Terry Nichols ever prepare any flashcards before he was arrested in this case? For Jason, or for Nicole?

A. He never made one, but he bought one.

Q. Did Terry Nichols ever prepare and make a Valentine's card for you and send it to you in the Philippines in February of 1995?

A. He prepared -- I'm sorry.

Q. Did he ever hand-make a Valentine's card for you and send it to the Philippines?

A. On '95?

Q. Yes. Before the bombing.

A. I think he bought some.

Q. Did you bring it with you?

Marife Nichols - Cross

A. Some were in my apartment.

Q. Did he make you an Easter card on April 16th, three days before the bombing?

A. No. He didn't because we were together.

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

THE COURT: Any redirect?

MR. TIGAR: We have no questions.

THE COURT: All right. You may step down.

MR. TIGAR: Thank you, Mrs. Nichols.

THE WITNESS: Thank you, your Honor.

THE COURT: Next witness.

MR. THURSCHELL: Call Suzanne McDonnell.

THE COURT: Thank you.

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

(Suzanne McDonnell 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: Suzanne Marie McDonnell,

M-C-D-O-N-N-E-L-L.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Thurschwell.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Suzanne McDonnell - Direct

Q. Good morning, Mrs. McDonnell.

A. Good morning.

Q. Mrs. McDonnell, what's your relationship to Terry Nichols?

A. I'm his sister.

Q. And how many other siblings do the two of you have?

A. Two other brothers.

Q. I want to show you --

MR. THURSCHELL: Show the witness what's been marked as Defense Exhibit M66.

BY MR. THURSCHELL:

Q. Can you identify the people in that photograph?

A. Yes, I can.

Q. Who -- who are they?

A. There's myself and two of my brothers and actually one of my cousins.

MR. THURSCHELL: Okay. We move the -- we move M66, your Honor.

MR. MEARNS: No objection, your Honor.

THE COURT: Received. Maybe be shown.

BY MR. THURSCHELL:

Q. Can you identify the people for the jury, starting from the left.

A. The little girl is myself, and then it's Terry there and my cousin Dale and then my brother James.

Q. Now, Mrs. McDonnell, where do you presently live?

Suzanne McDonnell - Direct

A. I live in Holly, Michigan.

Q. And where is that in relation to Detroit?

A. To -- it's north of Detroit an hour, hour and a half.

Q. Okay. Where did you grow up?

A. In Lapeer, Michigan.

Q. And where is Lapeer, Michigan, in relation to Detroit?

A. It's a good hour and a half north of La -- more straight of Detroit than Holly is.

Q. Straight north?

A. Yeah.

Q. Is -- is it in the area of Michigan known as the Thumb?

A. Basically, yeah.

Q. Now, let me turn to your parents. Before I do that, are you currently employed?

A. No.

Q. No. Who -- what was your father's name? What is your father's name?

A. Robert Nichols.

Q. I want to show you what's been marked as Defense Exhibit M69. Can you identify the individuals in this photograph?

A. Yes, I can.

Q. Who are they?

A. In front there is my brother James. To the left --

THE COURT: Well --

MR. THURSCHWELL: We move the exhibit -- move M69.

Suzanne McDonnell - Direct

MR. MEARNS: No objection.

THE COURT: Received. Now it may be shown, and you may proceed to identify who's in it.

MR. THURSCHWELL: Thank you, your Honor.

THE WITNESS: Up front is my brother James, and then to the left is Terry, and my father is sitting in the chair and myself behind them all.

BY MR. THURSCHWELL:

Q. Now -- and what is your mother's name?

A. Joyce Nic -- Joyce Wilt.

Q. Are your parents divorced?

A. Yes, they are.

Q. Did she remarry?

A. Correct.

MR. THURSCHWELL: Okay. I want to show the witness what's been marked as Defense M70.

BY MR. THURSCHWELL:

Q. Mrs. McDonnell, do you recognize the individuals in this photograph?

A. Yes, I do.

MR. THURSCHWELL: We move the admission of M70.

MR. MEARNS: No objection.

THE COURT: Received. May be shown.

BY MR. THURSCHWELL:

Q. And can you tell the jury who we see in this photograph.

Suzanne McDonnell - Direct

A. That's my older brother Les to the left and then Terry next to him and James and myself and then my mother.

Q. Now, what was your mother's maiden name?

A. Joyce Walton.

Q. Walton. And do the Waltons have a history in the Michigan Thumb?

A. Yes.

Q. Do you know how far back -- how long the Waltons have been living in the Thumb?

A. I -- from what we've -- it's about -- well over 100. I think it goes back to the 1830's. 1840's. Somewhere.

Q. And do you know what the Waltons have been doing in the Thumb during that time?

A. Farming.

Q. Farming. I'm going to show you what's been marked as M578. Do you recognize the people depicted in this photograph?

A. Yes.

MR. THURSCHELL: And, your Honor, we move M578.

MR. MEARNS: No objection.

THE COURT: Received. May be shown.

BY MR. THURSCHELL:

Q. Who do we see here?

A. That's my mother's whole family there, her brothers and sisters and her mother and father.

Suzanne McDonnell - Direct

Q. Okay. Can you point out your mother in this picture?

A. Yeah. She's up at the top -- actually, at the front of the

tractor, the last one to the -- to the right.

Q. Okay. And did -- where did your mother stand in relation to her siblings?

A. She was the youngest of ten.

Q. Young -- by the way, where do you stand in relation to your siblings?

A. I'm the youngest.

Q. Okay. Who is the oldest?

A. Les is.

Q. And then who is after that?

A. It's Les and then James and Terry and myself.

Q. Now, did you grow up on a farm --

A. Yes, I did.

Q. -- as well?

A. Uh-huh.

Q. Let me show you what's been marked as M629. Do you recognize what's depicted in that photograph?

A. Yes, I do.

MR. THURSCHELL: We move M629.

MR. MEARNS: No objection.

THE COURT: Received. May be shown.

BY MR. THURSCHELL:

Q. What does the jury see here?

Suzanne McDonnell - Direct

A. That's actually where I grew up, the brick house where I grew up -- all of us grew up at. And that's where my mother currently lives.

Q. And is that -- is that the house in the background?

A. Pardon?

Q. Is that the house in the background?

A. Yes. The brick house is the house.

Q. And what do we see in the foreground?

A. That currently now is the shop. But it used to be the original house where my mother and father started out.

Q. Okay. Did all four kids live in the house at one time with your parents?

A. Yeah. Just for a real short time, but -- or that I did, anyway.

Q. Okay. You built the new house shortly after you were born?

A. Right. Right. Correct.

Q. You say you grew up on a farm. What did you grow on the farm while you were growing up?

A. Let's see. While we were growing up, corn and wheat. And then real early, early years, I remember my mother doing a little bit of sugar beets, but mainly, it was corn and wheat. And then as it progressed, we got into beans later and -- later in time.

Q. Okay. I want to -- and -- let me ask you this, you were -- where -- how much older was Terry than you?

Suzanne McDonnell - Direct

A. He was about four years older than I.

Q. Four years -- so and how -- can you describe what Terry was like as an older brother.

A. As an older brother. He was -- he was a great teacher.

He taught me many things. I -- I remember him the most of all my brothers growing up because we, I think, had the most time to spend together since we were the closest and we worked a lot together, too.

Q. Okay. What kind of work did you do together?

A. Well, since we were the younger ones, we got the jobs that weren't really the most appealing or the -- kind of the -- so we got -- we got to pick rocks. We picked a lot of rocks together.

Q. And let me stop you there. What -- what is picking rocks?

A. You have to go out in the fields and pick the rocks to remove them so that your -- when you run your equipment over the ground, that it doesn't damage them and then you have breakdowns and so you -- we'd spend many days out on -- in the tractor and loader and picking rocks, and he and I worked out great together. He drove the tractor, I picked the rocks. And

we knew our hand signals, and we just -- I don't think too many people could say that they had fun picking rocks together, but Terry and I always did. We made it fun, you know. It was like whistle while you work, and we -- we had fun while we worked.

Q. Did you -- did you do any other unpleasant tasks with

Suzanne McDonnell - Direct

Terry?

A. Yeah. We -- we got the job most of the time of shoveling corn. We had thousands and thousands of bushels of corn, and one particular area that I really remember enjoying with Terry is every couple of weeks in our wet holding bin, we would have to empty it and to do that, you had to sit in this bin for hours and hours and just shovel and shovel and have a little break. And on these breaks, especially in the nighttime, we would sit there and we'd have a flashlight and we'd be doing puppets -- shadow puppets, you know, and just laughing and making all kinds of these figures up on this wall in there and just, you know, having a good time, throwing corn at each other and -- you know.

Q. Okay.

A. Making the best of it.

Q. Did you do other -- did you build your own buildings on the farm while you were growing up?

A. Yes. Yeah. We -- we built a -- I believe it was a 60-by-100 grain-storage building, and it was all steel. And we built -- I know of at least two grain bins that I've helped my brothers to -- to build.

Q. Okay. And let me -- let me ask you, this -- well, when you -- strike that.

Did Terry go to college?

A. He did for a short time. Yes.

Suzanne McDonnell - Direct

Q. Did anyone else in your family go to college?

A. No.

Q. What's your highest level of education?

A. To the 12th grade. My mother encouraged me big time to go, but I was -- I -- my heart was farming. And I just enjoyed learning on the job rather than going -- I was kind of scared. I didn't want to be off with other people, really.

Q. Okay. Terry went away to college?

A. Yes, he did.

Q. Did your other siblings graduate from high school, as well?

A. Yes.

Q. And where -- where did he go to college?

A. He went to Central Michigan in Mount Pleasant, Michigan.

Q. And about -- do you remember when he went?

A. I believe it was in the fall of '73.

Q. Okay. Now, did your family start having some hard times around that time period?

A. Yes.

Q. And what were those hard times?

Q. And what were those hard times?

A. Well, my -- my mother and father, they had filed for divorce, so the divorce proceedings had started at that time. Shortly after he left.

Q. Was that a fairly bitter divorce?

A. It was, yes.

Q. Okay. Was there another traumatic incident around the same

Suzanne McDonnell - Direct

time period?

A. When it actually -- the divorce came around, yeah, then my brother Les, he had gotten burned severely.

Q. He had a severe -- he was severely burned in an accident?

A. Yes. He spent close to six months in the hospital in the burn unit.

Q. Okay. Now, when did Terry come home from college?

A. He spent like a -- one term or one semester, I believe it was. So it was early '74.

Q. Okay. And do you know why he came home after one semester?

A. Well, that was about the time that my mother and dad got divorce -- the actual divorce was coming about. It was almost finished. And it was getting to be springtime, and my mother had asked my brother James if he wanted to farm. And she knew that was in his heart, that James was -- that was his whole life, and so she agreed to start back up in the farming operation with him and, you know, welcomed Terry back into the scene if he wanted -- if he wanted to.

Q. Okay. Did -- tell me what happened to the family after the divorce.

A. Well, I -- my brother Les went to farm with my dad.

Q. He was the oldest?

A. Yes. He was the oldest.

Q. Okay.

A. And then -- because he got like 200 acres of land. They

Suzanne McDonnell - Direct

split the farm. And my mother got the 160 with the house and buildings on it. And then -- so the rest of us decided to stay with my mother, James and Terry and myself.

Q. Did you, with your mother and the other kids, continue farming?

A. Yes, we did.

Q. Were you successful?

A. I would say so, yes. We were -- I felt really proud. I was really proud that --

Q. Did you win any awards?

A. We were usually -- there's an elevator in town, and we were one of the biggest -- between, you know -- it used to be the Nicholises were like the biggest farmers in the Lapeer County area. And then as it split up, now there were two. So at the elevator, they would have the top ten farmers of the year, and I know that my dad and -- and my -- my brothers, we were both in that top ten for a number of years.

Q. Okay. Did you get any community recognition in addition to that?

A. Oh, yeah. Yeah. We did. I -- I do remember that.

Q. Was there, in fact, a newspaper article?

A. Yeah.

Q. Okay. That recognized you. Do you remember when that was?

A. I'm thinking around -- I'm thinking -- I'm not quite sure. It's either '76 -- between '76 and '78.

Suzanne McDonnell - Direct

Q. I want to show you what's been marked as Defense Exhibit M95. Do you recognize that?

A. Yes, I do.

Q. And what is that?

A. That's a picture of my brother James, myself and Terry.

Q. Well, what's the whole -- the whole --

A. It's an article in the -- in the Lapeer County Press, which is the only -- you know, the major paper that's in the area.

MR. THURSCHWELL: We offer M95.

