

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:)
)
JESSE C. TRENTADUE)
)
Plaintiff,)
)
v.) Case No. 2:08-CV-788CW
)
FEDERAL BUREAU OF INVESTIGATION,)
et al.,)
)
Defendants.)

Transcript of Bench Trial

BEFORE THE HONORABLE CLARK WADDOUPS

July 31, 2014

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1 Salt Lake City, Utah, Thursday, July 31, 2014

2 * * *

3 THE COURT: We're back in session in
4 Trentadue v. The FBI. Counsel and parties are present.
5 The FBI is proceeding with its rebuttal case. You may
6 proceed.

7 MR. SIPLE: Yes, Your Honor. Before I do, I
8 just want to raise a preliminary matter. As you recall,
9 the court asked us to look into an allegation with
10 respect to Mr. Trentadue's witness, John Matthews. And
11 based on what little information we had available at the
12 time, we contacted the FBI's Division Office in Las
13 Vegas, which is the relevant office for -- would be the
14 relevant officer for the Reno, Nevada area where we
15 understand Mr. Matthews was scheduled to testify. We
16 contacted the Associate Chief Counsel there,
17 communicated to them the court's instructions and what
18 we knew of the allegation. The Associate Chief Counsel
19 has been looking into it, and we got information back
20 from their office that there had been no contact with
21 Mr. John Matthews.

22 However, I also approached Mr. Trentadue and
23 asked him if he could provide us any additional
24 information that might help us track this down. This
25 morning he did provide us with additional information

1 concerning he believed that the field office here in
2 Salt Lake that was potentially involved. We have
3 initiated contact with them. He also provided us with
4 Mr. Matthews' information so that we could have that
5 information as well. So we are -- we just got this
6 information, but we're acting on it and continuing to
7 look into it.

8 THE COURT: Thank you.

9 Mr. Trentadue, anything in response to that?

10 MR. TRENTADUE: No, sir. That's accurate.

11 THE COURT: Thank you. The FBI may proceed
12 with its first witness.

13 MR. SIPLE: Your Honor, the FBI would like
14 to call Sheriff Charley Hanger.

15 THE CLERK: Sir, can you see and hear me?

16 THE WITNESS: Yes, I can hear you.

17 THE CLERK: Can you see me?

18 THE WITNESS: Yes.

19 **CHARLES HANGER,**

20 called as a witness at the request of the Defendant,

21 having been first duly sworn, was examined

22 and testified as follows:

23 MR. TRENTADUE: Your Honor, before we
24 proceed, I would just like to lodge an objection at the
25 beginning. I don't think -- to the extent this

1 testimony goes to the existence or nonexistence of
2 portions of the actual videotapes, I think it's
3 irrelevant. I think it also poses a serious due process
4 problem for me in the sense I have no discovery, no --
5 nothing to refute Mr. Hanger's testimony. Thank you,
6 sir.

7 THE COURT: The objection is overruled. You
8 can argue the significance of this later.

9 You may proceed.

10 MR. SIPLE: Thank you, Your Honor.

11 MR. TRENTADUE: First of all, clarification,
12 Your Honor, the government insisted that my witnesses by
13 videoconference testify at a certified court reporter's
14 office. Where is Mr. Hanger testifying from?

15 MR. SIPLE: I don't recall that we insisted
16 on a certified court reporter's office. We did object
17 to the remote testimony, but we understand the court
18 overruled that and allowed and actually issued an order
19 saying the witnesses may testify remotely.

20 THE COURT: I think if you would just
21 establish where the witness is and who is present during
22 the testimony.

23 MR. SIPLE: I'll do that, Your Honor.

24 THE COURT: Okay.

25 //

1 **DIRECT EXAMINATION**

2 **BY MR. SIPLE:**

3 Q. Sheriff Hanger, where are you testifying from
4 today?

5 A. From the U.S. Attorney's Office in Oklahoma City,
6 Oklahoma.

7 Q. Okay, and is there anyone with you in that room?

8 A. No, just myself.

9 THE COURT: Mr. Siple, we failed to ask the
10 witness to identify himself by name and have him spell
11 his name.

12 MR. SIPLE: Yes, Your Honor.

13 Q. (By Mr. Siple) Sheriff Hanger, could you please
14 identify yourself and spell your first and last name for
15 the record.

16 A. My name is Charles Hanger; first name
17 C-h-a-r-l-e-s; Hanger is spelled H-a-n-g-e-r.

18 Q. And just to clarify, are you alone in the room
19 that you're testifying from?

20 A. Yes, I'm alone in this room.

21 Q. Do you have any documents with you in the room
22 today?

23 A. Yes. I have two pages from my transcript from my
24 testimony in the McVeigh trial that was conducted in
25 Denver, Colorado, April 28, 1997, and I have a copy of

1 an exhibit that was e-mailed to me from this trial, I
2 assume, Exhibit Number 68.

3 MR. SIPLE: I would like to let the record
4 reflect that's the transcript that is marked here as
5 defendant's exhibit -- just for identification at this
6 point, Defendants Exhibit 250, and I'll provide to the
7 court copies and Mr. Trentadue.

8 Q. (By Mr. Siple) Sheriff Hanger, where do you
9 currently reside?

10 A. Perry, Oklahoma.

11 Q. Are you currently employed?

12 A. Yes.

13 Q. How are you currently employed?

14 A. I'm the Sheriff of Noble County, Oklahoma.

15 Q. Prior to becoming the Sheriff of Nobel County,
16 Oklahoma, were you employed elsewhere?

17 A. I was employed by the Oklahoma Highway Patrol.

18 Q. And how long were you with the Oklahoma Highway
19 Patrol?

20 A. A little over 28 and-a-half years.

21 Q. Okay. And so when -- do you remember the year
22 that you started?

23 A. I started in 1976.

24 Q. Okay. When did you -- did you retire from the
25 Oklahoma Highway Patrol?

1 A. Yes, I retired on January 3rd, 2005.

2 Q. Thank you. Could you tell the court what did
3 your responsibilities with the Oklahoma Highway Patrol
4 consist of?

5 A. I was a road trooper, assigned to Nobel County.
6 I worked Interstate 35 in Nobel and Payne Counties, and
7 the secondary roads in Nobel County enforcing all the
8 laws of the State of Oklahoma, investigating traffic
9 collisions, and assisting the motoring public.

10 Q. I would like to call your attention to the
11 morning of April 19, 1995, the morning of the Oklahoma
12 City bombing, were you on duty that morning, do you
13 recall?

14 A. Yes, I was. I worked the day shift that day.

15 Q. When did your day shift start?

16 A. At 7:00 a.m.

17 Q. And what specifically were you doing that day as
18 part of your shift?

19 A. That particular day I started my traffic patrol
20 going east of Perry, which is the county seat of Nobel
21 County. I was working radar traveling east early that
22 morning.

23 Q. Did you make any stops that morning?

24 A. Yes, I did.

25 Q. How many stops did you make?

1 A. I made three stops that morning.

2 Q. And did any of these stops lead to an arrest?

3 A. Yes.

4 Q. Do you recall this arrest?

5 A. Yes, I do.

6 Q. Could you explain -- please describe the arrest
7 you made on the morning of April 19, 1995.

8 A. Shortly before 10:20 that morning I was traveling
9 northbound on Interstate 35 and I was in the left lane.
10 Within about a mile from where I was getting ready to
11 exit off, as I passed by an old yellow Mercury I
12 observed there was no tag on the rear of that vehicle,
13 so I affected a traffic stop and stopped that vehicle.

14 Q. What did you do next?

15 A. Upon coming in contact with the driver,
16 explaining to him why he had been stopped, and while he
17 was retrieving his driver's license from his right rear
18 pocket, I noticed a bulge under a windbreaker-type
19 jacket he was wearing that I thought was a weapon, so I
20 instructed him to slowly use both hands, unzip that
21 jacket, and slowly pull it back.

22 And as he started to pull it back, he looked
23 at me and said I have a weapon.

24 I then grabbed the bulge on the outside of
25 his jacket, spun him around, and told him to get his

1 hands up. I drew my weapon, then asked him to walk to
2 the trunk of his car where I took him into custody.

3 Q. When you say "took him into custody," would you
4 please describe what you did to put him into custody?

5 A. When we got to the trunk of the car, I pulled his
6 jacket back, I saw a pistol in what I call a suicide
7 holster, where the barrel is pointing up to the armpit.
8 I removed that pistol from that holster, threw it to the
9 shoulder of the roadway.

10 This individual, Tim McVeigh, at that time
11 said, I also have another magazine for that weapon in my
12 jacket.

13 I pulled it back, found the magazine, threw
14 that to the shoulder of the roadway.

15 He then stated I also have a knife under my
16 jacket, in which I pulled back and located the knife and
17 threw it to the shoulder of the roadway. I then
18 handcuffed him, patted him down again to see if he had
19 any other weapons. He did not. And he was placed in
20 the front seat of my patrol car and seat-belted in.

21 Q. During your -- in answer to that question you
22 identified the suspect as Tim McVeigh. Is that Tim
23 McVeigh who was ultimately convicted of the Oklahoma
24 City bombing?

25 A. Yes, that is the same person.

1 Q. And you mentioned the weapons. There were knives
2 and a gun. Were there any other items?

3 A. There was an extra magazine for the weapon, the
4 weapon itself, and the knife.

5 Q. Did you take custody of these items?

6 A. Yes, I did.

7 Q. Sheriff Hanger, was there any recording equipment
8 on your car, a video recorder that could capture the
9 scene of the stop?

10 A. There was a dash-cam installed in my unit.

11 Q. And did you operate that dash-cam during your
12 stop of Mr. McVeigh?

13 A. At one point I did, yes, I turned it on. After
14 he was in custody and sitting in the front seat of my
15 car, I was preparing to read him his *Miranda* warning, I
16 wanted to capture that on the audio, and so that's when
17 I turned the videocamera on.

18 Q. I have to ask you, Sheriff Hanger, why didn't you
19 turn the camera on when you initiated the stop?

20 A. I had only had the camera a couple of months,
21 maybe being old school I wasn't sure that I even liked
22 having that camera in the car. I thought it was a good
23 thing for DUI arrests, things where you need to capture
24 erratic driving movements and the instability of a drunk
25 driver prior to his arrest so you could document his

1 level of intoxication. But for a simple traffic stop I
2 didn't feel like it had any evidentiary purpose.

3 Q. Did the -- so if I'm understanding your
4 testimony, Tim McVeigh was already in the car when you
5 initiated the recording, is that correct, in your patrol
6 car?

7 A. That is correct, yes. He was sitting in the
8 front seat of my patrol car next to me.

9 Q. Did the video -- actually let me stop there.
10 Did you have any sounds you captured of Tim
11 McVeigh, any conversation, on that tape?

12 A. Even though that's what I was attempting to do, I
13 hit the wrong two buttons and I did not get any sound.
14 I did get video from the camera pointing forward
15 capturing the car itself and at one point me walking
16 about the car recording information from the vehicle
17 identification number and searching the car, but, no,
18 there was no sound whatsoever.

19 Q. And of the video that you did record, you
20 mentioned that you're in the video, is that right, at
21 certain points?

22 A. Yes, I am.

23 Q. Are there any other individuals captured in that
24 video during the stop and arrest that you recorded?

25 A. No, other than the traffic moving northbound on

1 the interstate.

2 Q. Do you recall -- I just want to make this clear,
3 did you have an opportunity to review the tape that you
4 recorded with your dashboard camera?

5 A. Yes, I reviewed it. I don't recall if it was the
6 21st or the 22nd of April 1995 the first time I reviewed
7 it. And I had been provided a copy of that sometime
8 back several years ago, I couldn't tell you exactly
9 when, and I have reviewed that copy as well.

10 Q. Did the tape that you recorded capture a pickup
11 truck of any kind in the vicinity of this stop?

12 A. No.

13 Q. There was no pickup truck pulled over to the side
14 of the road or the shoulder or anything like that?

15 A. There was nothing on the video -- the video
16 showing any pickup truck, nor do I recall seeing one.

17 Q. Sheriff Hanger, did you testify in the
18 prosecution trial of Tim McVeigh?

19 A. Yes, I did.

20 Q. Do you recall whether or not -- have you had an
21 opportunity to review the testimony that you provided in
22 that trial?

23 A. Part of it, yes.

24 Q. And how was that?

25 A. By reviewing the copies of the transcript that I

1 have in my possession.

2 Q. Do you have a copy of -- to be clear, you have a
3 copy of the -- your own copy of the transcript that you
4 gave of the testimony you gave in the McVeigh trial?

5 A. I do have my own copy, yes.

6 Q. And if I could have you look -- and did you bring
7 copies of that transcript with you today?

8 A. I brought two pages, page 33 and 34, from that
9 transcript.

10 Q. Why did you bring those pages?

11 A. Those are the ones regarding my testimony of the
12 video.

13 Q. So you testified about the video that you
14 recorded in the McVeigh trial; is that correct?

15 A. Yes, it is.

16 Q. And I just want to be clear because I don't
17 specifically remember, was the McVeigh trial a public
18 proceeding, was it open to the public, that prosecution
19 trial?

20 A. I believe it was, yes.

21 Q. If I could call your attention to the first page
22 here on the screen, and this is at this point marked as
23 Defendant's Exhibit 250. And just to make sure we're
24 talking about the same thing, it starts -- it's got a
25 5255 in the top left corner?

1 A. Yes, I have that copy here before me.

2 Q. And there's a number 33 on the bottom of the
3 page?

4 A. Yes, that is correct.

5 Q. Okay. And if we could just go down, I would like
6 you to read from this transcript starting at line 17.

7 A. Question, Prior to the interview did you take any
8 steps to try to record the conversation you were having
9 with Defendant McVeigh?

10 Answer, Yes, I did.

11 Question, Were you able to record?

12 Answer, No.

13 Question, Why not?

14 Answer, I hit the wrong two buttons on my
15 videocamera.

16 Question, In your unit?

17 Answer, Yes.

18 Q. Thank you, Sheriff Hanger.

19 Now, if we could turn to the second page of
20 the transcript that you brought with you, and if we
21 could go down to line 15, and if I could have you read
22 from lines 15 to 21 -- I'm sorry 15 to 25.

23 A. Question, And the video is the camera that
24 records what?

25 Answer, It records anything in front of the

1 camera itself, which mounts on the dash and is pointed
2 forward to the front of the unit, or anything in front
3 of the camera it will record in a video picture.

4 Question, And, accordingly, did this video
5 picture record anything relating to Defendant McVeigh's
6 person?

7 Answer, No.

8 Question, What did it record?

9 Answer, It recorded the unit, the car he was
10 driving, and myself as I was walking about.

11 Q. Thank you, Sheriff Hanger.

12 A. You're welcome.

13 MR. SIPLE: At this time, Your Honor, I
14 would move to admit what's marked Defendant's
15 Exhibit 250 into evidence.

16 MR. TRENTADUE: Objection, it's cumulative,
17 Your Honor. The witness has already testified to this.

18 THE COURT: Is there a reason to have any of
19 the additional information from the transcript in the
20 record beyond what he's read?

21 MR. SIPLE: It's withdrawn, Your Honor. I
22 think it stands for itself actually.

23 THE COURT: Thank you.

24 MR. SIPLE: I would like to -- if we could
25 call up Plaintiff's Exhibit Number 68.

1 Q. (By Mr. Siple) And are you able to see this
2 exhibit on the screen in front of you, Sheriff Hanger?

3 A. Yes, I can see it, and I have it before me as
4 well.

5 Q. So just to be clear, the exhibit that you're
6 seeing on the screen is the document that you have in
7 front of you?

8 A. Yes, it's one in the same.

9 Q. Okay. If you could just take a moment and review
10 this and just let me know when you've had enough
11 opportunity to read it.

12 A. I've reviewed it.

13 Q. And, Sheriff Hanger, can I ask you, having
14 reviewed this, do you recall giving an interview to the
15 FBI regarding your stop?

16 A. I remember talking to an agent, I couldn't have
17 told you his name.

18 Q. Does this FBI document in any way give you any
19 reason to second-guess the testimony that you've given
20 regarding the recording in your car?

21 A. No, it does not.

22 Q. And if I could just ask you on this, with respect
23 to the object on the ground, if you could comment on
24 that, it's the last line there, where it's reporting of
25 an object on the ground.

1 A. I would have to assume that the objects seen on
2 the ground was the items I took off McVeigh's person,
3 the weapon, the Glock .45 caliber pistol, the knife, and
4 the magazine as well, all three of those items were
5 thrown to the ground after I found them.

6 Q. Did you retrieve them from the ground?

7 A. I did at one point, yes.

8 Q. Okay. Did you take them into your possession?

9 A. Yes, I did.

10 Q. And did you -- were they turned into evidence?

11 A. Yes, they were.

12 MR. SIPLE: Okay. Thank you, Sheriff
13 Hanger.

14 And we can take down the exhibit.

15 THE WITNESS: You're welcome.

16 THE COURT: Cross-examination?

17 MR. SIPLE: Actually, I have a few more
18 questions.

19 THE COURT: Go right ahead.

20 Q. (By Mr. Siple) Sheriff Hanger, if I could ask
21 you, so you recorded the tape. What did you do with the
22 tape from your dashboard cam that was recorded, that
23 recorded your stop of McVeigh?

24 A. I turned it over to a federal agent.

25 Q. How did you do that?

1 A. I delivered it in person, I took it from where I
2 had it at my home to Oklahoma City.

3 Q. Where specifically in Oklahoma City?

4 A. It was at the command post.

5 Q. And --

6 A. I don't recall the address.

7 Q. Was this the command post for the Oklahoma City
8 bombing investigation?

9 A. Yes. It was just days after the bombing.

10 Q. Can I ask you, Sheriff Hanger, have you had an
11 opportunity since this arrest and recording this video
12 to view the video on other occasions?

13 A. I had reviewed part of the video upon receiving a
14 copy. I reviewed the actual video just days after the
15 arrest of McVeigh, it would either have been the Friday
16 or Saturday, which would have been the 21st or 22nd of
17 April 1995.

18 Q. Have you had an opportunity to look at the video
19 any time more recently?

20 A. Yes, after I received a copy I had watched that
21 video. And I also seen it on television.

22 MR. SIPLE: If I can ask if we could pull up
23 Plaintiff's Exhibit 1, which is identified as the Hanger
24 video, Plaintiff's Exhibit 1.

25 Sheriff Hanger, I would ask you to watch

1 this video we're about to play. We're just going to
2 play portions of it, a certain amount of it. I would
3 just like to get your comments after. If we could play
4 the video.

5 (Video being played.)

6 MR. SIPLE: You can stop at about two
7 minutes. We can go ahead and stop and pause the video
8 at this point.

9 Q. (By Mr. Siple) Did you have an opportunity to
10 look at the video just now, Sheriff Hanger?

11 A. Yes.

12 Q. Does that appear to be the video that you took
13 from your patrol car dash-cam?

14 A. Yes, it is.

15 MR. SIPLE: Thank you, Your Honor. No
16 further questions.

17 THE COURT: Cross-examination?

18 MR. TRENTADUE: Yes, sir, just very brief I
19 think.

20 **CROSS-EXAMINATION**

21 **BY MR. TRENTADUE:**

22 Q. Good morning Sheriff Hanger. Can you hear me
23 okay?

24 A. Good morning. A little low.

25 Q. Sir, were you saying something?

1 A. I said the volume was a little low.

2 Q. I'll try to speak up.

3 A. Thank you.

4 Q. When were you first contacted about testifying
5 here today?

6 A. Oh, it was probably within the last two weeks. I
7 don't know the exact date.

8 Q. So it was at least two weeks ago?

9 A. I'm estimating within the last two weeks.

10 Q. Certainly not during this week.

11 A. The first time was not this week, no.

12 Q. Were you told that you were going to testify at
13 the trial?

14 A. Sir, your volume is getting low again.

15 Q. When you were first contacted were you told that
16 you were going to testify at trial?

17 A. I was told there was a possibility I might
18 testify.

19 Q. Who contacted you?

20 A. I was originally contacted by a retired
21 gentleman, he worked for the FBI, the last name Maybry,
22 and he asked me to call Mr. Siple.

23 Q. And have you met with anyone to prepare to
24 testify here today?

25 A. I have not met with anyone.

1 Q. Have you talked over the phone with anyone about
2 your testimony here today?

3 A. Yes, I have.

4 Q. Who did you speak with?

5 A. Yes, sir. I spoke to Mr. Adam Siple.

6 Q. When was that, sir?

7 A. I've talked to him on a couple of occasions, most
8 recently last night.

9 Q. What was the first occasion that you recall?

10 A. He was asking me if I recalled the arrest and if
11 I had copies of my transcript. They were very brief
12 questions.

13 Q. When did Mr. Siple first contact you?

14 A. Shortly after I talked to Mr. Maybry, within the
15 last couple of weeks.

16 Q. Do you know whether there's an intercom system in
17 the room?

18 A. Can you speak up, please?

19 Q. Do you know whether or not there's an intercom
20 system in the room from which you're testifying?

21 A. I have no idea. First time I've ever been here.

22 Q. Did you at some time, sir, get back the original
23 videotape of the McVeigh stop?

24 A. I did not.

25 Q. If I could, sir, I would like to show you --

1 first of all, you have Exhibit 68 in front of you, don't
2 you, sir?