MR. MEARNES: No objection.

THE COURT: Received. May be shown.

BY MR. THURSCHWELL:

Q. And it doesn't quite fit on the ELMO here, but read the headline for the jury there.

A. "Farming Nicholises Just Hang in There."

Q. And zooming in a bit. Can you identify the people in the photograph?

A. Yes.

Q. Starting from the left?

A. That's my brother James, myself, and then my brother Terry.

Q. Now, did your mother eventually start expanding the farm?

A. Yes, she did.

Q. And how did she do that? What did she --

A. She started purchasing other farm parcels.

Q. Okay. Where were these other farm parcels?

Suzanne McDonnell - Direct

A. I know one was just 5 miles away from her house, and then she purchased some up in -- what we call the Cass City, Decker area.

Q. Okay. And did one of those parcels have a farmhouse on it?

A. Yes.

MR. THURSCHWELL: I'm showing the witness what's been marked as M519.

BY MR. THURSCHWELL:

Q. Do you recognize that picture?

A. Yes, I do.

MR. THURSCHWELL: We move M519.

MR. MEARNES: No objection.

THE COURT: Received. May be shown.

BY MR. THURSCHWELL:

Q. Could you tell the jury what they are looking at there.

A. Yeah. That's what we call the "farmhouse," and that's where my brother James currently lives.

Q. Okay. And was this -- was this the farmhouse on the parcel of land in the Decker area?

A. Yeah. She had bought like two parcels of land and that -- we bought one at an auction, and then we bought this at a private -- private sale.

Q. About how much -- about how much land in the Decker area did you end up with?

A. Oh, gosh. Now?

Suzanne McDonnell - Direct

Q. Well, at that time -- at that -- when did your mother buy the Decker property?

A. There's 160 acres there. There's another 58 -- the first parcel we purchased was 58 acres, and then we purchased the 160, and I know we had another 40. And I know -- I keep saying "we" because --

Q. When did your -- when did your mother first purchase the Decker-area property, including the one with the house?

A. Sometime -- I'm thinking -- I know it's in between '76, '78 time period.

Q. Okay. And did you all work that farm area, as well as the one in Lapeer?

A. Yes, we did.

Q. Okay. How did you manage that?

A. It was kind of tough, but the ground in Lapeer was always drier sooner in the springtime, so we would work and we -- we worked like a total of about -- between 12- and 1500 acres. And so we would work all the ground in Lapeer first, get it all worked up, planted, and then we would load up the big tractors on the trailer and transport those up 40 miles away to the farm and then haul up the -- it would take us two, three days to get the equipment up there, and then we would set up, work -- and we would work up the ground up there and travel back home, usually to spend, you know -- to stay at night.

Q. All right. Was that -- was that the four of you in the --

Suzanne McDonnell - Direct

your mother and the --

A. Most of the time. Sometimes she didn't always come, but a lot of times.

Q. So it was the either --

A. Three or four.

Q. Or the three kids?

A. Yeah.

Q. Okay. Now -- and Terry worked the farm there with you, too?

A. Right.

Q. This was in the '76 to '78 time period?

A. Right.

Q. At some point during that time period, did Terry move to

Colorado:

A. Yes, he did.

Q. Okay. Do you recall when he did that?

A. Yeah. It -- I had graduated in '77, so he left sometime in -- like the summer -- May or June of '77.

Q. Okay. And do you know why he moved to Colorado?

A. I think it was kind of stressful for him, and he kind of wanted to get out and do -- kind of be independent, find something that he kind of wanted to do, too. Something else.

Q. Something on his own apart from the family farm?

A. Yeah.

Q. Why was it stressful for him?

Suzanne McDonnell - Direct

A. Well, we'd had a -- had a lot go on, you know, with the divorce and then with Les being burnt and -- and you work day in and day out with not really a whole lot of time off, and you worked pretty close, and sometimes it wasn't under the best of conditions.

Q. Let me -- did you get paid for your farm work?

A. No. We didn't get paid. No. We just -- we just all worked together and, you know, mother made sure we had the things that we needed.

Q. Now, do you know what Terry did while he was in Colorado?

A. Yeah. He -- he eventually got a real estate license. That's what he was kind of going for. He kind of enjoyed that aspect.

Q. Okay. And did -- and do you recall when he came back from Colorado?

A. It was somewhere in the winter of '77, '78. Like between December -- November, December, January, February, somewhere in that area.

Q. Six to eight months after he left?

A. Yeah. He was only gone a short time, really.

Q. And when he came back, did he continue to work on the farm?

A. Yes, he did. My mother said, you know, he was welcome to come back.

Q. Did he do anything else for work?

A. He also did real estate, and then he did work at a John

Suzanne McDonnell - Direct

Deere dealership.

Q. Was Terry interested in investments during that period?

A. Yes.

Q. What kinds of investments was he interested in?

A. Real estate buying and selling, buying a house or buying a parcel and trying to make some money, you know, trying to make a -- what do you -- I lost the words there.

Q. And did he read The Wall Street Journal during that period?

A. Oh, yeah.

Q. Was he interested in the stock market?

A. Yes.

Q. How far back did his interest in the stock market and

Q. Now get back and his interest in the stock market and investments go?

A. I remember getting The Wall Street Journal delivered at our house and it was specifically for Terry for a number of years. Probably -- probably almost since he got out of college. Just -- not college, but high school. You know, at least '76, if not '74.

Q. Okay. Now, I want to go back and ask you some question -- more specific questions about Terry, but first, I want to ask you, did you -- while you were growing up, did you have pets?

A. Yeah. We had a number of different kinds of pets.

Q. What kind of pets did you have?

A. Well, besides having lots of cats, kittens, dogs, I think our first experience was with a little baby deer.

Suzanne McDonnell - Direct

Q. Okay.

A. And we had an owl and a hawk and --

Q. You had --

A. We had a raccoon, we had a skunk.

Q. Did you -- now, were those pets that you bought in the pet store?

A. No. Actually, when you're out working in the fields, you come across them. Sometimes you hurt -- you run them over by accident. You don't -- you don't know it. I know I had that happen to me.

Q. Let me -- was -- and did Terry take care of these pets?

A. Yeah. Especially -- the deer, we all kind of did, but Terry especially. The owl and the hawk, those were his -- we always -- he and I always tried to get a fox, but we never did.

Q. I want to show you what's been marked as M73. Can you -- do you recognize this photograph?

A. Yes, I do.

MR. THURSCHELL: We move M73.

MR. MEARNES: No objection.

THE COURT: Received. May be shown.

BY MR. THURSCHELL:

Q. What is the jury looking at here?

A. That's my brother Terry feeding our baby deer, Jeanie. We named her Jeanie.

Q. Okay. Now, was Jeanie fully domesticated?

Suzanne McDonnell - Direct

A. No. We -- the only reason we got her basically is because my brother was out -- James was out plowing and he hit the deer, and it -- either hit it or it was so new it couldn't walk, and we looked around for the mother. And so we brought it home and we got it -- nursed it back to -- to health, and so we raised it. But we always let it outside, but it did come inside, too.

Q. Okay.

A. And we'd many occasions have it in the house.

Q. Let me show you what's been marked as M615. Do you

recognize this photograph?

A. Yes, I do.

MR. THURSCHWELL: We move M615.

MR. MEARNS: No objection.

THE COURT: Received.

MR. THURSCHWELL: Publish? Thank you.

BY MR. THURSCHWELL:

Q. What's the jury looking at here?

A. That's my mother in the red, and that's our deer, Jeanie, and myself down in the lower part. And I don't recall what she's feeding her there, but she loved apples. And on Sundays, she always came to the house and had pancakes and applesauce with our Sunday breakfast. We always had pancakes and applesauce and sausage on Sunday morning.

Q. And the deer got the benefit of that?

Suzanne McDonnell - Direct

A. Oh, yeah, she had -- she would knock on the window. The popular song was "Knock Three Times on the Ceiling," and she would come to our front window and knock three times on the window and, "Let me in, let me in," and we would feed her.

Q. Let me show you what's been marked as Defense Exhibit M512. Do you recognize that photograph?

A. Yes, I do.

MR. THURSCHWELL: We move M512.

MR. MEARNS: No objection.

THE COURT: Received.

THE WITNESS: That's my brother. My brother Terry with the owl.

BY MR. THURSCHWELL:

Q. And is that the owl that he domesticated?

A. Yeah. They all -- all the animals, you know -- we didn't keep them caged up or anything. We let them roam around. They had their free will to go wherever, but they always returned and -- but survived on their own.

Q. Did you say Terry took care of the deer along with the rest of you and the birds were his special --

A. Yeah. Terry had -- the hawk and the owl were really Terry's because, like I say, James got the deer and we all -- it was just really an amazing thing. We had the whole town come out. Our bus would pull in and they would -- kids would get off and pet the deer and see the deer.

Suzanne McDonnell - Direct

Q. Let me turn to another area. Did you get a chance to observe Terry with kids after you were -- became adults?

A. Yes.

Q. Okay. Did you have -- do you have a child?

A. Yes, I do.

Q. Okay. Did Terry -- Terry relate -- how -- tell me how Terry got along with your child. Is that Natalie, your daughter?

A. My daughter Natalie.

Q. Okay. How did Terry relate to Natalie?

A. She was the first niece for any of my brothers. And I remember Terry -- I think my brother James visited first of all at the hospital, but Terry, I believe, was the first one that came out to my house and held my -- my daughter, and he was always really good.

Q. I want to show you what's been marked as M45. Do you recognize that photograph?

A. Yes, I do.

MR. THURSCHELL: We move M45.

MR. MEARNS: No objection.

THE COURT: Received. May be shown.

BY MR. THURSCHELL:

Q. And what do we see here?

A. That's my brother Terry about -- I would say and my daughter Natalie, it was either December of '80 or January

Suzanne McDonnell - Direct

somewheres of '81. Shortly after she was born.

Q. Shortly after she was born. Did -- does Terry have a son named Joshua?

A. Yes, he does.

Q. Did you get a chance to see how Terry related to Josh?

A. Yes.

Q. Can you just tell the jury a little bit about what you observed.

A. Oh, he -- he just always tried to -- to make things and do things. He was really creative at making things. And he was -- he was always there. I know he took care of Josh for many, many years.

Q. Took care of Josh as a single parent, as a matter of fact?

A. Yes. Yes.

Q. Let me show you M63.

MR. THURSCHELL: And, Judge, we would ask that this be subject to the order that applied to the other children, as well.

THE COURT: All right. Any objection to its receipt?

MR. MEARNS: No. No objection, your Honor.

THE COURT: All right. It'll be received.

BY MR. THURSCHELL:

Q. And do you -- what does the jury -- what will the jury be looking at here when they look at this?

A. That's my brother and his son Josh.

Suzanne McDonnell - Direct

Q. Okay. And where are they sitting?

A. At my mother's favorite picture-taking spot in her house at the fireplace.

Q. Okay. Now, you've mentioned that Terry was creative. Did the Walton family -- that is, your mother's family -- have an annual tradition?

A. Yes. Every -- every Christmas. I don't know how many

A. Yes. Every every Christmas, I don't know how many years, but there was like the Sunday before Christmas, we -- the whole Walton family would get together. They had to rent a hall. There would be at least 100 of us. And, you know, bring food. And the aunts would all prepare the turkey and take care of all the meals, and they also had Santa Claus that would come for the little kids and pass out presents.

Q. Now, did Terry make any contribution to that party over the years?

A. Yeah. As we got older, you know, all of us little cousins grew up and it wasn't really as much fun to go to these parties and -- and when Terry had kids, you know, we started having kids and Terry had Josh -- Terry and Lana had Josh, he arrived one Christmas party -- I believe it was like '83 -- and he had made a pinata.

Q. Let me show you what's been marked as M49. What are you -- do you recognize that picture?

A. Yes, I do.

MR. THURSCHELL: We move M49.

Suzanne McDonnell - Direct

MR. MEARNS: No objection.

THE COURT: Received.

THE WITNESS: That's my brother Terry with his first pinata. He made that Santa Claus all from scratch, papier-mache -- newspapers and papier-mache, and did all the -- you know, trimmings there and stuffed it full of candy for the kids.

BY MR. THURSCHELL:

Q. Now, I want to show you what's been marked as M50. Ask if you recognize this photograph.

A. Yes, I do.

MR. THURSCHELL: We -- we move M50.

MR. MEARNS: No objection.

THE COURT: Received.

THE WITNESS: That one -- that one, I believe, is the second one. I think it was '94 -- '84. That's my daughter and then my brother Terry and my mother there. And the pinata, that Christmas pin -- Christmas tree pinata that he made.

BY MR. THURSCHELL:

Q. And showing you M61. Do you recognize what's depicted in this photograph?

A. That's -- yes. I do.

MR. THURSCHELL: Okay. We move M61.

MR. MEARNS: No objection.

THE COURT: Received.

Suzanne McDonnell - Direct

BY MR. THURSCHELL:

Q. And what is the jury looking at here?

A. That's Terry again with another -- another year probably -- yeah. '86, '85, '86. Another -- a bell pinata.

Q. Is that the -- the area where the party was held that we're

looking at?

A. Yeah. That's the area where Terry set up the pinatas, and he would -- he had a string on it so that he could move it up and down for the kids, depending on the height of the child that was swinging the bat.

Q. I want to show you what's been marked as M76. What -- do you recognize what's depicted in this photograph?

A. Yes. Yes, I do.

MR. THURSCHELL: Okay. We move M76.

MR. MEARNES: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. And what are we looking at there?

A. That's Terry, and his son Josh is right in front of him there, the little one. And the snowman pinata. That was another one that he had made, another year. And actually, I think that's my daughter's arm there, swinging the bat. I recognize the dress.

Q. And is -- why is his hand raised in the picture?

A. Because he would swing it back and forth and try and make

Suzanne McDonnell - Direct

it either easier -- because sometimes, he'd make these pinatas and the kids couldn't break them. They -- they had a ball. He kind of gave all the -- almost all the kids, especially the little ones, a chance to -- to get a chance at the bat to -- to try and swing it, and the kids just looked so forward -- after the first year, those kids just -- they couldn't wait for Terry to show up, "Is he coming with the pinata," you know, because it's something that had never happened when we were growing up.

Q. Okay. I want to show you what's been marked as M52. Do you recognize that photograph?

A. Yes, I do.

Q. What is that?

MR. THURSCHELL: We move M52.

MR. MEARNES: No objection.

THE COURT: Received.

THE WITNESS: That's another -- that's the snowman pinata and then all the little kids around. I think Josh's head is -- is right there in the front -- you know, looking at the snowman. He just -- he loved that. One time, he wanted to -- he wanted -- when it opened, he went around, grabbing all the candy, and his dad, Terry, had to tell him, "No, no, you've got to share. You have to share."

He didn't like that idea too much. He did. There was enough for all of them.

BY MR. THURSCHELL:

Suzanne McDonnell - Direct

Q. Mrs. McDonnell, have you stayed in touch with Terry since he's been in jail?

A. Yes, I have.

Q. Okay. How have you stayed in touch with him?

A. By phone and by letters. And visits.

Q. Okay. Now, I want to show you -- oh, I'm sorry. Did he stay in touch with other members of the family, to your knowledge?

A. Yes, he did. My mother, I know; and I know he called my father when he could. And Les. But he's -- Les is hard to get a hold of. But yes, he basically kept -- kept in contact with -- with all of us.

Q. I want to show you M621. And ask, first of all, do you recognize the handwriting?

A. Yes, I do.

Q. Whose handwriting is it?

A. It's Terry's.

Q. Okay. Have you seen this letter before?

A. Yes, I have.

MR. THURSCHWELL: We move M621.

MR. MEARNS: No objection.

THE COURT: Received.

MR. THURSCHWELL: May I approach, your Honor?

THE COURT: Yes.

BY MR. THURSCHWELL:

Suzanne McDonnell - Direct

Q. Mrs. McDonnell, what's the date on that letter?

A. It's Thursday night, 4th May, '95.

Q. Is that shortly after Terry's arrest?

A. Yes.

Q. I -- could you please read the first page of that letter.

A. I'll try to do my best. I'm sorry. I've kind of lost my voice here so --

"Mother: This is the first chance I've gotten to write a letter to anyone. I would like to have you or Sue to call and talk to Marife and see how she is doing. I would like to know if she could stay with Sue at her home. It would be better than staying alone with Nicole in a strange motel in a strange town where she knows no one and she" cannot -- "she can't go outside. I can't remember Sue's address, so that's why I'm writing to you. Please try to help Marife and Nicole. I'm thinking about them in a motel room stuck with no place to go. Marife does not yet a drivers' license, so she can't drive. I would like someone perhaps Joe & Sue to come down and pick her up. That way, she could also hopefully get some of her, Nicole, and maybe some of my things out of our house. I think there are some things left at the house. I'm sure Marife could use more of her clothes and Nicole's, too. Also some toys and dolls for Nicole. I know that Nicole loves her Sesame Street book and the little pull choo-choo train, and her little yellow ladies. The train might be in the box in the basement

Suzanne McDonnell - Direct

yet.

"I know Marife would like to go back to the Philippines at this time, and Nicole would" like -- and go with Nicole with her. "I have no problem with that" as "that would be the best thing at this time because I have no idea how long this will take. She would be probably safer home and it would be better for her to be near her family and friends. The last time (and first) that I have talked to Marife, she thought the FBI would give her money back to her. I certainly hope so. So that she can take care of Nicole. If you can help her -- let's see. See if you can help her by --" oh "-- by talking to Agent Scott Crabtree, FBI, Salina, Kansas, (913) 823-6787, and try to keep me informed as to where they are and how they are doing."

Q. Do you know who Agent Scott Crabtree is?

A. Yes.

MR. THURSCHELL: Now, your Honor, may I approach again?

THE COURT: Yes. I thought you said the bench.

MR. THURSCHELL: Oh, I'm sorry.

BY MR. THURSCHELL:

Q. Mrs. McDonnell, before I ask you about that letter, Terry in the last letter asked about you possibly being able to do something for Marife. Did he ever ask you to do something personally for Marife?

A. I know he -- he wanted me to have her stay at our house.

Suzanne McDonnell - Direct

Q. Okay. Did he ask you to try to get her money by selling stock for him?

A. Yes.

Q. Okay. What -- what happened? Tell the jury how that happened.

A. He contacted me and wanted me to get the penny stocks that he had had from Marife, and so I had to send for those, and Marife sent me -- the stocks to me. We had to go through getting the power of attorney to sell the stocks, so he gave me his power of attorney to -- to sell the stocks.

Q. Okay. Now, turning to the letter in front of you, M106, do you recognize the handwriting on that letter?

A. Yes, I do.

Q. Have you seen that letter before?

A. Yes.

Q. That's a letter addressed to you?

A. Correct.

MR. THURSCHELL: Okay. We move M106.

MR. MEARNS: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. Mrs. Nic -- Mrs. McDonnell, could you read the first paragraph of that letter to the jury.

A. Sure. It's dated 2 January, '96, Tuesday.

"Dear Sue: Just wanted to write you for a quick note

Suzanne McDonnell - Direct

to thank you for the Christmas card and all that you and your family have done for me. Tell Natalie thanks for her letter and that I will write her shortly. As I am sure you've heard, Marife has given birth to Christian on the 16th December, '95, at 8:31 a.m., Saturday, 8 pounds, 6 ounces. I talked to Rose on Friday, 29th December, '95, and Rose said that Marife had called and talked to her. Rose said all was well. I hope so. I hate not being there and at least not being there and able to talk to Marife directly. Anyhow, I've decided to try to write more often. I hate writing. It takes so long. To keep your phone bills down and mother's, too. Marife needs the money that you, mother (everyone) are sending her" for more than I -- "are sending her more than I need to make any collect calls. I can write a letter. That only costs 32 cents, a lot cheaper than a collect call. And I don't want to give anyone extra phone expenses and jeopardize any money that is being sent to Marife. She needs to know she can count on it, and I will do what I can to help her. (Marife didn't tell me this.) I'm sure" -- in parentheses. "I'm sure the extra days in the hospital were the results of forced labor." In parentheses. (I'll know more once I get a letter from Marife.) That caused the extra loss of blood. Marife had no problems with Jason or Nicole. (She was 9-pounds-plus.) But we had the good assistance of a midwife then. The hospitals and doctors don't like to wait. Time is money to them and anything extra they

Suzanne McDonnell - Direct

can do, the more money they make. (Force labor, C-section, etc.) Marife was not overdue, but I wasn't there to help her through it, either. So anyhow, I should be writing more and calling less."

Q. Okay. Did you get any cards from Terry in addition to letters?

A. Yes, I did.

Q. Showing you on the ELMO what's been marked as M103. Is this one of the cards you received from Terry?

A. Yes, I did.

MR. THURSCHWELL: We move M103.

MR. MEARNS: No objection.

THE COURT: Received.

BY MR. THURSCHWELL:

Q. And do you know if he sent cards to other members of your family?

A. Yes.

Q. Did he send any to your mother?

A. Yes, he did.

Q. Did she show them to you?

A. Yes.

Q. Showing you what's been marked as M583. Is this one of the cards that he sent to your mother?

A. Yes, it is.

MR. THURSCHWELL: We move the admission of M583.

Suzanne McDonnell - Direct

MR. MEARNS: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. Have you visited Terry in prison?

A. Yes, I have.

Q. Has that been recently?

A. Yeah. Throughout the trial here, and then several times during the past two-and-a-half years.

Q. Have you had a chance to observe him with Nicole and Christian?

A. Yes.

Q. Can you describe some of the things he's done with them in your -- that you've observed?

A. On the weekends, I take -- it's either my mother or I. We take Nicole, Marife, and the kids in to see Terry. And I pick them up and I say, "Are you ready to go see Daddy?" And they are -- they are all excited, ready to go see him. And we get in there and they give big hugs and kisses to Daddy. And he plays with them. Puts them on his shoulders. And Christian especially likes to be swung like a clock. He's -- "Clock, clock." He doesn't really talk a lot yet, but he can get that word "clock" out, and Daddy knows what it means. And it's like a pendulum. And -- and we also make things with him, too.

MR. THURSCHELL: No further questions.

THE COURT: Do you have some questions, Mr. Mearns?

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

We have no questions, your Honor. Thank you.

THE COURT: All right. You may step down.

THE WITNESS: All right.

THE COURT: You're excused.

MR. THURSCHELL: We call Leslie Nichols.

THE COURT: All right.

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

(Leslie Nichols 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: Leslie Allen Nichols, N-I-C-H-O-L-S.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Q. Good morning, Mr. Nichols.

A. Good morning.

Q. Mr. Nichols, where do you live?

A. 1400 Grosbeck Road in Lapeer.

Q. Is that the house you grew up in?

A. Yes, it is.

Q. Okay. And are you Terry Nichols' oldest brother?

A. Yes, I am.

Leslie Nichols - Direct

Q. All right. Let me ask you -- oh, are you working?

A. Yeah. I'm a self-employed truck driver.

Q. Self-employed truck driver?

A. Yes.

Q. Okay. Let me ask if you remember the first house you grew up in.

A. It was a small house: living room, bedroom. Oh, bathroom. And a washroom. All six of us slept in one room.

MR. THURSCHWELL: Your Honor, I want to show the witness what's been marked as M573.

THE WITNESS: That's the house.

MR. THURSCHWELL: We move M573.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHWELL:

Q. Mr. Nichols, how many bedrooms were there in the house?

A. Only one.

Q. Now, where did you sleep?

A. We all slept in bunk beds.

Q. You -- when you say "we all" --

A. Terry, James, and I had bunk beds.

Q. Okay.

A. Susie had a crib, and mother and Dad had their bedroom -- had their bed.

Q. Their bed. Now, were you all in the same room, or were you

Leslie Nichols - Direct

in different --

A. All in the same room.

Q. Okay. How long -- how old were you when you moved out of that house?

A. I was probably about eight years old.

Q. All right. And had Susie recently been born?

A. Yes.

Q. You built a new house next door?

A. In '58 -- '59 and '60.

Q. Okay. And then you moved in there?

A. Right.

Q. Where did you go to elementary school?

A. I started out in Barringer School, and then I went later to Slater School when they closed the Barringer School.

Q. Let me show you what's been marked as M197. Before -- before I ask about this, how many rooms in that schoolhouse?

A. Just one room.

Q. One-room schoolhouse. And how -- did all of you attend at one time?

A. Yes, we did.

Q. I want to now ask you to look at your monitor. And do you recognize this?

A. Yes. James and Terry and me.

MR. THURSCHWELL: Before you say, your Honor, we move M197.

Leslie Nichols - Direct

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. Is this -- Mr. Nichols, is this a photograph of the -- the school in 1960, 1961, the students in it?

A. Yes.

Q. And can you just point out -- you can reach under -- well, could you take your pen -- there's a light pen that's attached to a -- to a thing and reach underneath the desk, and could you just circle first yourself.