3 A. Yes, sir.

4 Q. When you read down there, the second complete
5 sentence in the last paragraph, it says, When asked
6 about the possibility of a pickup truck traveling in
7 tandem with the McVeigh vehicle, Hanger responded he had
8 no recollection of any such vehicle. Do you remember
9 being asked about that, sir?

10 A. Yes, I do.

11 Q. Did they tell you from where that information
12 came?

13 A. No, they did not.

14 Q. Did they seem particularly interested in a brown
15 pickup truck?

16 A. The best of my recollection, there was mention of
17 a brown pickup truck.

18 Q. Did they tell you that that person was a suspect
19 in the bombing along with McVeigh?

20 A. No, they did not.

21 Q. If --

22 A. I was -- the morning of the arrest I was sitting
23 by my headquarters while I was at the county jail
24 finishing the arrest papers, I was sent out to the
25 interstate to look for a brown pickup that was possibly

1 involved in the bombing.

2 Q. Now, I'm going to show you Exhibit 10.39, if I
3 can get it to come up here, it's Exhibit 10, page 39.
4 Can you see that exhibit, Sheriff Hanger?

5 A. I can see it, but I can't read it.

6 Q. Maybe if I can blow up the parts I want to talk
7 to you about. Do you recall a Houston Chronicle article
8 coming out shortly in 1995 about your arrest of McVeigh
9 in which they referenced a suspect by the name of
10 Colbern?

11 A. I don't recall any such article.

12 Q. It says, An automatic camera in the car of
13 Trooper Charles Hanger was taping the arrest of McVeigh.
14 In the background was an image of a pickup truck that
15 was pulled over while McVeigh was being questioned. You
16 don't recall ever seeing that article.

17 A. I do not.

18 Q. Now, when was the first time you actually looked
19 at the arrest tape, the dashboard camera tape?

20 A. Like I testified earlier, I believe it was either
21 Friday, the 21st, or the -- Saturday the 22nd of
22 April 1995.

23 MR. TRENTADUE: Thank you, sir. No further
24 questions.

25 THE COURT: Any redirect?

1 MR. SIPLE: Yes, Your Honor.

2 **REDIRECT EXAMINATION**

3 **BY MR. SIPLE:**

4 Q. Sheriff Hanger, were you still employed with the
5 Oklahoma Highway Patrol in 2006?

6 A. I was not.

7 Q. And is it your understanding that the tape when
8 it would be returned, would it be returned to you, or
9 would it go back to the Oklahoma Highway Patrol?

10 MR. TRENTADUE: Objection, foundation.

11 THE WITNESS: I would assume that it went
12 back to the Oklahoma Highway Patrol.

13 Q. (By Mr. Siple) Sheriff Hanger, did you ever give
14 an interview or any information to the Houston Chronicle
15 about your tape or about your arrest?

16 A. Not that I recall.

17 MR. SIPLE: I have no further questions,
18 Your Honor.

19 THE COURT: Any followup?

20 MR. TRENTADUE: No, sir.

21 THE COURT: Thank you, Sheriff Hanger. We
22 appreciate your testimony. You are excused.

23 THE WITNESS: Thank you, Your Honor.

24 MR. TRENTADUE: Your Honor, I move to strike
25 this witness's testimony. The court will recall that

1 the government identified three potential rebuttal
2 witnesses. They had spoken with this witness long
3 before that time, had him in the wings ready to spring
4 him on me in this fashion.

5 MR. SIPLE: Your Honor, we only identified
6 case-in-chief witnesses. I don't believe we ever
7 proffered the identification of rebuttal witnesses.
8 Rebuttal depends on how the case develops.

9 MR. TRENTADUE: Your Honor, they filed a
10 notice of intent to call rebuttal witnesses.

11 MR. SIPLE: We had offered the OKBOMB agents
12 as a proffer of case-in-chief and that was denied. They
13 were not offered as rebuttal. We thought we could put
14 them in the case-in-chief and that was denied.

15 THE COURT: I'm going to deny the motion to
16 strike the testimony, and at the appropriate time you
17 can argue the significance or what weight and any
18 surprise you believe occurred because of the late
19 notification.

20 The FBI may call its next witness.

21 MR. SIPLE: Your Honor, the FBI calls
22 Mr. Richard Williams. If there are technical
23 difficulties we could do the other witnesses first.

24 THE COURT: Let's give him a couple more
25 moments to see if he can get it up.

1 THE CLERK: Sir, can you hear us?

2 THE WITNESS: Barely.

3 THE CLERK: Is there a way that you can move
4 down to the end seat, or can you adjust the camera? We
5 can barely see you.

6 THE WITNESS: Okay. I am about three feet
7 from the camera now.

8 THE COURT: We need you to take the seat at
9 the end of the table, which is the one that's focused on
10 the camera.

11 THE WITNESS: The far end? Okay.

12 THE COURT: Now we can see you well.

13 If we can place the witness under oath.

14 **RICHARD WILLIAMS,**

15 called as a witness at the request of the Defendant,

16 having been first duly sworn, was examined

17 and testified as follows:

18 THE CLERK: Will you please say and spell
19 your full name for the record.

20 THE WITNESS: I'm sorry, I'm really having
21 trouble hearing you.

22 THE CLERK: Can you please say and spell
23 your full name for the record.

24 THE WITNESS: Richard, middle initial E.,
25 last name Williams, R-i-c-h-a-r-d, W-i-l-l-i-a-m-s.

1 THE COURT: Mr. Williams, I didn't hear you
2 respond to the question when you were placed under oath,
3 did you say, yes, that you agree to be under oath?

4 THE WITNESS: I said I do, Your Honor. I
5 said I do, yes, sir.

6 THE COURT: Thank you.

7 **DIRECT EXAMINATION**

8 **BY MR. SIPLE:**

9 Q. Good morning Mr. Williams. Can you hear me okay?

10 A. Good morning.

11 Q. Can you hear me?

12 A. Barely. Still having trouble.

13 Q. I'll try to speak directly into the microphone.

14 A. That sounds a little better.

15 Q. First of all, Mr. Williams, where are you
16 testifying from today?

17 A. I'm in the U.S. Attorney's Office in Houston,
18 Texas.

19 Q. Do you have any -- is there anyone in the room
20 with you there?

21 A. No, sir.

22 Q. Do you have any papers or notes or anything of
23 that kind with you?

24 A. I do not.

25 Q. Mr. Williams, where do you currently reside?

1 A. I currently live in Montgomery, Texas.

2 Q. How long have you lived in Montgomery, Texas?

3 A. Nine years.

4 Q. Prior to residing in Montgomery, where did you
5 reside?

6 A. Oklahoma City, Oklahoma.

7 Q. Are you currently employed?

8 A. I am not. I'm retired.

9 Q. Where did you retire from?

10 A. I retired from the General Services
11 Administration Public Building Service.

12 MR. TRENTADUE: Your Honor, I would renew my
13 objection to this witness, the same one I made to
14 Sheriff Hanger, relevance and due process.

15 THE COURT: Your objection is recognized and
16 overruled.

17 You may proceed.

18 Q. (By Mr. Siple) Would you please explain to the
19 court what the General Services Administration is.

20 A. The General Services Administration, the branch
21 that I worked for, we are the landlords for the
22 government, we're responsible for all the federal
23 buildings and courthouses in the United States,
24 operations and maintenance, construction and repairs.

25 Q. Did you work in -- so you were -- did you work

1 for the GSA while you resided in Oklahoma City?

2 A. That's correct, I did.

3 Q. And, sorry, GSA, is that another way of referring
4 to General Services Administration?

5 A. Yes, sir.

6 Q. Do you remember -- when did you start working for
7 the General Services Administration?

8 A. I started in August of 1976.

9 Q. Okay. What was your position and
10 responsibilities when you began?

11 A. I was a maintenance mechanic and responsible for
12 operations and maintenance of the Federal Building
13 Courthouse and the old Post Office Building at that
14 time.

15 Q. Where were these buildings located?

16 A. 200 Northwest Fourth and 200 Northwest Third.

17 Q. Was this in Oklahoma City?

18 A. Yes, sir.

19 Q. Did you ever work in the Murrah Federal Building?

20 A. I did. I started -- as the building was being
21 completed, as I started with GSA in August, we opened
22 the building in April of 1977, and I became the
23 principal maintenance mechanic and operator for the
24 mechanical HVAC systems for the Murrah Building.

25 Q. Did you move on to any other position while you

1 were working at the Murrah Building?

2 A. I did. I became the maintenance mechanic foreman
3 for the complex, and then I became assistant building
4 manager, and then later district manager.

5 Q. Do you remember what position you held in 1995?

6 A. I was assistant building manager.

7 Q. Could you please describe for the court what is
8 an assistant building manager, what is it that you're --
9 the responsibilities of that job entail?

10 A. That job required being a contracting officer to
11 let contracts for repairs and alterations to the
12 buildings for cleaning, for maintenance, it required
13 working with the agency heads and tenants in terms of
14 their needs, just being a landlord so-to-speak, but we
15 were directly responsible for all the operations for the
16 building.

17 Q. When you say "operations," would you clarify
18 that, what does operations entail or encompass in your
19 mind?

20 A. It would encompass maintenance, repairs,
21 cleaning, construction, working with contractors on
22 alteration projects for the tenants, and basically
23 taking care of the building and the tenants as a
24 landlord.

25 Q. What were your responsibilities with respect to

1 working with contracts, could you elaborate on that?

2 A. As a contracting officer, it was my duty to put
3 contracts out for bid, award those contracts, and
4 oversee the work.

5 Q. In your responsibilities for building operations,
6 were you familiar with security measures for the
7 building?

8 A. I was familiar with it as we worked directly with
9 the Federal Protective Service in securing the buildings
10 and being responsible not for it, but with them. We
11 worked directly with the Federal Protective Service.

12 Q. When you say worked directly with them, could you
13 describe what you mean when you say you worked directly
14 with the Federal Protective Services?

15 A. They were also housed in the complex, as GSA. We
16 were partners in working with the tenants. Any concerns
17 that they may have and assisting Federal Protective
18 Service in any way that we could in the way of
19 alterations or upgrades or contracting.

20 Q. Would you meet with Federal Protective Services
21 on security issues concerning the building?

22 A. We met with FPS and the tenants on a regular
23 basis to discuss tenants' concerns and any other issues
24 that might be brought about by FPS, or by us to them for
25 that matter.

1 Q. Are you familiar with Mr. Tom Hunt?

2 A. I am.

3 Q. How do you know Mr. Tom Hunt?

4 A. I knew Mr. Hunt as the FPS representative from
5 our regional office to Oklahoma City who worked in our
6 complex.

7 Q. And is Mr. Tom Hunt a person that you met with
8 when on the job conducting responsibilities as building
9 manager?

10 A. That's correct, regularly.

11 Q. I want to draw your attention to April 19, 1995,
12 do you remember where you were that day?

13 A. Yes, sir. I had just come out of a meeting from
14 my manager's office, whose office was behind my mine.
15 Our office was on the first floor, west end of the
16 building. I was standing in my office with my planner
17 estimator discussing the results of the meeting that we
18 had just had with the Clerk of the Court from the
19 District Court.

20 Q. And what happened next?

21 A. That's the last thing I remember.

22 Q. Why is that the last --

23 A. I didn't hear anything, I didn't see anything.

24 I'm sorry?

25 Q. Why is that the last thing you remember?

1 A. Because of the blast. I was knocked out, buried,
2 I just didn't hear anything or feel anything until days
3 later.

4 Q. Do you remember -- when did you regain
5 consciousness?

6 A. Probably late Wednesday, April the 19th, that
7 afternoon as I came out of surgery.

8 Q. Mr. Williams, I want to ask you about -- you
9 mentioned you were familiar with the building because of
10 your position; is that correct?

11 A. That's correct.

12 Q. And you're familiar with the building security
13 measures as well?

14 A. Through working with the FPS, that's correct.

15 Q. Were you familiar with the cameras that were on
16 the Murrah Building, the camera system?

17 A. Yes.

18 Q. How are you familiar with the camera system on
19 the Murrah Building?

20 A. There was a control center in the Federal
21 Building Courthouse basement, which was in the same room
22 where my building automation system was that I
23 controlled the operations of the HVAC for the Murrah
24 Building, and that control center along, with the camera
25 placement, was done I think in the early '80s sometime,

1 so we worked with the installers in helping them
2 assisting them in getting those cameras installed. But
3 I was in that room for many, many years on a daily basis
4 operating my system, but being in that room with those
5 cameras also in that control center.

6 Q. Can you describe that control center a little
7 more, what did it consist of?

8 A. The control center was in the basement of the
9 courthouse and it was in the Federal Protective Service
10 joint office where my system was and it was a stand with
11 a series of monitors up on a console, and there was a
12 security officer back then that would sit and watch
13 those monitors. That included cameras from the
14 Courthouse and the U.S. Post Office Courthouse also
15 along with the Murrah Building cameras.

16 Q. You said the monitors. Did these cameras record
17 film, did they capture film?

18 A. No, sir.

19 Q. How do you know that?

20 A. No, sir. They were simply just instantaneous
21 monitors to be watched.

22 Q. Do you know if these cameras were operational on
23 April 19, 1995?

24 A. They were not.

25 MR. TRENTADUE: Objection, foundation, Your

1 Honor.

2 THE COURT: Sustained. The answer is
3 stricken. You need to lay additional foundation.

4 MR. SIPLE: Yes, Your Honor.

5 Q. (By Mr. Siple) Mr. Williams, how often would you
6 spend time in this area where the monitors were for the
7 cameras on the Murrah Building?

8 A. On a daily basis when I was operating the
9 building, and also when we moved our offices over to the
10 building in '89 that was right there where our offices
11 were located on the first floor.

12 Q. Were you ever involved in any meetings or
13 discussions concerning the cameras prior to April 19th,
14 1995?

15 A. There was some discussion when the Federal
16 Protective Service basically phased out the control
17 center as the --

18 MR. SIPLE: Stop your answer.

19 MR. TRENTADUE: Objection, foundation, and
20 objection, hearsay, Your Honor.

21 THE COURT: So far we don't have any content
22 of the hearsay, so the objection is overruled on that
23 basis.

24 MR. SIPLE: You may continue answering,
25 Mr. Williams.

1 THE WITNESS: I'm sorry?

2 THE COURT: Rephrase the question for him.

3 THE WITNESS: Please, yes, sir. Thank you.

4 Q. (By Mr. Siple) Do you have any personal knowledge
5 concerning budget issues that the Murrah Building and
6 your complex was facing that might have impacted on the
7 cameras in the building?

8 A. It would really be the Federal Protective Service
9 budget through GSA. Again, as the court expanded and
10 became secured through the U.S. Marshal Service and
11 hired their own security contractors --

12 MR. TRENTADUE: Objection.

13 THE WITNESS: -- the Federal Protective
14 Service had to cut back --

15 MR. SIPLE: Stop your answer.

16 THE WITNESS: -- security guards.

17 THE COURT: Was there an objection,
18 Mr. Trentadue?

19 MR. TRENTADUE: Foundation, sir. He's just
20 rambling on about his --

21 THE COURT: Let's make sure that we lay
22 actual foundation as to how he knows what he's about to
23 testify to.

24 Q. (By Mr. Siple) Let me step back here,
25 Mr. Williams. If there was going to be work done on the

1 building, in your role as building manager, would you
2 know about it?

3 A. Yes, sir.

4 Q. Why is that?

5 A. Well, everything that went on in the building
6 went through us or in conjunction with us, so we would
7 be aware of any work that was going on in the building,
8 so it would not interrupt service to our tenants or the
9 courts, or we would not have had people working in the
10 building that should not be there, contractors.

11 Q. Was it part of your responsibility to know about
12 systems that are in the building and how -- systems that
13 are in the building and how they are operational?

14 A. Absolutely, yes.

15 Q. Why is that?

16 A. That was our responsibility was to know how to
17 maintain and operate those systems.

18 Q. And did you testify -- and was one of your
19 responsibilities also to weigh in on protection of the
20 building itself, concerns in that regard?

21 A. In conjunction with the Federal Protective
22 Service, yes.

23 Q. How many times -- again, explain where you were
24 located, your control room area in relation to the
25 cameras.

1 A. The control room where the cameras were?

2 Q. Yes.

3 A. That was in the Federal Building Courthouse
4 basement at Northwest Fourth Street.

5 Q. How much time did you spend there, just on a
6 weekly basis, how much time would you be in that area?

7 A. In the early years when I was operating the
8 building, prior to becoming maintenance mechanic foreman
9 and the assistant buildings manager, it was everyday.

10 Q. Were you able to see the monitors for the cameras
11 while you were down there?

12 A. Yes.

13 Q. Were you able to see the images that were being
14 conveyed?

15 A. Yes.

16 Q. And did there ever come a time that there were no
17 more images and they weren't working from your
18 observations?

19 A. Yes.

20 Q. Could you please elaborate on that.

21 A. They were -- yes, sir. They were gradually
22 phased out as the marshals and the court security
23 officers took over the camera and the security of the
24 courthouse, and then, because there was no longer a
25 person at that control center, they phased down the

1 cameras for the Murrah Building also, and those cameras
2 were just basically shut off.

3 Q. Do you remember when this occurred?

4 A. I believe it was two to three, maybe four years
5 before the bombing.

6 Q. What's the basis for that conclusion?

7 A. Remembering the discussions that we had about
8 what Federal Protective Service was going to provide in
9 the way of security, it became from that, along with
10 that, the cameras, to guard service basically. And they
11 made us aware of that.

12 Q. Did you ever raise any concerns about phasing out
13 the cameras?

14 A. We did not directly relay them. We related
15 concerns from our tenants to the Federal Protective
16 Service in our safety meetings and security meetings.

17 Q. Just a few additional questions. I want to ask
18 you about your work with contracting. Were you working
19 on any bids or proposals for work on the Murrah Building
20 around 1995, the April 1995 time period?

21 A. Yes, sir. There was a prospectus level project
22 that was ongoing for bids. It was subject to bid on
23 April the 20th for a major upgrade of the Murrah
24 Building, which included mechanical, electrical,
25 structural, cosmetic. That was a project that was

1 funded out of Washington, D.C. through our regional
2 office, and we had -- we participated in those contract
3 meetings, those pre-bid meetings, and walkthroughs with
4 the contractors as the local building manager.

5 Q. And did this bid include any security upgrades or
6 updates to the Murrah Building?

7 A. No, sir. No, sir.

8 Q. How do you know that?

9 A. From remembering the specifications and the scope
10 of the work that we had helped work on prior to the bid.

11 Q. Did you actually work on those specifications?

12 A. We worked with the architects and engineering
13 firms that were contracted with GSA. They came to us
14 and asked us our needs, our requirements, and things
15 that we felt would be needed for the upgrade of the
16 building. They included us in every phase of it.

17 Q. Do you recall if the cameras on the exterior of
18 the building were still there in 1995, the actual
19 cameras themselves?

20 A. There were -- yes, there were several cameras
21 that were still attached in the building and in the
22 ceilings and to the exterior.

23 Q. Were you involved in any meetings concerning why
24 those cameras were still on the exterior?

25 A. No, sir, not after FPS shut their control center

1 down. It was basically just discussed that all cameras
2 would be left in place as a deterrent but not
3 functional.

4 MR. SIPLE: Thank you. No further
5 questions.

6 THE COURT: Cross-examination?

7 MR. TRENTADUE: Yes, Your Honor, a few.

8 **CROSS-EXAMINATION**

9 **BY MR. TRENTADUE:**

10 Q. Mr. Williams, Federal Protective Services was
11 responsible for security at the Murrah Building,
12 correct? Can you here me, sir?

13 A. I'm sorry, Your Honor, I can't hear.

14 Q. I'll ask you a few questions. When were you
15 first contacted about testifying here today, sir?

16 A. Two weeks ago, I believe, sir.

17 Q. Who contacted you?

18 A. The U.S. Attorney's Office, specifically Adam --
19 I apologize, I can't remember his last name.

20 Q. The counsel that just examined you, asked
21 questions? Can you hear me, sir?

22 A. Yes, sir. But I didn't understand your question.
23 I apologize.

24 Q. Was it Adam Siple?

25 A. Yes, sir, that's correct.

1 Q. He told you about two weeks ago that you were
2 going to be testifying?

3 A. He asked me if I would testify about my knowledge
4 of the building.

5 Q. Okay. Now, Federal Protective Services was
6 responsible for security, correct, sir?

7 A. That is correct.

8 Q. And that was for the Murrah Building?

9 A. Yes.

10 Q. The old Federal Post Office Building?

11 A. Correct.

12 Q. The Federal Courthouses?

13 A. Yes, sir.

14 Q. The new Post Office Building?

15 A. No.

16 Q. Okay. And Mr. Tom Hunt was head of Federal
17 Protective Services?

18 A. He was the responsible person in Oklahoma City
19 representing the regional office, yes.

20 Q. I believe you testified that for budgetary
21 concerns the surveillance system was shut down about
22 three or four years before the bombing?