A. Right here.

Q. Okay. And then James.

A. James up here.

Q. And then Terry.

A. And Terry.

Q. Thank you. Now, let me turn to your life on the farm. Did you -- all you kids work on the farm?

A. Yes, we did.

Q. And about how old were you when you began working in the fields?

A. I started driving tractor when I was three years old.

Q. You actually were driving a tractor?

A. Just steering it.

Q. Steering it. Practicing?

A. I couldn't touch no pedals.

Leslie Nichols - Direct

Q. When did you actually start driving it out in the field itself?

A. Probably about eight or nine.

Q. Let me show you what's been marked as M200. Do you recognize that photograph?

A. That's me.

MR. THURSCHELL: We move M200.

MS. WILKINSON: One moment, your Honor.

THE COURT: Yes.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. And is that you on the tractor?

A. Yes, it is.

Q. How old are you there; do you know?

A. Probably three or four.

Q. All right. That's when you're practicing?

A. Yeah.

Q. Okay. And you said you started around the age of eight or nine?

A. Right.

Q. Was that true of Terry, as well?

A. Basically, yes.

Q. Okay.

A. We all took our turns.

Leslie Nichols - Direct

Q. Let me show you what's been marked as Defense Exhibit M566.
Ask if you recognize this photograph.

A. That's my mother and Terry.

MR. THURSCHWELL: Okay. We move M566.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHWELL:

Q. And tell the jury who they are looking at there.

A. My mother and Terry.

Q. Okay. And is -- there's a date on the side that says
"April, '66." Is that about the right date, to your knowledge?

A. Yes. Yes, it is.

Q. Now, apart from working, what did you do for fun as kids?

A. We played baseball, football, played games, like Monopoly
and cards and euchre and poker. Learned a lot of card games.

Q. Did you -- did you play organized baseball with a league?

A. No.

Q. Why not?

A. We didn't have time. We didn't have no way to get there.

Q. When you say you "didn't have time," what were you doing?

A. We was on the farm, working.

Q. All right.

A. Our folks didn't have time to take us.

Q. Okay. Fair to say that you did -- the work was hard and
long at the farm?

Leslie Nichols - Direct

A. Yes.

Q. Okay. Now, did you do anything -- any other kinds of
sports as -- as kids?

A. Oh, we snow skied, sleigh ride, water-skied.

Q. Okay.

A. Played football.

Q. Did you go hunting?

A. Went hunting, fishing.

Q. Let me show you what's been marked as Defense Exhibit --

MR. THURSCHWELL: Excuse me one moment, your Honor.

M568. I'm sorry. Well -- I'm sorry, your Honor.

BY MR. THURSCHWELL:

Q. Do you recognize this photograph?

A. Yes, I do.

MR. THURSCHWELL: We move M568.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHWELL:

Q. What -- who is the jury looking at here?

A. James and Terry.

Q. Okay. With their fishing rods. And again, the -- the date

on the side there says, "April, '58"?

A. '58.

Q. Do you think -- is that accurate, to the best of your knowledge?

Leslie Nichols - Direct

A. Yeah. I would say so, yes.

Q. Okay. Were you in the Boy Scouts?

A. Yes, I was.

Q. All three of you?

A. Yes, we was.

Q. All right. Did you used to go -- did you ever go to school dances?

A. Yes, we did.

Q. Okay. How often?

A. Probably twice a year.

Q. All right. Let me show you what's been marked as M472. Do you recognize this photograph?

A. Yes, I do.

MR. THURSCHELL: We move M472.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. And could you tell the jury who they are looking at there.

A. That's Terry right there.

Q. Okay. Terry with that -- is he going to a prom?

A. I think it was the prom. Dance.

Q. Okay. Mr. Nichols, what -- what was Terry like as a kid?

A. Just an ordinary farm boy growing up.

Q. Do you -- do you have any specific memories of him doing anything athletic?

Leslie Nichols - Direct

A. Yeah. We played sports. He climbed. He was like a monkey. He was always in the trees, climbing around, hanging from his knees.

Q. I'm going to show you what's been marked as M608. Do you recognize that photograph?

A. Yes, I do.

MR. THURSCHELL: We move M608.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. And what is the jury looking at there?

A. Terry on top of a swing set.

Q. Is that something he used to do often?

A. Yeah.

Q. And the date on the side there says, "October, '59." Is that accurate, to the best of your knowledge?

A. Yes, it is.

Q. Show you what's been marked as M587. Do you recognize this photograph?

A. Yes, I do.

A. Yes, I do.

MR. THURSCHELL: We move M587.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. And who are -- who is the jury looking at there?

Leslie Nichols - Direct

A. James and Terry.

Q. Did Terry have any special talent in terms of standing on his hands?

A. Yeah. He could walk down the hall without touching the floor.

Q. Okay. Let me show you what's been marked as M72. Do you recognize that photograph?

A. Yes, I do.

MR. THURSCHELL: We move M72.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. And what is the jury looking at there?

A. That's Terry riding his unicycle to town.

Q. And he was riding his unicycle to town. Did he do that frequently?

A. Yeah. Quite often. Probably once a week, every other week.

Q. And how far was town?

A. 5 miles to town.

Q. So he'd ride it there and back?

A. Right.

Q. Okay. Now, Mr. Nichols, you had a fairly severe accident in 1974; is that correct?

A. Yes, it is.

Leslie Nichols - Direct

Q. Could you briefly tell the jury how that happened.

A. I was welding on a diesel fuel tank, quit and went to lunch, started welding again.

Q. Just slow down. Slow down a little bit.

A. I was welding on a diesel fuel tank, and I quit and went to lunch. Come back about an hour and a half later and started welding again, and it blew up.

Q. Okay. And were you badly burned?

A. Yes, I was.

Q. How badly?

A. Third -- third-degree burns.

Q. Okay. How long were you in the hospital?

A. Five-and-a-half months.

Q. Now, did this accident have an impact on your family?

A. Yes, it did.

Q. Did it have an impact on Terry, to your knowledge?

A. Yes.

Q. Did Terry do anything as a result of the accident?
A. He offered to offer blood and skin.
Q. Offered blood and skin?
A. Yes.
Q. Did you actually get blood and skin from Terry?
A. No, because it was not an identical twin.
Q. Okay. So the doctors told him he couldn't donate. All right.

Leslie Nichols - Direct

Now, Mr. Nichols, have you kept in touch with Terry since he was arrested?

A. Yes, I have.

Q. And how have you kept in touch with him?

A. Oh, letters and cards, phone calls.

Q. All right. Let me show you what's been marked as Defense Exhibit M192. Do you recognize what's shown there on the screen in front of you?

A. Yes, I do.

MR. THURSCHELL: We move M192.

MS. WILKINSON: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Q. What is this?

A. Birthday card.

Q. Birthday card from Terry?

A. Yes.

Q. I just want to focus in a little bit on the card itself. There's some other words, Peterbilt, GMC, Ford, Navistar written on there. What are those?

A. Those are just different truck makes and models.

Q. Different types of trucks?

A. Yes.

Q. Finally, Mr. Nichols, did you get a chance to observe Terry in his role as father?

Leslie Nichols - Direct

A. Yes, I did.

Q. When was that?

A. Oh, when he had Josh born. When Josh was born.

Q. Okay. Do you remember what -- about what time period that was?

A. I don't remember exactly when Josh's birthday was. No, I don't.

Q. Was it in the early 80's?

A. Mid 80's there.

Q. Okay. And how would you describe Terry's relationship to Josh?

A. He was a good father. Teaching father.

Q. What did he teach him that you observed?

A. Basics. You know, if his toys broke down, how to fix them. You know, how to read and write. How to build -- you know, if

his toys broke, how to fix them, put them back together.

Q. Did you -- how old Josh when he was trying to teach him to read and write?

A. Probably about two, three years old.

Q. Okay. So he was not in school?

A. No. He wasn't in school, no.

MR. THURSCHELL: No further questions, your Honor.

THE COURT: Ms. Wilkinson, do you have questions?

MS. WILKINSON: Yes, your Honor.

CROSS-EXAMINATION

Leslie Nichols - Cross

BY MS. WILKINSON:

Q. Good morning, Mr. Nichols.

A. Good morning.

Q. You told us a little bit about your relationship to Terry. Can you tell us, was he the second brother, or the third brother in order?

A. He's my third -- well, second brother.

Q. Okay. So James is younger than Terry?

A. No. James -- James is between Terry and I.

Q. What's the age difference between you and James?

A. Two years.

Q. And what's the age difference between James and Terry?

A. One year.

Q. Since Mr. Nichols has been in jail, have you been able to visit him?

A. Yes, I have.

Q. And has your brother James been able to visit him?

A. Yes, he has.

Q. And during these visits, are you and your brother able to talk to Terry about whatever issues you want to talk to him about?

A. Yes, we have.

Q. Now, while you were growing up, were you close to Mr. Nichols?

A. Yes, I believe so.

Leslie Nichols - Cross

Q. And was he close to your brother James?

A. Yes.

Q. Did you know and did you keep in touch with Terry when he lived on the farm in Decker, with Marife Nichols and his daughter?

A. On and off different times, we did.

Q. And did you see him with your brother James?

A. Yes. Because we -- I did.

Q. Did you also see Mr. Nichols with Timothy McVeigh at the farm in Decker, Michigan?

A. Yes.

Q. Now, during that time, did you talk to Terry and James about their political views?

MR. THURSCHELL: Objection, your Honor. Beyond the

MR. THURSCHELL: Objection, your Honor. Beyond the scope of direct.

THE COURT: Sustained.

BY MS. WILKINSON:

Q. You told us that you and James have been able to visit Mr. Nichols in prison; is that right?

A. Right.

Q. And are you aware of your brother's conversation -- James' conversations with Mr. Nichols, Terry Nichols?

A. No, I'm not.

Q. You've never been present when they have had any discussions?

Leslie Nichols - Cross

A. No, I'm not.

Q. If I could, I'd like to ask you just a few questions about your recovery from the accident that occurred in -- 1974; is that right?

A. Yes, it is.

Q. Was Terry Nichols with you and did he visit you in the hospital?

A. Yes.

Q. And was he -- did you discuss with him what had happened to you?

A. No. Not at first.

Q. But eventually, when you recovered?

A. Right.

Q. Did you and he discuss the blast?

A. Yeah. Yes, we did.

Q. Okay. And during your time on the farm when you were growing up, did you and your brothers become aware of ammonium nitrate and fuel oil and those uses to blow out stumps on farms?

A. Not exactly that way.

Q. Okay. In what way did you?

A. Well, just fertilizer and dynamite was all.

Q. And --

A. We was pretty young at the time.

Q. All right. At some point, did you learn how to use those

Leslie Nichols - Cross

to blow out stumps on your farm?

A. I never did, no.

Q. Did Terry?

A. I don't believe so when I was on the farm.

Q. Did you ever tell the FBI that you had become aware of how to use diesel oil and ammonium nitrate to blow out stumps?

A. Yes. I'm aware of it.

Q. And you know that a small quantity of that can blow a stump out and cause a great deal of damage; isn't that right?

A. Yes.

Q. And Terry Nichols was also aware of that; isn't that right?

A. Yes.

... 100.

Q. Now, when you were recovering from your accident, he saw what had happened to you; correct?

A. Yes.

Q. And he was very concerned about you?

A. Yes.

Q. And he knew that that was the result of the blast --

A. Yes.

Q. -- of fuel oil; correct?

MS. WILKINSON: I have no other questions, your Honor.

THE COURT: Do you have any follow-up?

MR. THURSCHWELL: Nothing further, your Honor.

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

MR. THURSCHWELL: He's excused.

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

THE WITNESS: Thank you.

THE COURT: We'll take our morning recess at this time, members of the jury, for the usual period of 20 minutes with the usual cautions, of course, of avoiding discussion about the issues before you, waiting until you've heard it all and you've been instructed to begin deliberations and, of course, avoiding anything outside the evidence and keeping open minds until you've heard it all.

So you're excused now. 20 minutes.

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

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

(Recess at 10:25 a.m.)

(Reconvened at 10:45 a.m.)

THE COURT: Be seated, please.

MR. TIGAR: May we approach, your Honor?

THE COURT: Yes, sure.

(At the bench:)

(Bench Conference 151B2 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

(Jury in at 10:47 a.m.)

THE COURT: All right. Next, please.

MR. THURSCHWELL: Call Lyle Rauh.