23 A. Yes, sir.

24 Q. And that shut down the surveillance system for
25 the Murrah Building?

1 A. The Murrah Building, and the courts took over the
2 Federal Building Courthouse and old Post Office
3 Building. The Federal Protective Service became
4 responsible for the Murrah Building and the Murrah
5 garage and the perimeter.

6 Q. So the surveillance system would have been shut
7 down for the old Federal Post Office Building too?

8 A. It would have for -- as far as Federal Protective
9 Service monitoring, yes.

10 Q. And you say that the monitors were not in
11 operation since four years before the bombing.

12 A. Yes, sir, I believe that's correct.

13 Q. But the cameras themselves, had they been in
14 operation, would certainly have shown the arrival of the
15 Ryder Truck that morning, wouldn't it, sir, April 19,
16 1995, at the Murrah Building?

17 MR. SIPLE: Objection, relevance and
18 speculation.

19 Q. (By Mr. Trentadue) Well, you looked at the
20 monitors and could see what the cameras on the Murrah
21 Building showed on the street, didn't you, sir?

22 A. Yes.

23 Q. It would have shown the arrival of the Ryder
24 truck with the bomb on the morning of April 19, 1995, if
25 they had been in operation, wouldn't they, sir?

1 A. Sir, I don't know that I can say yes or no to
2 that.

3 Q. Well, it showed the street in front of the Murrah
4 Building, didn't they, sir?

5 A. It focused on the sidewalk and the street and
6 the -- both were focused toward the central point of the
7 entrance of the building, the north entrance.

8 Q. And fair to say that Mr. Tom Hunt would have
9 better knowledge than you about the existing security
10 system, including the camera system and operation on
11 April 19, 1995?

12 A. I think that's a fair statement, yes, because he
13 would just include us as being a partner with them with
14 everything that was done.

15 Q. But he would know best.

16 A. Yes.

17 MR. TRENTADUE: No further questions, Your
18 Honor.

19 THE COURT: Any redirect?

20 MR. SIPLE: No, Your Honor.

21 THE COURT: Thank you, Mr. Williams, for
22 your testimony. You are excused.

23 MR. TRENTADUE: Your Honor, I would renew my
24 objection to strike this witness's testimony because he
25 was being groomed and prepared to testify long before

1 this trial.

2 THE COURT: The objection is overruled.
3 Again, you can argue the significance of the
4 circumstances at an appropriate time.

5 The FBI may proceed with its next witness.

6 MR. SIPLE: Yes, Your Honor. The FBI calls
7 Special Agent Retired Steve Brannan.

8 THE COURT: We can close the video link at
9 this point.

10 THE CLERK: Sir, can you hear me?

11 THE COURT: We don't have the audio.

12 THE WITNESS: How about now?

13 THE COURT: Okay, now it's working. Go
14 ahead.

15 **STEPHEN BRANNAN,**

16 called as a witness at the request of the Defendant,
17 having been first duly sworn, was examined
18 and testified as follows:

19 THE CLERK: Would you please say and spell
20 your full name for the record.

21 THE WITNESS: Stephen, S-t-e-p-h-e-n; middle
22 initial E.; Brannan, B-r-a-n-n-a-n.

23 **DIRECT EXAMINATION**

24 **BY MR. SIPLE:**

25 Q. Good morning Mr. Brannan.

1 A. Good morning.

2 Q. Where are you testifying from today, Agent
3 Brannan?

4 A. Birmingham, Alabama.

5 Q. Okay. And where specifically, what building are
6 you at?

7 A. I'm at the U.S. Attorney's Office in Birmingham.

8 Q. Okay. Is there anyone in the room with you there
9 today?

10 A. No, there's not.

11 Q. Do you have any papers or notes or anything like
12 that with you today?

13 A. Yes, I do.

14 Q. Could you please identify what papers you have
15 with you.

16 A. I have six Plaintiff's Exhibits, numbers 55, 56,
17 57, 58, 65, and 66, as well as two FBI electronic
18 communications from 1995.

19 Q. Thank you for identifying the Plaintiff's
20 Exhibits. And the electronic communications, how many
21 pages are in front of you that you mentioned?

22 A. There are two communications, one page each. The
23 first one is dated 10/30/1995, and the second is dated
24 11/22/1995, both one-page documents.

25 MR. TRENTADUE: Your Honor, I would again

1 renew my objection to this witness testifying on the
2 basis of relevance and due process.

3 THE COURT: The objection is noted and
4 overruled.

5 MR. SIPLE: I would like the record to
6 reflect that the witness is referring to what's marked
7 as Defendant's Exhibit 251. Your Honor, I will put them
8 up in just a moment, but I'll refer to them during the
9 direct testimony at some point.

10 Q. (By Mr. Siple) Mr. Brannan, Special Agent
11 Brannan, are you currently employed?

12 A. No, I'm retired.

13 Q. Where are you retired from?

14 A. I'm retired from the FBI.

15 Q. How long did you work for the FBI?

16 A. 26 years.

17 Q. Okay. Could you please let the court know when
18 you started and the actual date you retired.

19 A. I started May the 8th, 1972, and retired May the
20 30th, 1998.

21 Q. Thank you. Agent Brannan, do you recall where
22 you were assigned in the spring of 1995, shortly after
23 the Oklahoma City bombing?

24 A. Yes, I was assigned to the Birmingham FBI office.

25 Q. Were you in a particular squad or component of

1 that office?

2 A. Yes. I was on the white-collar crime squad
3 working public corruption matters.

4 Q. And could you define what are public corruption
5 matters.

6 A. Cases that involve allegations of corruption from
7 public officials, such as police officers, judges,
8 mayors, congressmen, legislators, anybody in public
9 office.

10 Q. During that time did you become aware of any
11 allegations, public corruption allegations, with respect
12 to the FBI's investigation of the Oklahoma City bombing?

13 A. Yes, I did.

14 Q. Before you get into any specifics, let me ask
15 you, how did you become aware of the allegation?

16 A. I received information from a confidential
17 informant.

18 Q. Could you please describe for the court what was
19 the allegation that you received with respect to the
20 Oklahoma City bombing investigation?

21 A. The allegation was that there was a videotape or
22 surveillance tape from outside the Murrah Federal
23 Building in Oklahoma City on the day of the bombing and
24 that one or two FBI agents were trying to sell copies of
25 that tape to people in the media.

1 Q. Okay. And thank you, Special Agent Brannan.

2 I would like to now call your attention to
3 some of the Plaintiff's Exhibits, and if we could start
4 with what's been marked as Plaintiff's Exhibit 55. If
5 we could pull up 55. Have you had an opportunity to
6 review this exhibit, Agent Brannan?

7 A. Yes, I have.

8 Q. Do you recognize this exhibit?

9 A. Yes, I do.

10 Q. How do you recognize it?

11 A. This is a document that I prepared after
12 receiving the initial information from the confidential
13 informant.

14 Q. Okay. Thank you.

15 I would like to move to Plaintiff's
16 Exhibit 56. Agent Brannan, have you had an opportunity
17 to review Plaintiff's Exhibit 56?

18 A. Yes.

19 Q. And do you recognize Plaintiff's Exhibit 56?

20 A. Yes.

21 Q. How do you recognize it?

22 A. This is a communication that I prepared three
23 days after the first communication from the confidential
24 source with additional followup information about the
25 allegations.

1 Q. Okay. Thank you.

2 Can we now pull up Plaintiff's Exhibit 57.
3 Agent Brannan, have you had an opportunity to review
4 Plaintiff's Exhibit 57?

5 A. Yes.

6 Q. Do you recognize Plaintiff's Exhibit 57?

7 A. Yes.

8 Q. How is it that you recognize Plaintiff's
9 Exhibit 57?

10 A. This is another document that I prepared after
11 receiving additional information from the confidential
12 source.

13 Q. Okay. Can we pull up Plaintiff's Exhibit 58.
14 Agent Brannan, have you had an opportunity to review
15 Plaintiff's Exhibit 58?

16 A. Yes.

17 Q. Do you recognize Plaintiff's Exhibit 58?

18 A. Yes.

19 Q. How do you recognize Plaintiff's Exhibit 58?

20 A. This is another document that I prepared after
21 talking to the confidential source on November 7th.

22 Q. Could we please pull up Plaintiff's Exhibit 65.
23 Agent Brannan, have you had an opportunity to review
24 Plaintiff's Exhibit 65?

25 A. Yes.

1 Q. Do you recognize Plaintiff's Exhibit 65?

2 A. Yes.

3 Q. How do you recognize Plaintiff's Exhibit 65?

4 A. This is a document that I prepared after talking
5 to the confidential source on October 31st, 1995.

6 Q. Thank you. Lastly, could we pull up Plaintiff's
7 Exhibit 66. Have you had an opportunity to review
8 Plaintiff's Exhibit 66?

9 A. Yes.

10 Q. Do you recognize Plaintiff's Exhibit 66?

11 A. Yes.

12 Q. How is it that you recognize that exhibit?

13 A. This is a document I prepared after speaking to
14 the confidential source on November 6th, 1995.

15 Q. Thank you. And the exhibits that you just looked
16 at 55, 56, 57, 58, 65, and 66, Plaintiff's Exhibits, do
17 they accurately reflect the allegations as you reported
18 them?

19 A. Yes.

20 Q. We can take the exhibits down at this time.

21 Agent Brannan, do you know if the FBI initiated a
22 public corruption investigation concerning these
23 allegations?

24 A. Yes.

25 Q. How do you know that?

1 A. Myself and my assistant special agent in charge
2 called FBI Headquarters to the Office of Professional
3 Responsibility and reported this information as I
4 received it.

5 Q. What happened then, after that, after you
6 reported it?

7 A. An investigation was begun to look into these
8 allegations to see if they were true or not.

9 Q. Did you have any role in that investigation?

10 A. Yes, I did.

11 Q. And could you please describe for the court what
12 was your role in the investigation.

13 A. I contacted the FBI office in Oklahoma City and
14 talked to agents that were working the Oklahoma City
15 bombing case, and I also, along with my assistant
16 special agent in charge, called the Los Angeles FBI
17 office and spoke to them and questioned them about this
18 information.

19 Q. What did you determine?

20 A. That the information was not truthful, that it
21 was some sort of a hoax.

22 Q. What led you to reach that conclusion, what do
23 you base that on?

24 A. A number of factors, but primarily the fact that
25 there was no surveillance video recovered outside the

1 Murrah Federal Building the day of the bombing --

2 MR. TRENTADUE: Objection, foundation.

3 THE WITNESS: -- that there --

4 MR. SIPLE: There's an objection.

5 THE COURT: The objection is?

6 MR. TRENTADUE: Foundation and hearsay.

7 THE COURT: Would you lay some foundation as
8 to how he came to the determination about what he's
9 about to testify to.

10 MR. SIPLE: I don't know if it's being
11 offered for the truth as much as --

12 THE COURT: Is he reporting what he was told
13 by someone?

14 MR. SIPLE: He is.

15 THE COURT: Let's establish who told it
16 and --

17 MR. SIPLE: Sure.

18 Q. (By Mr. Siple) Let's back up, Mr. Brannan, and
19 where did you get your information from, if we could
20 just go back with respect to the tape itself?

21 A. On October the 27th when I received the initial
22 information, I called the Oklahoma City Task Force, the
23 OKBOMB Task Force, and I talked to a number of agents
24 there. At this point, I don't recall their names. I
25 know that I did talk to the case agent and I talked to

1 the agent that was responsible for the evidence in that
2 case. I also -- and I also called the Los Angeles
3 office with my assistant special agent in charge and we
4 talked to an assistant special agent in charge of the
5 Los Angeles office.

6 Q. Did the informant who provided -- or gave you
7 this allegation, give you any names of actual FBI
8 agents?

9 A. Yes, he did.

10 Q. Could you please elaborate on that.

11 A. At some point he named the two agents that were
12 trying to sell the tape. And in talking with the Los
13 Angeles office and in talking with OPR, it was
14 determined that there are no agents or employees in the
15 FBI with those names. As of 1995, when this happened,
16 there were no employees with those names.

17 Q. Could you tell me how -- in what ways was the
18 Office of Professional Responsibility, OPR, involved,
19 what was your relationship with them with respect to
20 this investigation?

21 A. My relationship was reporting the allegation, as
22 was our duty, and to report to them the findings that I
23 had from Oklahoma and from Los Angeles, and while they
24 were doing their independent investigation, of which I
25 was not aware, but I reported everything that I found to

1 them.

2 Q. Do you know if the Office of Professional
3 Responsibility ever opened up a formal file of
4 investigation on a particular agent?

5 A. I don't know what they did, whether it was
6 formal, informal, preliminary investigation or -- they
7 didn't tell me exactly what they were doing.

8 Q. Did you recommend to OPR that any particular
9 agents be investigated further?

10 A. No.

11 Q. Why is that?

12 A. Not beyond the two names -- not beyond the two
13 names that I had.

14 Q. And do you know if the two names were
15 investigated?

16 A. Yes.

17 Q. How do you know that?

18 A. They told me that they were looking into it and
19 trying to identify --

20 MR. TRENTADUE: Objection.

21 THE WITNESS: -- anyone with a similar --

22 MR. TRENTADUE: Objection.

23 MR. SIPLE: Sir, there's an objection.

24 MR. TRENTADUE: Foundation.

25 THE COURT: I'm going to overrule the

1 objection for the reasons that it's the basis upon which
2 he reached his conclusion. It may or may not be true,
3 but I'm accepting it for the fact that this is what he
4 did.

5 Q. (By Mr. Siple) Agent Brannan, you may continue.

6 A. Repeat the question, please.

7 Q. Was there -- you related information to OPR. Did
8 you recommend any particular agents be formally
9 investigated by OPR?

10 A. Yes, that the two names that I had I requested
11 they be investigated.

12 Q. Okay. Were you involved --

13 A. And there was also some -- I'm sorry, there was
14 some descriptive information about them. One guy they
15 said how long he had been in the FBI, what his G.S.
16 rating was, that he was a military veteran, that he had
17 gone to a certain sniper school at Quantico, Virginia.
18 Some things like that were also looked into to see if
19 there was an agent that met that criteria.

20 Q. Did you look into whether there was any agent in
21 the FBI that met that criteria?

22 A. Yes.

23 Q. What did you determine?

24 A. Yes, I did.

25 Q. What did you determine?

1 A. There was no such -- there was no such agent.

2 Q. How did you reach that determination?

3 A. Through talking with the agents in Quantico that
4 were connected with the sniper school at Quantico, which
5 is run by the Marine Corps, and through talking to the
6 assistant special agent in charge of the L.A. office
7 about what agents with a particular grade and time in
8 service and a Marine Corps background and the other
9 things that were mentioned by the source as being
10 descriptive of the agent trying to sell the tape.

11 Q. You weren't able to locate anyone meeting that
12 description?

13 A. No, I was not.

14 MR. SIPLE: Could we please pull up
15 Plaintiff's Exhibit 65.

16 MR. TRENTADUE: Plaintiff's 55?

17 MR. SIPLE: Oh, I'm sorry, Plaintiff's
18 Exhibit 65.

19 Q. (By Mr. Siple) Would you actually read that
20 second paragraph, Agent Brannan, on your 302.

21 A. The source believes that members of the media
22 have submitted their stories relating to the
23 negotiations between an unknown Los Angeles agent of the
24 Federal Bureau of Investigation, FBI, and Dateline, an
25 NBC television show, for the purchase of a videotape

1 depicting the arrival of the Ryder truck at the Alfred
2 P. Murrah Federal Building in Oklahoma City.

3 Q. And the 302 mentions specifically a Dateline NBC
4 television show. Were you, as part of your
5 responsibilities, monitoring to see if this tape was
6 going to end up on a media broadcast of any kind, of any
7 type?

8 A. Yes.

9 Q. Do you know, was this video ever aired on
10 Dateline or any news outlet?

11 A. It was not.

12 Q. Thank you.

13 Mr. Brannan, if I could refer you --

14 A. I --

15 Q. Go ahead.

16 A. I don't believe I completely answered your
17 question about my reasoning in making a determination on
18 the truthfulness of the allegation. I mentioned that
19 there was no such agent, but there were some other
20 factors that went into that determination.

21 Q. Okay. What were those other factors?

22 A. The second factor was in talking to the Oklahoma
23 City Bomb Task Force they told us there was no video
24 surveillance camera that was recovered that had any such
25 video on it. There were a number of video recordings

1 taken and analyzed, but there was nothing that ever
2 showed the Ryder truck pulling up to the building and
3 Timothy McVeigh getting out of the truck and a second
4 person getting out of the truck. That video just did
5 not exist.

6 And then the other two factors are when you
7 get an allegation, especially in working public
8 corruption, there are a lot of allegations that are made
9 against public officials, and it's been my experience
10 that most of the allegations are not true, or at least
11 there's no way to prove whether they're true or not. So
12 you have to look at the source of the information, how
13 credible is the source of the information. And my
14 confidential source was reporting to me not information
15 that he knew firsthand, but was information from someone
16 else that was telling him this information. So it was
17 very hard to determine the credibility of this
18 information because it was coming secondhand to me, so
19 I'm the thirdhand recipient of the information.

20 Q. Agent Brannan, how confident are you in that
21 determination that this was a hoax?

22 A. I'm certain of it.

23 Q. May I have you look at what are the two pages
24 that you have brought with you today. If we could pull
25 up what's been marked as Defendant's Exhibit 251. Agent

1 Brannan, have you had an opportunity to review these
2 documents, these two documents?

3 A. Yes.

4 Q. Do you recognize them?

5 A. Yes.

6 Q. How do you recognize them?

7 A. These are documents that I prepared in the FBI
8 office in Birmingham in 1995.

9 Q. Why did you prepare these documents?

10 A. The first document, dated 10/30/1995, was an
11 electronic communication requesting that the Birmingham
12 office open a fraud-by-wire case to investigate the hoax
13 of the videotapes we've been talking about. If someone
14 was trying to get a million dollars from a television
15 program for something that didn't exist, then it would
16 have been a fraud, and so I wanted to open a case to
17 investigate this fraud.

18 Q. Okay. Can we turn to the second page, the second
19 document of this exhibit. Do you recognize that
20 particular communication?

21 A. Yes.

22 Q. How do you recognize it?

23 A. This, again, is a document that I prepared
24 related to the fraud-by-wire case that had been opened
25 October 30th.

1 Q. Why did you prepare this particular document?

2 A. This was to close the case.

3 MR. SIPLE: Thank you.

4 Your Honor, I would move to admit
5 Defendant's Exhibit 251.

6 MR. TRENTADUE: Your Honor, I object to the
7 first page as hearsay. I don't object to the second
8 page being admitted for the truth of the matter.

9 MR. SIPLE: Your Honor, I think this is for
10 completeness. There's an allegation that -- the
11 plaintiff has made it clear there's an allegation that
12 this is true, that, if anything, it's a credible lead.
13 I think we should be able to put into the record the
14 documents reflecting the FBI's conclusions with respect
15 to the allegation.

16 MR. TRENTADUE: Your Honor, the credible
17 lead goes to the FOIA people's search, not to what they
18 have done in preparation for this trial.

19 THE COURT: I'm going to overrule the
20 objection. Again, the document will be received for the
21 fact that it indicates the explanation as to why the
22 file was closed, which is the second page, without
23 having considered whether or not the information in the
24 document is true or not true.

25 (Whereupon, Defendant's Exhibit 251 was

1 received into evidence.)

2 MR. SIPLE: Thank you, Your Honor. I have
3 no additional questions.

4 THE COURT: Cross-examination?

5 MR. TRENTADUE: Yes, sir.

6 **CROSS-EXAMINATION**

7 **BY MR. TRENTADUE:**

8 Q. I'm going to show you some documents, Agent
9 Brannan, and ask you if you can see them. Can you see
10 what is on the screen now as Exhibit 55?

11 A. Yes, I can.

12 Q. That was one of the -- it's not a 302. What do
13 you call it?

14 A. It's just a memorandum.

15 Q. You were at Birmingham at the time, correct?

16 A. Correct.

17 Q. Who was your confidential source?

18 MR. SIPLE: Objection, Your Honor.

19 THE WITNESS: I'm not allowed --

20 MR. SIPLE: We cannot reveal confidential
21 source information, but we could do potentially en
22 camera if directed.

23 THE COURT: I'm sorry, I didn't hear the
24 last part.

25 MR. SIPLE: We cannot, to protect the

1 identity of informants, we cannot reveal informant
2 information, and so we would ask that the informant's
3 name not be revealed. If the court thinks the name
4 should be revealed, then we would ask to have it en
5 camera ex parte.

6 MR. TRENTADUE: Your Honor, I object.
7 Everything is based upon this confidential informant,
8 Mr. Brannan's conclusions. I think we're entitled to
9 know who that confidential informant is and know it in
10 open court.

11 MR. SIPLE: I would argue, Your Honor, that
12 he's just testifying to his conclusions based on his
13 relationship with the informant. And if there are any
14 issues with respect to the identity or the failure to
15 identify the informant, then I guess that would just go
16 to weight.