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

(Lyle Rauh 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: Lyle Duane Rauh, R-A-U-H.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. THURSCHWELL:

Q. Good morning, Mr. Rauh.

A. Good morning.

Q. Mr. Rauh, where do you live?
A. 1378 Lapeer, Michigan (sic).
Q. And what do you do for a living?
A. I'm a custom-home builder in Lapeer.
Q. And you build and develop houses and housing tracts?
A. Yes, I do. Developer as well. I've done about 200 homes.
Q. Okay. How do you know Terry Nichols?
A. We grew up together and we were neighbors. We lived about

Lyle Rauh - Direct

2 miles away from each other. Our family farmed as well as his family farmed, and I would say basically I first met him like in kindergarten, first grade. We went to a one-room school, so we seen him all the time every day, even though we were in different classes and --

Q. All right. And you said you worked together?

A. Yes, we did.

Q. Did you actually farm -- did you farm -- families actually farm together during a certain period?

A. Yes. It was about two years that we farmed together. Their family was a cash-crop farmer. Our family was a dairy farmer, and we had an opportunity to -- that Terry's dad wanted to save the straw that they was leaving behind the combines, and so we baled not only the straw and then resold it as well as the hay. We sold about -- somewhere between 80- and 90,000 bales of hay and straw during two summers, late 60's, early 70's, like '70, '71, in that time span.

Q. Let me show you what's been marked as Defense Exhibit 702.

A. Yes.

Q. Do you recognize that photograph?

A. Yes, I do. I took that photograph.

MR. THURSCHWELL: We move M702.

MR. ORENSTEIN: No objection.

THE COURT: Received.

BY MR. THURSCHWELL:

Lyle Rauh - Direct

Q. What's the piece of land we're looking at there?

A. That is a piece of land just outside of Lapeer, Michigan. It was owned -- it was land that we rented.

Q. When you say "we," who are you referring to?

A. A couple years, Terry's mom and dad rented the farm; and then there was different years that my mom and dad rented the farm.

Q. So this was land that you shared?

A. That is correct.

Q. Okay. And did you -- did you farm it at that time?

A. Yes. Yes, we did.

Q. And what do we see here? When was this photograph taken, by the way?

A. This photograph was taken on November 26, 1994.

Q. And how is the land being used now?

A. The land is being developed. Actually, my dad and I and some friends are developing that land that Terry and their family, we, used to farm, which now we're putting up homes in the 2- to 500,000 range.

Q. And is this -- focusing in on the home there, is that a home that you built?

A. Yes, it is.

Q. Mr. Rauh, what was it like working with Terry Nichols?

A. You could depend on him. He was always there for you. Unfortunately, he always got what you -- would be referred to

Lyle Rauh - Direct

as the crappy jobs, because he was the youngest of three brothers. He was as well younger than myself, and there was -- Terry's two older brothers, Terry, myself and both dads and Joyce worked together. Terry, being the youngest of everybody, got the worst-desirable job; but what was enjoyable with working with him was the fact that he never complained and he was always there. If you had work to be done and you wanted him to do it, he would drop what he was doing, help you, and go back and finish what he was to do.

Q. What kinds of work did you do together? You said you were out there in the fields.

A. We baled hay, worked up the fields, combine, cut hay, raked hay, loaded a lot of semis, trucks, because not only was we baling the hay and things, but we also was putting it into the barns, which was lot of times where Terry was stuck because it was hot and humid, the worst job, and then reloading the semis because we were selling to individual brokers who wanted the hay and straw.

Q. Let me show you what's been marked as Defense Exhibit M699. Do you recognize this photograph?

A. Yes, I do.

MR. THURSCHELL: We move M699.

MR. ORENSTEIN: No objection.

THE COURT: Received.

BY MR. THURSCHELL:

Lyle Rauh - Direct

Q. What are we looking at here?

A. In this picture, you're looking at Terry and myself. Also during the time that we worked together, his mom and dad built a large grain building. I don't know the size but approximately probably the size of this room, I would say.

Q. And where was that located?

A. That was located right at their farm.

Q. And did the family with your help put it up?

A. Yes. Terry -- their family and our family put the building up for them so as to be able to put it up as economical as possible.

What you're seeing in the picture is Terry and I are actually mixing cement.

Q. Which is you and which is Terry in this picture?

Q. Which is you and which is Terry in this picture:

A. I'm the one without the shirt on.

Q. Okay. Did there come a time when your family needed some extra help farming?

A. Yes.

Q. When was that?

A. 1969, my dad had a bad accident.

Q. What happened?

A. Actually, he was milking cows; and one cow got spooked and fell on him, doubled him up. Actually collapsed both lungs and pulled all his muscles. He was laid up for just short of a year. We had a --

Lyle Rauh - Direct

Q. Did -- were you able -- were you able to continue the farming operation at this point?

A. Well, that was a decision that we had to make immediate, because we was in the dairy farm, which meant the cows had to be milked every morning, every night. I do have three older brothers who had all left because they were older and in college. And so I was in school. Dad tried to find help, trying to think of who would be dependable. He couldn't think of anybody.

At school that day, I talked to Les and the Nichols boys, and they offered -- they volunteered and helped us out. They came every morning and every night and helped us on those cows.

Q. That was before and after their own day of work?

A. We started milking at 5 in the morning, which meant they had to have been up by 6 -- or by 4, 4:30. We milked the cows,

went to school, after school. They helped. They saved us.

Q. And was that all three of the brothers?

A. At different times, yes.

Q. Les, Terry, and James.

A. Yes. They -- between the three of them, they were there every morning and every night.

Also, they helped plant all our crops because my dad was still laid up.

Q. Was that in your experience of them -- was that

Lyle Rauh - Direct

characteristic of the Nichols boys?

A. Yes.

Q. Willing to help when needed?

A. Yes.

Q. You were in high school at the same time as Terry; is that right?

A. He was two grades younger than I was. Yes.

Q. Did you socialize with him at that time?

A. Yes. We would see each other as well as we rode to and from school together, as well as we went as families and things -- we had like hay rides for the kids in the

neighborhood and also like the teachers, future teachers clubs and the library clubs and the Girl Scouts, and so we put on hay rides.

Q. Let me stop you. Let me ask you about the hay rides. What were those hay rides?

A. Hay rides, you'd have a tractor and a couple wagons and straw and invite your friends over and take them for a couple-hour ride on a hay ride; and it was things that Terry and I and everybody pitched in to help after chores, and we would do them in the evenings.

Q. And who had the hay rides?

A. All of us. In other words, Terry, James, myself, or in situations like where I was in the future teachers club at school and library clubs, they would put it on and Terry and

Lyle Rauh - Direct

myself and James, whoever was there, would help get everything ready and help out.

Q. Was that on the Nichols farm?

A. Both farms, either our farm or their farm.

Q. I want to show you what's been marked as Defense Exhibit M618, ask if you recognize that scene?

A. Yes, I do.

MR. THURSCHWELL: We move M618.

MR. ORENSTEIN: No objection.

THE COURT: Received.

BY MR. THURSCHWELL:

Q. What are we looking at here?

A. We're actually looking at the Nichols farm. It's our two wagons. There is about half-a-dozen people on the wagon, and the deer is -- when we was farming also during the summers of cutting hay and things, one day there was a deer there out in the field; and we didn't want to hurt it, so we picked it up so it wouldn't get into the hay 'bine and took it home. And Susie and Terry and the family nursed it, and I'm not sure exactly, but had it for about a year, year and a half. It was just like a pet. It would come into the house, sleep at night in front of the fireplace. During the day it ran out just like any other deer. And what you see in there is the deer is licking the gentleman's hand right there.

Q. Let me ask you: You knew Terry as an adult as well; is

Lyle Rauh - Direct

that right?

A. Yes, I did.

Q. Did you know him about around the time that he was deciding to marry Lana Osentoski, now Lana Padilla?

A. Yes, I did.

Q. Did you talk to him about that?

A. Actually, one night Terry asked if he could come over and see me and came up and talked to me for a while because actually Joyce had advised not to -- not for him to marry Lana;

and Terry -- I was sort of like an older brother to him because his older brothers pick on him like every older brother. And he wanted my opinion: What do you think -- because we had not only with the farm, we had gone ski trips together and river canoe trips and Cedar Point and different things -- we've done a lot of different things together, and he wanted my opinion.

And my answer was -- because he had told me first that Joyce had a different opinion and it was because that Lana had been married before. And my opinion was: Terry, if you love her, then yes, marry her.

Q. And do you know that he did marry her?

A. Yes.

MR. THURSCHWELL: No further questions, your Honor.

THE COURT: Any questions?

MR. ORENSTEIN: No questions, your Honor.

THE COURT: All right.

MR. THURSCHWELL: The witness is excused.

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

Next witness, please.

MR. THURSCHWELL: Call Susan Simpson.

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

(Susan Simpson affirmed.)

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

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

THE WITNESS: Susan Kay Simpson, S-I-M-P-S-O-N.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Ms. Simpson.

A. Hi.

Q. Hi. Where do you live?

A. Lapeer, Michigan.

Q. How long have you lived in Lapeer, Michigan?

A. Oh, probably 20 years.

Q. And do you know Terry Nichols?

A. Yes.

Q. When did you meet Terry Nichols?

A. '75.

Q. How did you come to meet?

Susan Simpson - Direct

A. I worked at the Cheese and Wine there --

Q. Let's stop just a minute. What is the Cheese and Wine?

A. I'm sorry. The Cheese and Wine shop is a party store, and I worked there.

Q. And where? In Lapeer?

A. Yes.

Q. Okay. And do they sell -- cheese and wine I guess, but what else?

A. It's a small store, and they used to do cheese plates and meat plates and parties and things like that.

Q. And you were working there?

Q. And you were working there?

A. Yes.

Q. When did you start working there?

A. I believe it was '75, the summer of '75.

Q. Who was the owner of the Cheese and Wine store?

A. Rem Currell.

Q. And go ahead -- how did you come to meet Terry Nichols?

A. Terry had been evidently coming in and helping out there before I started working there, and so he would come in at night and help close the store and help out when Rem wasn't there. He was there quite a bit.

Q. And did Rem have some particular concern that led him to want somebody to be there at night when it was being closed up?

A. Well, the store had been robbed before I started working there, which is kind of unusual for that area at that time, but

Susan Simpson - Direct

it had been robbed a couple of times. So most of the time, one of the girls would be left there alone at night, so Terry would come in a lot and just help out, help close the store.

Q. Did he get a salary for this?

A. No, I don't believe so. It was just a helping out.

Q. How did he work it out with Rem, the owner? What was the arrangement as you observed it?

A. He -- if Rem went to Florida or something, sometimes the boys would come in and help out. Maybe he compensated them then, but otherwise it was just -- it was just a helping-out situation.

Q. Now, at the time that you met Terry, was the Nichols family going through some problems?

A. It was, I believe, after his parents' divorce and after Les's burn incident.

Q. And what -- what was -- did you know that Terry had been to college?

A. Yes.

Q. And he had come back home?

A. Yes.

Q. And when he wasn't working with you, closing up the Cheese and Wine shop, what was he doing, having come back from college?

A. He came back home to help on the family farm.

Q. Have you grown up in farm country?

Susan Simpson - Direct

A. Yes.

Q. And did you observe his relationship with the other members of his family?

A. Yeah. He was close with his family.

MR. TIGAR: Thank you very much, Ms. Simpson.

I have no further questions.

MR. GOELMAN: No questions.

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

MR. THURSCHELL: Call Lana Padilla.

THE COURT: All right.

If you'll resume the stand, you're being recalled under the oath earlier taken.

THE WITNESS: Okay.

(Lana Padilla was re-called.)

THE COURT: Mr. Woods.

MR. WOODS: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. WOODS:

Q. Good morning, Ms. Padilla.

A. Good morning.

Q. You have testified here earlier in this trial. Is that correct?

A. Yes.

Q. And you were subpoenaed by the Government to testify?

Lana Padilla - Direct

A. Yes.

Q. And on cross-examination, we went into the information about you and Terry, the period of your marriage; is that correct?

A. Yes.

Q. And the employment and the activities of Terry during that period. That's already been covered; correct?

A. Correct.

Q. What I want to do today is confine my questions to Terry's role as a father. You had a son; is that correct?

A. Yes.

Q. And the son is Josh?

A. Joshua.

Q. What year was he born? What was his birthday?

A. August 11, 1982.

Q. And the period of your marriage was January, '81, to

December, '89. Is that correct?

A. I'm sorry?

Q. What day were you married on?

A. January 29, 1981.

Q. And your divorce was in December, '89?

A. Yes.

Q. How old were you when you married, Ms. Padilla?

A. I think I was 31.

Q. Okay. And do you recall how old Terry was?

Lana Padilla - Direct

A. I think he was 25 or 26.

Q. And you had two children at that time. Is that correct?

A. Yes.

Q. And the two children were Troy and Barry?

A. Yes.

Q. And what ages were they at that time of the marriage?

A. Barry was 11, and Troy was -- '74 -- seven.

Q. I want to show you what has been marked for identification purposes as M338 and ask if you have seen that photo -- photo before.

A. Yes.

MR. WOODS: We would offer into evidence M338.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. Now, what is the jury seeing here, Ms. Padilla?

A. Terry holding Josh when he was first born.

Q. And that's -- this is in August of '82?

A. Yes.

Q. Now, you mentioned that you had two other sons, and I want to show you what has been marked for identification purposes as M397.

MR. WOODS: We would --

BY MR. WOODS:

Q. You recognize that picture?

Lana Padilla - Direct

A. Yes.

MR. WOODS: We would offer into evidence M397.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. Tell the jury what is depicted in this photograph.

A. That's in the backyard of my grandmother's home in Ubly, Michigan, and that's Terry playing with Barry and Troy.

Q. Now, these are your two sons from a previous marriage?

A. Correct.

Q. And when you got married to Terry, did the two sons live with you?

A. Yes, they did.

Q. Would you describe for the jury what Terry's role was in relation to the two sons that was living with you? Was he acting as a father, a caring and loving father with them?

A. Yes. Terry was very supportive in his role as a stepfather with Barry and Troy and tried to instill in them right and wrong.

Q. Tried to give guidance and teach them things?

A. Very much.

Q. Now, I want to show you what has been marked as M449. Do you recognize that photo?

A. Yes.

MR. WOODS: We would offer M449 into evidence.

Lana Padilla - Direct

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. Would you tell the jury what they're seeing in this

photograph.

A. It's a vacation in Florida, and it's Josh and Natalie and me and Terry.

Q. All right. Now, who is Natalie?

A. Natalie is Terry's niece.

Q. Is that Natalie Fisher?

A. Yes.

Q. And that's the daughter of his sister, Susie?

A. Yes.

Q. How old is Josh there?

A. Oh, I don't remember exactly, but probably about a year -- a year. Year and a half.

Q. And this is in Florida?

A. Yes.

Q. Did you take vacations in Florida more than once?

A. Yes. We visited Terry's family and my family occasionally.

Q. After you were married to Terry Nichols, did he expose you to outdoor activities that you had not participated in before?

A. Yes.

Q. Would you tell the jury what changes you experienced in your life upon marrying Terry.

Lana Padilla - Direct

A. Well, having been raised on a dairy farm, we didn't do a lot of family-type outing activities. But when I met Terry, he was very much into family functions and activities, and he took me snow skiing the first time -- didn't know how, but I learned; took me water-skiing, which I didn't know how and I didn't learn; took me canoeing, volleyball playing, did a lot of outdoor activities.

Q. And did he involve your two sons in this, Barry and Troy?

A. Yes.

Q. Did he teach them to ski?

A. Yes, and my little brother and sister.

Q. Now, you had some younger brothers and sisters; is that correct? You were the oldest in the family?

A. Yes.

Q. And describe Terry's role with your younger brothers and sisters.

A. Well, my brother and sister -- my brother was the same age as my oldest son, Barry; and so they spent a lot of time with Terry and I. And everything we included -- he always included them to go with us on outings; so he was introducing them to a little different type of social family-type outings.

Q. I want to show you what has been marked for identification purposes as M400. Do you recognize that photo?

A. Yes.

MR. WOODS: We would offer into evidence M400.

Lana Padilla - Direct

MR. MACKEY: No objection.

THE COURT: Received.

BY MR WOODS:

BY MR. WOODS:

Q. Would you tell the jury what they're seeing in this photo.

A. That's Josh and Terry, and it's a Christmas party called the Walton Christmas party, which is Terry's family. And it's a pinata that Terry made, a Christmas tree pinata that he made and filled with candy for the kids.

Q. Was this something that he would do every Christmas?

A. It was pretty much a tradition for Terry to do that.

Q. I want to show you a group photo -- a group of photos marked as M430. Do you recognize those group -- that group of photos?

A. Yes. This is another Christmas party.

Q. Okay. Let me move it into evidence first.

MR. WOODS: We would offer into evidence M430.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. And would you explain to the jury what's depicted in this group of photos.

A. It's the Walton Christmas party, and it's a different one. This is where he had made a pinata, a bell for the kids, and we were just having a -- it was a Christmas party.

Q. All right. And who is depicted in the two right photos?

Lana Padilla - Direct

A. Terry and me.

Q. Okay. And those are the children that attended the party on the left?

A. Uh-huh, little -- I think one of them is Natalie, and then there is a number of other little cousins.

Q. Okay. Now, I want to show you what has been marked for identification purposes as M334. Do you recognize that photograph?

A. Yes.

MR. WOODS: We would offer into evidence M334.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. And would you explain to the jury what's depicted in that photograph.

A. It was a family outing. We drove up to -- across the Mackinaw Bridge. And that's Terry and Josh and Troy.

Q. Troy is your older --

A. Troy is the middle son.

Q. Okay. Now, Mackinaw Bridge to Mackinaw Island: Where is that?

A. In Michigan.

Q. Okay.

A. It's north. It's probably a 5-hour drive that we took.

Q. Was this typical of the activities that you and Terry did

Lana Padilla - Direct

with your children?

A. Yes.

Q. And I'll show you what's been marked for identification purposes as M141. Do you recognize that photograph?

A. Yes.

MR. WOODS: We would offer M141 into evidence.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. And would you tell the jury what's depicted in that photograph.

A. Josh.

Q. And?

A. And Terry built a snowman and the dog. And this was in our home on Lamton Road.

Q. In what city?

A. Cass City, Michigan.

Q. And during the course of your marriage, Ms. Padilla, with Terry Nichols, you lived in that area of Decker/Cass City the whole time; is that correct?

A. Correct.

Q. Okay. Now I want to show you what's been marked for identification purposes as M394. Do you recognize that photograph?

A. Yes.

Lana Padilla - Direct

MR. WOODS: We would offer into evidence 394.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. Tell the jury what's exhibited in this photograph.

A. This is -- I believe we were still unpacking our boxes and moved from one home we sold. This was on the Argyle Road 80-acre farm that we bought, and Josh -- I remember him saying to Dad, "I'm going hunting."

And he slipped on his little, red rubber boots because he didn't have time to put on his shoes. And he ran out to the garden, and all of a sudden he ran in and said he caught a deer.

Q. Caught a deer?

A. "Got a deer, Dad."

Q. What happened with the deer? What --

A. Well, we got a camera and we took the picture, and then we let the deer go back with his mother.

Q. Okay. Okay. I want to show you what's marked for identification purposes as M425. Do you recognize this photo?

A. Yes.

MR. WOODS: We would offer into evidence 425.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Lana Padilla - Direct

Q. Explain to the jury what this photo depicts.

A. This was Terry and I and my two older sons, Barry and Troy; and there was an exchange student that worked on the farm for my mother and father, and this was a -- going-away party for him. And we took the kids. Josh was -- Josh was little and he was not there. He was probably two years old. This was at night.

Q. Where is this photo taken?

A. In the basement of a -- a restaurant in Cass City, Michigan.

Q. And this is a family outing?

A. A family function.

Q. With you and Terry and the two sons?

A. And all of my family.

Q. Did Terry include the two sons in everything that he did with you?

A. Yes.

Q. What is their relationship now with Terry Nichols, your two sons, Troy and Terry?

A. Troy and Barry?

Q. Barry. I'm sorry.

A. They're -- well, whenever Terry calls and talks with Josh or me, they like to say hello. He is -- still a very warm and supportive role he gives them. And the kids think very highly. And there is -- they have a lot of good to say.

Lana Padilla - Direct

Q. Do they respect and look up to Terry Nichols?

A. Yes.

Q. That is based on their growing up with his supervision?

A. Yes. I think they appreciate it a lot more as they've gotten older.

Q. Now, when you were married to Terry Nichols, you worked full-time except for approximately a year that you took off after Josh was born. Is that correct?

A. Yes.

Q. And who maintained the home and kept the family functioning and going to school, etc.?

A. Terry did.

Q. What was a typical day like in your family during those eight years when you were working full-time? How would a day start and end?

A. For the family, or for me?

Q. For the family that you observed. You, of course, were out of there early in the morning, I take it. Is that correct?

A. Correct. I would be -- I commuted a lot of times. The work I did, I might have been on the road. I would travel to and from, but Terry would always get the kids off to school. Breakfast was very important.

Q. Who cooked breakfast?

A. If there was -- usually Terry would cook.

Q. What did he normally cook?

Lana Padilla - Direct

A. Healthy. Oatmeal, bran cereal.

Q. Okay. Who cooked the meals by and large for the whole day and the whole month and the whole year?

A. I would cook on weekends or holidays, but he basically did most of the cooking.

Q. And this was during the period that you owned the rental properties?

A. Correct.

Q. And he was maintaining those?

A. Yes, he was.

Q. Okay. Now, did Terry spend a lot of time in self-study?

A. Yes.

Q. And I believe you've already told the jury the number of licenses that he picked up: A security license and insurance license?

A. Yes.

Q. What else did you observe Terry do during those days that you were married to him?

A. Well, he always made sure we had a garden and made sure that the garden was in control. And the purpose of the garden and canning -- we canned together usually. He took care of all of our paperwork. He took care of my paperwork. If I, you know -- a lot of the administrative things with what I was doing, he was very well -- he was like my assistant, and I would turn everything over to him with confidence that he would

Lana Padilla - Direct

take care of it.

Q. And during that time he worked at a grain elevator, managed a grain elevator; is that correct?

A. There was a period of time, yes.

Q. And a period of time he worked with you selling securities and insurance; is that correct?

A. Yes.

Q. Now, what did you observe his role to be with Josh, in raising Josh, his natural son, during that period of time?

A. Full-time. He was a full-time father. He was not an imaginary father. He was always, always in his own soft-spoken way teaching Josh with whatever he said. He would always give him something of substance.

Q. Okay. Now, there came a time when you encouraged Terry to go into the Army. Is that correct?

A. We were having some difficulties, and there was an Army recruiter office where my office was at. And I -- I'm not sure exactly how it all happened, but whatever would make Terry happy, if that's what he chose to do, I was supportive.

Q. And he went in the Army in May of '88. Do you recall that?

A. Yes.

Q. And then there came a time during that period when he was in the Army where he came and got Josh so that he could have Josh in Kansas at Fort Riley with him. Do you recall that?

A. Yes.

Lana Padilla - Direct

Q. Do you recall approximately when that happened?

A. After boot camp.

Q. Okay. Boot camp was four months. So that would be September or October of '88? Is that correct?

A. I think so.

Q. Now, what caused that to happen, Ms. Padilla? Why did Terry need to come and get Josh to take him to Kansas?

A. I was working a lot. I had an office that was 50 miles from our home, and everything that was -- everything that Terry was taking care of, I was taking care of then. And also, one of the -- one of the main reasons was that my oldest son was recovering from drug use, drug rehab.

Q. Okay.

A. And he didn't really want Josh around that. And also, I was working a lot.

Q. Was this a mutual decision of you and Terry for Josh to go to Kansas?

A. It was a difficult decision, but it was mutual.

Q. Okay. And Terry stayed in Kansas until May, '89. Do you recall that?

A. Yes.

Q. And do you recall that he received a hardship discharge?

A. Yes.

Q. Okay. And you probably haven't seen the Army records of that discharge, have you?

Lana Padilla - Direct

A. No, I haven't.

MR. WOODS: May it please the Court, we would offer into evidence the military records reflecting the discharge of Terry Nichols of May 15, '89. And that exhibit is M43, M40, M37, M42, 41 and 44. Those are the Army records of Mr. Nichols provided to us by the Government that we'd offered into evidence.

MR. MACKEY: We have no objection.

THE COURT: All right. They're received.

BY MR. WOODS:

Q. Ms. Nichols, I'm not going to go through each of these. The jury will have them for examination. But do you recall that Terry received an honorable discharge in May, '89, and came back to Michigan?