17 THE COURT: At this stage, in terms of the
18 open record, I'm going to sustain the objection. If
19 Mr. Trentadue can come up with a basis to have the
20 information disclosed en camera, I'll hear that at a
21 later time.

22 MR. TRENTADUE: Was the confidential
23 informant with the Southern Poverty Law Center?

24 MR. SIPLE: Objection. This goes to the
25 identity of the informant.

1 THE COURT: Well, it's long enough ago that
2 I'm not sure that that -- that there is any basis to
3 sustain that objection or that it would necessarily lead
4 to the identity. I'm going to overrule that objection.

5 Q. (By Mr. Trentadue) You may answer the question.

6 A. The answer is no.

7 Q. Now, you say the investigation focused upon the
8 two names given by this informant.

9 A. Correct, and along with the other identifying
10 information, descriptive information, about one of the
11 agents.

12 Q. And as far as the name of the agents, did you do
13 that search, or was it done in the Los Angeles Field
14 Office for that investigation?

15 A. It was done in two places, in the Los Angeles
16 Field Office for that office, and then in Washington
17 with the OPR for the entire FBI.

18 Q. They reported back to you what they supposedly
19 found.

20 A. Correct.

21 Q. You did not do that investigation yourself.

22 A. No. I didn't have the means to do that.

23 Q. So you don't know if it was accurate nor not.

24 A. I believe it was accurate.

25 Q. That wasn't my question, sir. You do not know

1 whether it was accurate or not, correct?

2 A. Correct, yes.

3 Q. Now, you say you called Oklahoma and you talked
4 about videotapes, correct?

5 A. Yes. Yes.

6 Q. Did you talk about any tapes from the Murrah
7 Federal Building security cameras?

8 A. Yes.

9 Q. And they told you that the tapes showed nothing?

10 A. Correct.

11 Q. They did discuss the tapes with you.

12 A. They -- we discussed all of the tapes that they
13 had gathered, and they said there is no tape that showed
14 what I was describing with the Ryder truck pulling up
15 with Timothy McVeigh driving and a second person in the
16 vehicle and then exiting the vehicle, there was no tape
17 like that.

18 Q. But you remember them discussing the Murrah
19 Building tape with you.

20 A. No.

21 Q. Now, if we could look at the -- if the government
22 could put up for me Exhibit 251. Now, you opened your
23 investigation on -- after October 30th, 1995, the top of
24 the page, the date of this memo?

25 A. Yes.

1 Q. If we could see the second page, please. You
2 closed the investigation on -- less than a month later,
3 on November 22nd, 1995?

4 A. Correct.

5 Q. Is it possible for the government to blow up the
6 last paragraph in this exhibit?

7 Now, you say in the last paragraph -- please
8 read that into the record for us, sir.

9 A. Subsequently, the informant was closed based on
10 control problems with the informant. Birmingham is
11 closing this investigation based on lack of any
12 prosecutive jurisdiction in the matter.

13 Q. So you were having problems with your informant?

14 A. Yes.

15 Q. So it was truthful that it was closed because of
16 your problems with the informant, not because you had
17 thoroughly investigated the case, isn't that correct,
18 sir?

19 A. Yes.

20 MR. TRENTADUE: No further questions, Your
21 Honor.

22 THE COURT: Redirect?

23 MR. SIPLE: Yes, Your Honor.

24 //

25 //

1 **REDIRECT EXAMINATION**

2 **BY MR. SIPLE:**

3 Q. With the exhibit still on the screen here, what
4 investigation, Mr. Brannan, is this document referring
5 to, was it referring to the investigation that you were
6 doing of the allegation, or was it a mail fraud
7 investigation that you were attempting to initiate?

8 A. It was a fraud-by-wire investigation. It had
9 nothing to do -- or it was a separate investigation from
10 the allegations about the tape. That investigation had
11 already concluded that there wasn't any tape and there
12 were no agents with those names as alleged.

13 Q. But how do these documents tie into the
14 allegation of the tapes?

15 A. If the tapes were a hoax, then if someone was
16 trying to contact Dateline to sell something that was a
17 hoax, it would have been a fraud by wire -- or a
18 potential fraud-by-wire case. And so that was a way for
19 me and Birmingham to investigate a fraud through the
20 confidential informant. The confidential informant had
21 contact with the person who allegedly had seen the tape
22 and was acting as a go-between with the person that was
23 selling the tapes. But once I lost the informant, then
24 there was nothing else that I could do in Birmingham
25 because there was no criminal activity happening in the

1 Northern District of Alabama, and so I closed that case.

2 Q. I just want to be clear, the case you're closing
3 here is the case you were looking to make a fraud case
4 because of your conclusion that the OKBOMB tape sale
5 allegation was a fraud; is that correct?

6 A. Yes.

7 MR. SIPLE: Thank you.

8 THE COURT: Any cross?

9 MR. TRENTADUE: Yes, Your Honor.

10 **RECROSS-EXAMINATION**

11 **BY MR. TRENTADUE:**

12 Q. Mr. Brannan, when were you first contacted about
13 testifying here today?

14 A. I'm sorry, I had --

15 Q. Excuse me. When were you first contacted about
16 testifying here today?

17 A. Maybe two weeks ago, 10 days, two weeks ago,
18 something like that.

19 Q. Who contacted you?

20 A. Initially I was contacted by an employee of the
21 Birmingham FBI office, and then I was contacted later by
22 Adam.

23 Q. Mr. Siple?

24 MR. TRENTADUE: Is that your last name?

25 MR. SIPLE: My last name is Siple.

1 MR. TRENTADUE: What?

2 MR. SIPLE: My last name is Siple,
3 S-i-p-l-e.

4 Q. (By Mr. Trentadue) Mr. Siple?

5 A. Yes.

6 Q. Thank you.

7 Now, I was confused throughout your
8 examination, Mr. Brannan, as to the significance of
9 Exhibit 251, but I think I may understand now. So there
10 were actually two investigations. There was an
11 investigation by OPR for the agents.

12 A. Yes.

13 Q. And they conducted that investigation, not you.

14 A. I participated in the investigation and furnished
15 them the information that I had -- that I had learned.
16 But, of course, they're going to do their own
17 investigation. They're in Washington and they have
18 their standards, and they're not going to rely on what
19 an agent in Birmingham is telling them totally.

20 Q. But Exhibit 251 relates to your investigation
21 about someone in the District of Birmingham attempting
22 to sell these tapes.

23 A. No.

24 Q. It was the fraud aspect of it then, correct?

25 A. It was the fraud aspect, but, as it turned out,

1 there was no jurisdiction in Birmingham because there
2 was nobody in Birmingham that was trying to sell the
3 tapes.

4 Q. But my point being that you were investigating
5 whether or not there was a fraudulent attempt to sell
6 the tapes regardless of whether it involved an agent or
7 not, weren't you, sir?

8 A. Yes.

9 Q. OPR, on the other hand, was investigating agent
10 involvement in an attempt to sell the tapes.

11 A. Correct.

12 Q. They conducted that part of the investigation,
13 correct?

14 A. Correct.

15 Q. Did you ever get a copy of their report?

16 A. No, I did not.

17 Q. So you don't know what investigation they did, do
18 you, sir?

19 A. No.

20 Q. You don't know what their true conclusions were,
21 do you, sir?

22 A. I know what they told me.

23 Q. But you don't know what is in their report.

24 A. No, I don't know what's in their report.

25 Q. So if anyone were to come in here and testify

1 about whether Exhibits 55, 56, 57, 58, 65, and 60 had
2 merit in terms of agent involvement, it should be
3 someone from OPR, shouldn't it, sir?

4 A. Well, I believe I have that information.

5 Q. That wasn't the question. They were the ones in
6 charge of that investigation, weren't they, sir?

7 A. Yes.

8 Q. They're not here, are they, sir?

9 A. Not to my knowledge.

10 Q. And instead -- I mean no disrespect, sir, you
11 appear to testify on the basis of secondhand knowledge
12 or thirdhand acknowledge as to what their conclusions
13 were.

14 A. Well, I believe I would have had the same
15 knowledge that they had because I would have talked to
16 the same people they talked to.

17 Q. Well, my question, you don't know that for a
18 fact, do you, sir?

19 A. No, I don't know the full extent of their
20 investigation. I would assume they did more than I did.

21 Q. You would hope they did more than you did,
22 wouldn't you, sir? I don't mean any disrespect, because
23 their responsibility is different than yours, correct?

24 A. That's true.

25 Q. They're the ones talking for the Bureau, correct,

1 OPR?

2 A. Yes, they are.

3 Q. They should dig into this matter very seriously,
4 shouldn't they, sir, agent corruption, allegations of
5 agent corruption?

6 A. And I believe they did.

7 Q. But you don't know what they did.

8 A. No. But it all started with me and my source,
9 and I feel that I'm in the best --

10 MR. TRENTADUE: Your Honor, move to strike
11 as nonresponsive.

12 THE WITNESS: -- to evaluate my source.

13 THE COURT: Well, I'm going to let it stand
14 as his explanation. The objection is overruled. The
15 motion to strike is denied.

16 MR. TRENTADUE: No further questions, Your
17 Honor.

18 MR. SIPLE: May I ask a few more questions?

19 THE COURT: You may.

20 **FURTHER REDIRECT EXAMINATION**

21 **BY MR. SIPLE:**

22 Q. Mr. Brannan, I just want to clarify the role of
23 OPR. Did you furnish information to OPR? Did they
24 direct you to provide them information about the inquiry
25 that you made?

1 A. Yes.

2 Q. And did you do that?

3 A. Yes.

4 Q. Did they ever inform you they didn't need any
5 more information because the case had been closed?

6 MR. TRENTADUE: Objection, hearsay, Your
7 Honor.

8 THE WITNESS: Yes.

9 MR. SIPLE: He's just conveying that he knew
10 the information he --

11 MR. TRENTADUE: Foundation too, Your Honor.

12 THE COURT: He said that they informed him.
13 He didn't say what they told him.

14 MR. SIPLE: Okay. I'm sorry, I don't
15 understand that.

16 THE COURT: The question was did they ever
17 inform you as to whether the case was closed, and he
18 said, yes, they informed him, but he didn't testify what
19 they told him.

20 MR. SIPLE: We'll just leave it at that.
21 Thank you.

22 Q. (By Mr. Siple) And in your experience working
23 with corruption matters, Mr. Brannan, do you often work
24 closely with OPR?

25 A. No.

1 Q. But when it involved agents would you work with
2 OPR?

3 A. I'm sorry, repeat the question.

4 Q. If the allegation concerned an agent would you be
5 in connection -- would you be in contact with OPR?

6 THE COURT: Why don't you ask him a
7 different question. Did he ever work with OPR on any
8 other basis?

9 MR. SIPLE: Thank you, Your Honor.

10 Q. (By Mr. Siple) Special Agent Brannan, did you
11 ever work with OPR on any other cases?

12 A. No, I did not.

13 Q. Do you think that OPR could open a case on a
14 nonexistent agent?

15 MR. TRENTADUE: Objection, speculation.

16 THE COURT: Sustained.

17 MR. SIPLE: Mr. Brannan, what did OPR inform
18 you when they closed the case, when they informed you
19 that the case had been closed?

20 MR. TRENTADUE: Objection, hearsay, Your
21 Honor.

22 THE COURT: Sustained.

23 MR. SIPLE: If I can have one moment, Your
24 Honor.

25 THE COURT: You may.

1 MR. SIPLE: Do you recall when you were
2 informed the case was closed?

3 THE COURT: I'm going to sustain that
4 objection, it's not even be made yet. It attempts to
5 get around the objection I just sustained.

6 MR. SIPLE: I'm just asking -- he was
7 allowed to answer he had been informed the case was
8 closed, and I'm trying to establish, Your Honor, the
9 time period when that occurred.

10 THE COURT: Okay. You can ask him the
11 question, better framed, when were you informed as to
12 whether the case was closed or not.

13 Q. (By Mr. Siple) Mr. Brannan, when were you
14 informed whether the case was closed or not?

15 A. It was about two weeks after the initial
16 information came in.

17 MR. SIPLE: Thank you, Mr. Brannan.

18 THE COURT: Any followup, Mr. Trentadue?

19 MR. TRENTADUE: Yes, Your Honor, just one
20 question.

21 **FURTHER RECROSS-EXAMINATION**

22 **BY MR. TRENTADUE:**

23 Q. So if I understand your answer, Mr. Brannan, OPR
24 spent about two weeks investigating this matter.

25 A. That's correct.

1 MR. TRENTADUE: No further questions, Your
2 Honor.

3 THE COURT: Thank you, Mr. Brannan, thank
4 you for your testimony. You are now excused. Thank
5 you.

6 Why don't we take our midmorning break at
7 this point. We'll be in recess until about ten minutes
8 to 11:00.

9 MR. TRENTADUE: Your Honor, I would renew my
10 objection and ask the witness's testimony be stricken
11 because they clearly contacted him well in advance of
12 the trial.

13 THE COURT: The objection is overruled.
14 Again, you can argue the significance of that at the
15 appropriate point.

16 MR. TRENTADUE: Thank you, sir.

17 (Recess.)

18 THE CLERK: Court resumes session.

19 THE COURT: We're back in the matter of
20 Trentadue v. The FBI.

21 Just for planing purposes, I should let you
22 know that I have a meeting that will start at noon and
23 last until 1:00 so that we'll take a little longer for
24 our lunch break, then we'll be back in session right at
25 1:00. You may proceed.

1 MR. SIPLE: Yes, Your Honor. The FBI calls
2 Special Agent Retired Walter Lamar.

3 **WALTER LAMAR,**

4 called as a witness at the request of the Defendant,

5 having been first duly sworn, was examined

6 and testified as follows:

7 THE CLERK: Would you please say and spell
8 your full name for the record.

9 THE WITNESS: Walter E. Lamar, L-a-m-a-r.

10 **DIRECT EXAMINATION**

11 **BY MR. SIPLE:**

12 Q. Good morning Special Agent Lamar.

13 A. Good morning.

14 Q. Let me ask, where do you currently reside?

15 A. In Albuquerque, New Mexico.

16 Q. And are you currently employed?

17 A. Yes.

18 Q. And how are you employed?

19 A. I'm the President and CEO of Lamar Associates.

20 Q. Could you please describe for the court what is
21 Lamar Associates?

22 A. Lamar Associates is a small firm that provides
23 training for tribal communities across the nation.

24 Q. Are you Native American?

25 A. Yes. I am actually an enrolled member of the

1 Black Ute Nation of Montana.

2 Q. Prior to Lamar Associates, were you employed
3 elsewhere?

4 A. Yes. I was the Deputy Director of the Bureau of
5 Indian Affairs Law Enforcement.

6 Q. And then prior to being with the Bureau of Indian
7 Affairs, where were you employed?

8 A. 1980 through 2000 I was employed by the Federal
9 Bureau of Investigation.

10 Q. 1980 to 2000?

11 A. Yes.

12 Q. Did you retire from the FBI?

13 A. No. I left the FBI and transferred over to the
14 Bureau of Indian Affairs, and then I retired from the
15 Bureau of Indian Affairs.

16 Q. Thank you. Special Agent Lamar, do you recall
17 where you were assigned at the time of the Oklahoma City
18 bombing, April 19, 1995?

19 A. I was assigned to the Oklahoma City Division of
20 the FBI.

21 Q. Do you recall where you were specifically when
22 the bombing occurred?

23 A. I was in North Edmond, Oklahoma preparing for a
24 trip to Albuquerque, New Mexico.

25 Q. How did you learn about the bombing?

1 A. I heard it and felt it.

2 Q. What did you do after you heard it and felt the
3 bombing?

4 A. I immediately went back into my house and I
5 turned on the television and I saw some of the early
6 news coverage and went out to -- I had my FBI car there
7 at my residence, and went and turned on the FBI radio
8 and heard transmissions from that area from agents that
9 were reporting that there had been a blast downtown.

10 Q. What did you do next?

11 A. I got into my car and put up the red light and
12 turned on the siren and went down to downtown Oklahoma
13 City.

14 Q. What did you observe as you pulled into downtown
15 Oklahoma City?

16 A. I parked on Sixth Street and went west on Sixth
17 Street, so the first building I saw really was the
18 Journal Record, and once I saw the damage there, I
19 thought possibly that that's what they had been talking
20 about until I went around the corner and saw the Federal
21 Building and realized that that's where there had been a
22 significant blast.

23 Q. Do you recall what time it was approximately when
24 you made it down to that area?

25 A. It probably would have been before 9:30, but I'm

1 not certain exactly what time I arrived there.

2 Q. What did you do once you got to the scene?

3 A. Once I got to the scene I checked in with an
4 agent who was there in front of the Federal Building and
5 he was standing by what I was informed was a crater
6 where a blast had occurred. After discussion with him,
7 I went around to the south side of the building and I
8 encountered a DEA agent who explained that they still
9 had people in the building, and I went into the
10 building.

11 Q. What did you do once you got into the building?

12 A. I went into the building and started searching
13 four by four engaged in the rescue effort looking for
14 people that might be trapped or injured.

15 Q. Just to be clear, this is -- I just want to make
16 sure we have it in the record, the building is the
17 Murrah Federal Building; is that correct?

18 A. Yes, A.P. Murrah Federal Building.

19 Q. Could you please continue to describe what you
20 did as you were in the building searching for people.

21 A. I started working up the floors that would have
22 been on the east side of the building, ended up on
23 floors that were farther towards the west, and I ended
24 up on the ninth floor where I encountered at least one
25 person from the U.S. Marshal Service and they were

1 looking for an ATF agent, and so I participated with
2 them trying to find the ATF agent until -- and it was
3 probably around between 10:00 in the morning and 10:30
4 that we were ordered out of the building because there
5 was a report of a secondary device in the building. And
6 we all scrambled out of the building.

7 Q. When you say you were ordered out of the
8 building, was that you yourself or were there others?
9 Can you elaborate on that?

10 A. Well, there were shouts and calls that there --
11 get out of the building, get out of the building, and it
12 was essentially everybody. So as far as I know, the
13 building cleared out.

14 Q. You said concern about a secondary device, what
15 do you mean by that?

16 A. Well, we were told subsequently that there were
17 some inert training devices that ATF had in the building
18 and that somebody had -- one of the rescuers had run
19 across those and reported them as a secondary device, a
20 possible secondary device.

21 Q. Okay. So what happened after you left the
22 building because of this concern about a device?

23 A. Well, I ended up going down the street.
24 Everybody was running away from the building. I ran
25 into a special agent who was clearly distressed and

1 distraught, and I asked him what was going on, and he
2 explained to me that he had left a woman in the building
3 who was still alive and trapped. So we turned back
4 around and ran against the crowd and ran back to the
5 building. And there were some Oklahoma City police
6 officers that we informed of what was going on. We
7 stood there on the street for a bit trying to figure out
8 what was going on with the building, and then we went
9 back in and went down into the building where the female
10 was trapped.

11 Q. Did you help this female in any way?

12 A. She was buried in what I would describe as tons
13 of rubble, and we were working with our hands because
14 there was no one else in the building at the time. So
15 we were pulling concrete pieces away and we were trying
16 to clear out the area right around her so that we could
17 have more freedom of movement to try to get her out, but
18 we weren't able to do so.

19 Q. Do you know if she was ever -- do you know if she
20 was ultimately freed by somebody else?

21 A. She was, and Amy Petty was actually the person.
22 And somewhere throughout the day the fire department was
23 able to get enough equipment in to get her out of the
24 building.

25 Q. Were other FBI agents with you in the building

1 helping to rescue people or was it just you?

2 A. There was myself and Matt Lotspeich, who was a
3 special agent with the FBI, and I know that there were
4 other agents that were engaged in the rescue effort.

5 Q. What was the primary concern for you at that time
6 when you approached the scene and went into the
7 building?

8 A. To save lives, engage in the rescue, and do what
9 I could to find anybody that might be trapped or
10 injured.

11 Q. Did you later take on any role with respect to
12 the FBI's investigation of the bombing itself, the
13 crime?

14 A. Yes.

15 MR. TRENTADUE: Your Honor, I renew my
16 objection on the basis of due process and notice.

17 THE COURT: The objection is recognized and
18 overruled.

19 Q. (By Mr. Siple) Did you later come to take on any
20 role with respect to the FBI's investigation of the
21 bombing itself?

22 A. I was engaged in a number of roles because it was
23 a very active investigation. Later that afternoon,
24 though, I did engage in a search for surveillance
25 equipment and recording equipment in the area of the

1 A.P. Murrah Federal Building.

2 Q. Could you please elaborate on the search, how did
3 you get involved in the search?

4 A. Well, myself and Special Agent Matt Schneck of
5 the FBI, we went to the A.P. Murrah Federal Building and
6 started there scanning -- we walked around the block
7 looking at storefronts, offices, places of business
8 looking for visible surveillance cameras, and then
9 actually going to as many of the places that we could
10 either get into or get access to to look for
11 surveillance cameras and recording equipment.