A. Yes.

Q. And where did he live at that time when he came back?

A. On the farm on Argyle Road, on our place.

Q. And whose house was that?

A. It was our home.

Q. And who lived with him at that time?

A. My son Troy.

Q. And Josh?

A. And Josh, yes.

Q. Now, did he raise and supervise Troy there for a period of a year or so?

Lana Padilla - Direct

A. He -- Troy stayed with Terry pretty much until he graduated from high school.

Q. He wanted to stay in that area so that he could continue his schooling?

A. Yes.

Q. And Terry supervised and acted as a father to him. Is that correct?

A. Yes, he did. Yes.

Q. During that time, did you observe that he was a loving and caring father to Troy?

A. Yes.

Q. And what about Josh?

A. Yes.

Q. And I take it that that has been the case from '89, when you got your divorce, up until Terry's arrest in '95 -- April, '95. Is that correct?

A. As far as supportive of Josh?

Q. Yes.

A. Yes.

Q. And was there ongoing discussions between you and Terry Nichols about Josh coming to Kansas in the summer of '95 to live with Terry and Marife?

A. When Terry expressed his buying a home, there was discussion at that point. Not a lot of dialogue but discussion that maybe Josh could come and live with him again.

Lana Padilla - Direct

Q. And were you going to leave that decision up to Josh?

A. We were going to leave it up to Josh.

Q. What did you feel Josh would want to do?

A. Live with his father in the country, small town.

Q. And at that time, you were living in Las Vegas. Is that correct?

A. Yes.

Q. Now, since Terry's arrest, has he kept up his contact with Josh?

A. Yes.

Q. How has he done that?

A. Phone calls. Phone calls, letters, and visits.

Q. How many times have you been able to bring Josh to where Terry is, either in El Reno prison in Oklahoma, or the federal prison here in Denver?

A. We visited Terry in El Reno, and we also visited Terry in Denver at Englewood. I don't know how many times, but yes, we have -- we have visited him personally.

Q. And that's something you've wanted to do on behalf of Josh; is that correct?

A. Yes.

Q. As to the phone calls, can you or Josh call Terry in prison?

A. No.

Q. You have to receive the call from him?

Lana Padilla - Direct

A. Yes.

Q. Are those collect calls?

A. Yes, they're collect.

Q. And have you borne that cost?

A. Yes, I have.

Q. And tell the jury why you have done that and want to do that?

A. I think it's -- it's very important because of the relationship as far as the divorce. It's important that Terry and Josh be able to communicate. And Josh has a separate phone line, therefore, that Terry can call in on if he chooses, and he doesn't really have to communicate to anybody else. But he chooses to call on the main line and talks to all of us. But it's important, because Terry was not an imaginary father and Josh -- Terry is the most important person in Josh's life.

Q. How frequently does Terry call Josh?

A. On an average, a couple times a week.

Q. Okay. And has that been going on for the two-and-a-half years since his arrest?

A. Yes.

Q. And you're aware of that because you're at the home. Is that correct?

A. Yes.

Q. And do you often talk to Terry Nichols during that time?

A. Yes.

Lana Padilla - Direct

Q. And are you aware that those phone calls are recorded?

A. Yes. Sometimes I forget that; but yes, I do know they're recorded.

Q. You mentioned that Terry writes letters to Josh. Is that correct?

A. Yes.

Q. And have you seen those letters?

A. Yes.

Q. Have you kept each letter?

A. Yes.

Q. And tell the jury why you're keeping all those letters.

A. Josh reads them and then sets them down, and I know that in his heart he would like to be able to reread them; so I keep them all and at times will reflect on them and look at them, basically for Josh.

Q. And there have been a number. Is that correct?

A. Yes.

MR. WOODS: May I approach, your Honor?

THE COURT: Yes.

THE COURT: 100.
BY MR. WOODS:

Q. Ms. Padilla, I'm not going to have you read all of them, but there are three letters here that I would like to move into evidence.

MR. WOODS: And we would offer into evidence M143, 142, and 183, along with a drawing, which is 185.

Lana Padilla - Direct

MR. MACKEY: No objection.

THE COURT: The exhibits are received.

BY MR. WOODS:

Q. Ms. Padilla, if you would open the first one that's on top there.

A. Okay.

Q. What's the date of that letter?

A. November 28, 1995.

Q. That's approximately five, six months after his arrest?

A. Yes.

Q. And it's a one-page letter?

A. Front and back.

Q. It's just that one in the right hand I want to read.

MR. WOODS: We would ask that the witness read the letter, your Honor.

THE COURT: All right. You may do so.

THE WITNESS: Okay.

"Josh, just a short note to say hi and how are you doing. I hope you take -- you try your best in school to get along with all your teachers. I think it would be best if you continue going to school rather than someone teach you at home unless you can find a good person to teach you. Remember that home school, you aren't with others, and during breaks there is no one to play with or talk to your age.

"Even if school is a bit boring, you should try to

Lana Padilla - Direct

learn all you can in math, reading and writing. History is important, too. Everyone needs to know the three Rs real well. Those will get you through life. Without them, life is darn tough. I'm glad I know how to read well, but I'd like to be able to read even faster. It sure helps pass the time by while sitting in here waiting for the trial, plus one can learn a great deal by reading. Reading helps expand your mind. It helps you to grow inside.

"Math, good knowledge of math is important so that you don't get taken when dealing with people; and it comes in real handy when you need to figure out problems, distance, measurements, change, etc.

"Writing is needed so no" (sic) "one can write important details down so as not to forget them, and good spelling helps in writing so people know what you're writing.

"You got a very powerful tool on top of your shoulders, and you need to use it. Otherwise, it's just

wasted. If you really want to do something for me, the best and most important thing you can do is learn well your math, reading and writing. That is what would make me most proud of you, Josh. You know you have it in you. You just need to apply yourself. Put good effort into it. It's just like" reading -- excuse me "-- riding a bike. It's difficult at first, but with a little practice and ambition you learn to ride and enough -- you to ride and enough of it.

Lana Padilla - Direct

"The same can happen with school. If knowledge through reading, writing and arithmetic were not that important, I certainly wouldn't keep talking about it to you. It's essential.

"Well, enough on that. Oh, one other thought, though.

It's also very important to -- one other thought. It's also very important to learn to respect people, especially adults. They have been around much longer than you have, and they went through most everything you have, so generally, the adults are talking from experience and to try -- and trying to help you avoid some of the mistakes they have. Listen to them.

"Enclosed are some comics and other articles for you to read. Take the time to read them. It certainly won't hurt you. I'll ask you about them this coming Sunday when I call. Surprise me, and you tell me about them before I ask you.

"Are you going to be going out for football again this year? Hey, write me another letter. The last one was great. You did well at spelling and writing. Keep it up. Shoot me out another letter.

"Well, got to go. Keep your chin up. I love you, Dad.

"This is longer than I planned. Some short note."

BY MR. WOODS:

Q. All right. Now, the next folder that I handed you has a yellow page in it. What is the exhibit number on the folder?

Lana Padilla - Direct

A. 142.

Q. And that's a short, half-page letter?

A. Yes.

MR. WOODS: We ask to read that, your Honor.

THE COURT: All right. You may.

THE WITNESS: This is Tuesday, September 26, 1995.

"Josh, enclosed is an article about three baseball players. I thought this story --" might "-- may interest you. Hey, where is that letter you said you would write to me? You must be writing one heck of a letter if it's taking this long to get here. It doesn't have to be long. Just one page is fine."

Are making -- "Are you making use of that gym after school, or have all the girls got you preoccupied and busy catering to them?"

"Also enclosed is a comic you may get a laugh at. I may cut this letter short because I want to get it out today and Mr. Morris will be stopping by any minute. He's here now. Keep your chin up. Love you, Terry."

BY MR. WOODS:

Q. And then the last letter is 183; is that correct?

A. Yes.

Q. I ask that you read that.

MR. WOODS: And first, your Honor, I want to publish a drawing that's referred to in this letter. It's been admitted

Lana Padilla - Direct

into evidence.

THE COURT: All right.

BY MR. WOODS:

Q. Go ahead and read the letter.

A. This is written March 20, 1997.

"Josh, enclosed you will find a drawing. Tell me if it reminds you of a past event that you may remember. I may not have all the details of exactly how things were, so you will have to forgive me if that's -- if that's any inaccuracies. That rabbit that saw the whole thing was hard to understand, so I'm doing the best I can.

"As far as the drawing looking like you, well, I'm just not that good yet, so you will have to accept a generic look, just like the deer and the rabbit.

"I also thought you may enjoy the drawing, since we have no photo of that time. That's usually what happens, though, isn't it? No camera for that special shot.

"By the way, how are things going?"

"I've been waiting for your letter a long time, so I decided to write you again. Maybe you can send a drawing to me of something that you remember. Don't worry about how good it looks. Drawing, like anything, takes some time and practice.

"Try it, though. You may have a talent that you don't know about. Just try to picture in your mind what it looks like and go slow. And be sure you have a large eraser. First

Lana Padilla - Direct

lightly sketch what you want, then go over it with a darker line. Don't worry if you have to -- have no colored pencils or markers. A simple No. 2 pencil can work well. One can get many different shades with a pencil.

"Well, this letter will be short, but send me something. I'll be waiting. I'll talk to you soon by phone. Be good, Josh. I love you. Take care. One of these days, we'll have to go hunting again."

Q. Now, these three letters which were sent among the many that you have: Is that typical of the type of letters that

that you have. Is that typical of the type of letters that Terry would write to Josh?

A. Yes.

Q. Was he trying to maintain his fatherly role?

A. Yes.

Q. And supervising and encouraging Josh?

Have you noticed that he has done that for the past two-and-a-half years?

A. Absolutely.

Q. Is that any change from what he had done for the prior 13 years of Josh's life?

A. No.

Q. I want to show you what's been marked for identification purposes as M698 and ask if you have seen this item before.

A. Yes. It's Josh -- yes, I have.

MR. WOODS: We would offer into evidence M698, your

Lana Padilla - Direct

Honor.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. And what is this, Ms. Padilla?

A. It's a birthday card Terry made for Josh on his 15th birthday.

Q. Which was when?

A. August 11, this year.

Q. And has Terry sent cards to you and to Josh during this period of time?

A. Yes.

Q. Are these cards that he's drawn and made himself?

A. Yes.

Q. Let me see if you can -- can you read that?

A. Yes. August 11, 1997.

"Joshua, just a simple note to say happy birthday. I wish you well on this special day. May the days and years ahead bring you joy and happiness. Though I'm not with you at this time, you are always in my thoughts. Keep in mind that you can succeed in anything you put your mind to. And remember: What a man thinks, so is he. So keep good thoughts always. Love, Dad."

Q. Now, when you were married to Terry, did you have a group photo made of you and Josh and your two sons?

Lana Padilla - Direct

A. Yes.

MR. WOODS: If I may approach.

THE COURT: Yes.

BY MR. WOODS:

Q. I'm going to show you what's been marked for identification as M357. Do you recognize that?

A. Yes.

MR. WOODS: We would offer into evidence M357.

MR. MACKEY: No objection.

THE COURT: Received.

BY MR. WOODS:

Q. Would you point out to the jury who is depicted in this large group photo.

A. This is Terry Nichols. This is me. This is Barry, my oldest son. Troy and Josh.

Q. Now, are all the boys living with you now, Ms. Padilla? And Josh is. And where is Troy?

A. They're all living with me.

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

THE COURT: Mr. Mackey, do you have some questions?

MR. MACKEY: Just a very few, your Honor.

MR. WOODS: Thank you.

CROSS-EXAMINATION

BY MR. MACKEY:

Lana Padilla - Cross

Q. Ms. Padilla, I have just a few questions for you, if you don't mind.

Mr. Woods showed you and you read to the jury three letters, all dated since the time of Mr. Nichols' arrest. Correct?

A. Right.

Q. And I heard him represent that there are others like those of similar nature that you didn't produce today; is that correct?

A. There is other letters, correct.

Q. And those are all letters that were written since the time of his arrest?

A. Yes.

Q. Did you search for any correspondence, any written letters from Terry Nichols to Josh that were written between the period September of '94 and April of '95?

A. No. I don't remember any correspondence; but I might not have saved them, either.

Q. As you sit there now, you have no recollection of a frequent routine, series of letters being sent by Mr. Nichols to Josh?

A. There were phone calls but no letters I remember.

Q. You told the jury that as you observed Terry Nichols and his relationship with Josh, one important goal was that he teach Josh something of substance. Was that your testimony?