12 Q. Why were you doing this, why were you involved in
13 this effort?

14 A. Based on my experience, I was in San Francisco
15 and San Diego offices of the FBI and I was assigned bank
16 robbery investigations during those years, and as a
17 response to bank robberies, obviously you look for the
18 surveillance recordings in the bank, but we also made it
19 a practice to look for surveillance recordings in the
20 area on the off chance there could be a camera that saw
21 something at the bank. So I employed that same
22 methodology to do a search around the A.P. Murrah
23 Federal Building looking for surveillance equipment that
24 may have captured anything relevant to what happened
25 that day.

1 Q. I would like to get the timeframe. Do you recall
2 when you started this effort?

3 A. Probably in late afternoon, I would say, probably
4 around, my recollection is, 4:30, 5:00, somewhere in
5 there.

6 Q. And if we could get a better understanding of the
7 area where you thought should be searched for films, how
8 much of a radius are we talking from the Murrah Building
9 out?

10 A. We started at that block that was immediately
11 around the A.P. Murrah Federal Building and we extended
12 a block and then we extended yet another block from
13 there.

14 Q. Did you pull any tapes from the Murrah Building?

15 A. No.

16 Q. Why not?

17 A. We were told that there were no --

18 MR. TRENTADUE: Objection, hearsay, Your
19 Honor, and foundation.

20 MR. SIPLE: He's out searching for tapes,
21 Your Honor, canvassing the area. Did he pull any tapes.

22 THE COURT: He was told not to search for
23 the tapes, but his reasoning I guess is hearsay. Why is
24 it relevant to this investigation what he was told?

25 MR. SIPLE: To show why, as part of the

1 investigation, he did not -- his actions, why he
2 responded the way he did.

3 THE COURT: If you establish foundation, who
4 told him, I'm going to allow it, but not for the truth
5 of the fact as to whether there were tapes, but only the
6 fact of why he didn't search for them.

7 Q. (By Mr. Siple) Special Agent Lamar, as part of
8 your efforts to search for tapes, did you attempt to
9 recover tapes from the Murrah Building?

10 A. I inquired about tapes from the Murrah Building
11 and from --

12 MR. TRENTADUE: Foundation, who he inquired
13 of.

14 THE COURT: Sustained.

15 Q. (By Mr. Siple) Who did you inquire of?

16 A. I don't recall.

17 MR. TRENTADUE: I continue my objection.

18 THE COURT: I'll wait for the question.

19 Q. (By Mr. Siple) Maybe I'll ask it this way, did
20 you collect any tapes from the Murrah Building?

21 A. No.

22 Q. Special Agent Lamar, were you involved -- were
23 you involved in the collection of tapes from the Regency
24 Tower Apartments?

25 A. Yes, I was.

1 Q. Could you please explain to the court how you
2 were involved in collecting tapes from Regency Tower?

3 A. At approximately quarter after 7:00 that evening,
4 as part of the search, I went to the area of the Regency
5 Tower, which is approximately a block away from the
6 Federal Building, and there was a special agent there
7 that was guarding the front entrance to the Regency
8 Tower. Actually, I believe she was -- there was a piece
9 of evidence there that she was guarding. I told her
10 what I was there for. And she said somewhere around
11 5:00 she was handed a tape from the surveillance
12 equipment in the Regency Tower by two police officers,
13 and she turned it over to me.

14 Q. Did you collect anything else from Regency Tower
15 or do anything else with respect to looking at the
16 Regency Tower for videotapes?

17 A. I went into the building to look at the recording
18 equipment and take notes from the recording equipment,
19 serial number, model number, and so on, and then, much
20 like I did all the rest of the areas, I looked over the
21 building looking for the cameras so that I would
22 understand what the camera angles were and where there
23 might be a camera that would potentially have something
24 of value.

25 Q. What kind of cameras were you looking for

1 specifically?

2 A. I was looking for surveillance cameras that were
3 situated at the Regency Tower. Particularly I was
4 looking for cameras that were being recorded that had
5 recorded images.

6 Q. Other than the videotape that you just mentioned,
7 the footage that you just mentioned taking custody of,
8 did you take any other footage from the Regency Tower?

9 A. No.

10 Q. As the search for tapes was being conducted,
11 where did the tapes go, who took custody of the tapes?

12 A. I took personal custody of the tapes as they were
13 retrieved from some of the businesses and some of the
14 storefronts in the area and I personally handled the
15 tapes, carried the tapes, I initialed and dated each
16 tape as I took it and made a note where it came from and
17 who had handed it over to me, and I maintained custody
18 of the tapes.

19 Q. What did you do with the tapes that you had?

20 A. Later that evening I went to the command post
21 that was at the Southwest Bell Building and I reported
22 to several of the agents who were managing some of the
23 tasks and advised them that I had video surveillance
24 tapes from the area and that I needed to know what to do
25 with them in terms of whether somebody that was

1 qualified could take those tapes and review them with
2 the time lapse -- with equipment that would read
3 time-lapse video, or it was best to get them back to the
4 laboratory. I was told that it was best not to put the
5 tapes in any equipment, but wait and just get them sent
6 to the lab.

7 Q. Did you send them to the lab?

8 A. At probably around 7:00 or so the next morning I
9 got a phone call to respond to the Oklahoma City
10 Airport, I believe it was, and there was an FBI Special
11 Agent Pilot who was there that had just flown out from
12 Washington, D.C., and I had already completed a 192,
13 which is a form that we refer to as a green sheet that
14 shows the -- what evidence that I had, and then I turned
15 it over to him and got his signature on the form and
16 released custody of those tapes to him.

17 Q. And, I'm sorry, just to be clear, "to him," who
18 is it you're referring to?

19 A. Special Agent Pilot who had flown out from
20 Washington, D.C.

21 Q. Did you ever have an opportunity to personally
22 review the tapes that were collected?

23 A. I did.

24 Q. And how was that, how did you do that?

25 A. After they came back from the laboratory, the

1 tapes that I had retrieved were provided back to me, and
2 they were now in a format that had -- that made it easy
3 for review.

4 MR. TRENTADUE: Your Honor, can we get some
5 foundation as to date on this.

6 THE WITNESS: The date that I received the
7 tapes back probably, if my recollection serves me
8 correctly, would have been the 22nd, but I reviewed them
9 on the 23rd, April the 23rd, and that's when I started
10 reviewing copies of the original tapes that I had
11 retrieved.

12 Q. (By Mr. Siple) What were you looking for on the
13 tapes?

14 A. At the time I was looking for anything that I
15 thought would be relevant to the investigation. And at
16 that point, on the 23rd, you know, I know that there was
17 a Mercury that was involved, there was a Ryder truck
18 that was involved, of course, so I was looking for
19 anything that would be depicted of that nature.

20 Q. During your review did you find any footage of a
21 Ryder truck?

22 A. I did.

23 Q. And could you please describe the footage that
24 you reviewed?

25 A. It was from the Regency Tower tape and it was

1 from a camera that was situated that had a view of the
2 lobby and it also washed out into the street, so it had
3 a view of -- a partial view of the street in front of
4 the Regency Tower, which would have been Fifth Street,
5 and I started at 9:02, and it turns out that the
6 equipment at the Regency Tower stopped functioning at
7 probably 9:02. I started working my way backwards and
8 at 8:56 I saw a Ryder truck that was in front of the
9 Regency Tower.

10 Q. During your review of the tapes did you find any
11 other footage showing the Ryder truck?

12 A. No.

13 Q. So the only footage that you found was from the
14 Regency Tower of the Ryder truck?

15 A. Yes.

16 Q. Do you know -- let me ask you, Agent Lamar, was
17 there any film that you reviewed that showed the Ryder
18 truck or a truck of any kind on detonation in the
19 vicinity of the Murrah Building?

20 A. No.

21 Q. Did you have a title that was given to you,
22 official or otherwise, with respect to this role you
23 took on with the videotapes?

24 A. Well, it would have been not official, but
25 otherwise is when there were questions and there were

1 discussions about videotapes they would say get in touch
2 with Walt, he's the video guy, he's handling the video
3 stuff.

4 Q. And why was that?

5 A. Because early on I was -- myself and Special
6 Agent Schneck were the agents that were engaged in the
7 search for videotapes and it was recognized by the
8 people that I had these original tapes, and then once
9 tapes -- and I ended up actually going back to the
10 laboratory to review the tapes on the 23rd after I saw
11 the Ryder truck, and thereafter I was the person
12 typically that was called when there was a question
13 about videotapes.

14 Q. Why was it that you had to go back to the lab on
15 the 23rd?

16 A. When I reviewed the tape and the Ryder truck was
17 on the tape -- and I also reviewed other tapes that I
18 had copies of the tapes that I had retrieved, and
19 actually I was extremely excited that I saw the Ryder
20 truck because of the possible investigative value of
21 that, and I went -- immediately went next door into a
22 conference room where there were other agents working
23 and informed a number of them to come and take a look at
24 it, and they came and took a look. They suggested that
25 I immediately call the laboratory and find out if there

1 was anything they could do to possibly enhance the
2 images that we were looking at.

3 Q. Can we pull up Plaintiff's Exhibit 69. I believe
4 this should be in the blue binder, but it should also
5 show up on your screen, Special Agent Lamar.

6 A. It's in front of me, but there's nothing on the
7 screen. That's fine. I can see what I have in front of
8 me.

9 Q. Did you have an opportunity to review this
10 document?

11 A. Yes.

12 Q. I just want to ask you, this refers to a tape
13 from the Regency Tower apparently from an ATM machine.
14 Was there a tape taken from an ATM machine?

15 A. No.

16 Q. How do you know that?

17 A. Because I was there retrieving the tapes and I
18 don't recall that there was an ATM machine there.

19 Q. Does anything in this document cause you to
20 change your conclusions with respect to your testimony
21 there was only this one tape of the Ryder truck in front
22 of the Regency Tower?

23 A. This document is an investigative insert. An
24 investigative insert is only to provide information to a
25 file. So it is only basically a regurgitation from an

1 investigative assistant of what took place at a
2 briefing. So it doesn't change anything that I know.

3 Q. We can take the exhibit down.

4 Special Agent Lamar, how confident are you
5 in your conclusion that there were no videotapes
6 collected of a Ryder truck or any truck on detonation in
7 the vicinity of the Murrah Building?

8 MR. TRENTADUE: Objection, foundation, Your
9 Honor.

10 MR. SIPLE: He's testified that he collected
11 and reviewed the tapes.

12 THE COURT: His level of confidence is
13 really for the factfinder to decide, not for him to
14 express, so I'm going to sustain the objection.

15 Q. (By Mr. Siple) Agent Lamar, are you aware of the
16 allegations that the FBI may be involved in some sort of
17 coverup trying to hide tapes or evidence from the OKBOMB
18 investigation?

19 A. Yes.

20 Q. How do those allegations make you feel?

21 MR. TRENTADUE: Objection, relevance.

22 THE COURT: Sustained.

23 MR. SIPLE: No additional questions.

24 THE COURT: Cross-examination?

25 //

1 **CROSS-EXAMINATION**

2 **BY MR. TRENTADUE:**

3 Q. Do you have Exhibit 69 in front of you, Agent
4 Lamar?

5 A. Yes, sir.

6 Q. Do you know who wrote that?

7 A. Who wrote the document itself?

8 Q. Yes.

9 A. I would imagine, based on what I'm looking at
10 here, that the initials ZAM, and then it was reported by
11 Zelda A. Morris, and she's identified as an
12 investigative assistant, and based on the markings on
13 this investigative insert, she would have been the one
14 who dictated it, and then it was transcribed by TAS.

15 Q. Do you know who Zelda A. Morris is?

16 A. No, sir.

17 Q. Now, you say that you were tasked with going
18 working out from the Murrah Building to the surrounding
19 buildings looking for video cameras and videotape.

20 A. I wouldn't say that I was tasked. I took on that
21 task and suggested to some of the supervisors in the
22 command post that I was going to do that.

23 Q. You went to -- if we could show you what's been
24 marked as Exhibit 62, it's in the blue book. Do you
25 recognize this document, sir?

1 A. It's an investigative insert that was prepared by
2 Matthew Schneck.

3 Q. Would it be fair to say that this document
4 results from some of your searches?

5 A. Yes.

6 Q. You were the source of this information, or part
7 of this information?

8 A. Agent Schneck dictated the document, but it was
9 from activity that he and I had engaged in, yes.

10 Q. Okay. So you report these different locations
11 out from the Murrah Building where you found and didn't
12 find tape.

13 A. Yes, sir. Can you enlarge this just a bit?

14 Q. Yes. What part would you like enlarged?

15 A. Just the whole insert just a little bit. There
16 you go. And yes.

17 Q. Do we have a date on this?

18 A. The date of the activity was April the 19th.

19 Q. Okay. So you report, for example, on this date,
20 Special Agents Schneck and Lamar initiated a search for
21 any potential surveillance camera videos that may exist
22 depicting the events to the crime scene of the Alfred
23 Murrah Federal Building.

24 A. Yes, sir.

25 Q. You go down and list some. And when we get down

1 to this one here, if you can see it on the screen, There
2 were no cameras located in and around the First
3 Methodist Church, which was being used as a morgue, and
4 there were no available cameras at the Federal
5 Courthouse.

6 A. There were not cameras -- recordings that were
7 available to us that night.

8 Q. Okay. Did you subsequently prepare an additional
9 report? I want to ask you, did you search other
10 buildings than these?

11 A. Yes.

12 Q. The YMCA Building, for example?

13 A. We went to the YMCA Building, yes.

14 Q. You talked about the Murrah Building. Have you
15 prepared additional reports that reflect your searches
16 of the Murrah Building or the YMCA Building or the other
17 buildings that you looked for tapes around the
18 perimeter?

19 A. Yes. I'll say that I dictated a report that
20 reflected that search.

21 Q. And do you know if that's ever been produced in
22 this case?

23 A. I don't know if it has nor not.

24 Q. First of all, Agent Lamar, when were you first
25 contacted about testifying here today?

1 A. Within the past two weeks.

2 Q. Who contacted you?

3 A. AUSA Siple.

4 Q. He told you you were going to testify?

5 A. He asked me what I knew about the events of April
6 the 19th.

7 Q. Now, you say you initialed the tapes that you
8 took into evidence. Where did you initial them, I mean
9 on the evidence bag or on the tapes themselves?

10 A. On the tapes themselves.

11 Q. Where would that have been?

12 A. Well, at the time the VHS tapes typically had
13 some type of label on the front, a paper label, and I
14 initialed them on the paper labels.

15 Q. Was it like on the back of the tape or on the
16 front of the tape?

17 A. Probably on -- you know, I don't recall
18 specifically. I know that I initialed them on --
19 usually on -- it would have probably been the paper that
20 would have taken ink.

21 Q. I'm going to show you what's marked as
22 Exhibit 37. Do you recognize this as a 302?

23 A. Yes, sir.

24 Q. And it's got some information at the bottom,
25 investigation on 10/26/95. Would that be the date the

1 event occurred that's recorded in this 302?

2 A. Yes, sir.

3 Q. Then it says over here 174A-OC. 174A is a type
4 of crime, isn't it?

5 A. It's a classification for a crime, yes.

6 Q. A bombing, and A means high priority.

7 A. Yes.

8 Q. And OC means Oklahoma City Field Office?

9 A. Yes, sir.

10 Q. And that's the case number, 56120.

11 A. Yes, sir.

12 Q. This is where this serial -- this document was
13 serialized as sub-file D as Document 11,221.

14 A. Yes, sir.

15 Q. So if you wanted to find this document you could
16 go in the file and look just like count up and go to
17 document 11,221 and it would be this document.

18 A. Yes, sir.

19 Q. Okay. And the person who prepared this report is
20 who?

21 A. Special Agent William Epright III.

22 Q. Do you know him?

23 A. No.

24 Q. But do you have any reason to doubt that this is
25 not an official bombing investigation document?

1 A. It appears that it is. Can you enlarge the -- I
2 can't necessarily read all what it's saying. Is that
3 important?

4 Q. It is. I'm going to enlarge it for you right now
5 and for me too. It says, The following investigation
6 concerns lead control number 13255. On October 26,
7 1995, Special Agent William Epright III reviewed the
8 contents of sub-file W 1A23. The 1A envelope contains
9 an Oklahoma City Police report dated 4/24/95 by
10 Sergeant -- by a sergeant. It cut off the first part.
11 It looks like Ritch L. Willis. The report states that
12 Sergeant Willis recovered a videotape from the security
13 camera at the Regency Tower Apartments. And this was
14 dated 10/26/95.

15 A. Yes.

16 Q. So that wasn't a tape that you recovered.

17 A. No, sir.

18 Q. And you don't know exactly when that tape found
19 its way into the possession of the FBI.

20 A. Well, based on this document, it would have
21 been -- probably been October 26th of 1995.

22 MR. TRENTADUE: We would offer Exhibit 37,
23 Your Honor, Document 37.

24 THE CLERK: I already have it in.

25 MR. SIPLE: Is it already entered?

1 THE CLERK: Yes.

2 Q. (By Mr. Trentadue) Let me show you what's been
3 marked, Agent Lamar, as Exhibit 38 in the blue binder,
4 and again this appears to be -- I'll ask you about
5 another 302 concerning a Ronald E. Stakem?

6 A. Yes, sir.

7 Q. If you would turn to the third page.

8 A. Remind me what that is. I can't see the exhibit
9 number on here.

10 Q. It's 38 in the blue binder. I'll highlight that
11 part.

12 A. Once again, if you could just --

13 Q. I will do that as soon as I get it highlighted.
14 This is an agent apparently reporting back about an
15 interview with Mr. Stakem. He says, Stakem described to
16 Kaminski -- do you know an Agent Kaminski?

17 A. No, sir.

18 Q. -- what he observed that morning. Kaminski did
19 not explain to Stakem how the FBI had known he was
20 downtown and Stakem assumed that his license plate
21 number had been retrieved by the video camera near the
22 Federal Building.

23 A. I see that, yes, sir.

24 MR. TRENTADUE: Your Honor, we would offer
25 Exhibit 38 not for the truth of the matter necessarily.

1 THE COURT: Exhibit 38 is received.

2 MR. SIPLE: It's not relevant. It doesn't
3 mention actual surveillance footage.

4 THE COURT: The objection's overruled.

5 (Whereupon, Plaintiff's Exhibit 38 was
6 received into evidence.)

7 Q. (By Mr. Trentadue) I'll have you look at Exhibit
8 Number 36 and I'll put it up on the screen. Exhibit
9 Number 36, do you recognize what this document is, Agent
10 Lamar?

11 A. It's an investigative insert.

12 Q. What is an investigative insert?

13 A. An investigative insert is a document to provide
14 information to the file.

15 Q. And do you know a Pamela A. Matson?

16 A. No, sir, I don't believe I do.

17 MR. TRENTADUE: I believe this is already in
18 evidence, so that's all the questions I have for this
19 witness, Your Honor.

20 THE COURT: Thank you.

21 Any redirect?

22 MR. SIPLE: Yes, Your Honor.

23 **REDIRECT EXAMINATION**

24 **BY MR. SIPLE:**

25 Q. Agent Lamar, were you ever prepared to testify in

1 either of the McVeigh or Nichols prosecutions?

2 A. Yes, sir.

3 Q. And which one?

4 A. The McVeigh trial in Denver.

5 Q. And what were you going to testify about?

6 MR. TRENTADUE: Objection, relevance, Your
7 Honor.

8 THE COURT: Is the question what was he
9 going to testify about?

10 MR. SIPLE: Yes.

11 THE COURT: Why would that be relevant?

12 MR. SIPLE: Well, I'll rephrase the
13 question.

14 Q. (By Mr. Siple) Were you prepared to testify about
15 videotapes in the McVeigh trial?

16 A. Yes, sir.

17 Q. Did you testify?

18 A. No.

19 Q. During the course of preparing to testify for the
20 McVeigh trial did you review videotapes in evidence?

21 MR. TRENTADUE: Objection, Your Honor,
22 beyond the scope of cross and relevance.

23 MR. SIPLE: I think his knowledge of the
24 videotapes is very much at issue and was the subject of
25 the cross.

1 THE COURT: Well, why would what he reviewed
2 add to anything to what he's already testified to?

3 MR. SIPLE: I just wanted to ask him to the
4 extent to which he has knowledge. He reviewed these
5 tapes multiple times.

6 THE COURT: I'm going to sustain the
7 objection.

8 MR. SIPLE: Special Agent Lamar, could I ask
9 you to look back at Exhibit 37. I'm going to try to --
10 I haven't tried to do this yet, but can we do
11 side-by-side of exhibits? Also look at Exhibit 34, page
12 57.

13 MR. TRENTADUE: Which page number?

14 MR. SIPLE: It should be page 57 of
15 Exhibit 34.

16 Q. (By Mr. Siple) I'll just ask you to take a minute
17 to review and compare these two documents.

18 A. Okay. I've looked at them both.

19 Q. Having looked at them, does page 57 in Exhibit 34
20 shed any more light in terms of the answers you were
21 giving to Mr. Trentadue in response to his questioning
22 about 37?

23 MR. TRENTADUE: Objection, speculation, Your
24 Honor. 34.57 everything is blacked out in terms as to
25 who wrote the report.

1 THE COURT: There is no indication that this
2 witness had any involvement in the exhibits, and other
3 than comparing them based on what he can see today, I
4 don't see that he has any percipient knowledge about
5 these documents.

6 MR. SIPLE: Yes, Your Honor. I'll attempt
7 to lay some additional foundation.

8 THE COURT: Sure.

9 Q. (By Mr. Siple) Just looking at 34, that page 57,
10 are you familiar with that document?

11 A. Yes.

12 Q. How are you familiar with that document?

13 A. That document would reflect what occurred between
14 myself and Special Agent Lou Ann Sandstrom.

15 Q. Okay. So having reviewed that document, does
16 that document accurately reflect what occurred
17 between --

18 THE COURT: I need more foundation. He said
19 it reflects what occurred. Did he see the document at
20 the time, was he involved in writing the document?

21 Q. (By Mr. Siple) Special Agent Lamar, were you
22 involved in writing the Exhibit 37?

23 A. No.

24 Q. Okay. Do you remember this document being
25 dictated or put into the file?

1 A. No.

2 Q. Do you remember relaying any of the information
3 for this document?

4 A. Yes.

5 Q. And could you please elaborate on that.

6 A. Special Agent Sandstrom maintained custody of the
7 tape until she turned it over to me.

8 MR. SIPLE: Your Honor, I submit that that
9 should be sufficient foundation to ask the question that
10 this document allows him to add to the response.

11 MR. TRENTADUE: Objection, Your Honor. I
12 still think it calls for speculation, and that's a
13 comparison the court can make for itself.

14 THE COURT: I'm waiting for the question to
15 determine whether or not it's relevant.

16 MR. SIPLE: I'll ask one more foundation
17 question, Your Honor.

18 Q. (By Mr. Siple) On the 37 Exhibit, could you look
19 at the initials on page -- I'm sorry, on Exhibit 57 --
20 page 57, Exhibit 34, do you recognize the initials at
21 the bottom of the page?

22 A. It's actually a redacted copy, so there are
23 initials but they are initials of the person who
24 transcribed it probably. CSC, is that what you're
25 asking about?

1 Q. Yes. That would be the LAS, the left corner of
2 the page underneath the 4/19/1995?

3 A. I see what would probably be initials and it
4 looks like that could be initials from Special Agent Lou
5 Ann Sandstrom, and I see that it was probably
6 transcribed by a CSC.

7 Q. Having reviewed -- having reviewed page 57 of
8 Exhibit 34, does that allow you to better elaborate on
9 the answer that you gave when you were questioned about
10 Exhibit 37 by the plaintiff?

11 THE COURT: I don't understand what you mean
12 by "better elaborate." Are you asking him to just start
13 talking whatever comes to his mind about these
14 documents?

15 MR. SIPLE: Okay.

16 Special Agent, does this give you a better
17 understanding of the tape that is at issue or
18 potentially being discussed in Exhibit 37?

19 MR. TRENTADUE: Objection, speculation, Your
20 Honor, foundation.

21 THE COURT: I'm going to sustain the
22 objection. You've got to give me some basis for him to
23 conclude that the tapes we're talking about are the same
24 or different tapes.

25 MR. SIPLE: Okay.

1 Q. (By Mr. Siple) Agent Lamar, do you know the
2 sergeant that is mentioned in the document?

3 A. Are we talking about in 37, Sergeant Willis?

4 Q. Do you know Sergeant Willis?

5 A. No, I don't believe I do.

6 Q. Do you know with respect to 57, the sergeant
7 referred to there?

8 A. It's redacted, so I don't know who the officers
9 were that handed her the tape. I did at one time, but I
10 can't remember now.

11 Q. If we could move on to Exhibit 69, Plaintiff's
12 Exhibit 69, does this document, Agent Lamar, indicate
13 that a tape was actually taken into custody?

14 MR. TRENTADUE: Objection, Your Honor. This
15 tape wasn't even -- I think we need some foundation on
16 this document.

17 THE COURT: If you're asking him what the
18 document says, I can read the document.

19 MR. SIPLE: Okay. Well, I was relying on
20 Agent Lamar's specialized knowledge with respect to --

21 THE COURT: Is there some code word you
22 think that's used there that indicates it was taken into
23 custody?

24 MR. SIPLE: We can make the argument, Your
25 Honor. If I may have just one moment, I may be

1 finished.

2 THE COURT: You may.

3 MR. SIPLE: Nothing further from this
4 witness, Your Honor.

5 THE COURT: Any further cross?

6 MR. TRENTADUE: No, sir.

7 THE COURT: Thank you, Mr. Lamar. You may
8 be excused.

9 THE WITNESS: Thank you, Judge.

10 THE COURT: We have another 20 minutes.
11 Does the FBI have another witness we could use that time
12 with?

13 MR. SIPLE: We can certainly start the
14 witness, Your Honor.

15 THE COURT: Yes, start the next witness.

16 MR. TRENTADUE: Your Honor, I would renew my
17 objection and ask that the witness's testimony be
18 stricken. He was obviously contacted two weeks before
19 trial.

20 THE COURT: The objection is overruled.
21 I'll allow you to argue the significance of what
22 conclusions the court should draw, if any, from it.

23 **JON HERSLEY,**

24 called as a witness at the request of the Defendant,
25 having been first duly sworn, was examined

1 and testified as follows:

2 THE CLERK: Would you please say and spell
3 your full name for the record.

4 THE WITNESS: My name is Jon, J-o-n; last
5 name Hersley, H-e-r-s-l-e-y.

6 **DIRECT EXAMINATION**

7 **BY MR. SIPLE:**

8 Q. Good morning Mr. Hersley.

9 A. Good morning.

10 Q. Special Agent Hersley, where do you currently
11 reside?

12 A. I live in the Denver, Colorado area.

13 Q. Are you currently employed?

14 A. Yes, I am.

15 Q. And where are you employed?

16 A. I work for the National Insurance Crime Bureau.

17 Q. What does your work with the National Insurance
18 Crime Bureau entail?

19 A. We do investigations and consulting work for the
20 insurance industry. We have about a thousand insurance
21 companies that belong to our organization, which is a
22 nonprofit organization, and we kind of act as a
23 go-between, if you will, between law enforcement and the
24 insurance industry.

25 Q. How long have you been there?

1 A. A little over nine years, I believe.

2 Q. Prior to being with the National Insurance Crime
3 Bureau, were you employed elsewhere?

4 A. Yes.

5 Q. Where was that?

6 A. Myself and three other retired FBI agents had a
7 private investigation and consulting firm in downtown
8 Oklahoma City for about five years.

9 Q. Prior to the private investigation firm, did you
10 have employment elsewhere?

11 A. Yes.

12 Q. Where was that?

13 A. The FBI.

14 Q. And how long were you employed with the FBI?

15 A. A little over 30 years.

16 Q. Did you retire from the FBI?

17 A. I did.

18 Q. And when did you retire?

19 A. In the fall of 1999.

20 Q. So do you remember the date you started with the
21 FBI?

22 A. Yes. It was September of 1969.

23 Q. Agent Hersley, do you recall where you were
24 assigned on April 19, 1995, the day of the Oklahoma City
25 bombing?

1 A. Yes.

2 Q. And where was that?

3 A. I was assigned to the FBI office there in
4 Oklahoma City. We were in a commercial building several
5 miles from the downtown Oklahoma City area.

6 Q. Do you remember where you were when the bombing
7 occurred?

8 A. Yes.

9 Q. And where was that?

10 A. My office was located on the 14th floor of that
11 commercial building and I was at my desk there and I
12 remember hearing or feeling the bomb when it happened.

13 Q. What happened next?

14 A. I went over to the window to look outside to see
15 if I could see what had happened, and when I looked
16 outside I could see in the downtown Oklahoma City area I
17 could see the smoke billowing up from down there. I
18 remember that we were talking and trying to figure out
19 what happened and wondering what was going on and we
20 were kind of speculating that it might have been some
21 type of a major gas explosion down there. We really
22 didn't know what happened.

23 Q. Did you have any involvement in the FBI's
24 response to the bombing that day?

25 A. Are you asking did I go down there or did I --

1 Q. Yeah, did you go down to see?

2 A. Not that day I didn't go down to the site.

3 MR. TRENTADUE: Your Honor, I renew my
4 objection on the basis of due process and notice.

5 THE COURT: The objection is overruled.

6 Q. (By Mr. Siple) What did you do the remainder of
7 that day, April 19th, while you were at the office?

8 A. I stayed in that commercial building in the FBI
9 office there and then started to help coordinate the
10 investigation. The FBI was in the process of trying to
11 get a command post set up, and once we had agents
12 respond down there and the police department respond and
13 we found out what had happened, that the Murrah Building
14 had been bombed, then we started coordinating the
15 efforts of other people that were going to be coming in
16 from out of state, first responders, investigators,
17 different people from out of state. And then as the
18 investigation was beginning and started to develop at a
19 rapid pace, then I would have helped coordinate the
20 investigation and set leads out that needed to be
21 conducted, and things of that nature.

22 Q. Were you ever given any formal responsibilities
23 with respect to the Oklahoma City bombing investigation?

24 A. Yes.

25 Q. What were those responsibilities?

1 A. I was assigned as one of the primary -- one of
2 the two primary investigative case agents on the case,
3 primarily the Timothy McVeigh portion of the case, but
4 also as in regard to how that portion of the case
5 related to other facets of the investigation that was
6 going on.

7 Q. You used the term "case agent," could you define
8 what is a case agent?

9 A. Well, a case agent has the overall responsibility
10 for the case in general. In this case, there were other
11 case agents that were assigned to different facets of
12 the investigation, if you will. So as the Timothy
13 McVeigh case agent, once we found out that it looked
14 like he was likely involved in the bombing, and I was
15 assigned to be the Timothy McVeigh case agent, then what
16 my responsibilities were was in tracking not only that
17 part of the investigation but other parts of the
18 investigation as well as it was unfolding to try to keep
19 up with the investigation to help set out more leads
20 that needed to be followed up on, to try to track the
21 evidence, to try to track all the reports of the
22 interviews. As you can imagine, a very hectic pace,
23 literally hundreds of interviews that were being done at
24 a pretty rapid pace, and we were trying to keep up with
25 all that and tried to set up mechanisms where we could

1 track all that.

2 Q. You used the term "keep up with the
3 investigation," how did you keep up with the
4 investigation?

5 A. I would review evidence as it was being found.
6 Initially, the immediate response was to try to rescue
7 people from the building, to try to get people out of
8 the building alive and dead, to try to get them removed
9 from the building, and then also at the same time
10 setting up a command post, and getting the perimeter
11 area down there blocked off so that we could protect the
12 crime scene, and then dividing the areas up into
13 quadrants where we could assign search teams to start
14 looking for evidence.

15 Q. How did you review the evidence?

16 A. Any time that -- the case agents, everybody
17 pretty much knew who we were, so any time -- any type of
18 information that looked like it could be evidentiary
19 would be received or a critical report or something that
20 looked like it was going to pertain to the investigation
21 would be -- would occur, then it would be brought to my
22 attention and I would review it and try to follow up on
23 it, try to make determinations as to the evidentiary
24 value of that, and then to follow up on leads that
25 needed to be conducted as a result of that, things of

1 that nature.

2 Q. What were some of the critical things you were
3 looking for in the early days of the investigation?

4 A. We wanted obviously to see what the cause of the
5 bomb was, so that's why we divided up the crime scene
6 into quadrants and started having search teams begin
7 their search, and we were looking to see if we could
8 find what might be part of whatever the bomb vehicle
9 was. So that was one of the initial things that we were
10 doing. And then there were people who were reporting
11 different sightings and stuff, so we were having those
12 people interviewed at a rapid pace trying to keep up
13 with that as well.

14 Once we started finding parts of what we
15 eventually determined were the bomb vehicle, then we
16 were setting leads out to follow up on that as well.

17 Q. Was some of the evidence that you were looking
18 for videotapes?

19 A. Yes.

20 Q. What kind of videotapes?

21 A. Any videotapes in the downtown Oklahoma City area
22 that might have a view of this immediate area where the
23 bomb exploded and the area right around it to see if any
24 of those cameras captured anything that would be of any
25 evidentiary value.

1 Q. As case agent were you responsible for reviewing
2 a videotape that had evidentiary value?

3 A. Primarily there were other agents that -- the
4 short answer to that is no. There were other agents who
5 were assigned that immediate responsibility to review
6 those tapes, but they were also instructed that if
7 anything that appeared to be of any evidentiary value
8 were found in any of those tapes to bring it to our
9 attention immediately.

10 Q. Agent Hersley, did you testify in any of the
11 proceedings leading -- with respect to Timothy McVeigh's
12 prosecution?

13 A. Yes.

14 Q. What proceedings did you testify in?

15 A. I testified at the preliminary hearing, I
16 testified -- presented pretty much the government's case
17 at the federal grand jury proceedings, I testified at
18 the suppression hearings in Denver, and then I also
19 presented the government's case at the state grand jury
20 regarding Terry Nichols' state trial.

21 Q. Would you review evidence in order to prepare for
22 your testimony in those criminal proceedings?

23 A. Yes, absolutely.

24 Q. Did you meet with the prosecutors, the U.S.
25 Attorney's Office, the Assistant U.S. Attorneys that

1 were handling the case?

2 A. Yes. In this case, that was a little different
3 situation than it normally is because we were in the
4 same command post with the prosecutors, so we would meet
5 on a daily basis with the prosecutors and discuss the
6 case, discuss evidence that was being determined and
7 witnesses that were being interviewed and things of that
8 nature. We would have regular meetings and discussions
9 with them on a daily basis, yes.

10 Q. Do you recall -- you mentioned you testified at
11 the preliminary hearing.

12 A. Yes.

13 Q. Do you recall when that was?

14 A. It was on April 27th of 1995.

15 Q. How long was that after the bombing?

16 A. It was eight days after the bombing. The bombing
17 was on April 19th of 1995.

18 Q. Can we go ahead and pull up Plaintiff's
19 Exhibit 20.

20 A. Is that in --

21 Q. I'm sorry, it should be in the blue binder.

22 Could we scroll down to the second page.

23 A. Pardon me?

24 Q. No, not you, agent.

25 A. Sorry.

1 Q. Actually, if we could refer to -- I'm sorry, 28,
2 Exhibit 28. It should be the transcript portion. There
3 appears to be a transcript attached to that exhibit, do
4 you recognize it?

5 A. In the book or in the --

6 Q. It should be in the blue binder and it also
7 should be on the screen at this point.

8 A. It's not under Exhibit 20 in the blue binder.

9 Q. I'm, sorry 28.

10 A. 28. Okay. Yes, I recognize this, yes.

11 Q. What is this document?

12 A. It is excerpts from my testimony at the
13 preliminary hearing on April the 27th, 1995.

14 Q. You said excerpts. Does this reflect all the
15 testimony that you provided that day?

16 A. No.

17 Q. Why do you say that?

18 A. I reviewed this and compared it against my actual
19 testimony that day which consisted of probably over 100
20 pages, and I think this was maybe roughly 20 or 25. I
21 also would notice in reviewing this that there would
22 be -- even though the pages were sequentially numbered,
23 I would notice that at the bottom of the page it
24 wouldn't be consistent with -- wouldn't contain the full
25 text of the testimony when it got to the next page.

1 Q. Okay.

2 A. I also notice that there were things that I
3 testified about this day on the prelim that are not
4 included in these excerpts.

5 MR. SIPLE: Okay.

6 If I could step away, I want to grab what's
7 been identified as Defendant's Exhibit 252. Your Honor,
8 may I approach the witness?

9 THE COURT: You may.

10 Q. (By Mr. Siple) Agent Hersley, I've just handed
11 you what has been marked as Defendant's Exhibit 252, do
12 you recognize this document?

13 A. I do.

14 Q. How do you recognize this document?

15 A. This document I recognize because it contains the
16 full transcript of my testimony at the preliminary
17 hearing as well as some information that was occurring
18 between the attorneys and the judge before I began
19 testifying.

20 MR. SIPLE: Your Honor, for completeness
21 purposes, I would like to move to admit Defendant's
22 Exhibit 252, which is all the testimony that Agent
23 Hersley gave in that proceeding that Mr. Trentadue has
24 filed the excerpts of.

25 MR. TRENTADUE: Objection, Your Honor, on

1 relevance. I don't have any problem if he thinks
2 there's something omitted from the transcript I
3 submitted, that's fine, they can point to those pages
4 and introduce them, but to let him put a hundred plus
5 pages of testimony in the record that's not related to
6 the videotape.

7 MR. SIPLE: Your Honor, I can go ahead and
8 wait to see if Mr. Trentadue asks the witness about
9 Exhibit 20, and I can maybe renew my motion to have --

10 THE COURT: Rule 106 allows you to put the
11 entire document in evidence. I'll receive it.

12 (Whereupon, Defendant's Exhibit 252 was
13 received into evidence.)

14 MR. SIPLE: Now we can take the exhibit down
15 at this point on the screen.

16 Q. (By Mr. Siple) Agent Hersley, did you review
17 videotapes as part of your responsibilities as the
18 McVeigh case agent?

19 A. Yes.

20 Q. What videos did you review?

21 A. Primarily I reviewed a video from the Regency
22 Tower Apartments that was taken on the morning of the
23 bombing just before the bomb blast exploded. I think
24 the videotape showed a Ryder truck there. I believe the
25 first -- it wasn't really a video. It was actually

1 these time-lapse images. It's not a continuous video.
2 But the first time-lapse image that I saw from that
3 camera, I believe, was at 8:56, if my memory's correct.
4 There were several time-lapse images that were taken
5 that morning. I believe the last one was sometime at
6 8:57. I reviewed that one.

7 And there was another video that I reviewed
8 from the Regency Tower Apartments also that showed what
9 we believe to be Terry Nichols' pickup going by the
10 Regency Tower Apartments on Sunday, the Sunday before
11 the bombing, April 16th, which was Easter Sunday. So I
12 reviewed those two.

13 And I also reviewed a videotape that State
14 Trooper Charley Hanger had taken. At some point after
15 McVeigh's arrest, he turned his video camera on, you
16 could see McVeigh's car in front of the trooper's car.
17 You could see Charley in the tape a little bit going up
18 to the car. I think he was checking the car out to see
19 if there were things in it, maybe just trying to
20 determine if there were some valuables in there. He
21 obviously placed Mr. McVeigh under arrest. He wasn't
22 going to leave the car there, like he was securing the
23 car, also maybe looking before he left, yes. So I
24 reviewed those three tapes I remember reviewing pretty
25 extensively.

1 Q. Did you go with the prosecution to Denver for the
2 McVeigh prosecution?

3 A. I'm sorry?

4 Q. Did you go with the prosecution team to Denver
5 for the trial?

6 A. I did.

7 THE COURT: We're right at noon, would this
8 be a convenient place to break?

9 MR. SIPLE: Yes, Your Honor.

10 THE COURT: We'll resume at 1:00.

11 In terms of how we're doing on the schedule,
12 do you expect to be able to finish today?

13 MR. SIPLE: Absolutely, Your Honor.

14 THE COURT: Okay. We'll be in recess until
15 1:00.

16 (Lunch recess.)

17 THE CLERK: Court resumes session.

18 THE COURT: We are back in session in
19 Trentadue v. The FBI.

20 You may continue. Mr. Hersley, if you would
21 retake the stand.

22 Q. (By Mr. Siple) Agent Hersley, I just want to make
23 sure, I'm not sure I got this in the record, how many
24 years were you the McVeigh case agent for the FBI's
25 investigation?

1 A. A little bit under three years.

2 Q. You mentioned that you reviewed Regency Tower
3 surveillance footage; is that right?

4 A. Yes.

5 Q. Why did you review footage for Regency Tower?

6 A. One of the other agents, specifically Walt Lamar,
7 had told me that there was an image, or images of a
8 Ryder truck on that video that was taken from inside the
9 Regency Tower Apartments across Fifth Street there on
10 the south side of the street.

11 Q. And what do you recall of the footage from that
12 tape that you reviewed?

13 A. That it had those still images, there were
14 several, I don't remember how many there were, but there
15 were several still images of the Ryder truck parked in
16 front of the Regency Tower Apartments on the opposite
17 side of the street, pointing in an easterly direction.

18 Q. Was the Ryder truck in any way important to your
19 investigation?

20 A. Yes.

21 Q. Why is that?

22 A. Well, we had already -- the search teams had
23 already started producing evidence from the search
24 quadrants that we had assigned them to search, including
25 a rear axel that was found in front of Regency Tower

1 Apartments that was blown from the area where the crater
2 was in front of the Murrah Building, about a block
3 and-a-half away was where that rear axel was, and we
4 found a little partial vehicle identification number on
5 that rear axel PVA26077. I'll always remember that I
6 think. We used that partial vehicle identification
7 number that was on the rear axel simply to determine
8 what the extent of the vehicle identification number
9 was. Each vehicle has a 17-digit vehicle identification
10 number, and we wanted to find out what that 17 digit
11 was. So we called the people in the National Insurance
12 Crime Bureau and asked them if they could help us
13 determine what the full VIN was.