Lana Padilla - Cross

A. Yes.

Q. In the summer of 1994, do you remember that Terry Nichols was living with Marife Nicole in Marion, Kansas?

A. He was there for a short time in the summer of '94. Not very long.

Q. Mr. Nichols was living in Marion, Kansas, during that time period?

A. Yes. I thought you meant Josh.

Q. That was my question. In fact, Josh did go out to Marion, Kansas, and spent some time on the Donahue Ranch; correct?

A. Yes.

Q. The plan was initially to spend some time during the summer, at least through his birthday on August 11?

A. I think so.

Q. The plans changed and he came home early?

A. He came home early.

Q. That was a result of some conflict that developed within the Nichols household; correct?

A. Terry was working very long hours, and Josh was in the house with Marife a lot; and it just -- it just was conflicting.

Q. I see. When Josh came home, though, you learned about what he had done with his father during the time he did spend with him at the Marion farm; correct?

A. Not really. No. Josh didn't -- we didn't really talk

Lana Padilla - Cross

about what he did, no.

Q. Did you learn, Mrs. Padilla, at any point in time that part of what Mr. Nichols spent his time with during that summer in 1994 with his son Josh was building small explosives?

A. During the summer of '94?

Q. Yes.

A. I never heard that, no.

Q. How about previously in 1993 during his stays in Michigan?

A. The first time I heard anything -- no. The first time I ever heard anything about building any type of bottle bombs was when the FBI asked us.

Q. But you know, do you not, Mrs. Padilla, that part of what Mr. Nichols taught his son was how to build bombs?

A. I don't know that firsthand, but that's what I have been told.

Q. You understand that from Josh.

A. We don't talk about -- I only heard it asked by the FBI to Josh.

Q. Did you hear Mr. -- Josh Nichols respond, "Yes, we did that"?

A. He talked about it, yes.

MR. MACKEY: Thank you.

MR. WOODS: Nothing further, your Honor.

THE COURT: All right. You may step down.

MR. THURSCHELL: Call Sandy Papovich.

THE COURT: Thank you.

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

(Sandra Papovich 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: Sandra Papovich, D A D O V I C H

THE WITNESS: Sandra Papovich, P-A-P-O-V-I-C-H.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Tigar.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning, Ms. Papovich.

A. Good morning.

Q. Where do you live?

A. I live in Snover, Michigan.

Q. There is a microphone there that looks like this. If you could lean over a little closer, then everybody in this area can hear you.

Do you know Terry Nichols?

A. Yes, I do.

Q. How long have you known him?

A. Approximately 16 years.

Q. Well, I want to ask you about the time beginning in the middle of 1988. Did Terry Nichols go into the Army?

Sandra Papovich - Direct

A. Yes, he did.

Q. And based on what you observed -- were you -- are you married?

A. Yes.

Q. All right. And did the Papovichs know Terry Nichols and Lana Nichols?

A. Yes.

Q. And you knew they had a son?

A. Yes.

Q. How did, based on what you observed -- how is it that Terry went into the Army?

A. How is it he went into the Army?

Q. Yeah. How was it that he came to make the decision to go into the Army?

A. The only knowledge I have is what his ex-wife told me; that she worked in the same building with a recruiting office and she would bring Army literature home for Terry to read.

Q. And after Mr. Nichols went in the Army, what did you observe happening to his son and Lana's son, Joshua, and to Lana's sons, Troy and Barry, by her former marriage?

A. Well, I observed that there was no supervision. Joshua went to stay with his aunt, and the other two boys were left alone at the farmhouse to fend for themselves.

Q. And what did Terry Nichols do about that when he found out about it?

Sandra Papovich - Direct

A. Well, when he found out that Joshua was with a relative, he immediately came home and got him, took him back out to Kansas with him so that he could care for him.

Q. And what did he do in Kansas to care for Joshua that you knew about?

A. Well, it was my understanding that he hired a housekeeper

with a -- she had a son of her own -- to take care of Joshua; but oftentimes he was called away for a couple of days at a time, and so the arrangements with the housekeeper wasn't working out. So that's when he applied for the hardship discharge.

Q. And so then he came back to Michigan at some point?

A. Yes, and he lived at the farmhouse taking care of Joshua and Troy.

Q. Now, did you and your husband have occasion to visit with Terry Nichols and he with you?

A. Yes.

Q. And did you see what kind of a dad he was?

A. Yes.

Q. How did he take care of the boys?

A. In my eyes, he took care of them very well. He loved the boys and he tried to teach them discipline and he just tried to take care of them and teach them.

Q. Was he interested in what they were eating?

A. Oh, yes.

Sandra Papovich - Direct

Q. And how did he manifest that?

A. Well, he always tried to make sure they ate healthy foods. He always baked his own bread for them, and he would make his own cereal out of wheat. It was a healthy diet that he was trying to instill in them.

Q. Did you observe that that was an interest of his, this organic food?

A. Yes.

Q. Was there an incident where he tried to convince you that that was the way to go?

A. He didn't try to convince me, no. When he saw that my husband and I were interested in eating organically grown food, he came over and gave us a 50-pound bag of organically grown wheat. And he also purchased a grinder for us and wouldn't let us pay him back for it so that we could grind the wheat, and he give us his recipes for making bread and making cereal.

MR. TIGAR: Excuse me just a moment.

Will your Honor indulge me just a moment?

THE COURT: Yes.

BY MR. TIGAR:

Q. In his role as a parent, did Terry see that Joshua got to be with the other kids in the area?

A. Yes, he did.

Q. Well, I'm going to show you what's been marked as Defendant's Exhibit 453 -- M453. I just ask you, do you

Sandra Papovich - Direct

recognize the people in that picture?

A. Yes. I recognize some of them. One of them is my daughter.

Q. Okay.

MR. TIGAR: I move its admission.

MR. SENDEL: No objection, your Honor.

THE COURT: It's received.

BY MR. TIGAR:

Q. Okay. Now the jury can see it. Tell us who is in the picture.

A. Well, my daughter, Janelle.

Q. Which one is she?

There is a pen attached to a cord. Should be on top there. Can you see it?

A. Oh.

Q. There it is. And if you reach underneath the glass, you can write directly on the TV screen.

A. Okay. This one is Janelle.

Q. And who else do you recognize?

A. The Lamming girl. I forget her first name. And Andrea Walsh, and Joshua, of course.

Q. Joshua is the one -- the big boy right there?

A. Right.

Q. And do you know when this was taken?

A. To the best of my recollection, probably '89.

Sandra Papovich - Direct

Q. Did you have occasion in 1989 to drop your daughter off at a birthday party that was being held for Josh?

A. Yes.

Q. How old was Josh at that birthday party?

A. Seven, I believe.

Q. Now, did Terry continue to take care of Josh then until Joshua eventually moved to Las Vegas?

A. Yes.

MR. TIGAR: Thank you very much Ms. Papovich.

THE COURT: Any questions?

MR. SENDEL: Very briefly, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. SENDEL:

Q. Mrs. Papovich, you told us that you had known Terry Nichols for approximately 16 years. And during that time, he was always a loner, wasn't he?

A. All depends on your definition of "loner." He was a quiet person.

Q. You remember giving an interview, Mrs. Papovich, to a defense investigator for Mr. Tigar and Mr. Woods in May of 1996?

A. Yes, I do.

Q. And didn't you tell him at that time that Mr. Nichols was a loner?

Sandra Papovich - Cross

A. I probably used that phrase.

Q. You also said that Mr. Nichols was someone that never had

any buddies or, in your words, "chums." Isn't that correct?

A. I said I never knew his buddies.

Q. Now, after Mr. Nichols returned from the Army, you did get the chance to meet Timothy McVeigh, didn't you?

A. On a -- on a couple occasions.

Q. And you became aware that Terry Nichols and Timothy McVeigh were really good friends, didn't you?

A. This is what I was told. They were friends from the Army. I don't know how well they knew each other. That's just what I was told.

Q. And after the Army, the last time you saw Terry Nichols in Michigan I believe was approximately 1993. Is that right?

A. Late '93.

Q. And you didn't see him again?

A. Well, he's been in your custody.

Q. Between 1993 and April of 1995, you didn't see Terry Nichols, did you?

A. No. I was supposed to see him the following year when he came home, but our schedules conflicted and I was not able to see him.

Q. And during the time that Terry Nichols was living in Kansas after he left Michigan in 1993, you had no idea what he was doing in Kansas, did you?

MR. TIGAR: Objection, your Honor. Beyond the scope.

THE COURT: Sustained.

MR. SENDEL: Pardon me? I didn't understand.

THE COURT: I sustained the objection.

MR. SENDEL: I didn't understand the basis for the sustention, your Honor.

THE COURT: You don't need to know the basis. I sustained it.

MR. SENDEL: Thank you, your Honor. I have no further questions.

THE COURT: Any other --

MR. TIGAR: No, I have nothing further.

Thank you very much, Mrs. Papovich.

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

I think we'll take the noon recess at this time.

Members of the jury, before we recess -- and we'll take the usual 90-minute recess -- I can advise you -- I've talked with counsel. We do anticipate completion of the testimony here this afternoon and probably well before 5:00, so you'll be excused at that time because we will not be able to go forward with what remains, which will be the presentations of counsel and their arguments. Just as was true with respect to the trial, both sides will have an opportunity to argue this -- these issues; and then, of course, I'll instruct you on the law, and we'll do that on Monday.

So again, that can be done, you know, one right after the other and wouldn't be helpful, I think, to go forward with that this afternoon, then interrupt it and come back, and so forth. More effective, I'm sure you would agree, if you hear it all at the same -- on the same day.

So I just wanted to let you know that so that you will anticipate -- be able to anticipate what the timing will be

anticipate be able to anticipate what the timing will be here. And, of course, now during this recess and as will be true during the weekend recess, you must keep open minds, waiting until you've heard it all, because just hearing from the witnesses testify, of course, is not all of the information that's already been received. Some of these matters are exhibits. Some of them have not been displayed to you. And of course, then, the arguments and instructions are important as well.

So we'll recess now till 1:25. You're excused for now.

(Jury out at 11:55 a.m.)

THE COURT: May I see counsel a moment.

(At the bench:)

(Bench Conference 151B3 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: All right. We'll be in recess, 1:25.

(Recess at 11:57 a.m.)

* * * * *

INDEX

Item

Page

DEFENDANT'S MOTION TO TERMINATE PENALTY PHASE

Defendant's Argument

Ruling

WITNESSES

Marife Nichols

Direct Examination by Mr. Tigar

Cross-examination by Mr. Ryan

Suzanne McDonnell

Direct Examination by Mr. Thurschwell

Leslie Nichols

Direct Examination by Mr. Thurschwell

Cross-examination by Ms. Wilkinson

Lyle Rauh

Direct Examination by Mr. Thurschwell

Susan Simpson

Direct Examination by Mr. Tigar

Lana Padilla

Direct Examination by Mr. Woods

Cross-examination by Mr. Mackey

WITNESSES (continued)

Sandra Papovich

Direct Examination by Mr. Tigar

Cross-examination by Mr. Sengel

DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
M37	15784	15784			
M40-M44	15784	15784			
M45	15712	15712			
M49	15714	15715			
M50	15715	15715			
M52	15717	15717			

M61	15715	15715
M63	15713	15713
M66	15692	15692
M69	15693	15694
M70	15694	15694
M72	15734	15734
M73	15709	15709
M76	15716	15716
M95	15703	15703
M103	15723	15723
M106	15721	15721
M141	15777	15777
M142-M143	15788	15789

DEFENDANT'S EXHIBITS (continued)

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
M183	15788	15789			
M185	15788	15789			
M192	15736	15736			
M197	15727	15728			
M200	15729	15729			
M258	15684	15684			
M289	15686	15686			
M299	15687	15687			
M300	15687	15687			
M301	15688	15688			
M303-M304	15688	15688			
M306	15688	15688			
M308-M309	15688	15688			
M334	15776	15776			
M338	15771	15771			
M357	15796	15796			
M394	15778	15778			
M397	15772	15772			
M400	15774	15775			
M425	15778	15778			
M430	15775	15775			
M449	15772	15773			
M453	15804	15804			

DEFENDANT'S EXHIBITS (continued)

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
M472	15732	15732			
M512	15711	15711			
M519	15704	15704			
M566	15730	15730			
M568	15731	15731			
M573	15726	15726			
M578	15695	15695			
M583	15723	15724			
M587	15733	15733			
M608	15733	15733			
M615	15710	15710			
M618	15764	15764			
M621	15718	15718			
M629	15696	15696			
M690-M692	15681	15682			
M694-M697	15681	15682			

M698	15794	15795
M699	15760	15760
M702	15758	15758

* * * * *

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 2d day of January, 1998.

Paul Zuckerman

Bonnie Carpenter

"Transcripts may not be reproduced, re-printed or re-transmitted without permission from PubNETics or KWTV."