14 A vehicle identification number is
15 abbreviated and referred to as a VIN number. That's the
16 number that you see in the dash of your vehicle, most
17 vehicles have it in the dash, but also different
18 components on vehicles that have a partial vehicle
19 identification number. And if you know that partial
20 vehicle identification number, you can determine what
21 the full VIN is, and once you determine what the full
22 VIN is, those characters, each one of them means
23 something that enables you to tell exactly what the
24 vehicle is and who the manufacturer is.

25 MR. TRENTADUE: Objection, narrative and

1 relevance.

2 THE COURT: Overruled.

3 THE WITNESS: So we found that and we found
4 the rear -- what turned out to be the rear bumper to the
5 Ryder truck, and we eventually found the key for that
6 Ryder truck. So finding the images on that video camera
7 approximately a block away from the Murrah Building was
8 very important to us.

9 Q. (By Mr. Siple) Now, as the case agent, was it
10 your responsibility to review evidence relevant to the
11 Ryder truck?

12 A. Yes.

13 Q. Now, were agents working on the OKBOMB
14 investigation expected to bring items of -- concerning
15 the Ryder truck, items of evidence concerning the Ryder
16 truck to your attention?

17 A. Yes, absolutely.

18 Q. Why do you say that?

19 A. Well, it was part of our investigation and we
20 started to focus on what we believed was the bomb truck.
21 Once we found those parts, the parts were kind of
22 twisted, and the way that they were mangled and twisted
23 made us believe that it was part of the bomb truck, and
24 so that became very important to us.

25 Q. Special Agent Hersley, during all your years as

1 case agent did you ever review any tapes showing the
2 Ryder truck -- showing Ryder truck footage of the bomb
3 detonation of the Ryder truck in the vicinity of the
4 Murrah Building?

5 A. No, there was no such film.

6 Q. During all your years as case agent, Agent
7 Hersley, did you ever come across any information to
8 suggest to you that the FBI might have taken custody of
9 such a film showing the Ryder truck bomb detonation in
10 front of the Murrah Building?

11 A. No.

12 MR. SIPLE: Thank you, Your Honor.

13 THE COURT: Cross-examination?

14 MR. TRENTADUE: Yes, Your Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. TRENTADUE:**

17 Q. Mr. Hersley, I believe you testified that the
18 Regency Tower Apartment Building was about a block from
19 the Murrah Building?

20 A. Yes.

21 Q. What street was the Regency on?

22 A. Fifth Street.

23 Q. And you say the Murrah Building was about a block
24 east of Regency Tower?

25 A. Yes, roughly.

1 Q. Now, you've testified about having given your
2 testimony at the McVeigh preliminary hearing.

3 A. Yes.

4 Q. If you will look at Exhibit 28 please in the blue
5 binder.

6 A. Okay, I have that.

7 Q. Beg your pardon?

8 A. I have that in front of me.

9 Q. You were sworn in that when you gave that
10 testimony, weren't you?

11 A. Yes.

12 Q. The same oath you took here today.

13 A. Yes.

14 Q. I want to review with you some of the testimony
15 you gave. If you would turn to -- if you'll see that
16 the tops of the pages where the transcript is, it says
17 page 1 of 1 beginning with the caption.

18 A. One of one?

19 Q. One of 17, excuse me.

20 A. Yes, I see that.

21 Q. Okay. If you would go to page 2 for me, please.

22 A. Okay.

23 Q. At the bottom of the page is where you're sworn
24 in?

25 A. Yes.

1 Q. You asked to give your name, your occupation
2 and -- the question is, What is your occupation?

3 What's your answer.

4 A. I'm an FBI agent.

5 Q. I'll read the questions, sir, if you'll just read
6 the answers. How long have you been an FBI agent?

7 A. About 20 years.

8 Q. Where were you assigned?

9 A. At the Oklahoma City Office of the FBI.

10 Q. On the next page, Have you had responsibilities
11 in connection with the investigation of the explosion of
12 the Murrah Building?

13 A. Yes.

14 Q. And then if you would turn to the next page,
15 which is 4.

16 A. Yes.

17 Q. This is where Mr. Coyle starts his
18 cross-examination of you, correct, sir?

19 A. Yes.

20 Q. And the next page over.

21 A. Page 5?

22 Q. Yes.

23 A. Okay.

24 Q. And you're asked the question -- why don't you
25 look at the questions I've highlighted. And the

1 question says, Now, can you tell us please, sir, what
2 your role has been in the investigation. What was your
3 answer, sir?

4 A. Yes, I have been assisting in the investigation
5 in regard to Mr. McVeigh. I have also been
6 participating in the ongoing investigation in an attempt
7 to further identify and locate other individuals who may
8 have been involved in the bombing on April the 19th,
9 1995.

10 Q. Turn to the next page, sir. Question, So your
11 job is to just take a look and keep track of all the
12 evidence and then you assign other FBI agents out to do
13 other tasks or to make the calls?

14 A. There are other agents that are assigned to the
15 same types of duties that I am there in regard to other
16 potential individuals that were involved in the bombing.
17 I also coordinate with those individuals insofar as
18 information that is received regarding Mr. McVeigh, in
19 an effort to identify some of the other subjects that
20 were involved in the bombing here in Oklahoma City.
21 That's our primary focus right now is to try to
22 determine the identity and the location of other
23 subjects so that we can prohibit another bomb from going
24 off.

25 Q. Are you familiar with the name Andreas

1 Strassmeir?

2 A. Yes.

3 Q. Was he one of the other subjects?

4 A. He never rose to the level of being a subject.
5 He was a person of interest at one point in time, yes.

6 Q. Are you familiar with the name Steven Colbern?

7 A. Yes.

8 Q. Was he one of your subjects?

9 A. He was not a subject, no.

10 MR. SIPLE: Objection, relevance. I'm not
11 sure what subjects has to do with films.

12 MR. TRENTADUE: It would save me from having
13 to call him back on my case, Your Honor.

14 THE COURT: Overruled.

15 Q. (By Mr. Trentadue) Are you familiar with the
16 Midwest Bank Robbery Gang?

17 A. Somewhat, yes.

18 Q. Are you familiar with members of the Midwest
19 Robbery Gang?

20 A. Yes.

21 Q. Were any of those members subjects of your
22 investigation?

23 MR. SIPLE: Objection, relevance. I'm not
24 sure what this has to do with a FOIA search, and if
25 Mr. Trentadue would like to recall Mr. Hersley, I don't

1 think it's relevant in any event in any case.

2 THE COURT: I'm going to let him see if he
3 can connect it.

4 Q. (By Mr. Trentadue) Finally, my last question, are
5 you familiar with the operation known as PATCON?

6 A. No.

7 Q. Would you turn to the next page, please.

8 A. Page 7?

9 Q. Yes.

10 A. Yes.

11 Q. Question, So your job is just to -- excuse me.
12 That's all I want.

13 You were asked, Now, is there any pictorial
14 or visual recording of the vehicle parked over the
15 crater, the site, what you say is the site of the
16 explosion?

17 A. I don't believe there is a picture actually where
18 that crater is. There are other pictures of the Ryder
19 truck on that street.

20 Q. Question, Where is the Ryder truck located at the
21 time of the pictures?

22 A. Heading east on Fifth Street towards that
23 location.

24 Q. Question, It's shown heading east?

25 A. Yes.

1 Q. Question, So you say there is film available that
2 shows a Ryder truck in an easterly direction that is
3 traveling in an easterly direction on Fifth Street?

4 A. Yes.

5 Q. And is it past the street that we now know -- we
6 know as Harvey?

7 A. I'm not -- I have not studied that film in
8 detail. It's in that general vicinity right in there.
9 It may be the video that I saw. I believe it is just
10 before -- well, I'm not sure. I better not say that.

11 Q. At the bottom of the page you're asked, Are the
12 photographs that you saw or is it still photo or film?

13 A. What I saw was the still photos.

14 Q. Is it a still photo that has been removed from a
15 film?

16 A. Yes.

17 Q. So it was a close-up more of the truck than its
18 location?

19 A. I'm sorry, I'm not sure where you're at now.

20 Q. It would be on page 12 -- page 9, next page.

21 A. Okay.

22 Q. The first question at the top of the page, So it
23 was a close-up more of the truck than its location?

24 A. It wasn't a close-up photo. It was taken from a
25 camera off one of the buildings in the vicinity.

1 Q. And you say taken from a camera off one of the
2 buildings.

3 A. I'm sorry, is that a question?

4 Q. Yes, sir. That was the testimony you gave.

5 A. Yes.

6 Q. Thank you.

7 You were next asked, Did you make a
8 determination what building it came off of?

9 A. No, I did not myself.

10 Q. Question, Did anyone?

11 A. I believe one of the other agents was able to
12 determine that it came from one -- one of the films came
13 from the Regency Tower Apartments.

14 Q. Can you tell in the photograph who was driving
15 the truck?

16 A. No.

17 Q. And is the truck parked or is it moving?

18 A. As I mentioned, I saw the still photographs of
19 the picture of the footage was frozen at this time when
20 the still photograph was made, but I believe the truck,
21 due to the continuation of the still photographs, that
22 the truck was moving in an easterly direction.

23 Q. Please move to page 10 now, sir. Question at the
24 top of the page, What was the size of the truck that you
25 saw in the photographs?

1 A. I could not tell myself exactly what the size was
2 from the photograph that I saw, but I would estimate it
3 from what I saw to be approximately 20 feet.

4 Q. Question, Was there a time indicated on the
5 picture of the film that you saw?

6 A. Yeah.

7 Q. Okay. Can you tell us please, sir, what that
8 time was?

9 A. It was in the proximity of 9:00 a.m. As I
10 mentioned, I did not study the photographs in great
11 detail, and I don't know the exact time on the
12 photographs, but it was in the proximity of 9:00 a.m.

13 Q. Question, Can you tell us when you viewed those
14 photographs please, sir?

15 A. I believe within the last two to three days.

16 Q. Look at page 11 now, sir. Go to page 12, please.
17 Question in the middle of the page, I believe you told
18 us in a previous answer that there is no visual or
19 pictorial record of the vehicle parked over the site
20 where you say it exploded in front of the Murrah
21 Building.

22 A. Not that I have seen. I have not viewed all of
23 the film of that location on that morning, so I can't
24 speak to that entirely, but I have not seen it.

25 Q. Turn to page 13, sir. Question in the middle of

1 the page is, Well, how did you see the ones that you
2 have testified about earlier, did you happen to see them
3 laying on a desk and look at them, or did someone bring
4 them to your attention, how did you see those?

5 A. One of the agents that have been tasked with
6 those responsibilities showed me those photographs.

7 Q. At the bottom of the page there's a question and
8 your answer as to who that agent was, and what's that
9 answer, sir, starting with agent?

10 A. The agent that showed me the photographs was Walt
11 Lamar. Is that what you're talking about?

12 Q. Yes, sir.

13 The next page, which is page 14.

14 A. Yes.

15 Q. You were asked at the top of the page, Is he the
16 one that you inquired of as to whether or not there were
17 any photographs as to the accused, Timothy McVeigh, in
18 possession of the government at or about the Ryder
19 truck, you asked him that question, I assume, did you?

20 A. I did not inquire of Agent Lamar about these
21 photographs. He brought it to my attention because
22 there is a possibility of a particular car being
23 involved in one of those photographs that he was showing
24 me. We are continuing the investigation to try to
25 determine the actual identity of that car.

1 Q. If you would turn to the next page, which is page
2 15. Now, you have in front of you, don't you, sir, your
3 deposition?

4 A. I'm not sure what you're referring to now.

5 Q. If you would look at the one that Mr. Siple gave
6 you, Exhibit 252.

7 A. Okay. That's actually my transcript of my
8 preliminary hearing.

9 Q. Preliminary hearing.

10 A. Yes.

11 Q. I apologize. When we look at page 15 there has
12 been a part cut off from the preceding page. If you
13 would look at page 96 of your preliminary hearing
14 transcript testimony.

15 A. Okay.

16 Q. You were asked a question beginning on line 17,
17 In your review of the surveillance photos, did you find
18 any surveillance photos of that parking lot across the
19 street from the Murrah Building?

20 A. Yes.

21 Q. Okay.

22 Your answer responding to the okay question.

23 A. You characterized that as my review of the
24 photographs. I was shown those particular photographs
25 by Agent Lamar.

1 Q. Have you been shown a photograph of that
2 particular parking lot, sir, across the street from the
3 Murrah Building that includes the speeding Mercury in
4 the photograph?

5 A. I don't know for sure yet. Those photographs are
6 not real clear. They are taken from a pretty good
7 distance away. There appears to be a light-colored car
8 in the very vicinity where this witness testifies -- or
9 provides the information was speeding away from. We are
10 not able to determine yet if that is in fact the yellow
11 Mercury.

12 Q. If you'll look back on the screen, go back to
13 Exhibit 28 where we pick up with the rest of the
14 questioning and answering on this subject.

15 A. What page are we on now?

16 Q. If you would look back on the screen now, it
17 would be --

18 A. Okay.

19 Q. And the question is, Can you clearly tell in the
20 photographs that you have seen, or have you been advised
21 that you can clearly tell in the photograph the time of
22 the explosion?

23 A. I'm not sure I understand your question.

24 Q. Well, I don't know how to -- can you tell in the
25 film or the photographs when the explosion occurs?

1 A. The film that I viewed was before the explosion.
2 I did not view the entire film. The pictures that were
3 shown to me were before the explosion.

4 Q. The pictures that you saw of that particular
5 parking lot -- now I'm talking about the parking lot
6 across the street from the Murrah Building --

7 A. Right.

8 Q. -- in a northerly direction, that parking lot,
9 there's a film of that parking lot prior to the time of
10 the explosion?

11 A. Yes.

12 Q. Correct?

13 A. Yes.

14 Q. If you would turn to page 16, sir. You were
15 asked, Can you tell where that particular camera was
16 located?

17 A. I believe that particular camera was located on
18 the apartment building there that we have been speaking
19 of.

20 Q. So those were some pictures from the Regency.

21 A. Yes, those are the pictures from the Regency.

22 Q. So the camera from the Regency -- is this the
23 camera at the very top of the Regency Tower?

24 A. I don't know the exact location of the camera,
25 but it kind of scans the whole area there, is what has

1 been represented to me. It scans in front of the Tower
2 building and also over towards the parking lot.

3 MR. TRENTADUE: No further questions, Your
4 Honor.

5 THE COURT: Any redirect?

6 MR. SIPLE: Yes, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MR. SIPLE:**

9 Q. Agent Hersley, when you gave your testimony at
10 this preliminary hearing, how many days into the
11 Oklahoma City bombing investigation were you at that
12 point in time?

13 A. Eight days.

14 Q. And how hard were you working on the
15 investigation at that point in time?

16 A. About 16 to 20 hours a day.

17 Q. And would it be strange in your view that eight
18 days into a major investigation you would still be
19 looking for other suspects and other possible leads?

20 A. No.

21 Q. You mentioned you were the case agent for how
22 many years?

23 A. A little under three years.

24 Q. Over that -- as the investigation progressed over
25 those three years, did you become more familiar with the

1 evidence?

2 A. Yes, I did.

3 Q. Did you have more opportunities to review the
4 evidence?

5 A. Very much so.

6 Q. Did you review the evidence each and every time
7 before you testified?

8 A. Yes.

9 Q. Later times?

10 A. Yes. I reviewed the evidence on a daily basis.

11 Q. At the time you testified at this preliminary
12 hearing had you had an opportunity to fully review the
13 Regency Tower film?

14 A. Would you say that again.

15 Q. At the time you went into this preliminary
16 hearing had you had an opportunity at that time to
17 review all the Regency Tower footage?

18 A. No.

19 Q. Did you later have an opportunity to review the
20 Regency Tower footage in more detail?

21 A. Yes.

22 Q. I would like you to turn back to Exhibit 20 which
23 the plaintiff was questioning you about.

24 A. 20?

25 Q. Yes.

1 A. Or 28.

2 Q. It's in the blue binder, Plaintiff's Exhibit 20,
3 and look at page 8.

4 A. There is not a page 8 on Exhibit 20.

5 Q. I'm sorry, 28, I'm sorry. I keep referring to it
6 as 20.

7 A. Page 8?

8 Q. Yes.

9 A. Okay.

10 Q. Now, having had the benefit of three years as
11 case agent on the investigation to review the evidence,
12 are you now aware of what you were referring to on page
13 8 the plaintiff talked to you about starting at about --
14 well, the lines aren't marked here, where you say, Yes,
15 I've been assisting in the investigation, and the video
16 that's referred to on page 8.

17 A. I don't see where it says, Yes, I've been
18 assisting in the investigation on page 8.

19 Q. I'm sorry. I'm on page -- let's go to the bottom
20 of page 8.

21 A. Okay.

22 Q. Try to get my mind back here. You were asked
23 about the video referred to here by the plaintiff. Now
24 having had the benefit of reviewing all the -- having
25 more time over the years to review additional -- the

1 evidence, do you now know --

2 MR. TRENTADUE: Leading, Your Honor, and I
3 don't think you can impeach your own witness.

4 MR. SIPLE: I'm not attempting to impeach
5 him. I'm just saying, having had the opportunity now
6 to review the evidence more fully --

7 THE COURT: I'm not sure what you're asking
8 him about because the bottom of page 8 refers to
9 photographs, still photographs.

10 Q. (By Mr. Siple) Do you now know, having reviewed
11 all the evidence where the photos that you were
12 referring to were taken from?

13 A. Yes.

14 Q. Where were those photos taken from?

15 A. Inside the Regency Tower Apartments.

16 Q. Thank you.

17 A. I should say shooting out towards Fifth Street.

18 Q. You were asked about footage of a parking lot
19 from the Regency Tower Apartments.

20 A. Yes.

21 Q. Now having had the opportunity of three years as
22 the case agent to have reviewed the evidence, do you
23 have a better understanding of that footage?

24 A. Yes.

25 Q. And where did that footage come from?

1 A. There was two footages that I was actually
2 inaccurately quoted from that day. One was the footage
3 off the Regency Tower Apartments shooting out. Walt
4 Lamar had told me about a possible light-colored vehicle
5 pulling out of the parking lot there at the Regency
6 Tower Apartments. Then there was another picture that I
7 had been shown that was across the street from the
8 Murrah Building and the Regency Tower -- I mean the
9 General Records Building Parking lot, but I determined
10 after my testimony that that photograph had actually
11 been taken after the bombing.

12 Q. At day eight in the investigation, eight days
13 after the bombing, what capability did you have at that
14 point to exploit and enhance these tapes?

15 MR. TRENTADUE: Objection, foundation.

16 THE COURT: Sustained.

17 Q. (By Mr. Siple) At that point in the
18 investigation, had you had an opportunity to fully
19 review all the tapes that might be of evidentiary value?

20 A. At the time of the prelim?

21 Q. Yes.

22 A. No.

23 Q. The plaintiff asked you about information, in
24 your testimony in Exhibit 28 you talked about getting
25 information from other agents.

1 A. Yes.

2 Q. In a major investigation is that unusual to rely
3 on information that you receive from other agents?

4 A. No, not at all.

5 Q. Why not?

6 A. There's just such an expansive, exhaustive
7 investigation going on, it would be impossible to do all
8 the investigation yourself, so you assign other agents
9 to specific tasks and to general categories of things to
10 do, such as trying to gather all of the films in the
11 downtown Oklahoma City area around the Murrah building
12 because you can't do everything yourself, so you assign
13 other agents to do that, and then they report back to
14 you what the results of their search is or what the
15 results of their leads that you assign them, and that's
16 very normal in an investigation like this.

17 Q. And having had the opportunity to now review this
18 preliminary hearing transcript, does it lead you to
19 believe that there was any other footage from the
20 Regency Tower showing a Ryder truck other than what
21 you've previously testified to?

22 A. No.

23 MR. SIPLE: One moment, Your Honor. No
24 further questions, Your Honor.

25 MR. TRENTADUE: No rebuttal, Your Honor.

1 THE COURT: Mr. Hersley, you may step down.
2 You may be excused.

3 The FBI may call its next witness.

4 MR. SIPLE: Yes, Your Honor, the FBI calls
5 Special Agent retired Larry Tongate.

6 **LARRY TONGATE,**
7 called as a witness at the request of the Defendant,
8 having been first duly sworn, was examined
9 and testified as follows:

10 THE CLERK: Could you please say your full
11 name and spell it for the record.

12 THE WITNESS: Yes. Larry G. Tongate,
13 T-o-n-g-a-t-e.

14 **DIRECT EXAMINATION**

15 **BY MR. SIPLE:**

16 Q. Good afternoon Special Agent Tongate.

17 A. Good afternoon.

18 Q. Just a couple of introductory questions, where do
19 you currently reside?

20 A. In Branson West, Missouri.

21 Q. Are you currently employed?

22 A. No. I'm retired.

23 Q. And where are you retired from?

24 A. Well, my initial career was with the FBI. I
25 retired from the FBI for almost 30 years, in October of

1 2000, and then I took a position with Midwest HIDTA,
2 which stands for High Intensity Drug Trafficking Area.
3 I was deputy director of that until May 31, 2013.

4 Q. So just to clarify, when did you start with the
5 FBI?

6 A. In 1971.

7 Q. And do you remember the year you retired -- you
8 retired in 2000?

9 A. Yes, 2000, October 2000.

10 Q. Special Agent Tongate, do you recall where you
11 were assigned on April 19, 1995, the date of the
12 Oklahoma City bombing?

13 A. Yes. I was assigned to the FBI in Kansas City,
14 Missouri.

15 Q. Do you remember what you were doing specifically
16 when you learned of the bombing?

17 A. Yes. I was at the United States Attorney's
18 Office preparing for a trial that was to begin the
19 following week and which it came up -- the bombing came
20 up on the news media there at the U.S. Attorney's
21 Office.

22 Q. Did the FBI assign you any responsibilities to
23 the Oklahoma City bombing?

24 A. Initially, the Kansas City FBI office sent a team
25 of agents to Oklahoma City. Because I was preparing for

1 trial I was not one of those. Eventually, by that
2 afternoon leads began coming in to the Kansas City
3 Division specifically relating to the rental of the
4 Ryder truck in Junction City, Kansas. More agents were
5 dispatched out to Junction City. I eventually joined
6 them and ultimately became case agent for the Kansas
7 City Division during the investigation in Kansas.

8 Q. Okay. If I could just back up a minute. Why
9 were you assigned to work the Oklahoma City bombing out
10 of Kansas City?

11 A. Well, all of the agents in Kansas City at one
12 time or another worked on the bombing and/or during the
13 initial stages. Eventually I was given the assignment
14 as the case agent representing Kansas City.
15 Subsequently, when they put together the trial team and
16 the case was moved to Denver, Colorado for trial, I was
17 picked as the Kansas City agent, one of the two
18 investigative case agents, for the overall case, myself
19 and John Hersley were the other case agent.

20 Q. This is for the McVeigh prosecution?

21 A. McVeigh and Nichols prosecution. I was at both.

22 Q. Did you testify at any of the proceedings for the
23 McVeigh or Nichols trial?

24 A. I testified in both federal trials, in McVeigh
25 and Nichols, as well as the state trial in Oklahoma.

1 Q. I would like for you -- if you could describe in
2 terms of being the case agent, what your responsibility
3 or role was as the case agent with respect to the
4 McVeigh and Nichols prosecutions.

5 A. Well, the overall job as a case agent is to
6 obviously identify culprits and bring forth the evidence
7 that would lead to a conviction for those that you
8 identified as the individuals who perpetrated this
9 crime. And from that period on you kind of oversaw all
10 the information that was developed, and there were
11 obviously thousands of pieces of paper that was
12 developed and interviews that were conducted, sort
13 through the majority of that, and put together a
14 prosecutable case, sit down and work with the Department
15 of Justice Attorneys and the U.S. Attorneys, Assistant
16 United States Attorneys, and get the matter ready for
17 preparation and court.

18 Q. Does the case agent personally review evidence of
19 evidentiary value for the prosecution?

20 A. Absolutely.

21 Q. In what way do you stay informed about the
22 evidence as case agent?

23 A. Well, there are a number of ways. This
24 investigation obviously took place in a number of field
25 divisions within the FBI. And specifically in the

1 Kansas City office, once I was declared the case agent,
2 agents would bring forth material to me or paperwork
3 would flow to me that had evidentiary value or need
4 potential, need further developing, and that I would
5 review and then ultimately furnish to the prosecution
6 until we ultimately put together the case.

7 Q. You mentioned that agents would bring material to
8 you, was the expectation that they should bring evidence
9 to you?

10 A. Absolutely, if it was -- certainly, if it was
11 pertinent to the investigation.

12 Q. And how many years were you a case agent in the
13 OKBOMB case?

14 A. A little over two years.

15 Q. During your time, during those two years as a
16 case agent, did you have a chance to review any
17 surveillance videos?

18 A. Yes.

19 Q. And please --

20 MR. TRENTADUE: I renew my objection, Your
21 Honor, based on due process and relevance to this
22 witness testifying.

23 THE COURT: The objection is overruled for
24 the reasons stated before.

25 Q. (By Mr. Siple) Special Agent Tongate, could you

1 please tell the court what videos you reviewed.

2 A. I reviewed a number of videos, including some
3 that were -- that occurred up in Kansas, for instance, a
4 video of Timothy McVeigh exiting a McDonald's restaurant
5 in Junction City just prior to the Ryder truck being
6 rented. I also became aware and was made aware and
7 reviewed the videotapes that came out of the Regency
8 Tower depicting a Ryder truck just prior to the bombing
9 on April 19th.

10 Q. Could you describe in more detail the footage you
11 reviewed from the Regency Tower.

12 A. Sure. It was from a camera that was inside the
13 lobby of the Regency Tower and showed the lobby area and
14 then outside. And across the street you could clearly
15 see a truck that was marked Ryder on the truck. You
16 couldn't tell anything about who was in the truck or who
17 was driving it or any persons, but you clearly knew it
18 was a Ryder truck because it said Ryder on the side of
19 it. And that was approximately 8:56, 8:57, I can't
20 recall exactly, but in that timeframe, was only there
21 for a short period of time, and it was only a few
22 hundred yards from the Murrah Building facing in the
23 direction of the Murrah Building.

24 Q. Was the Ryder truck of significance to the
25 investigation?

1 A. Absolutely. You know, prior to the investigation
2 it had been determined a rear axel that was actually
3 found embedded on top of a Ford Fiesta in front of the
4 Regency Tower, and through further investigation
5 determined that to be the truck that was utilized in the
6 bombing. It was traced back to being rented in Junction
7 City, Kansas, through Eldon Elliot's Body Shop, and a
8 lot of work was done in Kansas in response to that.

9 Q. Other than the footage from the lobby of the
10 Regency Tower which you mentioned showed the Ryder truck
11 in Oklahoma City, was there any other footage you
12 reviewed showing the Ryder truck?

13 A. None.

14 Q. During all your years as case agent did you
15 review any tapes showing a Ryder truck or a truck of any
16 kind pulling up to the Murrah Building and detonating, a
17 bomb detonation?

18 A. No, there was none. There were no videos of the
19 truck at the Murrah Building at the time of the
20 explosion. The only tapes that existed were those out
21 of the Regency Tower just prior to the bombing.

22 Q. Just because you mentioned tapes, the only image
23 from the Regency Tower is the one you testified to
24 earlier?

25 A. Excuse me, yes, the image.

1 Q. Well, I'll just say footage.

2 Agent Tongate, during your time as case
3 agent did you ever receive any information that led you
4 to believe that the FBI had taken into evidence any type
5 of video showing a Ryder truck detonation?

6 A. No, there was none.

7 MR. SIPLE: Thank you.

8 THE COURT: Cross-examination?

9 MR. TRENTADUE: Yes, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. TRENTADUE:**

12 Q. Agent Tongate, when were you first contacted
13 about testifying at this trial?

14 A. Oh, I don't recall the exact date, but a couple
15 of weeks ago, two weeks ago maybe.

16 MR. TRENTADUE: No further questions, Your
17 Honor.

18 THE COURT: Any redirect?

19 MR. SIPLE: No, Your Honor.

20 THE COURT: Thank you. You may step down,
21 and you're excused.

22 MR. TRENTADUE: Your Honor, I renew my
23 motion to strike the testimony of Agent Tongate and
24 Agent Hersley because of having been contacted weeks
25 before the trial.

1 THE COURT: The motion is denied. You can
2 argue the significance of that at a later time.

3 Does the FBI have any additional witnesses
4 to call?

5 MR. SIPLE: No, Your Honor.

6 THE COURT: Does the FBI rest?

7 MS. MYER: We rest, Your Honor, and again
8 move for judgment on the evidence that has been
9 submitted under Rule 52.

10 THE COURT: I'll take the motion under
11 advisement.

12 Anything further from the plaintiff,
13 Mr. Trentadue?

14 MR. TRENTADUE: Your Honor, if I can have
15 about five minutes to -- a few minutes to look over my
16 notes, I may be through.

17 THE COURT: All right. Let's take about a
18 15-minute break.

19 (Recess.)

20 THE CLERK: Court resumes session.

21 THE COURT: We are back in session in
22 Trentadue v. The FBI.

23 Anything further, Mr. Trentadue?

24 MR. TRENTADUE: Yes, Your Honor. I would
25 offer Exhibit 68, which has been testified to

1 extensively.

2 THE COURT: Exhibit 68, let me make sure
3 I've got the right one. Any objection?

4 MR. SIPLE: I'm just trying to locate it,
5 I'm sorry.

6 THE CLERK: On 68 I've got that as already
7 being entered.

8 MR. TRENTADUE: Is 69 entered too?

9 THE CLERK: Yes.

10 MR. TRENTADUE: And Exhibit 50, which is the
11 media bypass article, Mr. Hardy -- is in the record in
12 this case that shows the filing -- Mr. Hardy testified
13 he reviewed everything in the record in the case as
14 additional --

15 MS. WYER: Objection, Your Honor. If
16 Mr. Hardy reviewed something that was filed on the
17 docket to prepare for trial, that doesn't have anything
18 to do with the adequacy of the search that was
19 conducted.

20 THE COURT: What's your response?

21 MR. TRENTADUE: Well, Your Honor, if they
22 can bring in witnesses this late to testify about things
23 outside the scope of the FOIA search, then certainly
24 that should be admissible to show that Mr. Hardy was
25 aware of that evidence.

1 THE COURT: And it's being offered for the
2 purpose of showing --

3 MR. TRENTADUE: His knowledge of it.

4 THE COURT: Did he testify that he knew
5 about this article?

6 MR. TRENTADUE: He said he reviewed
7 everything in the record in the case, he said he
8 reviewed all the files.

9 MS. WYER: Your Honor, he didn't say that he
10 reviewed it before the search was done.

11 THE COURT: Where does this appear in the
12 record?

13 MR. TRENTADUE: It will show on Exhibit 50,
14 Your Honor, if you turn to the second page you can see
15 the filing, it was back in 2012 I think.

16 MS. WYER: Your Honor, 2012 was four years
17 after the request was submitted, and this was something
18 that was filed on the docket in the course of summary
19 judgment proceedings.

20 THE COURT: Well, I don't think there's
21 sufficient evidence to show that Mr. Hardy in fact
22 reviewed this document, so it will be -- the objection's
23 sustained.

24 MR. TRENTADUE: With that, I have no other
25 evidence, Your Honor.

1 THE COURT: Okay. And the plaintiff rests?

2 MR. TRENTADUE: I would like -- yes. I
3 would like to proffer before I do what Mr. Matthews'
4 testimony would have been I believe for the record.

5 THE COURT: Go ahead.

6 MR. TRENTADUE: Mr. Matthews would have
7 testified that he had been an undercover operative for
8 the FBI in an operation known as Patriot Conspiracy, or
9 PATCON, that extended throughout the 1990s, and he would
10 have testified about his connection with Andreas
11 Strassmeir and Timothy McVeigh through PATCON.

12 THE COURT: Okay. Does the FBI counsel have
13 any further report as to what the contact, if any, was
14 with Mr. Matthews?

15 MS. WYER: Your Honor, we were able to
16 contact the local FBI field office here in Salt Lake
17 City and we learned that Mr. Matthews did contact agents
18 in that office, from what I understand, two to three
19 weeks ago, and asked them if they knew of any way that
20 he could avoid complying with the subpoena that the
21 plaintiff had issued because he did not want to testify
22 in this case, and that's essentially the substance of
23 the contact that occurred.

24 THE COURT: How did they respond to his
25 question?

1 MS. WYER: They said that as far as they
2 knew a valid subpoena would have to be complied with.

3 THE COURT: And who was the agent that spoke
4 with Mr. Matthews?

5 MS. WYER: There were, I believe, at least
6 two agents that spoke with him -- or one agent, Agent
7 Adam Quirk.

8 THE COURT: Any further questions,
9 Mr. Trentadue?

10 MR. TRENTADUE: Yes, considerable questions,
11 Your Honor. Mr. Matthews was not subpoenaed. He was
12 going to voluntarily testify. I spoke with Mr. Matthews
13 this morning. He says after the government lost their
14 motion in limine to keep him from testifying about the
15 middle of the month, he was contacted. It was suggested
16 to him that it would be best for everyone if he didn't
17 testify; it was suggested to him that he take a
18 vacation; it was suggested to him that if he did
19 testify, he should have a bad case of I don't remembers;
20 and from his work with the FBI undercover he informed me
21 that he took that as a very serious threat. They told
22 him -- assured him, Agent Adam Quirk -- they called him
23 repeatedly -- that they would inform the court and would
24 inform me last week that he wasn't going to testify.

25 THE COURT: Did he provide any further

1 detail as to who the contact person was so that we can
2 ask the FBI to follow up on this?

3 MR. TRENTADUE: He mentioned Adam Quirk. I
4 had not actually known there was a second agent.

5 MS. WYER: Your Honor, I was misstating
6 that. I'm relying on agency counsel, and she corrected
7 me on that point.

8 THE COURT: Do you have any further
9 information pursuant to what Mr. Trentadue has
10 represented to the court?

11 MS. WYER: I do not believe that
12 Mr. Trentadue's representation is accurate because the
13 agent represented to the contrary, Your Honor.

14 THE COURT: Mr. Trentadue, is there anything
15 you would like me to do to pursue this further?

16 MR. TRENTADUE: Your Honor, I think they're
17 officers of the court. I mean we go ask the agents,
18 they say, oh, no, we never did that. You ask the guy
19 who doesn't come and testify and he says, I better not
20 come and testify, it would be best for everyone if you
21 don't testify. And Mr. Matthews said he didn't call
22 them, they called him repeatedly.

23 THE COURT: And the agent involved's name is
24 Adam Quirk?

25 MR. TRENTADUE: Quirk.

1 THE COURT: Where is he located?

2 MR. TRENTADUE: Mr. Matthews said he's here
3 in Salt Lake City. But I didn't know -- what is the
4 second agent?

5 MS. WYER: Your Honor, I have already said
6 that I misstated that and agency counsel corrected me.
7 There was only Agent Adam Quirk.

8 MR. TRENTADUE: And there was no subpoena,
9 Your Honor. Mr. Matthews was -- in fact, if the court
10 recalls, I expressed concern about --

11 THE COURT: Well, Mr. Quirk's within the
12 jurisdiction of the court. How would you like me to
13 proceed?

14 MR. TRENTADUE: I think we should have him
15 in here and talk to him.

16 MS. WYER: Your Honor, this is based on
17 some -- another wild theory of the plaintiff. There's
18 no reason to believe that in a FOIA case where our
19 understanding was that Mr. Matthews was going to say
20 something completely irrelevant about records, we didn't
21 know exactly what, that there would be --

22 THE COURT: The issue at this point goes
23 beyond that. The issue at this point is whether or not
24 there was direct interference. If the representation
25 Mr. Trentadue has made is true, then it's tampering and

1 encouragement of the witness not to appear.

2 MR. TRENTADUE: Your Honor, Mr. Matthews
3 said he was called. That should be a simple matter to
4 determine from the phone records. Why would
5 Mr. Matthews call -- his contact, his handler was out of
6 Arizona, not Utah.

7 THE COURT: This is a sufficiently serious
8 accusation that I think we should follow up on it. I
9 think the agent should be brought in, Mr. Trentadue
10 should be allowed to cross-examine him, and find out
11 exactly what he did.

12 MS. WYER: Well, Your Honor, we would ask
13 that Mr. Matthews be brought in to be cross-examined
14 also about --

15 THE COURT: If you want to subpoena
16 Mr. Matthews, you can.

17 MS. WYER: Well, we don't know where to find
18 Mr. Matthews, Your Honor.

19 MR. TRENTADUE: He got called, Your Honor.

20 THE COURT: Apparently Mr. Matthews --
21 Mr. Quirk knew how to find him.

22 MS. WYER: Mr. Matthews is the one that
23 contacted Agent Quirk, Your Honor.

24 THE COURT: Well, we have a dispute about
25 that. So I think that the first step in this is we ask

1 Mr. Quirk to come in, subject him to cross-examination,
2 and we see where that takes us. If the FBI wants to put
3 on additional evidence, I'll consider it at that point,
4 but I don't think we can just leave this where it is.
5 It's too serious of an accusation. We need to get to
6 the bottom of what exactly happened.

7 MR. TRENTADUE: Your Honor, it's a simple
8 matter. As I say, they should produce the phone records
9 too. If in fact it shows that Mr. Matthews was calling
10 him, that's a different story, but if in fact it shows
11 the agent repeatedly calling Mr. Matthews, that's the
12 smoking gun.

13 THE COURT: Let's set a date for Mr. Quirk
14 to come in and testify.

15 MS. WYER: Your Honor, we would ask that
16 Mr. Quirk, or Agent Quirk, simply submit a declaration.

17 THE COURT: He's got to be subject to
18 cross-examination. The accusation is too serious to be
19 dealt with without cross-examination.

20 MS. WYER: Your Honor, I've never been in
21 contact with Agent Quirk and I do not know what his
22 schedule is, so I would ask that we be able to address
23 the scheduling of any such matter at a later time.

24 THE COURT: We're going to set the schedule.
25 If there in fact is good cause to continue it to a

1 different day, you can raise that as an issue. But at
2 this point, Mr. Quirk's involvement is such that there
3 needs to be -- he may have to inconvenience himself to
4 be here. So let's pick out a date in the afternoon
5 about ten days out. Adriane, can you give us a date.

6 MR. TRENTADUE: Can we go a little further
7 than ten, Your Honor? I'm totally out of state until
8 August the 10th.

9 THE COURT: Okay. Sometime after
10 August 10th.

11 THE CLERK: Okay. And you're out the week
12 of August 18th.

13 MR. TRENTADUE: The end of the week would be
14 better probably.

15 THE CLERK: The week of the 25th because the
16 judge is of town the 18th through the 22nd.

17 MR. TRENTADUE: The 25th would work.

18 THE COURT: Sometime the week of the 25th.

19 MR. WYER: Your Honor, I would ask the
20 plaintiff to agree to an extension in another case that
21 we have together if it's going to be set on that date in
22 that time period.

23 MR. TRENTADUE: I have no problem with
24 granting extensions, Your Honor.

25 THE CLERK: We can do it Monday,

1 August 25th, at 11:00.

2 MR. TRENTADUE: That would work.

3 THE COURT: Does that work for the FBI?

4 MS. WYER: Yes, Your Honor.

5 THE COURT: Now, will the FBI produce
6 Mr. Quirk, or do we need to have a subpoena issued?

7 MS. WYER: As long as Agent Quirk doesn't
8 indicate a scheduling conflict, in which case we would
9 alert the court and try to reschedule, I assume that --

10 THE COURT: I'll take it that Mr. Quirk will
11 appear. And if there is a problem with the date, we can
12 work that out.

13 Anything further from counsel on either side
14 before we conclude the evidentiary hearing?

15 MR. TRENTADUE: No, sir. The time on the
16 25th?

17 THE CLERK: 11:00.

18 MR. TRENTADUE: 11:00, thank you.

19 THE COURT: Now, I'm going to request from
20 each counsel, from parties -- from each party, one, a
21 proposed findings of fact and conclusions of law, and a
22 concluding brief. Once I've received those, I'll then
23 set a date for oral argument.

24 I assume you want the transcript before you
25 prepare the proposed findings and final brief.

1 MR. TRENTADUE: Yes, sir.

2 MR. SIPLE: Yes, Your Honor.

3 THE COURT: Karen, can you give us a date
4 for the transcript.

5 (The reporter and the court agreed on
6 September 2, 2014, for completion of the
7 transcript.)

8 THE COURT: Since the FBI has the burden of
9 proof, it may be most helpful to have the FBI submit
10 their proposed findings and closing brief. How much
11 time after September 2nd does the FBI want to file their
12 documents?

13 MS. WYER: We would ask for 30 days, Your
14 Honor.

15 THE COURT: That would take us to
16 September 29th, does that work? It's not exactly 30
17 days, but it's close.

18 MS. WYER: I believe so, Your Honor.

19 THE COURT: Mr. Trentadue, how long do you
20 want for a response?

21 MR. TRENTADUE: 30 days, Your Honor.

22 THE COURT: That would take us to -- I don't
23 have my October calendar up, but let's fix a specific
24 date.

25 THE CLERK: It would be October 26th.

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THE COURT: Would that work?

MR. TRENTADUE: Yes, sir.

THE COURT: Then once I get the briefing and I've had a chance to look at it, then I'll set a time for oral argument, but it will be within a couple of weeks after that.

MR. TRENTADUE: Yes, sir.

THE COURT: Anything further we need to address before we recess?

MR. TRENTADUE: No, sir.

THE COURT: Thank you, counsel, for your efficient presentation of the case. We will be in recess.

(Whereupon, the matter was concluded.)

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C E R T I F I C A T E

State of Utah
County of Salt Lake

I, Karen Murakami, a Certified Shorthand Reporter for the State of Utah, do hereby certify that the foregoing transcript of proceedings was taken before me at the time and place set forth herein and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of September, 2014.

Karen Murakami
Karen Murakami, CSR, RPR